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## **Public land in the Roman Republic : a social and economic history of the ager publicus**

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**Public land in the Roman Republic: a  
social and economic history of the *ager  
publicus***

**Saskia T. Roselaar**

**PhD thesis Leiden University 2008**



# **PUBLIC LAND IN THE ROMAN REPUBLIC**

**A SOCIAL AND ECONOMIC HISTORY OF THE *AGER PUBLICUS***

Proefschrift

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de graad van Doctor aan de Universiteit Leiden

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# **1. Introduction**

## **1. Problems and questions**

The subject of this book is the *ager publicus*, a kind of public land specific to the Roman Republic: it was land owned by the state, which could be made available in various ways to Roman citizens. Although many works have been devoted to this kind of land, there is as yet no book which investigates in depth its role in the society, economy, and politics of the Roman Republic. The importance of *ager publicus* becomes clear immediately when reading the ancient sources: debates about *ager publicus* were prominent throughout the Republic. The main subject of discussion was the monopolization of this land by the elite and the resulting impoverishment of the small farmer. However, many aspects of the history of this type of land are still hotly debated, from its development in the early Republic and the legal rights to it that could be exercised by Roman citizens and allies, to its role in the events of the second century BC and the Gracchan period.<sup>1</sup> This has led Cornell to state: 'The nature and function of the *ager publicus*, and the rights of the Roman citizens in relation to it, are among the most fundamental but at the same time the most intractable problems in all of Roman history.'<sup>2</sup> This book aims to fill this gap in our knowledge by giving a comprehensive overview of *ager publicus* in the Roman Republic. I will discuss both the legal and technical aspects of the administration of this land, and the role it played in society as a whole.

*Ager publicus* has been the subject of scholarly debate since the early nineteenth century. However, certain aspects have been studied extensively, while others have been for the most part neglected. In the nineteenth and early twentieth centuries the focus of study was the legal conditions applying to *ager publicus*. A great deal of attention was given to the various laws relating to public land and the development of legal instruments concerning its possession. This research, although still of great value, was carried out mainly by German and Italian scholars, and both the language barrier and the antiquity of these works have been responsible for the fact that they are no longer regularly consulted.<sup>3</sup> Furthermore, the legal focus of these works has made them largely inaccessible to those who are not expert in Roman law. But most importantly, because these works are written by legal experts, they tend to neglect the historical importance of *ager publicus*. While discussing at great length the legal aspects of public land, many of these works completely neglect the actual functioning of public land in Roman economy and society and the central place it occupied in the history of the Republic.

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<sup>1</sup> All dates are BC unless specified otherwise.

<sup>2</sup> Cornell (1989a, 326).

<sup>3</sup> The most important works are Niese (1888), Zancan (1934), Bozza (1939), Tibiletti (1948-9), and Burdese (1952).



This book aims to move away from the purely legal issues and to give more attention to the role of *ager publicus* in the economy and society of Republican Italy. At the same time the legal issues connected with this type of land will not be ignored. By discussing *ager publicus* in a wider context and connecting it to such themes as population growth and proletarianization, its importance in the Republican period can be clarified. At the same time legal developments concerning it will be discussed in a new light, by putting the law in its social context. It will become clear that laws concerning public land were not created in isolation from developments in society at large: legal institutions could easily be adapted whenever economic or social circumstances called for it. Roman law was remarkably flexible in adapting to challenges posed by society, and this meant that new laws concerning *ager publicus* were developed at various moments in Roman history.

Before answering any questions about the importance of *ager publicus*, we must first investigate how much of this land there actually was. Serious attempts at calculating its extent have never been undertaken. Scholars like Beloch and Afzelius attempted to calculate the size of the Ager Romanus and the land held by Latins and allies, but they did not devote attention to *ager publicus* as a separate category. The existence of wide tracts of such public land is usually taken for granted. Only Rathbone has recently challenged this view by suggesting that there was actually only a limited amount of *ager publicus*, at least before the second century; however, he does not provide quantification to support this claim. We must therefore first try to make a systematic computation of the amount of *ager publicus* available at any given moment in Roman history. It will of course be impossible to arrive at more than a rough estimate. Rather than giving precise figures therefore, in chapter 2 and the Appendix I shall try to establish approximately which land became *ager publicus* and the places where this may have been located. I shall attempt to estimate how much public land was privatized in distributions to Roman citizens and allies, and therefore ceased to be public land of the Roman state. In this way we can establish how much of the land that had any moment been *ager publicus* actually retained this legal status for any significant time.

It is my contention that there was indeed a large amount of *ager publicus* available both before and after the Second Punic War, as is indeed assumed by most scholars. This then begs the question as to why the Romans confiscated large amounts of land which was not privatized for the benefit of Roman citizens. Part of the explanation can be found in the concept of *occupatio*: land could be occupied and used by Roman citizens for as long as the state did not need it, and this is generally assumed to have happened on a large scale throughout the Republic, especially by the rich. However, rich Roman citizens were not the only group making use of *ager publicus*. It is generally accepted that much *ager publicus* was not held by Romans, but by Latin and Italian allies. This means that although *ager publicus* was technically the property of the Roman

state, in fact many Italians were still using it. However, the occupation of *ager publicus* by non-Romans is not well documented, and many different patterns of landholding were possible. Chapter 2 will try to shed some light on this complicated issue.

Although some of the confiscated land was privatized in distributions to Roman citizens, a considerable amount of land remained public. Chapter 3 will focus on the legal conditions of the land that retained the status of *ager publicus*. While in the early Republic most of this land was free for occupation, gradually some limits were created on the amount of land that could be occupied. The *Lex Licinia*, dated by the ancient sources to 367, is generally accepted to have been the main instrument in achieving this, but its date and nature are heavily debated. I will argue that a new interpretation of this law may clear up much of the confusion surrounding it. In the course of the third and second century more differentiation was created in the nature of *ager publicus*. Some land remained free for occupation, while other land was sold or leased out under various terms. Much of the older legal literature treats the various categories of *ager publicus* as a given, without acknowledging the developments that took place during the Republican period. However, I argue that the Roman state was in fact rather flexible with regard to *ager publicus*; at various moments new legal categories of land were created. In my view, the creation of such new legal categories of land was intimately related to economic developments in the Middle Republic; in chapter 3 I will investigate the exact relationship between these developments and the creation of different legal categories of *ager publicus*.

A crucial period in the history of the Roman Republic, and also in that of *ager publicus*, was the second century. At this time the Roman state developed from the dominant power in Italy to a Mediterranean empire, a process which caused great changes in the Italian peninsula. A great influx of money and slaves created wider economic opportunities for many Romans, both rich and poor, and as a result of this many elements of traditional economy and society were transformed. It is generally accepted that the economic changes had direct consequences for the *ager publicus* as well. The traditional view of this period assumes that large tracts of *ager publicus* were occupied by rich farmers who invested the money gained from the expanding empire. In this way they are thought to have deprived the small Roman citizen farmer of access to the public land. This is assumed to have caused a decline in the number of Roman citizens: the landless were reluctant to have children because they could not feed them without land.

However, it has recently been recognized by such scholars as De Ligt and Lo Cascio that the second century may in fact have been a period of population growth, even if the rate of growth is still hotly debated. If this is true, many time-honoured ideas about *ager publicus* must be revised as well. The traditional view assumes that small farmers were dependent on *ager publicus*, but I suggest that this may not always have been the case. It is possible that the proletarianization

of the small farmer described in the sources was not caused so much by the greed of the rich as by an increase in population. On the one hand rich farmers were looking for land on which to produce for the growing urban market, while on the other small farmers remaining on the land had to share the limited resources with an ever growing number of people. Chapter 4 will investigate the links between population growth and the increasing demand for access to land. I will argue that demand for land in the second century was indeed much larger than before, and that this led to increasing problems for small Roman citizen farmers. This increasing proletarianization of the free Roman citizens eventually led to the Gracchan land reforms. At the same time, not all regions of Italy experienced the same problems, and I will therefore give due attention to local and regional variations throughout Italy.

The attempts at reform by Tiberius and Gaius Gracchus, tribunes of the plebs in 133 and 123-2 respectively, are the subject of chapter 5. Their plans were a direct answer to the perceived crisis of the peasant farmer. The Gracchi planned to revive the impoverished farmers by a time-honoured method: to recycle the surplus population of central Italy to *ager publicus* in the Italian periphery, as had happened by means of colonization and distribution of land in the fourth and third centuries. In 133 there was still a large amount of *ager publicus* in northern and southern Italy, which could theoretically have been used by the state for distribution. However, it is likely that much of this land was still occupied by Italian allies who had continued to work the land they had held before it had been confiscated. The plans of the Romans to use this land themselves therefore caused serious complaints from the allies; in a way the loss of *ager publicus* held by the Italian allies can be considered one of the causes of the Social War.

The Gracchi recognized that it was impossible to allow the land distributed to impoverished citizens to remain *ager publicus*; simply giving them access to this land would not sufficiently protect them from the developments which had caused them to become proletarians in the first place. Therefore the legislation of the Gracchi made a giant step in the privatization of the *ager publicus*, by giving extensive rights of possession to both new settlers and old occupiers of public land. Its privatization may therefore be considered a direct result of the growing competition for land. This process begun by the Gracchi was taken further by the post-Gracchan laws, the most important of which was the *Lex agraria* of 111 BC.

However, a considerable amount of public land which had not been touched by any previous legislation continued to exist into the first century BC. This was privatized mainly during the reign of Sulla, when all land available was used to accommodate veteran soldiers. In the later first century land played a crucial role in the politics of the competing generals, who tried to retain the loyalty of their soldiers. Enormous amounts of land were distributed to retired veterans as a reward for their support. However, the limited amounts of *ager publicus* still left quickly proved insufficient for this purpose, and the first-century generals therefore had to resort to the purchase and confiscation of land.

This means that less than a hundred years after 133 all arable *ager publicus populi Romani* had disappeared; the only kinds of public land still in existence were pastures and lands belonging to individual towns.

It is in the nature of the subject that the period considered in this book is limited to the Republic only. Within this period I limit myself mainly to the period between 396 and 88 BC. The main focus will be on the second century, when crucial developments in Roman society, economy, and politics took place, which in turn had important consequences for the *ager publicus*. Before 396 our source material is so scanty that it is difficult to say anything with certainty about the status of land. Moreover, the literary sources concerning the early Republic are often based on legends or on events of later periods projected back into earlier ages. It is so difficult to disentangle legend from fact that the early Republic is best left aside. Furthermore, most of the arrangements concerning land in the archaic period were transformed in later periods, especially after the Latin War and the Second Punic War. It is not necessary therefore to discuss the archaic period in great detail. However, a short overview will be given of the possession of land in the early Republic, since it is necessary to describe the status of land at the beginning of the period on which this book concentrates; the early Republic will therefore be discussed briefly in chapter 2. The period after the Social War will only receive attention in so far as is necessary to sketch the disappearance of the last arable *ager publicus*.

## 2. Sources concerning the *ager publicus*

There are many sources from which we can gather information about *ager publicus*, but unfortunately most of them are defective in one way or another. Traditionally the sources most often used by ancient historians are literary, and this book does not differ in this respect. However, the information given by the written sources often cannot be trusted at face value, and must, whenever possible, be supplemented by other material.

The most important literary sources for the Republic, especially the second century BC, are the accounts of Appian and Plutarch. These are the only two authors providing a continuous account of the developments leading up to the actions of the Gracchi and the events of the years 133-121. However, both are surrounded by a variety of problems. The first objection is obvious: they were written more than two centuries after the events they describe, and were therefore themselves based on other sources which we no longer possess. Moreover, it is often clear, especially from Appian, that he did not understand all the details he found in his sources. In his time, the second century AD, *ager publicus* belonging to the state no longer existed, and this made it impossible for him faithfully to represent the situation of the Republic. In fact, this is often an advantage, since in many cases Appian simply repeats what he found in his sources without altering it in any way. Both his work and Plutarch's have often been accused of being fraught with Gracchan propaganda, and therefore not

representing a reliable picture of the second century.<sup>4</sup> Even if it is clear that these works do not give a truthful account of developments in the second century, I argue that we are extremely fortunate to have such sources. If Appian and Plutarch used texts written or spoken by the Gracchi themselves, we may use them to reconstruct the view the Gracchi themselves, and probably other elite Romans as well, held about the problems the Italian population had to face, and how the Gracchi thought to solve them.<sup>5</sup>

In the case of Appian it is mainly the famous introduction to his work that has been the cause of discussion. Some have argued that the situation described by Appian – the occupation of public land by the rich, the expulsion of the poor, the growth of slave-staffed estates, and a decline in the number of free citizens – is that of the second century, and therefore have used all information given in the introduction for the reconstruction of second-century events. However, the text of *BC* 1.7-9 sounds very much like a general preface to the Gracchan period, consisting of a short history of the Roman *ager publicus*. By way of introduction to Tiberius Gracchus' tribuneship, which according to Appian was the beginning of the civil wars, he started with a general prologue describing the previous treatment of *ager publicus* by the Romans, since he considered land to be the central point of the Gracchan reform. The wording of the text is therefore deliberately vague, in keeping with its function as a general introduction. It is therefore not necessary for all elements of the introduction to be dated to the second century.

There are actually indications that the policy of the Romans described in this passage is not datable to any specific period: first of all, Appian continuously uses the imperfect tense, which shows that land was taken and distributed by the Romans repeatedly when new land was conquered, or at least that Appian thought this to have been the case. Furthermore, the word ἐκάστοτε ('the captured land which became theirs *on each occasion*') indicates that the policy concerning the *ager publicus* was in principle the same every time.<sup>6</sup> It may be that Appian's account contains elements that were datable to specific periods, especially the second century, but that Appian understood these elements to be applicable to all *ager publicus*, no matter the date of its confiscation. The issue of the imposition of rents, for example, may be explained in this way (see ch. 3.2.1).

The generalizing introduction does not have to be an original creation of Appian. It is more likely that he found it in his source(s). If Appian's work (and that of his predecessors) was directly influenced by the Gracchi, it is even possible that they themselves gave a general sketch of the Italian *ager publicus* in

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<sup>4</sup> Tibiletti (1948, 236); Gabba (1954, 6-9); Badian (1958, 172-3); Bringmann (1985, 10).

<sup>5</sup> Fraccaro (1914, 14); Fortlage (1971-2, 16-9). Sordi (1978, 306) argues that Plutarch's version is closer to the Gracchan texts than Appian's, but in fact both are remarkably similar. Fraccaro (1931, 56), however, warns that Appian's and Plutarch's depictions of the Gracchan view are not always reliable.

<sup>6</sup> Riecken (1911, 94).

their speeches. A sketch in general terms of the degeneration of the Italian countryside would be a logical element of the Gracchan rhetoric. Focusing too much on details would weaken their argument; the situation was not the same in each region of Italy, but they could not expect their public to have been aware of all local variations. Therefore the text of Appian can be understood as describing the way the Gracchi themselves presented their arguments to the public, and their arguments must have been at least reasonably accurate to be believable. The same goes for Plutarch, who sometimes quotes directly from speeches or written works produced by the Gracchi.

The degree of literary construction in the introduction to Appian's work is much debated. Some have argued that literary construction plays an important role in Appian's work, and that the introduction was crucial in this.<sup>7</sup> However, even if it is likely that a certain measure of construction was present in Appian's work, the historical value of his account is still considerable. The fact that Appian's and Plutarch's accounts are so similar seems to indicate that they used the same source.<sup>8</sup> Notwithstanding some literary construction, the similarity between their texts suggests that they are a reasonably truthful representation of their common source.

Even if Appian's and Plutarch's accounts are very important for our understanding of *ager publicus* in the Republican period, in some places the confusion that Appian plainly experienced can be misleading, as in his use of the term Ἰταλιῶται. In this and other cases he projected legal and other terms of his own time onto the second century BC, which makes it difficult to understand their meaning in the context of the second century (see ch. 5.2.4). At other times, however, he simply translated the Latin terms from his sources into Greek, which gives us some insight into their Republican connotations. Therefore, although many details in Appian and Plutarch must be used with caution, the larger outline shows clearly the developments of the second century as they were presented by the politicians of the time. It is therefore time for a rehabilitation of Appian and Plutarch: of course one should not take everything they say at face value, but I think that very good use can be made of most of them, albeit in a different way than many scholars would like.

Another important literary source is Cicero. In his speeches, especially *De lege agraria*, and in some of his letters, he produces a lively picture of the privatization

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<sup>7</sup> Gargola (1997, 568-76); see also Mouritsen (1998, 17-20). Gargola (forthcoming) argues that Appian is not speaking about the *ager occupatorius* in general, but about the *subseciva*. However, his arguments are not convincing; he supposes that Appian knew what he was talking about in legal terms, but this was not necessarily the case. Van Dooren (2008, 28-30) explains how Appian focused on land and citizenship because these issues appeared the most important in late-Republican politics, and therefore neglected other topics important in this period.

<sup>8</sup> Cardinali (1912, 45-92); Shochat (1970, 35); Gargola (forthcoming); Rich (forthcoming). Others assume they used different sources: Kontchalovsky (1926, 162, 179); Göhler (1939, 82); Gabba (1956, 37 n. 1); Sterckx (1969).

of the last remnants of arable *ager publicus*, which occurred in his lifetime. In some of his discussions on rhetoric and philosophy, moreover, various references can be found to *ager publicus* in earlier periods, especially the later second century. Unfortunately, most of these passages are very short and devoid of context, so that for modern readers it is often frustratingly difficult to reconstruct exactly Cicero's meaning. Furthermore, Cicero's works are not free from considerable prejudice. He strongly opposed the distribution of land to the poor; politicians who opposed the distribution of land are usually presented as heroes, while his judgements on the Gracchi are often very negative. It is also likely that in his time a standard reconstruction of events concerning the Gracchan period had been created, including the familiar theme of its occupation by the elite.<sup>9</sup> To make his speeches acceptable to his audience, Cicero could not move too far from this accepted picture. However, in works dealing with the history of rhetoric or with philosophy there was less reason for a negative representation of the Gracchi, and references in such works are generally more reliable.<sup>10</sup>

For the general history of the Republic our most important sources are Livy, Dionysius of Halicarnassus, and Dio Cassius. Obviously, these works were all written long after the events they describe, and are therefore based on other sources. The most important problem with all of them is that they project later events back into earlier periods. For example, in their discussions of the early Republican period all sources show a remarkable similarity to the most crucial episode concerning *ager publicus* – the events of the years 133-121 BC, when the Gracchi made *ager publicus* the focal point of their reformative legislation. This means that the problems important in the early Republic are described in the same terms as those of the Gracchan period: the rich (in the early Republic presented as the patricians) supposedly occupied *ager publicus*, leaving nothing for poor plebeians. For example, in a speech allegedly held in 470 BC, it was said that 'those who have no lands of their own and live miserably off the possessions of others which they cultivate for hire either do not feel any desire at all to beget children, or, if they do, produce a miserable and wretched offspring, such as might be expected of those who are the fruit of humble marriages and are reared in impoverished circumstances'.<sup>11</sup> Gracchan connotations are clear in this piece of rhetoric. Reformers trying to remedy the situation, like Spurius Cassius in the 480s and G. Flaminius in 232, were, according to the sources, accused of being demagogues with royal aspirations, as were the Gracchi.<sup>12</sup> It is therefore very

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<sup>9</sup> Negative opinions on the Gracchi are presented in Cic. *Lael.* 12.41, *Har. Resp.* 20.43, *Mil.* 27.72, *Rep.* 1.19.31, *Cat.* 4.2.4, *Off.* 2.12.43, 2.23.80, *Phil.* 8.4.13. See D'Arms (1935, 244); Badian (1964, 237); Béranger (1972); Meister (1974, 91-2); Hermon (2001, 244); Sacchi (2006, 15).

<sup>10</sup> Bernstein (1978, 243).

<sup>11</sup> DH 9.51.6.

<sup>12</sup> See Gabba (1954) for a detailed analysis of Gracchan analogies in Dionysius' account of the story of Spurius Cassius; see also Capanelli (1981, 11-39). On the influence of later (especially Gracchan) events on the historiography of the early Republic see Riecken (1911, 111); Gutberlet

difficult to make any positive statement about the possession of land in archaic Rome.

The same may be the case with descriptions of early Republican land laws, especially the *Lex Licinia* of 367 (for which see ch. 3.2.2). It has often been argued that its contents as described by Livy and Appian were anachronistic for the fourth century BC, and that they were in fact influenced by Gracchan or even later agrarian laws.<sup>13</sup> Indeed it is often difficult to separate actual events of the early Republican period from intrusions reflecting later incidents; however, in some cases it is possible to point out some basic events that are likely to have occurred in the archaic period (see ch. 2.2.1-2).

Because all literary sources are to some extent problematic, they must be supplemented by other materials. We are fortunate to have a variety of sources that can shed light on the possession of land. An extremely important collection of sources are the works of the Roman land surveyors or *Agrimensores*. This is a collection of works from the Imperial period dealing with the surveying and distribution of land. Although this is a written source, it differs widely in nature from sources such as Livy or Appian. Instead of providing a literary text, the works contained in the collection are of a technical nature, and their main goal was to give practical and technical information about such subjects as the foundation of colonies, the administration of land under the jurisdiction of towns, the legal status of various categories of land, and technical aspects of land surveying and demarcation. However, these texts also present various problems: first of all, they were written during the Empire, which makes it dangerous to project their contents onto the Republican period. For example, in the Imperial period towns usually owned large amounts of public land, and a great deal of legislation existed to regulate this. For the Republic we have much less information about this issue, and it is to be expected that many regulations on town lands under the Empire were not yet in force in the Republican period (see ch. 3.5). Furthermore, the texts contained in the collection were written with a practical purpose, namely to inform (trainee) surveyors of various practical aspects of land surveying; this means that the texts often do not give much detail on the legal aspects of the status of land. Most importantly, however, the manuscripts containing these texts have suffered various grades of deterioration, which sometimes makes their contents all but unintelligible. Some of the texts are fragmentary, and even those that are complete have suffered corruption in many

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(1985); Laffi (1988, 31); Flach (1994); Northwood (1998); Cornell (1995, 1-25); Mitchell (1993, 203 and 2005, 153). See ch. 2.1.1 for a discussion on the reality of the events presented in the sources.

<sup>13</sup> Stephenson (1891, 18); Gabba (1954); Valvo (1977, 211); Dal Cason (1985, 175); Raaflaub (1986, 211); Drummond (1989b, 184); Mitchell (1996, 256). However, not all intrusions into early history have to be attributed to the Gracchan period; Basile (1978, 293-5) points at the attempts of various later noble *gentes* to emphasize the importance of their forefathers, and sees Cassius Longinus, one of the land commissioners in 173 BC, as a model for Spurius Cassius. Of course, early stories can have been influenced by more than one later event at the same time.



respects.<sup>14</sup> It is therefore dangerous to use the information in them without careful consideration of the text, and one must continually keep an eye out for possible corruptions.

One of the works contained in the collection is the so-called *Liber Coloniarum* or Book of Colonies. This work gives a list of Italian cities and describes, among other things, how and by whom the land in each of them was measured. The text has been severely criticised for being unreliable, and is sometimes considered useless as a source for the Republican period.<sup>15</sup> Indeed its limitations are many: the text probably dates from the later fourth century AD, and even though it was based on a survey made under Augustus and Tiberius, the information has become corrupted over the centuries. The information the *Liber* gives is limited to what would be interesting for land surveyors, and therefore most of its attention is given to various methods of land measurement and boundary marking occurring in the listed towns. The list is incomplete; some towns that were colonies are left out, while others are mentioned that never had colonial status. The information about the foundation of colonies goes no further back than the Gracchi; earlier settlements are not mentioned. Information about Gracchan settlements in Italy would of course be extremely valuable; however, there is considerable discussion about the exact meaning of the terms *Lex Sempronia* and *limites graccani*, which are employed in the *Liber* and seem to indicate some sort of Gracchan involvement.<sup>16</sup> In general, we can say that the *Liber* is useful mainly when its contents can be supported by other evidence, but we must be careful to use it as an independent source.<sup>17</sup>

A source that can be used to supplement the information given by the written sources are the Roman land distribution grids visible all over Italy, most of them in the form of centuriation grids (square blocks), but also in various other shapes, such as rectangles or strips. These grids are the most tangible evidence of Roman allocation of land. It has been suggested that the size and shape of the individual *centuriae* in such grids can be used to date the centuriation; for example, *centuriae* of the Gracchan land commission are assumed to have measured 13 by 13 or 14 by 14 *actus*, while those of the triumvirate measured 20 by 20 *actus*, and those of Augustus 15 by 15 *actus*.<sup>18</sup> Systems using strips (*strigatio* or *scamnatio*) are assumed to have been older than the system of centuriation by squares, which is supposed to have originated shortly before the Second Punic War.<sup>19</sup>

However, the idea of a strict chronological development in the shape and size of *centuriae* has been criticized: their size could vary according to the circumstances of the terrain. *Strigatio* and *scamnatio* therefore did not necessarily

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<sup>14</sup> See for examples the articles in Guillaumin (2007).

<sup>15</sup> E.g. Mommsen (1883, 174).

<sup>16</sup> See Roselaar (forthcoming a).

<sup>17</sup> Chouquer et al. (1987, 233-8); Campbell (2000, xl-xliv).

<sup>18</sup> Chouquer et al. (1987, 245-53).

<sup>19</sup> Schubert (1996, 55-68).

disappear when centuriation became more common. Moreover, some people active in land distribution, for example Sulla or Caesar, did not employ a unique system of measurement, but used the same *centuria* size as others. The Gracchi, for example, did not employ only grids of 13 by 13 or 14 by 14 *actus* only, but also various other sizes. Therefore the size of the *centuriae* alone cannot be decisive.<sup>20</sup> However, when several grids are located in one location, it is likely that the *strigatio* or *scamnatio* is the oldest, while the centuriation grids date to a later period, which can at least provide a relative date for the grids as related to one another.

The most important external evidence for the dating of centuriation grids is the presence of boundary stones that can be ascribed to a specific period. Of special interest for the second century are boundary stones (*cippi*) set up by the Gracchan land commission, of which fourteen so far have been found throughout Italy.<sup>21</sup> These stones record their place in the centuriation grid and the names of the land commissioners, which makes it possible to date them to within a margin of only a few years. Most of these stones were found in areas where Gracchan activity has been attested by other sources, such as the *Liber Coloniarum* or the presence of centuriation grids with 'Gracchan' sizes, and in such cases the various kinds of evidence clearly support each other.

The single most important epigraphic source for the history of the *ager publicus* is the so-called *Lex agraria*, a document inscribed on a bronze plaque, of which a several fragments have been found in the north of Italy. It records an agrarian law dated to 111 BC, shortly after the Gracchan period (see discussion in ch. 5.3.3). It deals in detail with *ager publicus* in Italy and Africa, privatizing some of it and laying down rules for the administration of the remaining public land. Unfortunately, the fragmentary nature of the inscription makes it impossible to reconstruct the complete text. Nevertheless, its contents can be reconstructed with a fair degree of certainty, which makes it the most important source we have for the administration and legal conditions of *ager publicus* in the late second century.

Legal information can also be found in the Digests of Justinian. Since *ager publicus* belonging to the state no longer existed in the sixth century AD, it does not appear in the Digests. However, various other kinds of land with which we are concerned, such as land under the jurisdiction of towns, do appear in them. Although the compilation of this text took place almost 600 years after our period, some of the legal experts cited in the text were active in the late Republic, which makes their information a helpful source.

Useful information can also be gathered from comparisons with other societies. This is especially relevant when reconstructing economic and social developments taking place in the Republican period. Various early modern

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<sup>20</sup> Roselaar (forthcoming a).

<sup>21</sup> See a list in Campbell (2000, 452-3).

societies, for example England, Germany, and Italy, had some system of public lands, and developments such as population growth and increasing commercialization often caused debates about access to such lands, leading eventually to their privatization. In this respect, the developments taking place in many societies can be fruitfully compared to those in the late-Republican period. We must keep in mind, however, that *ager publicus* in the Roman period was in many respects different from the public land in other societies: even though the use of the term 'public land' may at first sight raise associations with 'common lands', the *ager publicus* in the Roman Republic belonged to the state, and in this respect it was unique. Nevertheless, some elements of the history of other common lands may apply to the Roman *ager publicus* as well, and it will therefore be useful to compare such lands with those of Rome (see ch. 4.4.1).

For the reconstruction of economic developments archaeological sources are very important. They can teach us much about developments such as the emergence of cash crop estates, the growth of luxury in the construction of *villae*, the increased reclamation and drainage of land, etc. However, problems with the interpretation of these sources are many. First of all, it is often difficult to date archaeological finds; shards of black-glaze pottery, the most common kind in use during the Republican period, can sometimes be dated anywhere between the fourth and second century BC, which makes their value in dating the associated sites limited. Moreover, many social and economic developments cannot be attested by archaeological materials; for example, agriculture with slave workers could take place on the same kind of farm as agriculture with free labourers, so that the emergence of the 'slave mode of production' is hard to discern from archaeological sources (see ch. 4.3.1). Even if we can discern an increase in the number of large estates in a specific period or area, this does not tell us anything about the accumulation of land, since we do not usually know who the owners of such estates were; one person may have owned more than one individual estate. The survival of small farmers is not necessarily shown by the presence of small sites, since their inhabitants need not have been free peasants, but may have been tenants or slaves. It is clear that archaeological sources suffer from many limitations, although they are still of great value when combined with other materials.<sup>22</sup>

All in all, a remarkable number of sources exists that can shed light on *ager publicus* in the Republican period. They all suffer from defects, so that a critical view of them is necessary. However, when we take into account all literary, legal, technical, archaeological, and comparative material, we are able to arrive at a reasonably detailed reconstruction of the history of *ager publicus* in the Roman Republic.

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<sup>22</sup> For an analysis of the use of archaeological material in the reconstruction of agrarian history see Pelgrom (forthcoming).

## 2. *Ager publicus* from the archaic period to the Gracchi

### 1. Introduction

The existence of *ager publicus* has been taken for granted by almost all scholars of the Roman Republic. Its presence follows naturally from the ancient sources: *ager publicus* appears to have played a central role in Roman society and politics ever since the beginning of the Republic. In the nineteenth century some scholars claimed that in general most *ager publicus* was turned into the private property of Roman citizens, and that relatively little public property remained,<sup>23</sup> but from then on all scholars have accepted at face value the existence of large tracts of *ager publicus*.

Recently the idea that most *ager publicus* was privatized soon after it had been confiscated, at least before the Second Punic War, has received new support. Rathbone claims that 'most land in Italy annexed by Republican Rome was distributed as private property',<sup>24</sup> and that '*ager publicus* was essentially a transient category in which conquered and annexed land rested pending its transfer to private ownership'.<sup>25</sup> He points to the paramount importance of private property by quoting Cicero:

The man in an administrative office, however, must make it his first care that everyone shall have what belongs to him and that private citizens suffer no invasion of their property rights by act of the state. (...) [The speech of Philippus] deserves unqualified condemnation, for it favoured an equal distribution of property; and what more ruinous policy than that could be conceived? For the chief purpose in the establishment of constitutional state and municipal governments was that individual property rights might be secured. For, although it was by Nature's guidance that men were drawn together into communities, it was in the hope of safeguarding their possessions that they sought the protection of cities.<sup>26</sup>

According to Rathbone the dominance of the ideal of private property led to the privatization of most public land. Privately owned land was already very old,

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<sup>23</sup> Niese (1888, 418-9).

<sup>24</sup> Rathbone (2003, 135). Badian (1972a, 24) seems to voice the same idea, saying that in 232 the last available *ager publicus* had been distributed, and that there was no more left until new confiscations were made in the Second Punic War.

<sup>25</sup> Rathbone (2003, 175).

<sup>26</sup> Cic. *Off.* 2.21.73. See also 2.22.78 and *Mil.* 28.78: 'Why, what power of perpetual possession could you have had even in those things which you possess as your private property and in the strictest sense your own (*quod ius perpetuae possessionis habere potuissent*), while that frenzied man held the reins of government?' Normally private possessions were secured by law, but this was endangered in the first century, when much private land was taken away at the initiative of the state. See Rathbone (2003, 139).

and Rathbone points out that the concept of *ager publicus* appeared in history only from the early fourth century.<sup>27</sup> Rathbone admits that 'from the late fourth century, (...) as the scale of annexation mushroomed, more pasture, woodland and wetland was retained in state ownership as *ager publicus populi Romani*, and left open to almost unfettered use by Roman citizens'.<sup>28</sup> In his view, then, the only land that remained *ager publicus* was pasture and woodland; he denies that much arable land being left open as *ager publicus* before the Second Punic War.<sup>29</sup> Although Rathbone's thesis differs radically from established historiographical tradition, it has received surprisingly little attention from other scholars. It is therefore time to analyze it more thoroughly.

In my view Rathbone's theory neglects much of the evidence in the ancient sources, which show without doubt that large amounts of arable land were made into *ager publicus*. Much of it was not transformed into private property at all, but remained in state ownership for a considerable period of time. Not only pasture but arable land as well could enjoy the status of public land for a long time. The Roman state regularly assigned public land to individual citizens or limited its use in other ways, but this affected only part of the *ager publicus*. The rest remained open to occupation and use by Roman citizens, and also – in my view – by Latins and Italian allies. I will argue therefore that *ager publicus* was not merely a temporary arrangement in the administration of land, but that it was a legal condition in which land could and did remain for long periods. Precisely for this reason *ager publicus* played a vital role in Roman society, economy, and politics during the Republic.

### 2.1. The possession of land in archaic Rome

Even if the literary sources are problematic (ch. 1.2), the confiscation of land from defeated enemies seems to have occurred from the earliest history of Rome onwards. The procedure of taking land and sending colonies to it seems to have been practised by other peoples as well; many cities are mentioned as being colonies of the Latins or other peoples.<sup>30</sup> However, not all land conquered by

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<sup>27</sup> Rathbone (2003, 140): 'Only from around 390 can unoccupied land have been seen as part of Roman territory with some 'public' status, rather than as the 'unclaimed land' of no state, that is the *ager incertus* of archaic augural lore'. However, there were debates about public land that was held by Rome before 390, even if the sources in this respect are coloured by later events.

<sup>28</sup> Rathbone (2003, 149). What he means exactly by 'pasture' is unclear. Pasture is not a self-defining category; arable land can be used as pasture, while much land used as pasture is also suitable for agriculture.

<sup>29</sup> It is difficult to judge from Rathbone's account how much land he actually thinks was distributed; 'most' may mean any amount above 50%. It seems, however, that he denies altogether the existence of arable *ager publicus* before the Second Punic War; for the second century he has a different view.

<sup>30</sup> DH 3.38.1 (Politorium, a colony of the Latins), 3.38.4 (Ficana, a colony of the Latins), 3.49.3 (Crustumium, a colony of the Latins), 8.18.1 (Bola, a colony of the Latins), 8.19.1 (Labici, a colony of the Albani); Liv. 4.49.3 (Bola colonized by the Aequi), 7.27.2 (Satricum colonized by the

Rome was given to colonists; there was also land that remained public. The main question concerning this land is who controlled it: the state (in the person of the king), individual members of the elite, or groups known as *gentes*. One of the most persistent theories is that in archaic Rome private property existed only to a very limited extent. According to this theory, each citizen owned only a small amount of private property, on which he had his house and garden. This idea is based on the story that each citizen had received two *iugera* of land, the *heredium*, from Romulus.<sup>31</sup> These allotments were passed on to the holders' heirs, and could not be alienated. Moreover, in historical times the amount of land distributed in colonies and virgated divisions was often very small, either two or seven *iugera*. This has led to the idea that these amounts were standard in early Roman society; and since this amount of land is thought to have been insufficient to feed a family (but see ch. 4.3.7), they must have had access to other land as well.<sup>32</sup>

It has been suggested that all other land was possessed by family groups called *gentes*. These were extended family groups, supposedly headed by a *pater gentis*.<sup>33</sup> Each *gens* possessed its own land, which had originally been conquered by the *gens*. Some hold that this so-called *ager gentilicius* was partly distributed by the *pater gentis* to its individual members, while the rest remained common land which could be used by the members of the *gens*.<sup>34</sup> Other scholars think all *ager gentilicius* was used in common by all its members; some suppose it was used only as pasture, since agriculture is sometimes believed to have been unimportant in archaic Rome.<sup>35</sup> Private possession of larger quantities of land is, as a consequence, assumed not to have originated until later in Roman history.<sup>36</sup>

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people of Antium); Var. R. 3.16.29 (colonies of the Sabines). See Galsterer (1976, 85); Sirago (1995, 85).

<sup>31</sup> Var. R. 1.10.2; Festus 47 L; Plin. HN 19.19.50. See De Neeve (1984, 205 n. 13); Behrends (1992, 204). Gabba (1985b, 178) thinks the *heredium* was not Romulean at all, but a legend created in the second century BC; Oakley (1997, 676) argues that it was an antiquarian construct based on the size of plots in later colonies.

<sup>32</sup> Kaser (1956, 233-4); Diódsi (1970, 34); Nicolet (1977, 103); Momigliano (1989, 100); Lintott (1992, 35). Drummond (1989a, 121) also suggests the possibility of wage labour on other people's land. Cornell (1995, 269) does not believe that people had only two *iugera* of private land, but nevertheless considers *ager publicus* to have been important.

<sup>33</sup> Burdese (1952, 34 and 1985, 54); Bignardi (1984, 82); Franciosi (1995, 44); Marcone (1997, 111); Hermon (1999, 22); Humm (2006, 45).

<sup>34</sup> Festus 289 L: *Patres senatores ideo appellati sunt, quia agrorum partes adtribuerant tenuioribus ac si liberis propriis*. See Diódsi (1970, 38); Capogrossi Colognesi (1980, 29, 41); Franciosi (1986, 267); Drummond (1989a, 161); Mitchell (1996, 267); and Hermon (2001, 54) for distribution of land by patrons to clients. David (1997, 130) assumes that later in the Republic being the client of a rich man still gave access to *ager publicus*.

<sup>35</sup> Bozza (1939, 146); Alföldi (1962, 210 and 1963, 315).

<sup>36</sup> Some scholars take the importance of the *gentes* to the extreme; they suppose that the domination of the *gentes* on the land was still great in the fourth century or even later. Some even believe that the importance of the Gracchi resides in the fact that they tried to enhance the power of the individual as opposed to the *gentes*: see Franciosi (1995, 49); Hermon (1999, 21).

However, proof for the theory that land was held collectively by the *gentes* is actually very thin. The main argument given in favour is the laws of the Twelve Tables, supposedly created in 451 BC. Here we find some indications of the collective tenure of land. In the Twelve Tables the words used for 'property,' *familia* and *pecunia*, both refer to moveable goods (slaves and cattle respectively), suggesting that originally land cannot have been owned by private individuals (except for the *heredium*).<sup>37</sup> Moreover, the laws specify that the *gentiles* of a deceased person, i.e. people belonging to the same *gens*, can inherit if someone dies without a will, and that if someone becomes mentally ill, his *gentiles* can take over control of his possessions.<sup>38</sup>

Another argument for the presence of collective land owned by the *gentes* is based on the names of the early Republican *tribus*. The Ager Romanus, meaning the total of *ager publicus* and private land belonging to Roman citizens, was divided into *tribus*, and many of these bear the names of important *gentes*. Therefore the adherents of the *gentes*-theory believe that the *tribus* were named after the *gentes*, for example because the *gens* had originally conquered this land in war and now owned it as collective land. The *gens* Claudia is often cited as an example: Attus Clausus from Sabinum helped Rome in the war against the Sabines, and as a reward received land which was afterwards called the *tribus* Claudia.<sup>39</sup>

However, a greater number of sources indicates that private property existed very early in Roman history. According to the legend reported by Livy, king Servius Tullius (578-534) introduced the census, allegedly consisting of five *classes*:

Those whose property amounted to, or exceeded 100,000 asses were formed into eighty centuries, forty of juniors and forty of seniors. These were called the First Class (...). The Second Class consisted of those whose property amounted to between 75,000 and 100,000 asses (...). The Third Class he formed of those whose property fell as low as 50,000 asses (...) In the Fourth Class were those whose property did not fall below 25,000 asses (...) Th[e] Fifth Class was assessed at 11,000 asses. The rest of the population whose property fell below this were formed into one century and were exempt from military service.<sup>40</sup>

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<sup>37</sup> Twelve Tables 5.3: *Uti legassit super [familia] pecunia tutelave suae rei, ita ius esto.* (Her. 1.13.23; Cic. Inv. 2.50.148; Gaius 2.224). See Franciosi (1995, 44).

<sup>38</sup> Twelve Tables 5.4: *Si intestato moritur, cui suus heres nec escit, adgnatus proximus familiam habeto.* 5.5: *Si adgnatus nec escit, gentiles familiam habento* (Cic. Inv. 2.50.148; Gaius 3.17). 5.7A: *Si furiosus escit, adgnatum gentiliumque in eo pecuniaque eius potestas esto* (Her. 1.13.23; Cic. Inv. 2.50.148, Tusc. 3.5.11). Such debates were apparently still relevant in the late Republic, see Cic. *De Or.* 1.39.176.

<sup>39</sup> Liv. 2.16.5; DH 5.40.5; App. Reg. 12; Suet. Tib. 1.1-2; Plu. Publ. 21.6; Serv. Aen. 7.706. See Ross Taylor (1960, 6); Pallottino (1993, 290); Franciosi (1995, 42); Hermon (2001, 39, 45, 54).

<sup>40</sup> Liv. 1.43.1-8. See DH 4.15.6: 'After he had made these regulations, he ordered all the Romans to register their names and give in a monetary valuation of their property, at the same time taking

Of course, the values cited by Livy cannot date back to the sixth century BC; it is generally assumed that when the census was first introduced in the regal period there was only one *classis* of people who owned property and served as cavalry and heavy-armed infantry, while those without property were called *infra classem* and served as light-armed soldiers.<sup>41</sup> Coinage did not yet exist in the sixth century, so the original census qualification must have been based on landed property; therefore, if there was a class of people owning considerable amounts of land, then private ownership of land must have existed at a very early date. To be able to own a horse and heavy armour, someone needed to own more than just two *iugera* of private land. Not all land can have been owned collectively if there were people who clearly possessed more than others.<sup>42</sup> It is therefore more likely that some people owned more than just two *iugera* of private land.

Another indication of the importance of private land is that nowhere in the sources do we find the slightest indication that historians of later times were aware of collective possession of land in the early Republic. There are many descriptions of struggles for the possession of land, but the issue is always the distribution of land as private property. This shows that private ownership was known in archaic Rome<sup>43</sup> – or at least that later historians were not aware of the existence of property owned collectively by the *gentes* in the regal period and early Republic. Even if the amount of land distributed to citizens as private property was insufficient to support a family, as is reported for the colonies supposedly founded from very early times, this does not mean that all other land was held collectively.

Furthermore, the Twelve Tables, which are often quoted as proof of the possession of land by the *gentes*, in fact give even more evidence for the existence of private land. They speak only of private land; there is nothing in them about land belonging to *gentes*.<sup>44</sup> The *gentiles* are indeed mentioned as heirs, but only after the *agnati*, the closer relatives. There was a considerable chance that someone would not have a child, and in this case the inheritance moved first to the *agnati*, and only if there were none, to the members of one's *gens*, which can

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the oath required by law that they had given in a true valuation in good faith; they were also to set down the names of their fathers, with their own age and the names of their wives and children, and every man was to declare in what tribe of the city or in what district of the country he lived.' See DH 4.18.2; Cic. *Rep.* 2.22.40; *Vir. Ill.* 7; Gell. *NA* 10.28.1; Flor. 1.1.6.3; Lydus *Mens.* 11.39.

<sup>41</sup> Gell. *NA* 6.13. See Beloch (1926, 291); Torelli (1988, 256); Drummond (1989a, 163); Momigliano (1989, 103); Cornell (1995, 182-6); Forsythe (2005, 113). Lo Cascio (1988, 275-6), Rathbone (1993a, 122), and Mitchell (1996, 265) suppose that the system with five classes was complete somewhere in the third century, while Triebel (1980, 6) dates it to the fourth century.

<sup>42</sup> Drummond (1989b, 207-8).

<sup>43</sup> Capogrossi Colognesi (1980, 31, 37); Drummond (1989b, 238).

<sup>44</sup> Capogrossi Colognesi (1980, 60); Lintott (1992, 34); Mitchell (1996, 259); Smith (1996, 192).



in this case be understood as the more distant relatives.<sup>45</sup> Moreover, the regulation of the Twelve Tables does not seem to indicate that the *gentiles* held the land they inherited in common; they are in fact more likely to have inherited the land in private ownership. This regulation had not necessarily existed in the regal period; it may have been a development of a later time. However, it does show that the importance of the *gentes* in the mid-fifth century was very limited.

The Twelve Tables also mention the possibility of *usucapio*: one could obtain ownership of private land which was not used by its actual owner by using it for two years, a process called *usucapio*.<sup>46</sup> However, if *ager gentilicius* existed, it could not be acquired by *usucapio*, since the *gens* as a collective was its owner; this reference can therefore refer only to private land. On the other hand, the land in question can hardly have been the *heredium*, which was inalienable. If neither the *heredium* nor the *ager gentilicius* could be subject to *usucapio*, which land did the law refer to? There must have been other land, which could be subject to *usucapio*.

Some adherents of the *gentes*-theory have tried to defend their ideas by arguing that in the Twelve Tables possibilities for private possession were created which had not existed before.<sup>47</sup> It seems, however, a more prudent course to assume that private property already existed before the Twelve Tables.<sup>48</sup>

The argument based on the names of the *tribus* may be questioned as well. It is true that the sixteen oldest *tribus* all have names derived from names of *gentes*. Ten of them are named after *gentes* important in the early Republic; six others are named after unknown *gentes* which are usually assumed to have been important in the regal period.<sup>49</sup> The later *tribus* are not named after *gentes*, but sometimes bear a name connected to a landmark in the territory, while for others the origin is unclear. The connection between the *gentes* and the land remains elusive. Since there were fewer *tribus* than there were *gentes*, one *tribus* must have contained the land of more than one *gens*. Some *gentes* that were important in the regal and early Republican period, such as the Valerii and the Postumii, did not have *tribus* named after them.<sup>50</sup> All this makes it very difficult to uphold a direct relationship between the *gentes* and the *tribus*. It may be that the early *tribus* were named after *gentes*, probably those who owned most of the land in the area, but how and why

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<sup>45</sup> Gaius 1.155: *Quibus testamento (...) tutor datus non sit, iis lege XII [Tabularum] agnati sunt tutores*. Moreover, the Tables apparently laid down that an *assiduus* – someone with sufficient property to qualify for military service – should be judge in the case of a trial against another *assiduus*, see Cic. *Top.* 4.10, which means that private property must have been in existence. See Drummond (1989a, 148-51); Smith (1996, 192-3); Mastrocinque (1999, 105).

<sup>46</sup> Cic. *Caecin.* 19.54; Gaius 2.42.

<sup>47</sup> Hermon (1994a, 500 and 1994c, 265); Franciosi (1995, 47).

<sup>48</sup> Kaser (1956, 234); Gabba (1979b, 63). Mitchell (1996, 266) argues that what happened at this time was not the creation of private land out of land which had previously been held in common, but the public recognition of claims held on the land by individual ‘strongmen’.

<sup>49</sup> Drummond (1989b, 179); Smith (1996, 204).

<sup>50</sup> Smith (2006, 237, 246).

this happened cannot be ascertained. In general it seems likely that the *tribus* were named after the element that was most characteristic for them, whether it was the *gens* whose members owned the largest amount of land in the area, or an important landmark.<sup>51</sup>

Another difficulty with the *gentes*-theory is that it is hard to reconcile with the sources for the social structure of the early Republic, even though their historical reliability is doubtful. According to the sources, in the earliest period of the Republic there were continuous struggles between patricians and plebeians; among other things they quarrelled about the possession of land, because the patricians allegedly occupied everything and left nothing for the plebeians. However, it is difficult to see how a social structure of patricians and plebeians can be combined with a structure based on *gentes*. If all citizens belonged to a *gens* – which is, however, not certain – it is difficult to see how the patricians could have occupied all the available land, while the plebeians had no access to it; all citizens should have had access to the communally possessed *ager gentilicius*.

The presupposition of the existence of *gentes* therefore forms an extra complication when trying to explain the exclusion of the plebeians from the land. In a situation where private property existed from the beginning, it would have been perfectly possible for there to have been a differentiation in property levels, which left some of the citizens with nothing. Even if all plebeians had patrician patrons – which seems unlikely – it is entirely possible that these were not always able to protect them against poverty. There are various other possible explanations for the exclusion of citizens from the land; it may be, for example, that rich men who owned private lands offered the poor positions as labourers on their land in exchange for a small plot of private land; in this case the *heredium* may be seen as a form of proto-tenancy. Those who were unable to find a position as tenant may have become poor, since they had no access to the land held by the elite.

Capogrossi Colognesi has offered an explanation which combines the *gentes*-theory with the possibility of private possession of land. He assumes that the land possessed by the *gentes* was assigned by the *pater gentis* to the *patres familiarum*, who could then subdivide it to their family and clients. The plebeians were those who were not clients of patricians and therefore did not manage to obtain a piece of land. The *gentes* were only an institution meant to protect the interests of the individual citizens; there was therefore no real collective possession of land in archaic Rome. Unfortunately, Capogrossi does not fully explain the legal status of the land held by the *patres familiarum*; he thinks that the concept of *dominium ex iure Quiritium* did not yet exist, and that the land therefore cannot have been considered full property, and was therefore in some

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<sup>51</sup> Beloch (1926, 333); Alföldi (1962, 213); Toynbee (1965a, 173); Hantos (1983, 22-4); Momigliano (1989, 100).

sense still public. The legal position of the land was therefore not the same as that of the later *ager divisus et adsignatus*, land assigned as private property to citizens. The fact that the land held by the *patres familiarum* came to be identified with *ager publicus* was, according to Capogrossi Colognesi, due to a misunderstanding by later authors: they knew only of a distinction between *ager publicus* and land in full private property. Therefore in later terms the land owned by the *patres* could not be called *ager privatus*, and therefore had to be *ager publicus*. Until the fifth century *ager gentilicius* and *ager publicus* were therefore the same. Capogrossi furthermore assumes that when the position of the state grew stronger, it came to consider some of this land the property of the whole community, which it was able to do since it had never been fully private. However, because the land was occupied by the rich, the state could not effectively use it, and this led to demands for distribution to the plebeians.

Recently another theory has been brought forward by Smith. He argues that the *gentes* were a creation of the sixth century, a period of expansion of the Roman territory. To protect the interests of the patricians, who exercised some form of common control over the recently conquered land, the *gentes* were created. Thus it was not those belonging to the *gentes* who had access to the land, but those who had access to it who created the *gentes* to protect their possessions. Those who controlled the land and formed the *gentes* were the patricians, while those who were excluded from the possession of land were the plebeians. This would explain why the plebeians were excluded from the land: since they did not have access to it at the moment of the creation of the *gentes*, it was impossible to get access to it later.<sup>52</sup> Smith's theory has many attractive elements, since it eliminates some of the major problems of earlier theories. However, his theory does not rule out the possibility that the patricians held private land as well, and on the other hand gained control over public land, which may have resembled the public land of later times. In this way the *ager publicus* was more or less equal to the *ager gentilicius*, since the *gentes* were created to protect the control of the patricians over the public land that Rome had conquered.

Notwithstanding these ingenious theories, there is hardly any proof of the claim that all or even most of the land was possessed collectively in archaic Rome.<sup>53</sup> The theory of collective ownership of land by the *gentes* cannot be proved. It may be that something like the *heredium* existed, an inalienable piece of land for every citizen, although there is no secure evidence for this; but apart from that, there was surely also other private land. The only thing we can say with any certainty is that, according to the sources, the patricians somehow gained exclusive control of the land conquered by Rome in war, thereby excluding those plebeians who did not have powerful patrons.

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<sup>52</sup> Smith (2006, 239-42, 275-9).

<sup>53</sup> Zancan (1934, 13); Kaser (1956, 234); Capogrossi Colognesi (1980, 58); Drummond (1989a, 144); Momigliano (1989, 99-100); Mitchell (1996, 260-1); Rathbone (2003, 139); Smith (2006, 240); Rich (forthcoming).

## 2.2. *Ager publicus* in the early Republic

As we have seen, it is difficult to reconstruct the events of the fifth and fourth centuries from the sources, since these are very much coloured by the events of later periods. The sources paint a fairly coherent picture,<sup>54</sup> but it is very doubtful how much of this represents actual events from the early Republic and how much is later historiographical conjecture.

From the earliest times taking land from defeated enemies appears as the normal procedure after a Roman victory. The Romans won a war and took part of the land belonging to the conquered people.<sup>55</sup> This practice also worked the other way around, since the Romans are occasionally reported to have lost some land to their enemies as well.<sup>56</sup> The confiscation of land by the Romans meant that technically this land became the property of the Roman state: it became *ager publicus populi Romani*, public land of the Roman people. It must be assumed that the amount of such land was quite small during the regal period and the early Republic; the conquests of Rome were limited to the immediate vicinity of Rome. The private land owned by Roman citizens was divided into *tribus*; it is usually assumed that all land belonging to the *tribus* was private property.<sup>57</sup> If all land belonging to a *tribus* was private land, there was no room for *ager publicus* within the territory of the *tribus*. There may have been additional *ager publicus* outside the territory of the *tribus*,<sup>58</sup> but this would have been of limited use to those owning private land within the *tribus*, since for most people this *ager publicus* would be too far away from their private land.

If private holdings were indeed small – the legendary *heredium* measured only two *iugera* – *ager publicus* must have been very important for the poor, because such a small amount was not sufficient to support a family. The most likely way for people to obtain additional land was by using *ager publicus*, unless forms of tenancy already existed. The denial of access to land must therefore

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<sup>54</sup> It is pointed out by many scholars, e.g. Mouritsen (1998, 17) and Hermon (2001, 2-3), that the account of the sources is internally solid, but that problems appear when we try to compare the literary tradition with later practice and the few facts we have about the archaic period.

<sup>55</sup> Liv. 1.11.1-4 (Antemnae and Crustumerium), 1.15.5 and 1.33.9 (Veii), 1.38.1 (Sabines), 1.53.2 (Suessa Pometia); DH 3.6.1 (Veii and Fidenae), 4.27.6 (Veii, Caere and Tarquinii); Eutrop. 1.6 (Sabines); Cic. *Rep.* 2.14.26, 2.18.33; Festus 331 L. DH 3.28.6 explains that this was the usual action after a war.

<sup>56</sup> DH 5.65.3, 8.10.2; Liv. 2.15.6.

<sup>57</sup> Ross Taylor (1960, 37); Capogrossi Colognesi (1988b, 283). Sometimes Cic. *Flac.* 32.80 is adduced as evidence for this. In this passage it is argued that certain lands cannot be private property, because they have not been inscribed in a *tribus* (*In qua tribu denique ista praedia censuisti?*). However, this passage proves only that all private land had to be inscribed in a *tribus*. If a citizen wanted this land to count as his private property, he would have to declare his ownership of it at the census, in which case it would be inscribed in the *tribus* this citizen belonged to. It does *not* necessarily mean that all land located in the *tribus* was private property.

<sup>58</sup> Capogrossi Colognesi (1988b, 279); Hermon (2000, 60).

have been a serious problem for those who had no more than a small private holding.

During the regal period there are continuous references to land being distributed among the landless citizens of Rome and to colonists being sent to conquered cities.<sup>59</sup> Even in this time there seem to have been problems with the rich occupying too much land, leaving nothing for the poorer citizens; often the kings are presented as those who protect the poor from the greed of the rich and distribute land to them.<sup>60</sup> Even though the rhetoric of these passages often resembles that found in later periods, we must not discard them altogether. It is likely that the fair distribution of confiscated land was indeed a problem; as soon as Rome started to defeat the neighbouring cities under the kings, it regularly subjected them to confiscation of territory. It is no more than logical that the distribution of this land among the citizens of Rome led to trouble before some rules for dealing with it had been devised;<sup>61</sup> at this time, there were probably no laws governing the *ager publicus* and its possession.<sup>62</sup> This does not mean that the individual accounts of agrarian agitation are all correct, but some discussion over the distribution of conquered land is to be expected.

The plebeians may have received some land during the time of the kings, but after the creation of the Republic distributions seem to have largely ceased. Some individuals according to legend received land as a reward for services to the state, such as Horatius Cocles and Mucius Scaevola.<sup>63</sup> In the early Republic there were only a few additional confiscations of land, to some of which colonies were sent out, while other land remained undistributed and therefore ran the risk of being occupied exclusively by the elite. In theory *ager publicus* was owned by all

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<sup>59</sup> Colonies: DH 1.9.2 (Ostia), 2.24.44, 2.35.7 (Caenina and Antemnae), 2.36.2 (Crustumerium, Medullia and several other cities), 2.53.4 (Fidenae), 2.54.1 (Cameria), 4.63.1 (Signia and Circeii); see 6.55.1; Liv. 1.11.4 (Antemnae and Crustumerium), 1.27.9 (Fidenae), 1.56.3 (Signia and Circeii); Cic. *Rep.* 2.3.5; Plu. *Rom.* 23.6 (Fidenae) and 24.3 (Cameria); Plu. *Cor.* 28.2 (Circeii); Strab. 5.2.7 (Fidenae); *Vir. Ill.* 5. Distributions of land: DH 2.7.4, 2.28.3, 2.62.4, 3.1.5, 4.10.3, 4.13.1, 4.27.6; Cic. *Rep.* 2.14.26, 2.18.33. The existence of the *tribus* Clustumina shows that land in this area had also been distributed. Even non-citizens often received land upon moving to Rome: DH 2.55.6, 3.31.3, 3.43.2 (see ch. 2.5.2 below).

<sup>60</sup> Liv. 1.46.1; DH 4.9.8, 4.11.2; Plu. *Num.* 16.3; Flor. 1.2.8.4.

<sup>61</sup> Bozza (1939, 83); De Martino (1980, 15); Capanelli (1981, 32); Gutberlet (1985, 49); Cornell (1989a, 324 and 1995, 327-9); Oakley (1993, 18 and 1997, 433); Hermon (1999, 24); Manzo (2001, 49-50); Forsythe (2005, 158). Mitchell (1996, 271) assumes that Rome hardly possessed any land before the conquest of Veii, and therefore that the distribution of land cannot have been an issue before 396; see also Hackl (1972, 152); Bringmann (1986, 55-6); Raaflaub (1986, 211). However, some land was conquered before 396, and there must have been problems in administering this.

<sup>62</sup> Bignardi (1984, 76); Drummond (1989b, 238).

<sup>63</sup> Cocles: Liv. 2.10.12; DH 5.25.2; *Vir. ill.* 11; Scaevola: Liv. 2.13.5; DH 5.35.1. See Plin. *HN* 18.2.9, 34.5.20. Those who had informed on the rebellion of the Tarquinii also received land, DH 5.57.3. In DH 6.9.4 *ager publicus* is promised to those who will fight well in a battle. A much later example is that of Vatinius, who received land in Reate as a reward from the state, Cic. *Nat. D.* 2.2.6.

citizens of Rome, and could be occupied by them at will. However, the sources describe the monopolization of this land by the wealthy elite in the early Republic. They call these rich men the patricians, while the poor, who are deprived of access to land, are called plebeians. The sources for the early Republic are therefore characterized by a continuous battle between the patricians and plebeians for the possession of land. The plebs constantly asked for the distribution of the public land as private property, but the patricians resisted distributions of the land they held.<sup>64</sup>

In the 480s the actions of the consul Spurius Cassius caused great unrest, which would continue for several decades. Livy describes the events of these years as follows:

A treaty [the *Foedus Cassianum*] was concluded with the Hernici, two-thirds of their territory was taken from them. Of this Cassius intended to give half to the Latins and half to the Roman plebs. He contemplated adding to this a quantity of land which, he alleged, though state land, was occupied by private individuals. This alarmed many of the patricians, the actual occupiers, as endangering the security of their property. On public grounds, too, they felt anxious, as they considered that by this largess the consul was building up a power dangerous to liberty. Then for the first time an agrarian law was proposed, and never, from that day to the times within our own memory, has one been proposed without the most tremendous commotions.<sup>65</sup>

This and other sources certainly echo later events, especially those of the Gracchi. Their most important issue was the distribution of *ager publicus* to the poor, and this led to opposition by the individual possessors of this land, presented as the rich patricians. Moreover, the senatorial protest against the Gracchi was motivated by fear of their growing personal power, and Cassius as well was constantly accused of striving for kingship.<sup>66</sup>

Some scholars have therefore doubted the description of the agrarian struggles in the early Republic and discarded them altogether as fictions from the time of the Gracchi. They argue that the plebs would not have asked for land distribution so many times if they never received land anyway.<sup>67</sup> However, there are some indications that the story was not entirely made up on the basis of later

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<sup>64</sup> Liv. 2.61.1-4, 3.1.1-2, 3.30.1, 4.36.1-2, 4.48.2-4, 4.51.5-6, 4.58.12, 6.5.4-5; Zonar. 7.17; Cass. Dio 5.20.2; DH 5.68.1, 6.95.3-4, 7.4.5, 8.69-8.75, 10.36.2. See Chouquer & Favory (1991, 92).

<sup>65</sup> Liv. 2.41.1-3. See below on the *Foedus Cassianum*.

<sup>66</sup> Val. Max. 5.8.2, 5.6.1b; Cic. *Rep.* 2.35.60; Plin. *HN* 34.14.30; DH 8.77.1, 10.38.3; similarly Maelius in DH 12.2.9 and Val. Max. 5.3.2g, 5.6.1c, and Maelius and Capitolinus in Cic. *Rep.* 2.27.49. DH 7.8.1 expresses the view that promises of land distribution always lead to tyranny. For the parallels between Cassius and the Gracchi see Gabba (1954) and Capanelli (1981, 11-39); they include such elements of the story like the resistance of a colleague and the sale and lease of *ager publicus*, which did not yet exist in the fifth century.

<sup>67</sup> Gabba (1974, 135); Hinrichs (1974, 9).

events. For example, the fact that Cassius is presented as a consul and not as a tribune of the plebs, as were most later instigators of agrarian laws, lends some credibility to the reality of early Republican agrarian struggles. Moreover, the early Republican agitation differs markedly from those of the Gracchan period, in that the plebs never asked for the introduction of a limit on the amount of *ager publicus* that could be occupied. They wanted to remedy the situation by distribution of *ager publicus* to the poor. Since one of the main features of the Gracchan law was the introduction of a maximum of land that could be occupied, one would expect that an account solely based on the Gracchan period would emphasize this aspect of their legislation.<sup>68</sup> Even if many of the sources concerning the early Republic were influenced by the events of the Gracchan era, the strongest evidence for problems with the possession of land is the *Lex Licinia* of 367, which clearly shows that even before the Gracchan period the occupation of *ager publicus* by a small group was considered a problem.

Because there were as yet no laws limiting the amount of public land one person could possess, the plebeians had no political power to check the dominance of the patricians. Although there was no legal protection for those occupying land, as there would be later on, the state had neither the ability nor the will to take it away from its possessors. In the debate about Cassius' law, Appius Claudius is reported to have given the advice 'to choose ten of the most distinguished Senators to go over the public land and fix its boundaries, and if they found that any private persons were by fraud or force grazing or tilling any part of it, to take cognizance of this abuse and restore the land to the state'.<sup>69</sup> He is only referring to the illegality of occupying land by 'fraud or force', not the occupation in itself. The legal concept of 'fraud or force' (*vi aut clam*) was only formulated at a later date, and in fact the whole speech is most likely an anachronism created on the basis of later developments. However, the idea of *ager occupatorius*, in the sense of land free for occupation by Roman citizens, may have existed from a very early period, even though it was not yet controlled by the regulations it would later have (see for this ch. 3.2.1).

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<sup>68</sup> D'Ippolito (1975, 204-6); De Martino (1980, 15); Cornell (1995, 269-71). Strangely, Cornell argues on p. 328 and in (1989a, 325-8) that the plebeians demanded the introduction of a limit on the amount of *ager publicus* one person could possess and the number of animals he could graze on it. See also Manzo (2001, 5). However, although the *Lex Licinia*, allegedly passed in 367, introduced a limit on the amount of land to be possessed, this had never been a feature of plebeian demands before its introduction. See Capogrossi Colognesi (1980, 36-7); Drummond (1989b, 242).

<sup>69</sup> DH 8.73.3. DH 2.74.5, 9.52.4, and 10.32.2 also use the expression 'by fraud or force'. In later times it was a well-known principle that those who were driven from their land by fraud or force had legal protection; such protection probably did not exist in the early Republic, but the right to occupy unused *ager publicus* may have originated very early.

In the next decades we continuously see the *tribuni plebis* asking for the distribution of land according to this law, yet this never happened.<sup>70</sup> Sometimes they received the support of the consuls;<sup>71</sup> the need for a solution to the land problem was apparently widely appreciated and not only an issue for the *tribuni plebis*. It is noticeable that the requests of the plebs that are recorded in the ancient sources can be clustered in two groups, one dating between 486 and 474 and one after 424, which coincides with conquests of land by the Romans, the first one after land had been taken from the Latins and Hernici, the second after the conquest of Bola and Labici.<sup>72</sup> The connection between the demands for land distribution and the conquest of territory lends a further air of plausibility to these demands.

The first success of the plebeians seems to have been achieved in 456, when the *Lex Icilia de Aventino publicando* proposed that

all the parcels of land [on the Aventine hill] held by private citizens, if justly acquired, should remain in the possession of the owners, but such parcels as had been taken by force or fraud by any persons and built upon should be turned over to the populace and the present occupants reimbursed for their expenditures according to the appraisal of the arbitrators; all the remainder, belonging to the public, the populace should receive free of cost and divide up among themselves.<sup>73</sup>

Again, the story as it stands is heavily influenced by later sources, as appears, for example, from the reference to 'force or fraud'. In any case, the distribution of only the Aventine made available only a small amount of land. The sources state that the plebeians were satisfied with this, for 'they would be contented with receiving a portion of the city, inasmuch as they could have no part of the land lying in the country because of the number and power of those who had appropriated it'.<sup>74</sup> Even though the *Lex Icilia* is presented as a success for the plebeians on a par with the later Republican agrarian laws,<sup>75</sup> the practical gain from it must have been small, since the plebs did not get access to any arable land. The law plainly did not succeed in reaching its goal, namely alleviating the suffering of plebeians; it may therefore be that this had not been the goal of the

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<sup>70</sup> DH 8.81.1, 8.87.3-4, 8.91.3, 9.1.3, 9.5.1, 9.17.4, 9.18.1, 9.27.4, 9.32.1, 9.37.2, 9.51.1-53.7, 9.59.1-2, 9.69.1, 10.35.5, 10.37.4, 10.42.2, 12.1.7; Zonar. 7.17; Liv. 4.44.7-10, 4.47.8-52.3, 5.12.3, 6.5.1-5; 6.6.1-2; App. Ital. 9.

<sup>71</sup> Liv. 2.48.2, 3.1.1-2.

<sup>72</sup> Humbert (1978, 62-4); Cornell (1989a, 327 and 1995, 271). Smith (2006, 240) suggests that later writers assumed that confiscations of new lands naturally led to agitation over its distribution, and therefore mentioned this in their writings every time land was confiscated.

<sup>73</sup> DH 10.32.2-5; see Liv. 3.31.1.

<sup>74</sup> DH 10.32.3.

<sup>75</sup> Forsythe (2005, 207).



law at all, but that the sources presented it as such to fit this event into the framework of the patrician-plebeian struggle.

There are only a few records of foundations of colonies on conquered land. Colonies are sometimes presented as having been an easy way for the Senate to get rid of troublesome plebeians, without having to give up the land they themselves occupied<sup>76</sup> – again we see that the accumulation of land by the elite, which was a stock theme in the sources for later periods, is continually attributed to the early Republic as well. The plebeians on the other hand are thought to have been unwilling to go to the colonies. In 467

there was a considerable quantity of land which had been taken from the Volscians the previous year, (...) a colony might be settled at Antium, which, as a seaport town, and at no great distance from Rome, was a suitable city for the purpose. This would allow the plebeians to enter on public land without any injustice to those in occupation, and so harmony would be restored to the state. (...) So few gave in their names that the number was made up by the addition of Volscians as colonists. The rest of the people preferred to ask for land at Rome rather than accept it elsewhere.<sup>77</sup>

This story contains many puzzling elements: if the plebeians were really starving, it is unlikely that they would have refused the offer of land, wherever it was located. Moreover, Antium is not much farther away from Rome than other colonies founded in the early Republic. It seems that for most plebeians shortage of land was not the immediate problem in the fifth century, and that some other problem may have been the cause of their refusal to go to this colony; or that the narrative is unreliable and based on later experiences.

Colonization was the only way for the plebs to receive land in the early Republic. However, the number of colonies was small: between 510 and 383 only thirteen ‘old Latin colonies’, *priscae Latinae coloniae*, were founded, most of them in Latium itself.<sup>78</sup> They were probably established by the Latin League, not by

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<sup>76</sup> DH 6.43.1; Liv. 4.48.2-3. See Stephenson (1891, 12); Bandelli (1999a, 93).

<sup>77</sup> Liv. 3.1.5-8, see DH 7.14.4, 9.59.1-2. Velitrae was unpopular as a colony because of a plague: DH 7.13-4, 7.28.3; Plu. *Cor.* 12.2-13.2.

<sup>78</sup> The colonies founded in this period mentioned in the sources are Cora, Signia, Velitrae, Norba, Antium, Ardea, Fidenae, Labici, Vitellia, Circeii, Satricum and Setia. Cora (501): mentioned as an existing colony in Liv. 2.16.8; Fidenae (498 and 426): DH 5.43.2, 5.60.2, and see 6.55.1; Liv. 4.30.6; Signia (495): Liv. 2.21.7; Velitrae (494 and 401): DH 7.13.1; Liv. 2.31.4, 2.34.6, and see 6.21.2, 6.36.1, 8.14.5; Diod. Sic. 14.34.7; Norba (492): DH 7.13.5; Liv. 2.34.6, and see 8.1.1; Cass. Dio 4.17.9; Antium (467): Liv. 3.1.5, and see 3.10.8, 3.22.2; DH 9.59.1-2, and see 10.20.4; Ardea (442): Liv. 4.11.3-7; Diod. Sic. 12.34.5; Labici (418): DH 8.19.1; Liv. 4.47.7; Vitellia (393): Mentioned as an existing colony in Liv. 5.29.3, see Suet. *Vitell.* 1.3. Circeii (393): Diod. Sic. 14.102.28; mentioned as an existing colony in Liv. 6.21.2 (later a Latin colony, see Liv. 27.9.7, 29.15.5; Cic. *Nat. D.* 3.19.48); Satricum (385): Liv. 6.16.7; Setia (c. 382): mentioned as existing colony in Liv. 6.30.9 and 8.1.1. Beloch (1926, 359-60) dated the colonisation of Circeii and Setia to some undated later period and

Rome alone; Rome at this time did not have supremacy over other cities in Latium, but functioned as an ally (not a member) of the Latin League. In the *Foedus Cassianum*, a treaty concluded with the Latins in 493 and later extended to the Hernici, an equal share of any booty acquired in wars fought together was promised to the Latins, and colonies were an easy way to give land equally to Latins and Romans.<sup>79</sup> It has been suggested that Rome played the major role in these foundations, with the Latin league only as a subordinate partner;<sup>80</sup> however, as can be seen from Livy and Dionysius, Latins and other peoples were admitted into these colonies (see ch. 2.5.2). This means that only a small number of Roman citizens can have profited from these colonization schemes. After the foundation of Sutrium and Nepes in 383,<sup>81</sup> colonization ended altogether.

Even if the land confiscated in war had to be shared with the Latins and Hernici, Rome acquired some *ager publicus* by itself. However, during the fifth century Rome did not conquer much land;<sup>82</sup> the first substantial amount of land that was added as *ager publicus* was the land of Veii in 396. This in its turn may have created a stronger incentive finally to deal with the problems connected with the occupation of *ager publicus* (see ch. 3.2.2).

We may conclude, therefore, that although actual acquisitions of land by Rome in the early Republic were small, the stories of severe agitation over this land are most likely not complete fantasies. However, the complicated nature of the sources makes it very difficult to separate fact from fiction for the archaic period. From the fourth century onwards, however, the sources seem to become more reliable, and this period will therefore be the main subject of this chapter.

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believed that the conquest of Satricum in 385 was a retrojection of the events of 346 (Liv. 7.27.5-9, *Fasti triumphales* 346/5). See for early colonization Alföldi (1963, 368); Salmon (1969, 42-5); Hinrichs (1974, 38); Galsterer (1976, 85); Humbert (1978, 63); Cornell (1989b, 280).

<sup>79</sup> Ampolo (1990b, 124). Indeed they sometimes received land: in 415 Ferentinum was captured by the Romans, and 'the town and its territory were given to the Hernici' (Liv. 4.51.8). It may be that at the conclusion of the *Foedus* the Latins were deprived of some of their territory, see Humbert (1978, 73-6). However, since the *foedus* was *aequum* – a treaty between equal parties – this is not very likely. In 486 the Hernici were included in the treaty, but, according to Livy, they were first stripped of two-thirds of their territory. Dionysius, however, expressly states that the Hernici did not lose any land (DH 8.71.5, 8.77.2), and this is believed by Basile (1978, 279); Cornell (1989b, 274-7); and Oakley (1998, 396). In later times most of the Hernican towns were independent of Rome, and only after the Latin War were they incorporated in the Roman state; this makes it likely that they did not lose land in 486.

<sup>80</sup> Humbert (1978, 71); Cornell (1995, 302).

<sup>81</sup> Rathbone (2003, 140) seems to ignore these two colonies when he states that the foundation of *priscae Latinae coloniae* ended with Circeii in 393.

<sup>82</sup> In 446 a conflict arose between Aricia and Ardea when these two cities asked Rome to judge in a dispute over the possession of land; a decision could not be reached, and Rome decided to take the land for itself: Liv. 3.71.7; DH 11.52.2-3. Labici in 418 and Bola in 415 were the only other additions to Roman territory, but the size of these territories was small: Liv. 4.47.6-7, 4.49.9-11. See Stephenson (1891, 21-2); Ross Taylor (1960, 47); Humbert (1978, 58); Drummond (1989a, 136).

### 3. The acquisition of *ager publicus* by the Roman state

Since almost all *ager publicus* was taken from conquered peoples, the history of the *ager publicus* is in a sense a history of the conquest of Italy. Italian communities could be forced to surrender land to Rome for various reasons; in most cases land was confiscated after a defeat in war. Armed conflict was not always necessary, however; occasionally land could be demanded on the conclusion of a treaty with Rome.<sup>83</sup> Roman citizens could acquire private rights to the use of this land through various methods: by the establishment of colonies or by individual ('viritalis') distributions of land, by gifts, sale or lease of the land, or by a grant to specific communities or groups.

The quantity of land taken from defeated enemies was often considerable. Livy records that two thirds of the land of Privernum was taken in 340 BC.<sup>84</sup> Only in a few cases do we possess any information about how much land was confiscated, at least as a percentage of the total possessed by the enemy. One third or one half of the land of the defeated party is often considered the standard amount taken by the Romans,<sup>85</sup> but the case of Frusino in 303 is actually the only one in which one third is specified as the amount seized, while the confiscation of one half is attested only in the case of the Boii in 191.<sup>86</sup> The amount of land taken varied according to the circumstances: peoples who had fiercely resisted the Romans were punished with the loss of a larger quantity of land than those who had surrendered quickly. However, there were no standard rules; variations occurred in the treatment of defeated peoples (see ch. 2.5.2 below). However, even if we know, for example, that one third of the land was taken, we still do not know exactly how large the actual amount of confiscated land was, since we do not know how much the community possessed in the first place. If no percentage is specified, we sometimes at least have evidence that land was confiscated. For instance, Livy describes how the Marsi in 302 'were compelled to surrender a portion of their territory'.<sup>87</sup> However, confiscation of land was often not recorded at all, and we can only conclude that land was taken because *ager publicus* in the area is mentioned at some later moment. Livy frequently reports that a colony was established without any reference to the previous confiscation of land in the area. However, since colonies could be

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<sup>83</sup> See Appendix items 4 and 7.

<sup>84</sup> Liv. 8.1.3; Appendix item 8.

<sup>85</sup> This is believed almost universally, see Stephenson (1891, 9); Liebenam (1900, 3); Kornemann (1901, 513); Scalais (1930-2, 202); Last (1932, 16); Tibiletti (1955, 40); Scullard (1959, 21); Salmon (1969, 165 n. 2 and 1982, 59); Hopkins (1978, 60); Gabba (1979b, 39); De Martino (1980, 26); Christ (1984, 117); Peruzzi (1990, 6); David (1997, 67); Càssola (1988, 5) for the regal period. Capogrossi Colognesi (2002, 7) states that regularly one half or more was taken. Doubts have been raised by several scholars, but to no avail, e.g. Göhler (1939, 10); Hantos (1983, 42 and n. 90).

<sup>86</sup> Liv. 10.1.3, 36.39.3. One third is also stated for the confiscation of land from Cameria, Caenina, and Antemnae by Romulus, DH 2.35.5 and 2.50.4; one half is attested for a second confiscation from Cameria in DH 2.54.2. These accounts, however, are most likely anachronistic.

<sup>87</sup> Liv. 10.3.5.

founded only on *ager publicus*,<sup>88</sup> we must assume that the land on which they were established had been confiscated as *ager publicus* previously.

The inadequate nature of the evidence makes it impossible to establish any absolute figure for the size of *ager publicus*. It is even more difficult to establish the amount of land that was privatized by colonization or distribution to citizens, because it is hardly ever possible to establish the size of the territory of a colony or *viridane* distribution. The works of Beloch and Afzelius from the early twentieth century show great confidence in their ability to establishing the boundaries of territories, but I do not share their optimism. Their main sources are inscriptions mentioning *tribus*: if an inscription showing a certain *tribus* is found, it can be assumed that the location where it was found fell within the territory of the nearest city belonging to this *tribus*. Further information is deduced from the boundaries of medieval dioceses and modern cities. Furthermore, natural boundaries, especially mountain ranges and rivers, play an important role in their reconstructions.<sup>89</sup>

However, it is clear that all these sources have severe limitations. For each town there are only a limited number of inscriptions. They serve to show only that a certain location may have belonged to a certain community, and they do not allow us to establish the boundaries in detail. Moreover, when a Roman citizen moved to another location, he sometimes retained membership of his old *tribus*, and it may therefore be that not all inscriptions show the tribal affiliation of a certain location, but only that of an individual citizen.

To establish the size of colonies, the only thing we can do is look at the information about the privatization of confiscated land. Sometimes we have information about the number of people settled in a colony and the amount of land each settler received as his private property, which allows us to arrive at a minimum amount of land that was assigned. However, whenever such figures are known, they are invariably lower than the size of the territories of the colonies reconstructed by Beloch and Afzelius. As we shall see (ch. 3.5), most colonies also received some additional land for general purposes, which may explain the difference. Unfortunately, in many cases we do not even have information about the amount of land received by the colonists. In the case of *viridane* assignments we sometimes have information on the amount of land granted to each settler, but never on how many people were involved. Since it is impossible to calculate the amount thus privatized, it is only possible to establish a range within which the distributed amount of land may have fallen. For example, if a colony was settled with 2,500 colonists who each received five

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<sup>88</sup> Cic. *Agr.* 2.25.65. Dilke (1971, 178) states that colonies could also be founded on land belonging to *municipia*, but it is unclear what he means.

<sup>89</sup> Dyson (1978, 255) states confidently: 'the political boundaries of the original territory can be reconstructed with reasonable certainty,' and uses mainly natural boundaries to reconstruct the territory of Cosa. Attolini (2002, 129) does the same for Heba. See also Chouquer (1981, 864).

*iugera* of land, how much land would that be? And if there were 6,000 colonists who each received 10 or even 20 *iugera*, what then?

For the territories held by the Italian peoples before the Roman conquest the problems are even greater. *Tribus* were not assigned to a town until it acquired Roman citizenship, which for most of allied Italy did not happen until 89 BC. It is unlikely that the borders between towns were in all cases the same in this year as they were in the fourth to second centuries BC. The only other evidence to go by is natural boundaries. However, it is likely that in many cases there were no clear-cut boundaries between Italian peoples at all during this period, or that the boundaries shifted regularly as a result of wars.<sup>90</sup>

Even more importantly, there is a fundamental flaw in the reasoning of Beloch and Afzelius, namely the idea that all land in Italy should belong to one community or other. The maps in their books show the whole of Italy neatly distributed among the various communities, with no land that does not belong to any specific town. Several times Beloch assumes that two cities border on each other, because there is no town between them.<sup>91</sup> For example, between Alba and the Marsic territory 'bildet der Kamm des Gebirges die natürliche Grenzscheide'.<sup>92</sup> However, it is far more likely that communities did not always border directly on each other. Especially in the Apennines the mountains constitute formidable boundaries between the isolated fertile valleys in which the towns are situated, and it is not to be expected that all mountain ranges would be considered part of a specific community. It is far more likely that only the arable land and easily accessible pasture lands were considered the territory of a specific city, and that there was much land that remained unclaimed.<sup>93</sup> Only in the Imperial period did all land in Italy come to be assigned to specific communities.<sup>94</sup> Therefore it is impossible to maintain, as Beloch and Afzelius do, that the top of a mountain range or another inaccessible location was considered the natural boundary between one territory and another. As a result of this, the

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<sup>90</sup> Oakley (2005b, 39) for the border between Marsi and Aequi; Van Dooren (2008, 38). Older scholars, like Liebenam (1900, 2), believe in strictly defined boundaries.

<sup>91</sup> E.g. Beloch (1926, 527) for the boundary between Sora and Antinum. Considering the steep and wooded mountains separating these two cities (Photo 1), it is likely that much land located between them was not considered to belong to either city.

<sup>92</sup> Beloch (1926, 552), see also Beloch (1880, 156).

<sup>93</sup> Wightman & Hayes (1995, 34-5) point out that such lands could be unclaimed, or be the *ager compascuus* of one of the neighbouring communities. Ager (1996) gives several examples of border conflicts in the Hellenistic Greek world, from which it becomes clear that territories were often laid down with extreme precision; however, this still does not mean that all land was assigned to the territory of one town, only that the boundaries of each territory were well defined.

<sup>94</sup> Kahrstedt (1959, 176-7); Azzena (1987, 20); Bispham (2008, 80); Morley (forthcoming). Delplace (1993, 220) argues that the territories of cities were often not exactly defined, because they were running over *ager publicus*. However, even if the land was public, it is possible that boundaries were strictly defined; on the other hand, the public nature of the land may have made it easier for assignments to cities to become unclear over time.

territories assigned to the various communities by Beloch and Afzelius are usually too large, since they include more land than can be securely ascribed to a community. This also means that medieval and modern boundaries are a very unreliable source for reconstructing the ancient situation,<sup>95</sup> since they were usually based on natural boundaries, and belonged to a period when all land in Italy had been assigned to a diocese or community.

Therefore it is quite impossible to make estimates about the size of Italian territories or Roman colonies. When Afzelius states confidently, for example, that the territory of Brundisium measured 375 km<sup>2</sup>,<sup>96</sup> this might just as well be 250 or 600, depending on where one draws the boundary. Beloch does not even round off his figures to multiples of five, but states, for example, that the land of the Praetuttii measured 1089 km<sup>2</sup>. He estimates his margin of error at only 5%, 'weil es sich um absolut kleine Zahlen handelt'.<sup>97</sup> Such semi-scientific estimations are in fact quite dangerous, since they give us an entirely false impression of the political reality of Republican Italy, and grossly overestimate our ability to calculate the size of Italian territories. The figures given by Beloch and Afzelius should therefore be treated with much more caution than is usually done. Modern scholars still use their figures with a confidence that is not at all justified.<sup>98</sup> This is not to say that all individual figures provided by these scholars are wrong; I think that most of them are at least in the right order of magnitude. We can be sure that some territories were larger than others, and we can usually make some estimation of whether they measured 100 or 1,000 km<sup>2</sup>. More precise figures are, however, impossible; those given by many modern scholars cannot therefore be taken seriously.

Another problem in establishing the size of the *ager publicus* is that the figures provided by Beloch and Afzelius distinguish only between *Ager Romanus*, *Ager Latinus*, and land belonging to the allies; *ager publicus* is not a separate category in their calculations.<sup>99</sup> The *Ager Romanus* consisted of both private land held by

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<sup>95</sup> Wightman & Hayes (1995, 34); Corti (2004, 88). Liebenam (1900, 7) expresses doubts about their usefulness; Levi (1921-2, 69) does not trust them for the *Ager Campanus*. Dyson (1981, 269), however, considers them reliable.

<sup>96</sup> Afzelius (1942, 191).

<sup>97</sup> Beloch (1926, 621). Similar optimism is shown by La Regina (1971-2).

<sup>98</sup> E.g. Cornell (1995, 381).

<sup>99</sup> The calculations can be found in Beloch (1880, 69-76 and 1926, 620-1) and Afzelius (1942). It is remarkable that Beloch in his earlier work makes different calculations for the size of the *Ager Romanus* than in his later work. In (1880, 71) he estimates the size of the *Ager Romanus* after 358 at 3,096 km<sup>2</sup>, while in (1926, 620) he sets it at 1,902 km<sup>2</sup>. His earlier estimate of the *Ager Romanus* after the Latin War is 6,039 km<sup>2</sup>, in 300 BC 7,688 km<sup>2</sup>, and in 263 BC 28,244 km<sup>2</sup>, while in his later work he sets these at 5,289, 7,512 and 23,226 km<sup>2</sup> respectively. He explains the differences (1926, 575-6) as being caused by the better availability of evidence, for example by the publication of inscriptions in the CIL, which led him to revise the territory size of many colonies and other political entities. Afzelius in many cases gives widely different figures; his figure for the size of the *Ager Romanus* in 338 is 5,525 km<sup>2</sup>, in 300 6,285 km<sup>2</sup>, in 290 15,295 km<sup>2</sup> and in 264 26,805 km<sup>2</sup>. Others have made different calculations; for example Toynbee (1965a, 116) thinks the *Ager*

Roman citizens and *ager publicus* of the Roman state; much of it, therefore, was in private hands. Many of the additions to it were made by granting Roman citizenship to communities which had not held it before. This automatically made their land *Ager Romanus*, while of course they retained the private rights of ownership on it, and therefore no land was turned into public land (unless it had been and remained the public land of the community). *Ager publicus* was therefore only a category of land within the *Ager Romanus*, but Beloch and Afzelius do not make separate calculations to establish its size. There can be no doubt, then, that the amount of land that was privatized, and therefore also of land that was left as *ager publicus*, cannot be calculated in absolute figures. The often-quoted estimate that the amount of *ager publicus* confiscated after the Second Punic War was 10,000 km<sup>2</sup> is no more than a guess, and an unfounded one at that.<sup>100</sup>

Nevertheless, a more detailed estimation of the amount of *ager publicus* is necessary if we want to say anything with confidence about its extent and importance in the Republic. This is done in the Appendix. For each acquisition of land by the Roman state I give the circumstances of the conquest (since this may have influenced the amount of land taken, see ch. 2.5.2), the privatizations occurring immediately afterwards and those that happened later, and the possible location of land that was left as *ager publicus*. No matter how unsatisfactory this method is, it will at least allow us to conclude that there was indeed a considerable amount of *ager publicus* at any given time during the Republic. This conclusion is supported by further evidence: in many cases *ager publicus* is mentioned long after the conquest of the area in which it was located. I shall discuss the examples known to us in order to show that it was a routine procedure of the Roman state to retain *ager publicus* for long periods of time after its confiscation.

If there was indeed so much *ager publicus* in the Roman Republic, an obvious question presents itself: why did the Romans confiscate so much land from their defeated enemies if they did not immediately distribute it? Who used all this land? Conventional scholarship holds that excess *ager publicus* was occupied mainly by the Roman elite, who established large slave-staffed estates on it, producing crops for the expanding urban market. However, new research has made this position increasingly difficult to maintain. In the first place, the size of

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Romanus measured 822 km<sup>2</sup> at the end of the fifth century. Toynbee (1965a, 165) states, for example, that the total amount of *ager publicus* confiscated between 500 and 241 measured 25,260 km<sup>2</sup>. Bozza (1939, 166) estimates the size of the *Ager Romanus* at 2,220 km<sup>2</sup> after the conquest of Veii; she claims to have taken this from Beloch, who, however, does not give this figure.

<sup>100</sup> Beloch (1880, 73). It is still often quoted, e.g. Gabba (1989a, 198); Harris (1991, 60). However, see already Kromayer (1914, 151 n. 14); Brunt (1971, 278). Frederiksen (1981, 267) states that this brought the total amount of public land after the Second Punic War to three million *iugera*. Other estimates have been made: Pina Polo (2006, 177) states that the distributed land in Cisalpine Gaul measured one million *iugera*; many other examples could be cited.

the market is now known to have been quite small, and the need to have a great number of commercial estates was therefore much smaller than was previously thought. Moreover, market production was limited mainly to central Italy, while much of the *ager publicus* was located in the periphery (see ch. 4.3.6). It is therefore very difficult to maintain that all *ager publicus* was occupied by the Roman elite. Who then were the occupants of *ager publicus* not distributed by the Roman state?

In my view, the presence of Italian allies on *ager publicus* can explain this problem. I propose that most *ager publicus* continued to be used by the defeated populations, and that in this way the public land played a crucial role in the relation between the Romans and their allies. The fact that the allies were now using the land they had previously owned as a favour from the Romans formed a permanent reminder to them that they were dependent on Roman goodwill. In ch. 2.5.2 I will set out in more detail the rights and obligations of the allies with respect to the *ager publicus*.

### 3.2. Latium

The history of the *ager publicus* in Latium is complicated, because many conquests in this region were made very early in Roman history and are not well documented. Already in the regal period wars are recorded with Rome's neighbours in Latium, the Hernici, Volsci, and Aequi. The extent to which Rome had expanded its territory during the regal period can be determined by Livy's statement that Rome had 21 *tribus* in 495, which were all situated in close proximity to Rome.<sup>101</sup> This land was probably all private, but there may have been *ager publicus* between the territories of the *tribus* or outside them. However, this was probably only a limited amount of land, judging from the fact that all Rome's wars had been fought in close proximity to the city and there had been no opportunities to confiscate large tracts of land elsewhere. As we have seen, Rome during the fifth century had to share most of its land with the Latin league, and acquired only small tracts of *ager publicus* for itself.

The Ager Pomptinus, conquered in 387, was the first large tract of land that the Romans acquired as *ager publicus* in Latium (Photo 2).<sup>102</sup> Initially, however, no distributions of land seem to have taken place; between 385 and 338 no attempts at virgation distribution or colonization succeeded. The tribunes of the plebs wanted to give the land to the people, because 'this territory, they alleged, was in much greater danger from the nobles than it had been from the Volscians, for the latter only made raids into it as long as they had strength and weapons, but the nobles were putting themselves in possession of the public domain, and

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<sup>101</sup> Liv. 2.21.7. The nature of this land is bound up with the discussion about landholding by the *gentes*: if the *gentes* possessed land, the land in the *tribus* can be seen as *ager gentilicius* and therefore as public land in a sense, whereas if most land was held privately, as I believe, the tribal land will mostly have consisted of private land. See Smith (1996, 208).

<sup>102</sup> Appendix item 2.



unless it was allotted before they appropriated everything there would be no room for plebeians there'.<sup>103</sup> In 385 a commission for the division of the Ager Pomptinus was actually created; however, the *tribus* Pomptina was not created until 358, and this may indicate that it had taken a long time before the confiscated land was distributed. It is possible that some of the land had been occupied by private individuals before it was distributed, and that the plebeians therefore did not have much chance of profiting from the newly conquered land.<sup>104</sup>

During the Latin War, from 340 to 338, the Romans finally established their authority over the Latins, who were punished for their rebellion with loss of land. The Romans thus acquired more *ager publicus*, although it is hard to establish exactly which land was taken. Many Latin communities retained their independence, and probably also their land, or at least most of it.<sup>105</sup> After the Latin War the Romans faced the Samnites, and in the course of the wars against them the Latini and the surrounding peoples were finally conquered. The Volsci, Hernici, and Aequi were ultimately defeated between 306 and 303.<sup>106</sup> These conquests were secured by a number of colonies and virgated distributions in their territories.

Most of the confiscated land in Latium was made into private land, either through virgated distributions to Roman citizens or by the foundation of colonies, the number of which was quite large. This is shown by the relative dearth of references to *ager publicus* in Latium in later periods. Nevertheless, there are indications that some *ager publicus* was left in the possession of the state long after the conquest. In 200 BC the state proved unable to repay loans which had been made by rich citizens during the Second Punic War. Then 'the Senate accordingly made a decree that they should have the option of taking any part of the *ager publicus* within fifty miles of the City'.<sup>107</sup> This land became known as the *ager in trientibus*. The fifty-mile radius runs in a circle from Graviscae via Narnia, Alba Fucens, and Frusino to Circeii, and thus contains parts of Latium which had fallen under undisputed Roman control after the Latin War in 338 at the latest. Much of the land in this area is very fertile, and must have been highly desirable.<sup>108</sup> It may be that most of the *ager in trientibus* was situated in Etruria or Sabinum, but the area indicated in the text clearly includes Latium. The Roman state had apparently managed to hold on to *ager publicus* for a long

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<sup>103</sup> Liv. 6.5.3-4.

<sup>104</sup> Ross Taylor (1960, 50); Hermon (1994c, 267).

<sup>105</sup> Appendix items 4, 6, 7.

<sup>106</sup> Appendix items 14, 15, 17.

<sup>107</sup> Liv. 31.13.6.

<sup>108</sup> De Neeve (1984, 19).

time,<sup>109</sup> even though arable land this close to Rome must have been popular with rich and poor citizens alike.

In the first century BC extensive distributions of land took place in Latium, especially by Sulla.<sup>110</sup> It may be that some of the *ager in trientabulis* was still in existence – the *lex agraria* of 111 mentions it as an existing form of public land – and that this was used to settle the veterans. The Sullan period was the first occasion after 111 when land was distributed on a large scale, and so at this moment it would still have been public land. However, Sulla also confiscated land from his political enemies, making it impossible to use all of his distributions as evidence for the survival of *ager publicus* dating back to the conquest of Latium.

### 3.3. Etruria and Umbria

Rome had a long history of war with the Etruscan city of Veii. Already in the time of Romulus a war is mentioned, and references to wars with Veii occur regularly during the regal and early Republican period.<sup>111</sup> However, the definitive victory was not achieved until 396, when the city and its neighbour Capena were finally conquered.<sup>112</sup>

After the conquest of Veii in 396 there was for the first time a large quantity of *ager publicus* available to the Romans. At first the Senate tried to satisfy the plebeians with a colony in the territory of the Volsci, but they were unwilling to accept this.<sup>113</sup> The plebeians therefore received a substantial amount of land as their private property: each citizen, apparently including all children of both sexes, received seven *iugera* of the Veientane territory. A few years later some of the original inhabitants of Veii received land as well. However, there are many references to the availability of land in the area in periods long after the conquest of Veii, and the amount of *ager publicus* in southern Etruria must therefore have been great.

When Velitrae was captured in 340 its leaders were banished to the other side of the Tiber, an area which had belonged to Veii until 396: 'The Veliternians, who had been Roman citizens from old times, were in consequence of their numerous revolts severely dealt with; their walls were thrown down, their Senate deported

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<sup>109</sup> Bringmann (1985, 12); Gabba (1989a, 202). Castagnoli et al. (1985, 38) attribute the availability of land close to Rome to decline in population having occurred in the Second Punic War, but it is unlikely that the war would have had such serious effects in the area close to Rome. Göhler (1939, 11) argues that the land sold in 200 must have been confiscated in the Second Punic War, because otherwise it would have been used earlier, but this is not necessarily true. There is, moreover, no reason why land in this region should have been confiscated in the Second Punic War.

<sup>110</sup> Chouquer et al. (1987, 248-9) mention Sullan distributions – most of them without secure evidence – in Gabii, Tusculum, Castrimoenium, Collatia, Bovillae, Casinum, Aricia, and Capitolum.

<sup>111</sup> Liv. 1.15.1-5, 1.33.9.

<sup>112</sup> Appendix item 1.

<sup>113</sup> Liv. 5.24.4-8.

and ordered to live on the other side of the Tiber.’<sup>114</sup> The same happened to the Senators of Privernum in 329.<sup>115</sup> It is not said that the state actually provided these people with land by distributing *ager publicus* (or indeed any land) to them. However, there must have been land available for these people to live on, since it cannot be assumed that the state expected them to occupy land that was privately owned. The only land that was available was *ager publicus* and the only time when it could have become so was in 396.

The rest of southern and central Etruria was conquered during the late fourth and early third centuries; the last war with Etruria ended in 281 with the battle at Lake Vadimon.<sup>116</sup> It is usually assumed that on this occasion the cities of Caere, Vulci, Volsinii, and Tarquinii lost part of their land. Yet only one large colony, Cosa, was founded after the war, and during the First Punic War some small maritime colonies were established.

The history of Umbrian relations with Rome is much like that of Etruria, with whom the Umbrians were often associated. The southern part of Umbria was conquered in 300 and the colony Narnia founded in 299. The conquest of Umbria was completed in the 260s BC. The colony Spoletium was founded, and some virittane distributions probably took place.<sup>117</sup> Nevertheless, several sources indicate that in both Etruria and Umbria some *ager publicus* remained in the hands of the Roman state for a very long time. Judging from the availability of *ager publicus* here in later periods, this may have been a substantial area.

In the Second Punic War the inhabitants of rebellious Capua were punished with banishment: ‘Those who had been deported beyond the Tiber were forbidden to acquire or to hold either for themselves or their posterity landed property anywhere except in the territories of Veii, Sutrium, and Nepes, and in no case was such holding to exceed fifty *iugera*.’<sup>118</sup> Of course, the territory of Veii was not vacant at this time, and the state could therefore not simply turn the Capuans loose in the territory of Veii. It was at least necessary to point out the place where they could live. There must have been land available where they could settle without disturbing those already living there. Livy says: ‘we gave them land and a place to dwell in’;<sup>119</sup> however, this does not mean that the state assigned each individual an allotment, and certainly not that they each received 50 *iugera*, which would be a nice reward for their infidelity. The places

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<sup>114</sup> Liv. 8.14.5. Appendix item 6. See Humbert (1978, 185); Liverani (1984, 41).

<sup>115</sup> Liv. 8.20.9; *Fasti Triumphales* 329/8. Appendix item 9.

<sup>116</sup> Appendix item 25.

<sup>117</sup> Appendix items 18-19. Not much *ager publicus* seems to have been left in Umbria: Van Dooren (2008, 223).

<sup>118</sup> Liv. 26.34.7-10. See also App. *Hann.* 7.43. See ch. 2.5.2 for the treatment of the Capuans. Sisani (2007, 224) assumes that some land in Etruria and Umbria was confiscated in the Second Punic War as punishment for a rebellion reported against Roman rule; however, if this was the case, it was most likely located in eastern Etruria, not in the area where the later presence of *ager publicus* is reported. See Appendix item 25.

<sup>119</sup> Liv. 31.31.15: *agrum locumque ad habitandum daremus*.

mentioned were precisely those where much *ager publicus* was confiscated after the capture of Veii in 396, and it seems that some of these areas were still public land (but see ch. 3.5).<sup>120</sup>

As we have seen, in 200 the state gave citizens *ager publicus* as repayment of loans instead of money. The 50-mile radius includes a large part of southern Etruria. If there was any *ager publicus* in Etruria at this time, it would have become so in 396 or 283, in either case a long time before 200.<sup>121</sup>

In the second century BC the colonies of Saturnia, Graviscae, and probably Heba were founded in Southern Etruria, on land which must have been *ager publicus* since 283 at the latest. Livy in fact indicates that Graviscae was founded 'on territory which had formerly been taken from Tarquinii'.<sup>122</sup> His use of the word *quondam* implies that this had been taken a long time ago.

Another clue pointing to the continuing availability of *ager publicus* in Etruria and Umbria can be found in 91 BC, when the *tribunus plebis* M. Livius Drusus proposed to give all Italians Roman citizenship. The Italians, however, were opposed to it:

even the Italians, in whose interests chiefly Drusus was carrying out these schemes, were apprehensive about the colonial law, because they expected that the land belonging to the Roman state which was still unallocated, and which was farmed either clandestinely or after forcible seizure, would at once be taken away from them, and that trouble might even occur over their own land. The Etruscans and the Umbrians, who shared the same fears as the Italians, were brought – it seems by the consuls – into the city.<sup>123</sup>

Apparently there were still many Etruscans and Umbrians holding *ager publicus*. This land must have been public since the conquests of Etruria and

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<sup>120</sup> Liverani (1984, 39) and Gabba (1989a, 202) think the Campanians were not actually set up with plots of land. Rathbone (2003, 142 n. 25), however, states that 'the plan in 210 to give displaced Campanians 50-*iugera* allotments in the territory of Veii implies that considerable *ager publicus* had remained there from the early fourth-century distribution'. It is unclear to me how he means to reconcile this with his theory that all land became *ager privatus*; if land had remained public in the territory of Veii, then why not in other places as well? Tibiletti (1950, 189) and Sirago (1971, 25) also think the Campanians were given plots of land. However, there is no clear reference to the distribution of plots of land to the Campanians.

<sup>121</sup> Camilli et al. (1995, 399) suggest that the land distributed in 200 may have been especially the Ager Faliscus, which had been thinly inhabited since the fifth century.

<sup>122</sup> Liv. 40.29.1: *de Tarquiniensibus quondam captum*. See Beloch (1926, 456); Tibiletti (1948, 178); Ross Taylor (1960, 89); Salmon (1963, 11); Toynbee (1965a, 203); Galsterer (1976, 62); Torelli (1976, 107); Nicolet (1977, 126); Mansuelli (1988, 46-8). For Saturnia see Stockton (1979, 207-8). Gracchan activity in Etruria seems to be indicated in the *Liber Coloniarum*, see Harris (1971, 205) and Nagle (1973, 370), but the references are spurious, see Campbell (2000, 407, 409); Roselaar (forthcoming a).

<sup>123</sup> App. BC 1.36. See Bradley (2000, 139), who, however, states that the land had been leased out to them, which is not what Appian says.

Umbria in the early third century, since there was no other possible date for the confiscation of land in the area (see ch. 5.4.2).<sup>124</sup>

Cicero mentions land being measured for distribution in the territory of Veii and Capena in 46 BC, which has been seen by some as evidence for the continued presence of *ager publicus* in Etruria: 'Some land in Veii and Capena is being measured; this is not far away from Tusculum, but nevertheless I am not afraid.'<sup>125</sup> However, Cicero alludes to the possibility that his own land in Tusculum might be in danger of confiscation, which indicates that the land in Veii and Capena had also been acquired by confiscation. We cannot therefore use these passages as proof for the continued existence of *ager publicus* in Southern Etruria since 396. The same goes for the veterans settled by Caesar and Octavian in the colony of Lucus Feroniae (see ch. 5.4.3).<sup>126</sup> It is possible that some of the *ager in trientabulis* had continued to exist here, since it was located within the 50-mile radius, but there is no evidence for this. In any case, we can conclude that a great part of the *ager publicus* in Etruria and Umbria had remained public for a very long time.

### 3.4. Sabinum

Wars with the cities of south-western Sabinum are reported from the time of Romulus.<sup>127</sup> However, these early wars were only skirmishes in the part of Sabinum which was closest to Rome. The first great involvement of Rome with the Sabines came in 299, when the southern parts of Sabinum and Umbria were conquered.

In 290 M'. Curius Dentatus conquered the rest of Sabinum; some of the land was distributed to the soldiers of his army.<sup>128</sup> The territory around the city of Cures seems to have been sold as *ager quaestorius* (see ch. 3.3.1). A sizeable amount of land must have been turned into *ager publicus*, because in 241 the *tribus* Quirina was established, the territory of which comprised a large part of Sabinum. Some of the inhabitants of this *tribus* must have been local Sabines who had been granted citizenship,<sup>129</sup> but it is possible that some of the inhabitants of the *tribus* Quirina were Romans who had received grants of land in Sabinum.

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<sup>124</sup> Perelli (1990, 239) states there was not much *ager publicus* left in Etruria; however, he does not distinguish between various kinds of public land.

<sup>125</sup> Cic. *Fam.* 9.17.2: *Veientem quidem agrum et Capenatem metiuntur; hoc non longe abest a Tusculano; nihil tamen timeo*. Toynbee (1965a, 313), Frederiksen (1970-1, 345); Liverani (1984, 43); Castagnoli et al. (1985, 52), and Keppie (1983, 52) assume this land was old *ager publicus*.

<sup>126</sup> Keppie (1983, 79).

<sup>127</sup> Liv. 1.38.1. However, the statement in DH 5.49.2 that in 500 the Sabines were forced to concede 10,000 *iugera* of arable land seems to be anachronistic; it may be related to the statement about the creation of the *tribus* Claudia.

<sup>128</sup> Appendix item 21.

<sup>129</sup> Some of the original inhabitants of Sabinum became Roman citizens, receiving the *civitas sine suffragio* in 290 and the *civitas optimo iure* in 268: Vell. 1.14.6. However, this probably refers only to the Sabines of Cures and not to the whole population. Most of the Sabines were *cives sine suffragio*

It is possible, moreover, that some of the *ager publicus* in this area became *ager in trientabulis* in 200, because the fifty-mile radius includes Sabinum as far as Reate. This land must have been public since its conquest in the third century. If there was indeed still *ager publicus* in Sabinum in 200, we can see again that the state was perfectly content to let a part of the conquered land remain *ager publicus* for a very long time, instead of immediately distributing it.

### 3.5. Picenum

In 290 Dentatus conquered not only Sabinum, but also the southern part of Picenum, inhabited by the Praetuttii. In 283 moreover he defeated the Senones, a tribe living in the Ager Gallicus. In 268 the rest of Picenum was conquered, and some of this was turned into *ager publicus*.<sup>130</sup> Some colonies were founded in Picenum and the Ager Gallicus: Sena Gallica, Ariminum, Firmum, and Castrum Novum. In 241 the *tribus* Velina was established for those Roman citizens who had been settled in the territory of the Praetuttii and local Picentes who had received citizenship.<sup>131</sup> Apart from the colonies, which did not require a very large amount of land compared to the total area conquered, and the land granted in virgane distributions, much land must have remained public.

In 232 the tribune of the plebs G. Flaminius proposed the *Lex Flaminia de Agro Gallico et Piceno virgim dividundo*, a law to distribute land – probably only the Ager Gallicus (see Appendix) – among the people. Again, the state could distribute only *ager publicus*, so this land must have been public since it had been conquered. After the distribution by Flaminius there was still *ager publicus* left in the Ager Gallicus, on which the colonies Pisaurum (184) and Auximum (date uncertain) were founded in the second century. In Picenum itself some land had remained public as well, on which the colony Potentia was founded in 184. A boundary stone referring to Gracchan activities has been found in Fanum Fortunae in the Ager Gallicus, which makes it likely that some land was distributed here by the Gracchi. This is also suggested by the name of Forum Sempronii, a town close to Fanum. The land distributed in the Gracchan period must have been *ager publicus* since its conquest in the third century.<sup>132</sup>

### 3.6. Campania

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in 225, since they are mentioned as a separate group in the list of Polyb. 2.24. See Afzelius (1942, 23); Ross Taylor (1960, 60-5). On the other hand, Brunt (1969), Galsterer (1976, 29), and Hermon (2001, 187) assume that local inhabitants as well were admitted into the *tribus*, and therefore had received citizenship before 241.

<sup>130</sup> Appendix items 22, 24, 30.

<sup>131</sup> It is again unclear who exactly had received citizenship; Brunt (1969, 124 and 1971, 21), Galsterer (1976, 29), and Guidobaldi (1995, 183) assume that local inhabitants had received citizenship and were included in this *tribus*, while Ross Taylor (1960, 64-6) argues the Picentes had not yet been admitted as citizens in 241.

<sup>132</sup> De Martino (1984, 38); Oebel (1993, 33); Bradley (2000, 195).

The history of Campania is closely connected to that of the Samnites, because most of the region was under Samnite control during the fifth and fourth centuries. Therefore many developments in the later area of Campania will be discussed under the heading of Samnium.

Capua had submitted itself to Roman rule, but it proved an unfaithful ally and in the Latin War joined the Latins against the Romans. Therefore, after the Latin War and First Samnite War in 340 Rome confiscated the Ager Falernus in northern Campania and distributed it to Roman citizens. In 329 the city of Privernum rose against Rome rule and was defeated. The private land of its leaders was confiscated as *ager publicus*. It was not until 295 that two Roman colonies, Sinuessa and Minturnae, were founded on the land that had previously belonged to Capua.<sup>133</sup>

After its defection in the Second Punic War, Capua lost its autonomy and all of its land, which now became *ager publicus*, except for the land belonging to those who had been loyal to Rome. Some of this land was used for the foundation of a number of small colonies and for sale as *ager quaestorius*, but most of it remained in the hands of the state, the most important area being the Ager Campanus proper, which became *ager censorius* (see ch. 3.3.3).<sup>134</sup>

It has long been debated whether the Gracchi distributed land in the Ager Campanus. Three boundary stones set up by the Gracchan land commission have been found in various locations in Campania, which has led some scholars to assume that the Gracchi distributed part of the Ager Campanus. Moreover, Plutarch states that Gaius Gracchus wanted to establish a colony in Capua.<sup>135</sup> On the other hand, doubts have been raised by Cicero's statement that 'neither the two Gracchi (...) nor Lucius Sulla, who gave away everything without the slightest scruple to anyone he pleased, ever ventured to touch the Campanian territory. Rullus was the first man to venture to remove the Republic from that property, of which neither the liberality of the Gracchi nor the uncontrolled power of Sulla had deprived it'.<sup>136</sup> Moreover, Granius Licinianus maintains that the *forma* drawn up in 165 remained inviolate until Sulla changed it.<sup>137</sup> There

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<sup>133</sup> Appendix items 3 and 9.

<sup>134</sup> Appendix item 34.

<sup>135</sup> Plu. CG 8.3; however, he immediately says that this plan came to nothing. Many scholars accept Gracchan activity in the Ager Campanus: Molthagen (1973, 452); Flach (1974, 272-3); Curreri (1975, 43-6), Bernstein (1978, 151); De Martino (1980, 113); Frederiksen (1984, 275); Chouquer et al. (1987, 382); Hermon (1992, 126); Perelli (1993, 93); Schubert (1996, 84). Contra: Vallat (1979, 984); Horvath (1994, 109-10). Franciosi (2002, 242-3) assumes that Ager Campanus should be read as Ager Clampetinus, which was in Bruttium, and that therefore the Gracchi did not distribute land in Capua.

<sup>136</sup> Cic. Agr. 2.29.81: *Qua de causa nec duo Gracchi qui de plebis Romanae commodis plurimum cogitaverunt, nec L. Sulla qui omnia sine ulla religione quibus voluit est dilargitus, agrum Campanum attingere ausus est; Rullus exstitit qui ex ea possessione rem publicam demoveret ex qua nec Gracchorum benignitas eam nec Sullae dominatio deiecisset.*

<sup>137</sup> Gran. Lic. 28.36. Cass. Dio 38.7.3 also states that by Caesar's distribution Capua became a Roman colony for the first time.

seems therefore to be a discrepancy between the literary sources and the archaeological evidence. Some have tried to solve this problem by arguing that the Gracchi did not distribute any land in Campania, but only measured the land in order to clear up the confusion between *ager publicus* and private land.<sup>138</sup> However, in the Ager Campanus itself this was not necessary, since this had been done in 165 BC and Granius Licinianus states the *forma* from these measurements had remained unchanged.

In fact, the contradiction is only apparent. Cicero is speaking explicitly of the Ager Campanus proper, meaning the territory which until 210 had belonged to the city of Capua, and this is not the same as Campania in general. There is actually no evidence pointing to the distribution of the Ager Campanus itself by the Gracchi. Two Gracchan boundary stones have been found, one in Arienzo between Saticula and Nola, and one in Sant'Angelo in Formis, very close to ancient Capua; neither place is located in the Ager Campanus itself.<sup>139</sup>

The *Liber Coloniarum* mentions deductions having taken place *lege Sempronia* or *lege Graccana* in several Campanian towns (Abellinum, Aefulae, Suessa Aurunca, and Caiatia). Chouquer et al. have identified various centuriation grids of 13 by 13, 14 by 14, and 14 by 16 actus in these cities, and ascribe these to Gracchan activity.<sup>140</sup> However, it is very difficult to date centuriations by their size without any corroborating evidence, so we cannot accept Chouquer's dates for the grids in Campania. It is therefore likely that the Gracchi distributed land in Campania close to the places where the boundary stones have been found, but outside the Ager Campanus proper.<sup>141</sup>

That the Ager Campanus itself was not distributed by the Gracchi is shown by the fact that it was still public in the first century. If it had been distributed by them, it would have become private land as a result of its distribution (see ch. 5.2.3). In fact, it was not until 59 that the Ager Campanus was distributed as private property to individual citizens, together with the foundation of a colony in Capua. The large centuriation grid which is visible here may be related to this distribution.<sup>142</sup>

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<sup>138</sup> Levi (1922, 61); Laffi (1966, 100); Badian (1972b, 705); Triebel (1980, 186); De Martino (1984, 35); Chouquer & Favory (1991, 9); Franciosi (2002, 235-8); Sacchi (2006, 146). Rathbone (2003, 156) thinks they reused the grid laid out by Lentulus in 165, but it is not actually stated that in 165 a centuriation was carried out.

<sup>139</sup> Crawford (1996, 157). Sant'Angelo in Formis may have been considered part of the Ager Campanus, but in that case it was located on the extreme edge of the territory. Chouquer et al. (1987, 225) connect the boundary stone in Sant'Angelo to a general distribution of the whole Ager Campanus by the Gracchi, which can be related to a centuriation grid visible in the area, but there is no reason for this to have been the case. In fact, the stone may be related to the territory of Cales, since it is located at the southern edge of a centuriation around this town, see Campbell (2000, 417); Roselaar (forthcoming a).

<sup>140</sup> Chouquer et al. (1987, 245-53).

<sup>141</sup> Levi (1922, 61); Molthagen (1973, 452); Compatangelo (1989, 236).

<sup>142</sup> Chouquer et al. (1987, 203) date it to the Gracchan period, but this is unlikely.



### 3.7. Samnium

The Samnites lost much land to the Romans during the frequent wars between them. During the Latin War the Romans for the first time conquered some Samnite territory and started to contain the Samnite threat by means of the colonies Cales and Fregellae.<sup>143</sup> In the Second Samnite War the Romans consolidated their power by establishing new colonies on the land taken from the Samnites, all on the borders of Samnite territory and clearly with the goal of containing Samnium and cutting it off from possible allies.<sup>144</sup> After the Third Samnite War even more land was taken by the Romans. The colony of Venusia was founded on land taken from the Lucani, so that the Romans could also control the Samnites from the south.<sup>145</sup>

At the end of the Pyrrhic War in 272 the Samnites had to cede yet more land. The most important land they lost was the Ager Taurasinus, in the mountainous region of central Samnium.<sup>146</sup> In 268 the Samnites rebelled against Rome, but failed. A large part of western Samnium was now incorporated into the Roman state as *praefecturae*. To emphasize the Roman presence, the colonies of Beneventum and Aesernia were founded.<sup>147</sup>

The large amount of *ager publicus* the Romans had appropriated in Samnium could not all be distributed among Roman citizens. Some of it was used for the establishment of colonies, but much of the *ager publicus* in Samnium remained undistributed for a long time after its confiscation; the most important single part was the Ager Taurasinus, which remained undistributed until 180. In the mountainous region of Samnium there were not many continuous tracts of arable land, so the foundation of colonies was not always possible. Much of this land may therefore have been used as *ager scripturarius*.

Further confiscations took place after the Second Punic War.<sup>148</sup> It was not until the second century that land was distributed on a larger scale. Some land in Samnium was divided among veterans of Scipio who had served in Spain and Africa. In 180 40,000 Ligurians were forcibly resettled in the Ager Taurasinus; later they were supplemented with a further 7,000 people. According to Livy all Samnite tribes except the Pentri had joined Hannibal, and were therefore punished with confiscations of land.

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<sup>143</sup> Appendix items 8, 10.

<sup>144</sup> Appendix items 11, 13.

<sup>145</sup> Appendix item 20.

<sup>146</sup> Appendix item 23.

<sup>147</sup> Appendix item 29.

<sup>148</sup> Appendix item 37.

The Gracchi were especially active in the territory of the Hirpini.<sup>149</sup> Since between the Second Punic War and the Gracchan period no land in Samnium had been appropriated in these areas, the land must have been public at least since the Second Punic War. However, with the enormous amount of land taken after the Samnite wars, it is also possible that this land had already been taken in the third century.

### 3.8. Lucania and Bruttium

The Romans first came into contact with Lucania during the Third Samnite War. The epitaph of L. Cornelius Scipio Barbatus, consul in 298, says that he 'conquered the whole of Lucania and took hostages'.<sup>150</sup> Although it is unlikely that Scipio conquered the whole of Lucania,<sup>151</sup> at least part of it was in Roman hands by 291. In this year the colony of Venusia was founded on the border between Samnium, Apulia, and Lucania.<sup>152</sup>

After the Pyrrhic War the Romans were in complete possession of the south of Italy. However, their interference in the area seems to have been limited. In Lucania the Romans confiscated the land on which the colony of Paestum was founded in 273, and the Ager Picentinus, a strip of coastland between Salernum and Paestum. Moreover, half of the Silva Sila, the great forest on the Bruttian mountains, was turned into *ager publicus*.<sup>153</sup>

Most of Lucania and Bruttium joined Hannibal, and for this the inhabitants were punished with the loss of a very large amount of land.<sup>154</sup> Some colonies were established soon after the Second Punic war, especially in Bruttium. However, the Roman colonies occupied only a small amount of land, and with the amount of land confiscated in Lucania and Bruttium after the Second Punic War there must have been much unused *ager publicus*, which was left over to the initiative of private individuals or in the hands of its former owners. In the Latin colony of Thurii (Copia), for example, 'a third of the land was reserved, which could, were it desired, be assigned to fresh colonists'.<sup>155</sup> Apparently the amount of *ager publicus* available was far greater than necessary for the colony, so a large part must have remained public, either in the territory of the colony or outside of it.

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<sup>149</sup> This is attested by the finds of three Gracchan *cippi* close to Rocca San Felice. Moreover, archaeological finds show that a village, excavated near the modern Fiocaglia dei Flúmeri, should be dated to the late second century BC: Johannowsky (1991).

<sup>150</sup> CIL I<sup>2</sup>.7: *subigit omne Loucanam opsidesque abdoucit*. See Appendix item 26.

<sup>151</sup> Ferone (2005) argues that Scipio was not active in Lucania, but in the Hirpinian territory, which was sometimes also indicated as Lucania. See Appendix item 23.

<sup>152</sup> Appendix item 20.

<sup>153</sup> Appendix item 26-7.

<sup>154</sup> Appendix items 35-6. See Toynbee (1965b, 27); Russi (1995, 25); Accardo (2000, 42).

<sup>155</sup> Liv. 35.9.9. Smurra (1989, 120) and Camodeca (1991, 17) assume that this was used as public pasture.

That there was much *ager publicus* available here can be seen from the fact that many assignations carried out by the Gracchi were situated in Lucania. Nine boundary stones of the Gracchan land commission have been found in various places in Lucania, and their activity is also attested in the *Liber Coloniarum* and by some centuriation grids with a possible Gracchan date.<sup>156</sup> Most of the *ager publicus* used by them had probably been confiscated after the Second Punic War.

Other *ager publicus* in Lucania and Bruttium was not suitable for agriculture, such as the Sila forest, which had already been made public after the Pyrrhic War. We know that this remained the property of the state at least until Cicero's time, because he refers to the pitch-production there being contracted out by the censors.<sup>157</sup> It is also possible that part of the forest was made available to Roman citizens as *ager scripturarius*, which may be attested by the growth of stockbreeding in this area in the second century (see ch. 4.3.3).

### 3.9. Apulia and Calabria

Rome first came into contact with Apulia during the Second Samnite War. The Apulian cities asked Roman help against the Samnite threat, but were instead themselves conquered by the Romans. The colony of Luceria was founded in 314 as a tool to contain the Samnites and a bridgehead for further conquests in Apulia (Photo 3).<sup>158</sup> During the Pyrrhic War the Romans conquered the rest of Apulia. In 267 the Sallentini and Messapi in Calabria were defeated and the colony Brundisium founded shortly thereafter.<sup>159</sup>

In the Second Punic War 'a section of the Apuli' and 'the Uzentini and almost the whole of the coast of Magna Graecia, the people of Tarentum, Metapontum, Croton and Locri' joined Hannibal,<sup>160</sup> and were therefore punished with the loss of a considerable amount of land. The only colony founded in Apulia after the war was Sipontum; this was a small citizen colony with 300 settlers. Some land in Apulia, moreover, was distributed to Scipio's veterans.<sup>161</sup> The other *ager publicus* in Apulia remained in state hands for a long time.

The *Liber Coloniarum* mentions distributions of land by the Gracchi in numerous places in Apulia and Calabria. Gaius Gracchus founded the colony of Neptunia on land that had belonged to Tarentum. Several centuriation grids are visible in Apulia and Calabria; the coincidence of most of these grids with the references in the *Liber Coloniarum* makes a Gracchan date likely. Moreover, two

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<sup>156</sup> Simelon (1993, 58-67), who, however, places too much confidence in the evidence of the *Liber Coloniarum*. See Roselaar (forthcoming a).

<sup>157</sup> Cic. *Brut.* 21.85.

<sup>158</sup> Appendix item 12.

<sup>159</sup> Appendix items 28 and 31. See Compatangelo (1991, 49).

<sup>160</sup> Liv. 22.61.11-2. Appendix item 38. See Nicolet (1977, 125).

<sup>161</sup> Grelle (1981, 193); Desy (1993, 77). Some, e.g. Compatangelo (1991, 14), place all the veterans in Apulia, but the sources mention Samnium as well. Stephenson (1891, 29) says that Livy does not mention the location of the distributions, but he clearly mentions Apulia and Samnium. Sisani (2007, 136-9) thinks that some veterans were settled in Umbria, but this is not securely attested.

Gracchan border stones have been found in Apulia, both in Celenza Valfortore near the border with Samnium.<sup>162</sup> We have therefore enough proof to maintain that the Gracchi were active in Apulia and Calabria. Since there had been no confiscation of land in these areas between the Second Punic War and the Gracchan period, these lands must have remained *ager publicus* for almost seventy years.

### 3.10. Cisalpine Gaul

The Romans first conquered a part of the Po basin shortly before the Second Punic War. They confiscated a large part of the Gallic territory and immediately proceeded to found the colonies of Placentia and Cremona.<sup>163</sup> However, the arrival of Hannibal in Italy largely cancelled the Roman efforts. The Gauls joined Hannibal and rebelled against the newly established colonies, taking prisoner the commissioners for founding the new colony of Mutina.<sup>164</sup> After the Second Punic War control of Cisalpine Gaul therefore had to be re-established. This was done by a series of campaigns against the various tribes of Gaul. The Boii lost half of their lands in 191, and on this several colonies were established.<sup>165</sup>

In the western part of Cisalpine Gaul the Romans' most important enemies were the Ligures. After a defeat in 179 some tribes were moved from the mountains to the plains, where land must have been available.<sup>166</sup> Similarly, in 172 some of the Statielli were moved across the Po.<sup>167</sup> In the first case it might be that the Ligurians were simply transported to other land in Ligurian territory, but the Statielli were clearly settled on *ager publicus*, because otherwise the state could not have assigned them the land in question.

In 180 the town of Pisae offered the Romans land to found a colony, since it was suffering from Ligurian attacks and hoped a colony would protect them. Accordingly, the Roman colony of Luna was founded in 177.<sup>168</sup> In this same year 'C. Claudius (...) sent a despatch to Rome in which he gave an account of his operations and boasted that owing to his good fortune and ability there was no longer any enemy to Rome on this side of the Alps, and that a considerable quantity of land had been acquired which could be distributed amongst many thousands of colonists.'<sup>169</sup> Additional land seems to have been confiscated later in the second century.<sup>170</sup> It is clear that the Romans conquered huge amounts of territory in Cisalpine Gaul and made it *ager publicus*. The local inhabitants were

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<sup>162</sup> Campbell (2000, 452).

<sup>163</sup> Appendix item 33.

<sup>164</sup> Liv. 21.25.3-7; Polyb. 3.40.5; they were not freed until 203: Liv. 30.19.7.

<sup>165</sup> Appendix item 39.

<sup>166</sup> Appendix item 40.

<sup>167</sup> Appendix item 42. See Toynbee (1965b, 183, 272); Nicolet (1977, 124).

<sup>168</sup> Appendix item 41.

<sup>169</sup> Liv. 41.16.8.

<sup>170</sup> Appendix items 42, 43.

apparently treated more harshly than had happened in other cases; many were killed or expelled, or at least the sources boast that they were. In fact, many Gauls seem not to have been expelled at all, as we shall see (ch. 2.5.2).

There appear to have been some remarkable differences between the treatment of the *ager publicus* in Cisalpine Gaul as compared to that in other parts of Italy. The amount of land conquered in Cisalpina was so large that not all of it can have been distributed to Roman settlers, and some other use had to be found for it. Moreover, in the period after the Second Punic War the Romans already had so much *ager publicus* in other parts of Italy that they hardly knew what to do with their land. Therefore in Latin colonies in Gaul the colonists received far more land than had been normal in earlier periods. Moreover, the state even gave land to Latins and allies: *ager publicus* was assigned to Ligurians and Statielli,<sup>171</sup> and in 173 much of the remaining *ager publicus* was distributed to Roman and Latin settlers. Furthermore, the centuriations around most colonies in Cisalpina are enormous, and usually much larger than the amount of land that was needed for the colonists. Apparently the colonies received these lands as communal lands to be administered or rented out by the city. It is not always certain that these centuriations date back to the foundation of the colonies, but if they do, the state here centuriated much more land than in the southern Italian colonies. It seems therefore that the state was reluctant to leave any *ager publicus* in Gaul unoccupied, but preferred to secure it by settling as many Roman citizens and loyal allies as possible.

There are several possible reasons for this peculiar treatment of the land in Gaul. Firstly, allocating the land to towns and individuals reduced the amount of land that had to be controlled from Rome, but at the same time kept the land securely under Roman control. Administration of these lands by magistrates from Rome – for example as *praefecturae* – would be difficult, since Gaul was relatively far away from Rome. If the land was not kept under control by the colonies, it would be at risk of being retaken by the Gauls. Even though not all land was occupied directly by colonists, the imposition of a Roman centuriation scheme constituted a clear break with the past and made it clear that these areas were now under Roman control. Moreover, since many original inhabitants were apparently not executed or expelled, there were many native people who needed land. In other parts of Italy these people were allowed to live on *ager publicus* without being actively controlled by the Romans. It may be that the Gauls were considered a greater threat to Italian safety than other peoples; in that case, it may have been felt that leaving them on the *ager publicus* without any official arrangements would have been too dangerous.<sup>172</sup> Instead, for all the confiscated land an official organization as a colony or *viridana* settlement was preferred,

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<sup>171</sup> Appendix items 40, 42.

<sup>172</sup> Ewins (1952, 61) agrees that every town received a defined territory and that the rest was under direct control from Rome.

even if many of the local inhabitants were allowed to live in the colonies' territory. In this way many colonies had larger territories than in peninsular Italy, and this may have been rented out to local inhabitants or colonists. Stricter supervision was possible for people living in a regulated landscape, and therefore a large number of Gauls may have been settled within the centuriated area. They could also be organized in *fora*, which were also controlled from Rome, as is attested by the existence of Forum Gallorum and Forum Druentinarum.<sup>173</sup>

Parallels for this treatment can be found in the treatment of other conquered areas. In Latium, for example, all land, whether confiscated or left to its original inhabitants, was clearly assigned to some authority: some towns were granted citizenship and retained their land, others lost their land, which was distributed to Roman citizens. In this way the pre-existing political and military organization of the allies was completely broken down, and it was made clear to all that Rome was now the dominant power. Colonies were established at strategic points to make sure that no enemy would rebel against Rome. Something similar happened in Samnium, where an impressive number of colonies was established to keep the Samnites in check. Those Samnites who were still autonomous were surrounded by so many colonies that it was practically impossible for them to rebel against the Romans. Conversely, in areas that had been defeated more easily and did not pose a large threat, such as Etruria and Picenum, it was considered safe to leave a large amount of *ager publicus* unallocated. The speed of privatization of *ager publicus* seems therefore to have depended partly on the perceived danger posed by the defeated enemy.

In this way the treatment of *ager publicus* was a tool in the suppression of the conquered peoples. If the defeated enemy was considered a danger, the Romans took care to make sure that they had a firm grip on the land by privatizing much of it, and by isolating any remaining autonomous groups from others. If the defeated enemy was considered less dangerous, relatively more *ager publicus* remained undistributed. Of course, when the enemy had been treated leniently, it was more difficult to distribute all *ager publicus*, since in that case the defeated population would have had nowhere to go (see ch. 2.5.2). The way the Roman state dealt with its public land was therefore motivated not only by the gains it would bring the Romans, but also by the necessity of keeping the allies in check without antagonizing them unnecessarily.

### 3.11. Viritate distributions

There were two basic methods by which the Roman state could alienate *ager publicus* to its citizens: viritate distribution and colonization. In the case of viritate distribution (*assignatio viritana*) an amount of land was measured and

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<sup>173</sup> Brunt (1971, 571); Pasquinucci (1985, 35). On the *fora* in Gallia and their territories see Ewins (152, 57-9).

divided into equal shares.<sup>174</sup> Each of the citizens taking part in the distribution received one of the shares, which then became his private property; the land thus passed from being *ager publicus* to *ager privatus*, land held in full ownership by an individual.<sup>175</sup> Usually *fora* were set up in such districts, towns which could serve as marketplaces and centres for the settlers, but without independent administration. They were governed by a *praefectus* sent from Rome, and the areas where such distribution had taken place are therefore known as *praefecturae*.<sup>176</sup>

In many viritane distributions the amount of land handed out was remarkably small. In the distribution of the Ager Falernus, Latium, and Privernum in 340 the settlers received two to three *iugera*. In the Ager Veientanus in 393 they received seven *iugera*, and in Cisalpine Gaul in 173 Romans received ten *iugera*, but Latins only three. Moreover, not many viritane distributions are recorded. Apart from those mentioned above, we only know of the distribution of the Ager Gallicus in 232 and of the land in Samnium and Apulia for Scipio's veterans in 200. An indication of the carrying out of viritane distributions, however, is found in the creation of new *tribus*. Most likely people assigned to a *tribus* were Roman citizens,<sup>177</sup> and therefore the whole area covered by the *tribus* must have belonged to Roman citizens. These may have been old Roman citizens who had received land by distribution or people who had recently received citizenship. New *tribus* were created in 386 (Stellatina, Tromentina, Sabatina, and Arnensis),<sup>178</sup> 358 (Pomptina and Publilia),<sup>179</sup> 332 (Maecia and Scaptia),<sup>180</sup> 318 (Falerna and Oufentina),<sup>181</sup> 299 (Aniensis and Teretina),<sup>182</sup> and 241 (Velina and

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<sup>174</sup> Non. 61 L: *viritim dictum est separatim et per singulos viros*.

<sup>175</sup> It is generally assumed that the land became the private property of its recipients, e.g. Bove (1960, 4); Hackl (1972, 148); Salmon (1969, 13); Nicolet (1977, 121); Stockton (1979, 10); Gabba (1985b, 177); Lintott (1992, 237); Kolendo (1993, 179); and Rathbone (2003, 141), although he points out that there is in fact not much explicit evidence for its privatization. Nicolet (1994, 621), however, states that the land remained public even after it had been distributed.

<sup>176</sup> Festus 262 L: '*Praefecturae* were locations in Italy, in which lawsuits and markets took place; they were in some way public entities, but did not have their own magistrates' (*praefecturae eae appellabantur in Italia, in quibus et ius dicebatur, et nundinae agebantur; et erat quaedam r(es) p(ublica), neque tamen magistratus suos habebant*). Cities called *praefectura*: ILS 3701, 6453. See Campbell (2000, 380). *Praefecturae* could also be set up to govern tracts of land that had become *ager publicus*, but were still inhabited by the local population, who had become *cives sine suffragio*; a reference to a *praefectura* therefore does not automatically mean that *ager publicus* existed there.

<sup>177</sup> It is unclear whether citizens *sine suffragio* were assigned to a *tribus*; Brunt (1969, 124) does not believe this was the case, but on the other hand the citizen status of *cives sine suffragio* must have been safeguarded in some way, and assigning them to a *tribus* seems the most likely option.

<sup>178</sup> Liv. 6.5.8. Galsterer (1976, 29) thinks that these also included loyal Veientes, Falerians, and Capenians, which is possible.

<sup>179</sup> Liv. 7.15.12.

<sup>180</sup> Liv. 8.17.11.

<sup>181</sup> Liv. 9.20.6; Diod. 19.10.1. See Comptangelo (1999, 21).

<sup>182</sup> Liv. 10.9.14.

Quirina).<sup>183</sup> It is likely that in most cases their creation means that land had been distributed in these areas.<sup>184</sup> Only the *tribus* Maecia and Scaptia are stated to have been created to accommodate people who had received Roman citizenship after the Latin War: 'the new citizens were assessed and formed into two additional tribes, Maecia and Scaptia'.<sup>185</sup> There were of course more defeated enemies who received Roman citizenship, but they were usually assigned to existing *tribus*.

It is remarkable that many *tribus* were created long after the actual distribution of the land. In the case of the Pomptina this has led scholars to think that the land was actually distributed in 358, when the *tribus* was created, instead of in 383, as Livy says. However, the state could only establish two (or another even number) *tribus* at once, because there always had to be an odd number of *tribus* in the *comitia tributa*. It was not until 358 that another opportunity for the creation of a *tribus* arose, and so the settlers on the Ager Pomptinus had to wait until 358 before a new *tribus* was created. This was not really a problem, since, being Roman citizens, they already belonged to a *tribus* and therefore retained their voting rights in their old *tribus* until they could be assigned a new one. The same applied to settlers in the territory of the Aurunci, who were not organised in the *tribus* Teretina until 299. The new citizens of the *tribus* Maecia and Scaptia, on the other hand, were organised in new *tribus* by the first pair of censors after the grant of citizenship, because as long as they had not been assigned to a *tribus* they could not exercise their voting rights.

This does not explain why the *tribus* Falerna and Oufentina were established only twenty years after being settled, nor why the Velina and Quirina took an unprecedented fifty years to be established. In the latter case it may be that the Senate opposed the settlement of these *tribus* because it would have given Dentatus, the conqueror of these areas, too much personal influence in the voting assemblies. He had settled his own soldiers in the territory, and could therefore practically control the way these *tribus* voted.<sup>186</sup>

The proposal in 232 to distribute the Ager Gallicus likewise provoked much opposition: 'Gaius Flaminius (...) when tribune of the people seditiously proposed an agrarian law against the wishes of the Senate and in general contrary to the desires of all the upper class.'<sup>187</sup> Various reasons have been suggested for the fierce opposition of the Senate. It has been suggested that the

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<sup>183</sup> Liv. *Per.* 19.15.

<sup>184</sup> Burdese (1985, 65); Rosenstein (2004, 223 n. 196). Nicolet (1967, 98), however, thinks that all records of virginate distribution prior to 232 are anachronistic.

<sup>185</sup> Liv. 8.17.11. According to Liv. 8.14.2-3, the inhabitants of Lanuvium, Aricia, Nomentum, Pedum, and Antium received the Roman citizenship. See Humbert (1978, 178). Ross Taylor (1960, 55) assumes the land of Velitrae was distributed to Romans, and that these were also incorporated in these new *tribus*.

<sup>186</sup> *Vir. ill.* 33. See Ross Taylor (1960, 64).

<sup>187</sup> Cic. *Inv.* 2.52. See also *Sen.* 4.11, *Acad. Pr.* 5.13, *Brut.* 14.57; Val. Max. 5.4.5. See Stephenson (1891, 28-9); Badian (1972b, 696); Hinrichs (1974, 6); Flach (1990, 29); Oebel (1993, 40); Gargola (1995, 105); Hermon (2001, 240).



Senators had themselves occupied this land; it had been conquered by the Romans fifty years before and it is hardly likely that the *ager publicus* would have remained untouched all this time. The most likely candidates for occupation would be the elite; distributing land in Picenum would then mean that the land had to be taken away from the rich.<sup>188</sup> On the other hand, it is difficult to imagine that the involvement of Senators in this area was widespread, since northern Picenum was far away from profitable markets, and large estates were not common in Picenum in the third and second centuries (see ch. 4.3.2). Another reason for opposition may have been that the land was still mostly inhabited by the original inhabitants, the Senones, who were probably not as completely wiped out as described in the sources (see ch. 2.5.2). It is also possible that the Senate was afraid that the Gauls would resent the settlement of Roman citizens here, and that they feared for the safety of the citizens who were to be sent to this region.

However, the most important argument is most likely that Flaminius was striving for personal influence, by binding to him as clients those people who received land. Especially after the restructuring of the *comitia centuriata* some time after 240 a *homo novus* with a large clientele in one *tribus* would have too much power. The distributions in the Ager Gallicus therefore took place without the establishment of new *tribus*.<sup>189</sup>

Another reason for the relative scarcity of viritane distributions after the early third century is that they required the land to be safe from enemy incursions. The settlers had no fortified town at their disposal to which to flee if they were attacked, and, moreover, they were probably proletarians instead of veterans.<sup>190</sup> Viritane distributions could therefore only take place in land that was not exposed to attacks.<sup>191</sup> All fourth-century distributions are situated in areas close to Rome, and those in later periods were also located in areas where enemy activity was unlikely. The Ager Gallicus, however, was located far from Rome,

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<sup>188</sup> Valvo (1977, 201); Humbert (1978, 237); Burdese (1985, 67); Belayche (1994, 72). Stephenson (1891, 28) and Frank (1962, 93) believe the land was used as pasture by rich Romans. Oebel (1993, 39) thinks the land was not yet occupied by the rich, but that they wanted to reserve it for themselves. Tibiletti (1950, 216) does not understand the opposition to viritane distributions in 232, because only a few decades later many colonies were founded. However, this was after the Second Punic War, when the situation in terms of available land and demand for land was totally different.

<sup>189</sup> Crawford (1978, 59); Gabba (1979a, 162-3); Manzo (2001, 118); Jehne (2006, 77). Hackl (1972, 155-61) argues that there was still enough land closer to Rome available for occupation, and that the resistance of the Senate was motivated mainly by the political influence Flaminius would gain, but cf. Hantos (1983, 46).

<sup>190</sup> For the status of settlers in mid-Republican colonies see Galsterer (1976, 50); Càssola (1988, 8); Rosenstein (2004, 82-8); Erdkamp (forthcoming); Roselaar (forthcoming c).

<sup>191</sup> This leads Hinrichs (1974, 13) to believe that viritane distributions started only in the third century, but this is obviously false. The number of viritane divisions recorded for the fourth century is larger than for the third and second.

and relatively close to Cisalpine Gaul, which in this period was not securely pacified.

The amount of land privatized by virittane distributions is hard to determine. It is impossible to calculate the size of each *tribus*, of which we sometimes know nothing more than an approximate location. The land privatized by the early distributions was all located in Latium and Campania, but the number of people involved is impossible to calculate. For some of the virittane distributions carried out after 241 we know the amount of land granted to each settler, but not the total number of people involved. If we assume, purely for the sake of argument, that in 232 there were 10,000 Romans, each of whom received seven *iugera*, that Scipio had 40,000 veterans who each received ten *iugera*, and that in 173 there were 10,000 Romans who received ten *iugera* and the same number of Latins who got three, the total amount of land privatized in these distributions was 600,000 *iugera* or 1,500 km<sup>2</sup>. In fact, the territory distributed in this way after 241 may have been much smaller or larger than this, but there is no way to reconstruct the exact amount.

### 3.12. Colonization

Another way of allotting *ager publicus* to Roman citizens was by colonization. Sometimes a new city was built on conquered territory; in other cases a captured city was colonized by Roman citizens. Each settler received a piece of land in private ownership.<sup>192</sup> Sometimes each individual plot had its own pasture or woodland assigned to it: 'A man who receives cultivable land as the larger part of his allocation, will, according to the law, properly receive some woodland to make up the area. So, it will happen that some receive woodland adjoining their allocation, while others receive woodland situated in mountains, perhaps more than four neighbouring properties away'.<sup>193</sup> Some additional land was usually turned into common land, to be used by all colonists (see ch. 3.5). If the distributed land covered a large area, villages may have been established away from the town, so that not everybody lived in the city.<sup>194</sup>

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<sup>192</sup> Bove (1960, 4); Nicolet (1977, 121); Gabba (1989a, 215); Rathbone (2003, 141). Again, it is not explicitly attested that the land became the private property of the settlers.

<sup>193</sup> Hyginus (2) 160.10-2. See Frontinus 4.34-5; Agennius Urbicus 36.6-8; Commentum 62.30-1. Bonetto (2004, 59) draws attention to this possibility, which is often neglected.

<sup>194</sup> In many colonies the number of colonists was too large fit into the town, so that they must have lived elsewhere. Many colonies had such large plots per person that it would be impossible for all settlers to live in the town, because they would have to travel too far to their plots. See Salmon (1969, 28 and 1985, 16); Dyson (1978, 258); Gabba (1979b, 34). Halstead (1987, 82) suggests that people usually lived in villages, quite far away from their actual plots of land. This means that the idea of Roman colonists all spread out through the territory should be abandoned. The 'problem of the missing sites', so widely discussed by archaeologists, e.g. Dyson (1978, 259), may then be explained by the fact that most colonists lived in villages, which are located in the same areas as modern villages. DH 10.46.2, for example, describes a man travelling home from his

It is often assumed that colonization was a strictly regulated project, in which everything was arranged by the Roman state: the selection of the colonists, the measuring and allotment of the land, the building of a city, the establishment of boundaries, the creation of roads, etc.<sup>195</sup> However, there is actually very little evidence for the intensive involvement of the state with colonization during the Republican era. It may be that the colonists were assigned some land without the creation of any of the other traditionally postulated elements of a colonial landscape.<sup>196</sup> Unfortunately, this is not the place to go into this debate; however, it is necessary to keep in mind that the traditional image of colonization may not be accurate for mid-Republican colonies.

From the Latin War onwards two kinds of colonies existed: Roman and Latin. Latin colonies were independent of the city of Rome and had their own government. Roman citizens who moved to Latin colonies lost their Roman citizenship, and instead received Latin rights. This meant that they had certain privileges in their contacts with Rome: the *ius commercii*, the right to acquire property in Roman territory and conduct trade with Romans; the *ius conubii*, the right to marry Roman citizens; and the *ius migrationis*, the right to move to Rome and receive Roman citizenship there. They had limited voting rights in the Roman assemblies: all Latins were gathered in one *tribus*, so their actual influence was negligible. It is usually assumed that the colonists in Latin colonies were both Roman citizens and Latins; others think Latins were eligible only if there were not enough Romans to be found.

In Roman colonies the inhabitants retained the Roman citizenship. They were entitled to all rights that citizens living in Rome itself had, including suffrage and the right to hold magistracies at Rome. Sometimes Latins and allies could also receive land in such colonies, and thereby gain the Roman citizenship, but this happened only in the colonies founded after the Second Punic War (see ch. 2.5.2). It is generally assumed that in Roman colonies each settler received only two *iugera* of land. However, the sources do not often mention plots of two *iugera*; in fact, only in the case of Terracina is this explicitly stated.<sup>197</sup> It is possible that colonists received more land in other colonies, but there are no references to this.

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farm, on which he apparently did not live. See Pelgrom (forthcoming) for the spatial distribution of colonists over the colonial territory.

<sup>195</sup> Traditional reconstructions, such as Brown (1980, 16-7), Chouquer et al. (1987, 3-20), Moatti (1993, 7-28), and Gargola (1995, 46-80), describe colonization as a strictly regulated process, but mid-Republican colonies may have been less well organized.

<sup>196</sup> Bispham (2006, 124-5); Pelgrom (forthcoming). Crawford (1995) points to the confusion existing already in the ancient period concerning the number of colonies founded by the Romans; it may be that a clear definition of what a colony was did not appear until the second century BC. On the other hand, it is likely that the references to colonial foundations are at least correct, even if colonies did not always take the same form: see Bradley (2006, 164).

<sup>197</sup> Liv. 8.21.11. See Salmon (1969, 22, 71). Hantos (1983, 33-4) wrongly says that the amount of two *iugera* is not attested at all. Mitchell (1996, 272-3) assumes the amount of two *iugera* was 'the amount of land that a foot soldier received as booty for each year of military service' and that this

It is usually assumed that in Latin colonies the amount of land received was greater. Unfortunately, for the Latin colonies founded prior to the Second Punic War we have no information on the amount of land allotted; it has been suggested that in Cosa eight or sixteen *iugera* were assigned, but this is not certain.<sup>198</sup> After the Second Punic War the allotments were extremely large, ranging from fifteen *iugera* to as much as 140; however, this seems to be a reflection of the availability of land in this period, and it is unlikely that this was the case before the war.

The number of people sent out to Roman colonies was small; when we know a number, this is always 300. However, this is reported only for Fidenae in the regal period, Terracina in 329, and the eight colonies founded in 194.<sup>199</sup> We cannot therefore assume that this was a standard number for Roman colonies before the Second Punic War.<sup>200</sup> In Latin colonies the number of settlers, when attested, was much greater, either 2,500 (at Cales and Luceria), 4,000 (at Interamna, Sora, and Vibo), or 6,000 (at Alba Fucens, Placentia, and Cremona).

Several considerations were important in the foundation of colonies. The most important was no doubt the stabilisation of newly conquered territory in order to discourage hostile peoples from warring against the Romans and to serve as bridgeheads for further conquests.<sup>201</sup> Apart from military purposes, colonies also served to reduce the pressure on Roman arable land by providing additional land for Rome's ever-growing population.<sup>202</sup> When colonization ceased in the second century, economic and social problems occurred only a few decades later (see ch. 4.2).

After the Second Punic War a new wave of colonization occurred: new colonies were founded and old ones received new settlers. It was necessary to emphasize the Roman presence in the whole of Italy in order to prevent new

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was the *heredium*, which thus had nothing to do with the communal possession of land. Those who owned an *heredium* were obliged to serve in Rome's army. However, if the colonists in Roman colonies were proletarians, they had not served in the army, nor were they obliged to do so after colonization, since the Roman colonies enjoyed a *vacatio militiae*.

<sup>198</sup> Celuzza & Regoli (1985, 38). Vallat (1981b, 82) states that the colonists in Cales received sixteen *iugera* each, but there is no evidence for this.

<sup>199</sup> DH 2.53.4; Liv. 8.21.11, 32.7.3, 32.29.4. See Càssola (1988, 5).

<sup>200</sup> Bispham (2006, 122-3). Salmon (1963, 25), Cornell (1989a, 365), and Galsterer (1996, 76) believe the number was always (or usually) 300.

<sup>201</sup> Hantos (1983, 136); Patterson (2006, 191). Others have assumed that the colonies must have played an important role in the Romanization of Italy, since they were 'strongholds of civilization' within non-Romanized territory, e.g. Gabba (1979b, 32-3). However, many scholars have pointed to the limited influence of colonies on the surrounding non-Roman territory. Many areas in which colonies were settled show no marked Romanization in the years after colonization: see Morel (1991, 129-38); Bispham (2006, 81-4, 118-20). Lomas (1996, 7) thinks small Roman colonies were founded for military reasons, and large Latin ones to spread Roman culture, but this is clearly wrong. The Latin colonies were also important for military purposes, and their cultural impact seems less than has sometimes been supposed.

<sup>202</sup> Linke (2006, 9).

defections such as those that had taken place in the war, and to secure the newly conquered territory in Gaul. On the other hand, at this moment the population was low due to the casualties of war (see ch. 4.3.5), making it difficult to find enough colonists for the new colonies. At least 40,000 men received land between 200 and 170 BC, including reinforcements for earlier colonies. However, there were also colonies and viritane distributions of which we do not know the number of beneficiaries, so the number of men receiving land in this period must be at least 50,000.<sup>203</sup> The Roman citizen population may not have been large enough to provide so many colonists immediately after the Second Punic War, so in many colonies Latins and sometimes even allies were also allowed (ch. 2.5.2).

Some colonies at this time proved unsuccessful and needed new colonists within a few years. The small Roman colonies in particular suffered this fate. Latins or allies who received land here may have seen this as an easy way to receive the Roman citizenship, and left the colony after a few years. The Roman Senate discovered by accident that two of them, Sipontum and Buxentum (Photo 4), had been abandoned in 186, only eight years after their foundation.<sup>204</sup> The abundance of land available in this period makes it likely that people who received land in unfavourable places were easily able to move away and acquire better land elsewhere.

The combined problems of the unpopularity of the small Roman colonies and the need to give enormous amounts of land in Latin colonies in order to attract enough settlers led to the establishment of a new kind of colony from 184 BC onward. These were Roman colonies, but instead of being small outposts they were much larger. It is assumed that not 300, but 2,000 colonists received land in each Roman colony from now on.<sup>205</sup> The allotments distributed here were much smaller than in the contemporary Latin colonies: at Mutina and Graviscae they measured five *iugera*, at Potentia and Pisaurum six, at Parma eight and at Saturnia ten.<sup>206</sup> The small size of the allotments was compensated by the fact that

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<sup>203</sup> The attested number in the sources between 200 and 173 is 40,160 (including the colonists and reinforcements of Cremona, Placentia, Bononia, Aquileia, Thurii, Vibo, Narnia, Cosa, the nine maritime colonies, and the seven new Roman colonies). Brunt (1988, 70) says 'over 40,000,' and thinks the number of colonies and viritane distributions of which the number of beneficiaries is not mentioned was small. Other estimates have been made: Dilke (1971, 35), Potter (1987, 120, referring to Brunt, whom he misrepresents), and Rossi (1980, 51) estimate that between 200 and 190 100,000 people received land. Kromayer (1914, 151) and Hopkins (1978, 57) assume that from 194 to 177 100,000 colonists received land. Gabba (1986a, 240) says that from 218-170 100,000 people received land in Cisalpine Gaul alone, but this is too much, since not all colonies were in Gaul. Bandelli (1999b, 207) states that about 50-55,000 people received land in Gaul in this period. Nicolet (1977, 125) may be too cautious with his estimate of 50,000 settlers between 200 and 133, since there were also assignments of land after 170, which he does not take into consideration. It is usually not clear how these scholars arrive at their estimates; the sources certainly do not allow us to arrive at such totals.

<sup>204</sup> Liv. 39.23.3-4. See Salmon (1969, 99).

<sup>205</sup> The number 2000 is reported only for Mutina and Parma, Liv. 39.55.6.

<sup>206</sup> Liv. 39.44.10, 39.55.6, 40.29.1.

the settlers retained their Roman citizenship, and this was probably enough to make them more popular than the old types. In this period the importance of Roman citizenship seems to have increased, and therefore to have become more exclusive; this is shown by the fact that those Latins and allies who had wrongfully acquired Roman citizenship were deprived of it and expelled from Rome (see ch. 4.3.5).

It is impossible to calculate exactly the amount of land that was privatized by colonization, since for many colonies the number of colonists and the size of their allotments is unknown. A very conjectural calculation would be as follows:

23 Latin colonies between 338 and the Second Punic War; I assume (purely for the sake of argument) an average of 3,500 colonists who received 10 <i>iugera</i> of land each <sup>207</sup>	805,000 <i>iugera</i>
19 Roman colonies with 300 colonists who received two <i>iugera</i> <sup>208</sup>	11,400 <i>iugera</i>
Four Latin colonies after the Second Punic War whose number of colonists and allotments are known <sup>209</sup>	597,900 <i>iugera</i>
Seven Roman colonies after the Second Punic War with an assumed 2,000 colonists and known allotments <sup>210</sup>	93,000 <i>iugera</i>
Three Roman colonies after the Second Punic War with an assumed 2,000 colonists, and assumed allotments of at least five <i>iugera</i> <sup>211</sup>	> 30,000 <i>iugera</i>
Total	>1,536,4300 <i>iugera</i>

This makes a total of at least 3,841 km<sup>2</sup> privatized in colonies; we have seen above (ch. 3.2.11) that about 1,500 km<sup>2</sup> were privatized by virgation assignment.<sup>212</sup> Moreover, colonies usually received a substantial amount of land as public land of the colony (see ch. 3.5). Judging from the size of the centuriation patterns, such grants were especially large in Cisalpine Gaul, but it is impossible to give any figures for this kind of land. However, the amount of *ager publicus* most likely exceeded 5,500 km<sup>2</sup>, because in many cases we know that *ager publicus* had been left undistributed for many years after its confiscation.

<sup>207</sup> Cales, Fregellae, Luceria, Saticula, Suessa, Pontiae, Interamna, Sora, Alba, Narnia, Carseoli, Venusia, Hatria, Cosa, Paestum, Ariminum, Beneventum, Firmum, Aesernia, Brundisium, Spoletium, Placentia, and Cremona.

<sup>208</sup> Antium, Ostia, Terracina, Minturnae, Sinuessa, Sena Gallica, Castrum Novum, Pyrgi, Alsium, Fregene, Castra Hannibalis, Salernum, Puteoli, Liternum, Volturnum, Sipontum, Buxentum, Croton, and Tempa.

<sup>209</sup> Thurii, Vibo, Bononia, and Aquileia.

<sup>210</sup> Potentia, Pisaurum, Mutina, Parma, Saturnia, Graviscae, and Luna. Allotments in Luna are assumed to have measured 6.5 *iugera*: see Appendix item 41.

<sup>211</sup> Luca, Auximum, and Heba.

<sup>212</sup> Toynbee (1965a, 163-5) estimates that between 493 and 241 12,630 km<sup>2</sup> were privatized in colonies and virgation distributions, but this amount seems too large.

### 3.13. Conclusion

We have seen that throughout Italy there were substantial tracts of arable *ager publicus* that were not used in any official way by the state for very long periods of time. From the data on the number of colonists and the size of the allotments granted to them, between 338 and 170 a minimum of 5,500 km<sup>2</sup> of land was privatized in colonies and virgated distributions; moreover, an incalculable amount of land was granted to colonies as communal land. The amount of *ager publicus* confiscated, however, was larger, and we must therefore conclude that much land remained officially in the hands of the state long after its confiscation. Rathbone's thesis that most of the arable public land was privatized before the Second Punic War is therefore untenable.

However, it can be assumed that the presence of land that officially belonged to the state, but was often neglected by the authorities for long periods, may have caused various problems. Although this land was in theory open to occupation by any Roman citizen who wished to use it, in practice some had better chances of occupying land than others. Moreover, not only Romans, but also Latins and allies had access to *ager publicus*, if not by legal right then at least in practice. The fact that *ager publicus* existed therefore does not mean that land was available for everyone who needed it. The only period for which we can be reasonably sure that the amount of land available was sufficient is shortly after the Second Punic War. In this period the amount of *ager publicus* was very large, while the population had decreased due to war casualties. However, as soon as the population started to increase again, the struggle for land broke out with greater intensity than ever before. Already during the time of the Gracchi it was difficult to find enough land to allocate.

The lack of access to public land was not only a problem for poor Roman citizens, but maybe even more for the Italian population. As a result of the Roman confiscation of their lands many Italian communities had lost much of the territory previously belonging to them. The land that was distributed to Roman colonists was forever lost to the Italians, but in the case of the land that remained *ager publicus* this was not always the case. Although this land in theory belonged to the Romans, it is likely that Italians often still occupied it. However, as Roman domination had caused great changes in the patterns of landholding – both rich and poor lost the land they had previously held in ownership – it cannot be assumed that the situation remained unchanged after the confiscation of *ager publicus* by the Romans. Some Italians may have profited from the new situation, while others were faced with serious problems of subsistence. In order to obtain a better understanding of these processes, we must take a closer look at the types of land affected by confiscation and the fate of the original inhabitants.

## 4. Confiscation of arable and pasture

There has been much discussion as to which part of defeated enemies' land was declared *ager publicus*: either the lands best suited for agriculture, or the lands which had been used as common lands by the defeated community.

Some scholars think that the lands that were taken were the common lands of the conquered cities.<sup>213</sup> They assume that most Italian communities possessed common lands which were used as pasture, and that these were taken by the Romans as *ager publicus*. This theory is influenced by the idea that most of the *ager publicus* taken by the Romans was used as pasture; if this was the case, it would of course be strange to confiscate the best arable land. Many believe that especially after the Second Punic War most of the *ager publicus* was used for the establishment of large cattle farms (see ch. 4.3.3).<sup>214</sup> However, this completely ignores the fact that not only pasture and other lands unsuitable for agriculture were turned into *ager publicus*; much public land was used for agriculture, or could at least be used for that purpose.

In fact, there are several reasons for thinking that *ager publicus* was often arable land of good quality.<sup>215</sup> In the first place, Roman colonists each received a part of the *ager publicus* as their private property. It would have been useless if this land had been unsuitable for agriculture: the colonists were supposed to be able to feed themselves and therefore needed good agricultural land. Of course, turning pasture into arable land was not impossible (in the *Elogium Pollae*, for example, it is said that graziers were removed in favour of farmers, see ch. 4.3.3). But when founding a colony it would have been preferable to assign land that was already used for agriculture, since the colonists could not wait for many years before their land would produce crops. It is therefore probable that the land distributed to colonists was already in use for agriculture.<sup>216</sup> It is possible that the colonists reclaimed more land once they were settled in their colonies, but for the first few years they needed land which was ready to use.

Moreover, colonies were often founded within existing cities. When choosing the site for a colony, the Roman state used the land which was located most favourably from a strategic point of view: many colonies had an *arx* situated on a hill, with at least part of the population living inside the wall surrounding this hill. The flat land around the hill was then used as arable land for the colonists. Colonies such as Sora, Carseoli, and Alba Fucens are good examples of this kind

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<sup>213</sup> Bernardi (1973, 112); Gabba (1977, 277 and 1979b, 41-2); Clavel-Lévêque (1983, 25); Corbier (1991, 153); David (1997, 94); Hermon (2001, 280).

<sup>214</sup> Gabba (1977, 277); Frank (1979, 49); Kolendo (1983, 173); Compatangelo (1989, 83); David (1997, 94). Gabba (1989a, 200) even states that Rome confiscated the best land and that this was usually turned into pasture.

<sup>215</sup> See Salmon (1967, 277) for Samnium; Toynbee (1965b, 272); Brunt (1971, 282); Nagle (1973, 372); Peyre (1979, 51) and Williams (2001a, 211) with respect to the Boii; Chevallier (1980, 59); Carandini (1985b, 50) for Tarquinii and Vulci; Torelli (1999b, 5); Marcone (1997, 135); Gualtieri & Fracchia (2001, 126) for Lucania.

<sup>216</sup> Gabba (1989a, 201) assumes that only in the Gracchan period good arable land was distributed, but there is no reason why this should not have been the case earlier.



of settlement (Photo 5). In such cases the colonists sometimes took over the actual houses of the former population,<sup>217</sup> so they had no choice where the new colony would be situated. It would of course have been most convenient to exploit the arable land close to the city, formerly worked by the indigenous population.

At other times the Roman colony was established further away from the pre-Roman town; the original town then remained in existence as a separate community.<sup>218</sup> The Roman colony of Cosa, for example, was a new town, built on *ager publicus* confiscated from the Etruscan town of Vulci; Vulci remained an independent town. However, Cosa was situated on very good arable land, and it is unlikely that this had previously been used as pasture by the inhabitants of Vulci.

There are few statements in the sources about which lands were actually taken from the conquered peoples. Sometimes a city lost all its lands, both the private lands of the inhabitants and the common lands, if there were any. In some cases it is expressly stated that the private lands of the nobility were taken, as we have seen for instance at Privernum and Velitrae.<sup>219</sup> After the Second Punic War there are some references to the land of especially those who had rebelled against Rome being taken away:

Sosis [a Greek who had helped the Romans] was to take his allotment in that part of the Syracusan territory which had belonged to the king or to those who had taken up arms against Rome, and he was allowed to choose any house in Syracuse which had been the property of those who had been put to death under the laws of war. A further order was made that Moericus and the Spaniards should have assigned to them a city and lands in Sicily out of the possessions of those who had revolted from Rome.<sup>220</sup>

It is to be expected that the individuals who had previously owned this land had not owned pasture lands only. The leaders of a defeated town in particular must have owned land of good quality, and the newly created *ager publicus* must have included many holdings of arable land.

By looking at the centuriation patterns visible in the Italian landscape it may be possible to determine which lands were made into *ager publicus*. Centuriation during the Republic usually occurred in connection with the distribution of land, and the only land to be distributed was *ager publicus*, so most land that was centuriated must have been public land.<sup>221</sup> Only under the Empire were other

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<sup>217</sup> Moatti (1993, 40).

<sup>218</sup> Staveley (1989, 429); Catalano (1991, 91-2).

<sup>219</sup> Torelli (1999a, 89) assumes this also happened in Apulia, but there is no direct evidence.

<sup>220</sup> Liv. 26.21.9-13.

<sup>221</sup> Chouquer et al. (1982, 860), Purcell (1990, 18), Vullo (1995, 204), and Kron (2005, 479) point out, however, that not all centuriated land was *ager publicus*; land measurements may also have been carried out for purposes of drainage. See Pelgrom (forthcoming).

lands centuriated; much land in Cisalpine Gaul, for example, is thought to have been centuriated under Augustus for administrative purposes without it being *ager publicus*.<sup>222</sup> The visible remains of land measurement from the fourth to second centuries BC are usually situated on fertile soil immediately around cities that were established as colonies, not in marginal areas. Similarly, the land centuriated by the Gracchan land commission was situated in relatively good agricultural terrain, in valleys and plains. Inferior land was usually not centuriated, and we may therefore conclude that the *ager publicus* taken from the enemy and used for land distribution was the best agricultural land.

Of course, lands not suitable for agriculture, such as mountains and forests, were also made into *ager publicus*, for instance the Silva Sila in Bruttium. These, however, were not distributed to citizens, but remained *ager publicus* under the control of the Roman state. Since there is no way of discerning which pasture land was public, the amount or location of these lands cannot be ascertained. It may be that after the Second Punic War the *ager publicus* in the south was used partially for cattle farming, and that some good arable lands were turned into pasture land. However, not all land became pasture; a notable diversification of crops has been attested in the south in the second century, and there is no reason to assume that this could not have taken place on arable *ager publicus*. Moreover, the lack of Roman settlers on these lands is probably to be explained by the policy of allowing the local inhabitants to remain on the land. The land distributed by the Gracchi in the south was apparently still suitable for agriculture seventy years after its confiscation, and it cannot have been used as pasture all this time, since in that case it would have taken a great deal of effort to turn it into arable land again. It is therefore unlikely that all *ager publicus* was used for pasture, even in the south (see ch. 4.3.2-3).

We can therefore conclude that the lands turned into Roman *ager publicus* were usually the best arable lands of the Italian communities, possibly complemented by pasture lands. There is no reason to assume that Roman colonists were settled on former common (pasture) lands of the Italian communities, and instead all the more reason to assume that they received the best lands that were available in the area.

### 5.1. Reactions of defeated populations to the creation of *ager publicus*

It is to be expected that the confiscation of extensive tracts of land raised protests from its previous possessors. There are indeed many references to conquered people protesting against the fact that land was taken from them. Already in the early Republic there are examples of allied resentment at confiscation of land: Coriolanus encouraged the Volsci to demand back from the Romans the land

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<sup>222</sup> Gabba (1985b, 192; 1986a, 245; 1994a, 227). Van Dooren (2008, 113) states that the grant of citizenship to the Transpadani in 49 was accompanied by a programme of colonization and centuriation, but it is unlikely that the colonization and centuriation that took place here were linked to the grant of citizenship.

that had been confiscated: 'The land which originally belonged to the Romans is of small extent and barren, but the acquired land which they possess as a result of robbing their neighbours is large and fertile; and if each of the injured nations should demand the return of the land that is theirs, nothing would be so insignificant, so weak, and so helpless as the city of Rome.'<sup>223</sup>

Although this is probably no more than a legend, several cases of allied objections against confiscation of land are available from later periods. The Latins in 338 started a war 'because they were angry about having lost their land'.<sup>224</sup> In 321, when the Romans were defeated by the Samnites at the *Furcae Caudinae*, the Samnites demanded that the Romans remove the colonies of Cales and Fregellae. These had been founded in territory taken from the Samnites, contrary to a treaty made in 354 which had established the Liris as the border between Romans and Samnites.<sup>225</sup> The Aequi in 303 'resented the planting within their borders of a colony (Alba Fucens) which was to be a stronghold of Roman power (Photo 6), and they made a desperate effort to capture it, but were beaten off by the colonists'.<sup>226</sup> The Gauls in 236 'demanded back the land surrounding Ariminum and commanded the Romans to vacate the city, since it belonged to them'.<sup>227</sup>

When Capua defected from the Romans during the Second Punic War, one of the things it claimed was the return of the land that the Romans had taken away. This had been done in 338, well over a hundred years previously, yet apparently the Capuans were still upset about it.<sup>228</sup> Hannibal used this dissatisfaction to gain the support of the Italians, by promising them the return of the land taken away by the Romans. The Boii in particular were angry over the foundation of Cremona and Placentia.<sup>229</sup> The offer by the Pisani to give the Romans land for a colony also caused problems, since in 167 'the Pisans complained that they had been expelled from their territory by the Roman colonists; those from Luna stated that the land in question had been assigned to them by the commissioners who settled the colony'.<sup>230</sup>

However, these are all the records we have of protest against Roman confiscations of land; a remarkably small number taking into consideration the huge amount of land which had been taken.<sup>231</sup> Furthermore, not all of these need

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<sup>223</sup> DH 8.8.2, see 5.62.3, 6.32.1, 6.36.2, 8.9.3, 8.35.2; Zonar. 7.16; App. *Ital.* 5.1; Liv. 2.6.3. In DH 5.21.2 the Veientes ask for the return of confiscated land, as well as Tarquinii, 5.31.3. Liv. 4.1.4, 4.7.4 and DH 11.52.2-3 report protests from Ardea against confiscation of land taken in a boundary dispute (see note 60).

<sup>224</sup> Liv. 8.12.5: *ob iram agri amissi*. See Beloch (1926, 374).

<sup>225</sup> Liv. 9.4.4. See 8.23.6-7; App. *Samn.* 4.4-5; DH 15.8.4.

<sup>226</sup> Liv. 10.1.7.

<sup>227</sup> Zonar. 8.18.

<sup>228</sup> Liv. 23.6.1.

<sup>229</sup> Polyb. 3.77.6; Liv. 21.25.2.

<sup>230</sup> Liv. 45.13.10. See Appendix item 41.

<sup>231</sup> Oakley (1993, 33) states that the allies raised 'much protest', but in view of the large number of confiscations the amount of protest seems limited.

be historical; it may be that Roman authors expected the allies to protest against confiscations, and therefore included this in accounts of wars against the Romans. Most claims for the return of land were made at times when the injured party felt it had some chance of winning, such as in the case of the Samnites in 321 and Capua in 216. Those who knew they could not win thought it a better strategy to cooperate with the Romans and try to minimize the damage.<sup>232</sup>

It is, however, remarkable that *ager publicus* which had been confiscated a long time before, and yet was not used by the Roman state, could be retaken apparently without any difficulty. In many cases colonies were founded on land which had been taken away as much as a hundred years before, for example in Saturnia, Graviscae, Potentia, and Pisaurum. This land had been confiscated a very long time before it was actually used by the state, yet there are no sources reporting angry possessors, as there were in the case of the Gracchan distributions. The same goes for the Ager Campanus: when the state sent out magistrates in 173 and 165 to demarcate the *ager publicus* and take it away from possessors who had illegally occupied it, there were no protests from such people. It would have been logical if people who had held this land for forty years had been upset at losing it, but Postumius and Lentulus were able to reclaim the land for the state, apparently without much protests or legal discussion (see ch. 3.2.3). Why were there no protests from people being deprived of lands they had possessed for so long? What was different in this situation compared to that of the Gracchan period?

A possible explanation may lie in the fact that in many cases the decision to use the land which had been public for a long time was taken after the Second Punic War. This was a period in which the population was low, while the amount of available *ager publicus* was very large. It may be that the population of the areas in which the colonies Saturnia, Graviscae, Pisaurum, and Potentia were founded had declined during the war, so that there were few people who could protest against the use of the land by the state. Various other colonies reported a loss of citizens and received new colonists at this time.<sup>233</sup> Those who had to give up their land so that the colonies could be founded may have profited from the *ager publicus* available elsewhere in Italy, or may have been compensated, as happened in 111. In the case of Campania it may be that those already in possession of the land were made official tenants when it was measured and centuriated in 165, and so did not actually have to give up the land they occupied. It was only in the time of the Gracchi that growing competition for the possession of land due to population growth had led to a scarcity of land, and

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<sup>232</sup> This ties in with the discussion as to how the Romans managed to control their Italian allies, and the debate about the degree of (forced or voluntary) Romanization. Unfortunately, we cannot go into this discussion here; the question as to why so little effort was made to throw off the Roman yoke is extremely interesting, and a further study into this topic may shed light on the role of *ager publicus* in this respect.

<sup>233</sup> Tibiletti (1948, 178).

this caused the dispossessed to voice their resentment at the Gracchan distribution scheme.

## 5.2. The colonial landscape and the original population

We have suggested several times that the original inhabitants of the confiscated land played an important role even after its confiscation. It is now time to investigate in more detail how the Italian population was treated by the Romans. It is often suggested that the population of conquered areas was usually killed or deported.<sup>234</sup> However, this seems in fact to have happened only rarely; the treatment of defeated enemies depended on the way they had behaved toward the Romans. Those who had rebelled against Rome or in some other way incurred Rome's wrath were punished severely, while those who had simply been on the losing side in a war could count on some measure of leniency.

For the regal period there are many stories of people who had resisted the Romans fiercely, or had rebelled against Rome after having been previously defeated, being in turn punished with death or enslavement.<sup>235</sup> At the same time, however, the Romans are often described as being remarkably lenient towards the people they had just conquered, especially in the sources concerning the regal period. They actually prided themselves on their clemency: '[Their policy] was this: not to slay all the men of military age or to enslave the rest of the population of the cities captured in war or to allow their land to go back to pasturage for sheep, but rather to send settlers thither to possess some part of the country by lot and to make the conquered cities Roman colonies, and even to grant citizenship to some of them. By these and other like measures he (Romulus) made the colony great from a small beginning.'<sup>236</sup> Of course this positive judgement is more an example of later representation than an actual account of early Roman policy, but there are several examples of the lenient treatment of Italian peoples in this period.

From later periods there are some instances of the execution, enslavement, or forced expulsion of defeated enemies. This occurred especially when the enemy had in some way offended the Romans. After the victory over Veii, an especially

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<sup>234</sup> Salmon (1969, 15); Chouquer & Favory (1991, 96); Moatti (1992, 60 and 1993, 10). Cornell (1989a, 403) assumes, apparently without reason, that the people of Sabinum and the Praetuttii were largely killed or expelled in 290. Contra: Toynbee (1965a, 166-7), who states that defeated people were often treated with mercy.

<sup>235</sup> DH 3.49.3 (Apiolae), 5.49.5 (Cameria), 6.29.5 (Suessa Pometia); Liv. 2.17.6 (Pometia); Plu. *Cor.* 28.2 (Tolerium, Lavicum, Pedom and Bola); Val. Max. 6.5.1c (Cameria).

<sup>236</sup> DH 2.16.1-2, see also 6.19.4 and 14.6.2-3. Sometimes defeated enemies were removed to Rome and incorporated into the city: see Liv. 3.29.6, 40.46.11 (Alba); DH 3.38.2 (Tellenae), 3.50.3., 5.36.4, 6.20.5 (Latini), 2.55.6 (Veii), 6.32.1, 6.55.1, 6.91.4 (Polusca); Liv. 1.29.1 (Alba), 1.33.1 (Politorium); Plu. *Rom.* 17.1 (Fidenae, Crustumium, and Antemnae); Cic. *Balb.* 13.31. The liberality of the Romans with respect to granting citizenship to others is also expressed in a letter of Philip of Macedon dating to 217, in which he admires the Romans' tendency to grant citizenship to their slaves: see SIG 543. See Humbert (1978, 76-80).

stubborn foe, the leaders were described as being executed and the inhabitants sold into slavery.<sup>237</sup> The town of Privernum had attacked the nearby Roman colonies of Setia and Norba in 340, and was therefore punished with the loss of two thirds of its land; when it rose against the Romans in 329 its leaders were banished (but not executed). The Senones, who had killed Roman ambassadors, were all killed or enslaved, and lost apparently all their land, since the whole Ager Gallicus was later the property of the Roman state.<sup>238</sup> The city of Tarquinii in 355 had killed Roman prisoners of war; as retribution '8,000 prisoners were taken, the rest were either killed or hunted out of the Roman territory'; the prisoners were later executed as well.<sup>239</sup> At Sora in 314 some of the local inhabitants had killed the colonists that were sent there; they were captured and taken to Rome and 'all those taken to Rome were scourged and beheaded to the great satisfaction of the plebs, who felt it to be a matter of supreme importance that those who had been sent out in such large numbers as colonists should be safe wherever they were'.<sup>240</sup> The Aequi, defeated in 304, also seem to have been harshly punished: their towns were destroyed and the people slaughtered.<sup>241</sup> The Aurunci were reportedly 'wiped out, exactly as if it had contended in an internecine war', even though, as Livy expressly states, 'it was not quite clear it had been guilty of defection'.<sup>242</sup>

References to the sale of defeated groups into slavery are rare in the early Republic; Veii is the only example. In the early Republic it may have been impossible for the Romans to sell large numbers of people into slavery, since at

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<sup>237</sup> Liv. 5.22.1, 6.4.2; Diod. Sic. 14.93.2. However, those who had been loyal to Rome received land and citizenship: see Galsterer (1976, 29); Liverani (1984, 39); Hermon (1994a, 502 and 1994b, 131). In many cases only those responsible for the rebellion were executed, e.g. at Nepes, Liv. 6.10.5.

<sup>238</sup> Liv. *Per.* 12.1; Polyb. 2.19.9-12, 2.21.7-9; DH 19.13.1; Oros. 3.22.13; App. *Gall.* 11, *Samn.* 6.1. The expulsion of the Senones is accepted by many scholars: Fraccaro (1919, 192-3); Beloch (1926, 452); Scalais (1930-2, 223); Galsterer (1976, 53); Valvo (1977, 197-8); De Martino (1980, 40); Gabba (1986a, 241 and 1990a, 69); Delplace (1993, 30); Oebel (1993, 7 n. 7 and 22-4); Bandelli (1999b, 193, but cf. 1988, 5); Hermon (2001, 256); Williamson (2005, 157). Toynbee (1965a, 167) suggests that the Senones were not expelled in 283, but in 232, when the land was needed for distribution. On the other hand, it has been suggested that the Senones were not all ejected from their lands, because there are strong influences of Senonic culture after the date of their supposed ejection. That does not mean that their land cannot have been made *ager publicus*; in fact, it happened very often that land was made *ager publicus* without the previous inhabitants being driven off. See for this Susini (1965, 156); Galsterer (1976, 53); Cornell (1989a, 381); Peruzzi (1990, 6); Broadhead (2000, 151); Hermon (2001, 256-7). Hermon (1989, 278), Grassi (1991, 27-8), and Foraboschi (1992, 76) agree that the Senones were not all killed, but think that they were expelled to marginal lands, for example the mountains of Montefortino, where late-third-century graves have been found. However, Sisani (2007, 192-7) accepts the expulsion of the Senones, at least the male population.

<sup>239</sup> Liv. 7.17.9, 7.19.2.

<sup>240</sup> Liv. 9.24.14-5.

<sup>241</sup> Liv. 9.45.17: *Nomen Aeqorum prope ad internecionem deletum*. However, Cic. *Off.* 1.11.35 records that they received citizenship. See Humbert (1978, 210); Cornell (1989a, 376).

<sup>242</sup> Liv. 9.25.9: *Deletaque Ausonum gens vix certo defectionis crimine perinde ac si internecivo bello certasset*.

this time Rome did not have as much use for slaves as in later eras. Its territory was as yet small and the use of slaves in agriculture was not as widespread as it would become later. However, the number of slaves acquired in war would rise quickly; already in the Samnite wars great numbers of people were enslaved, attesting the quick spread of the use of slaves already in the late fourth century (see ch. 4.3.4). A notorious later case is Tarentum, which was retaken by the Romans in 209 after it had joined Hannibal: 'those found with arms and those who had none were massacred indiscriminately (...). It is said that 30,000 slaves were captured.'<sup>243</sup>

In a number of cases defeated groups were deported to other areas of Italy; we have already seen that the leaders of Velitrae and Privernum were banished after the Latin War, just like the Capuan population (probably not only the leaders) after 210.<sup>244</sup> However, people who were removed from their original territory were always in some way provided with land on which to live. Thus we see the Picentes and the Ligures Apuani being moved to Samnium and settled on *ager publicus* there (see Appendix items 23 and 26). The same happened when Falerii rebelled in 241: the population was moved to a new town, Falerii Novi.<sup>245</sup> When Fregellae rebelled in 125 its people were given a new place to live in Fabrateria Nova.<sup>246</sup> In these cases the expulsion was arranged by the Romans, who made sure the people were properly installed in their new environment. Not providing the means to live would have led to large groups of dissatisfied and potentially hostile people roaming through Italy. The Romans wanted to keep a tight control on the displaced people and assigned them specific areas to live. The expulsion of conquered people therefore seems to have taken place only in the case of especially stubborn enemies such as the Liguri, but it was always followed by the assignment of land somewhere else.

There are only a few cases of total expulsion from Italy of conquered peoples. Not only the Senones, but the Boii as well are described as being driven out of Italy completely.<sup>247</sup> There was indeed a large amount of *ager publicus* created in

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<sup>243</sup> Liv. 27.16.6-7; Oros. 4.1.1; Plu. *Fab.* 22.4.

<sup>244</sup> Some assume that the deportation of the Capuans was only a threat that was never executed, e.g. Scalais (1930-2, 208); Galsterer (1976, 76-7); Potter (1979, 97); Frederiksen (1984, 248); Havas (1984, 33); Gabba (1989a, 197); Erdkamp (1998, 184); Pina Polo (2006, 182). However, the state actually made efforts to make sure the Capuans were moved to their new residences and made provisions for their assessment in the census: Liv. 28.46.6, 38.28.4. Frederiksen (1984, 248-9) argues, however, that this was necessary because the Capuans no longer had their own magistrates. Bozza (1939, 31) accepts the deportation. Some have argued that those Capuans who had been faithful to Rome retained their land: Toynbee (1965b, 230); Frederiksen (1981, 273); Manzo (2002a, 132 and 2002b, 36); Monaco (2002, 122-3); Sacchi (2002, 74-5). However, Liv. 26.16.8 explicitly states that only those people living on the Campanian land who were not of Capuan descent were allowed to remain and work the land.

<sup>245</sup> Eutrop. 2.28.1; Polyb. 1.65.2; Zonar. 8.18; Liv. *Per.* 20.1; Val. Max. 6.5.1; Oros. 4.11.10.

<sup>246</sup> Plu. *CG* 3.1; Liv. *Per.* 60.3; Obs. 30; *Vir. ill.* 65.2.

<sup>247</sup> Polyb. 2.20.1-3 describes how a large part of the Boii were killed in 283 at the battle of Lake Vadimon. In 2.35.4 he states that in 222 they were 'entirely expelled from the plain of the Po,

Cisalpine Gaul, which seems to suggest that the Gauls were treated more harshly than other peoples.<sup>248</sup> However, we have already seen (ch. 2.3.10) that the confiscation of large amounts of *ager publicus* here may have been intended to keep the Gauls under control, and that in fact many of them were left in the territory.

It is clear therefore that there was no standard way of dealing with defeated enemies. In most cases the original inhabitants of the land were not simply killed, enslaved, or expelled at all. This means that arrangements had to be created which made it possible for the Romans to live together with their former enemies.

Basically there were four possibilities to deal with the original inhabitants of conquered lands. The old inhabitants could be allowed to remain where they had always lived, and be admitted as official colonists into the new colony settled by the Romans.<sup>249</sup> This often happened in early Republican colonies, for example Antium, where some of the local Volsci were admitted: 'So few [Romans] gave in their names that the number was made up by the addition of Volscians as colonists.'<sup>250</sup> In the colony of Ardea 'the majority of the colonists should consist of Rutulians [Ardeates], that no land should be allotted other than what had been appropriated under the infamous judgment, and that not a single sod should be assigned to a Roman till all the Rutulians had received their share'.<sup>251</sup> Sometimes this led to trouble, when the native inhabitants killed the colonists and rebelled against Rome. The colony at Antium repeatedly rose in rebellion against the Romans, and even became the leading city of the Volsci in their war against Rome.<sup>252</sup>

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except a few regions close under the Alps.' See also Plin. *HN* 3.15.115; Strab. 5.1.6. This is believed by Toynbee (1965b, 244); De Martino (1980, 40); Pasquinucci (1985, 21); Gabba (1986a, 241 and 1990a, 69); Arslan (1991, 461); Denti (1991, 34); Delplace (1993, 30). However, in the Second Punic War there were still many Gauls in Cisalpina, see Polyb. 3.34.2-4, so this must be an exaggeration, see Galsterer (1976, 29); Chevallier (1980, 59); Bandelli (1988, 12); Belayche (1994, 79); Broadhead (2000, 151); Williams (2001, 51, 211-3). Cato *Orig.* 2.9 = 39 P (Var. R. 2.4.11) mentions Insubres, who were supposedly expelled at the same time, as traders in pork, and therefore clearly still able to make a living in Cisalpine Gaul. Livy 37.2.5 states how 'Cornelius (the proconsul) was at that time (190) conducting the Boii from the lands which he had confiscated from them after their defeat in the war'. However, only one half of the land of the Boii was confiscated; it makes sense that the other half would have been left for them to live on. It may be to this land that the proconsul was moving them. Especially in the Veneto most local inhabitants were left undisturbed: see Denti (1991, 36). On the survival of local inhabitants in Cisalpine Gaul in general see Baldacci (1986).

<sup>248</sup> Pasquinucci (1985, 21); Chouquer et al. (1987, 31); Sirago (1995, 149).

<sup>249</sup> Afzelius (1942, 156); Alföldi (1963, 416); Dal Cason (1985, 177); Càssola (1988, 5-6); Ampolo (1990, 129); Cornell (1995, 302); Torelli (2002, 72). Peruzzi (1990, 22), on the other hand, assumes that only citizens could take part in colonies.

<sup>250</sup> See note 55.

<sup>251</sup> Liv. 4.11.3-4.

<sup>252</sup> Liv. 3.1.7, 3.4.3-5, 3.10.8, 3.22.2, 4.56.5, 6.6.4; DH 9.59.2-60.2, 10.20.4. Many colonists from other towns also rebelled against Rome: Fidenae (Liv. 1.27.3, 4.17.1, 4.30.1, 4.31.7; *Vir. Ill.* 25), Sora (Liv.



References to the inclusion of non-Romans in colonies disappear from the sources after the early Republican period, only to reappear after the Second Punic War. In the intervening period Livy often says that so many were sent out to a colony, suggesting that only Roman citizens and, in the case of Latin colonies, people of Latin status were sent to a colony.<sup>253</sup> In this period there were enough Romans and Latins to fill them, therefore there was no reason to be generous to the allies. We cannot therefore conclude that in the number of colonists mentioned for such colonies local inhabitants were included as well.<sup>254</sup> Latins were most likely not admitted in Roman colonies, although others think Latins were eligible if there were not enough Romans to be found.<sup>255</sup> Italian allies are likely to have been admitted as official colonists into any kind of colony only after the Second Punic War.<sup>256</sup>

For some Latin colonies there is archaeological evidence that locals were still living in the colony's territory, e.g. Paestum, Ariminum, and Hatria. This is accepted by some as proof that local inhabitants were official colonists in such colonies already in the mid-Republican period.<sup>257</sup> However, it is not necessary

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9.23.1-2), Velitrae and Circeii (Liv. 6.12.6, 6.13.8, 6.17.7, 6.21.2, 6.36.1, 8.13.5; DH 2.54.1, 8.14.1), Satricum (Liv. 9.12.5, 9.16.2), Pometia and Cora (Liv. 2.16.8), Crustumium (DH 3.49.4). The people of Fundi and Formiae, although not colonists but locals who had received the Roman citizenship, were coaxed by the Samnites into rebelling against Rome: DH 15.6.3-4, 15.7.4. See Salmon (1969, 44-5); Humbert (1978, 157); Cornell (1989c, 278); Bandelli (1999a, 98); Bradley (2006, 167).

<sup>253</sup> Latins were most likely accepted in Latin colonies in all periods: Stephenson (1891, 13); Bernardi (1973, 79); Sherwin-White (1973, 27); Hinrichs (1974, 17); Bleicken (1990, 124); Cornell (1996, 367). Badian (1970-1, 386) and Richardson (1980, 4) assume Latins were regularly admitted in virginate distributions as well. Kornemann (1901, 572) assumes Latins were admitted, but that they received less land. One of the arguments in favour of the inclusion of Latins and allies is that the Roman population on its own would not have been able to supply the large numbers of colonists mentioned in the sources: see Hopkins (1978, 21); Cornell (1989a, 388). Contra: Salmon (1955, 65).

<sup>254</sup> Sherwin-White (1972, 25-6). However, Scheidel (2004, 10) and Forsythe (2005, 308) think the number included local inhabitants as well.

<sup>255</sup> Salmon (1969, 24); Bringmann (1985, 13); Peruzzi (1990, 22).

<sup>256</sup> Tibiletti (1949, 36); Smith (1954, 19); Salmon (1969, 117); Bringmann (1986, 58); Càssola (1988, 12); Wulff Alonso (1991, 244); Patterson (2006, 201); Yntema (2006, 123). However, Salmon (1969, 79-80; 1982, 64; 1985, 13) argues that Roman colonies were unpopular and therefore included allies even before the war. The presence of allies in Latin colonies is assumed by Ross Taylor (1960, 49); Gabba (1985b, 186 and 1989a, 212); Cornell (1989a, 368; 1989c, 278; 1995, 367); Galsterer (1996, 76); Bispham (2006, 91-2, 106-18); Patterson (2006, 199); Erdkamp (forthcoming). Serv. *Aen.* 1.12 defines colonies as *est autem pars civium aut sociorum missa, ubi rem publicam habeant*, indicating that allies were also allowed in colonies, but it is not clear to which period this statement refers. Toynbee (1965b, 148) thinks that allies were also allowed in Latin colonies, but that they did not receive Latin rights, only land. In that case of course they were not colonists, and did not count among the number of colonists sent out.

<sup>257</sup> Torelli (1999b, 4); Gualtieri & Fracchia (2001, 79); Celuzza (2002a, 105); Gualtieri (2003, 21); Bradley (2006, 172-6). In Aquileia some high-ranking locals seem to have been included in the official body of colonists: Bandelli (1983, 182-3). The problem that many colonies show a great

that these people were admitted as official colonists with the same rights as the Romans; even if it is extremely likely that there was no strict geographical boundary between colonists and locals in the colonial landscape, it is likely that there existed a legal separation between these two groups.

It is only after the Second Punic War that the official admission of Italian allies into colonies is attested. At this time the Roman state was unable to find enough colonists due to the decline of the Roman population as a result of the war. At the same time a large amount of *ager publicus* was available and colonies were necessary to strengthen Rome's hold over the newly conquered territories. In these circumstances there were not enough Romans to fill the colonies, and they were partially filled with people of allied status. For Cosa in 197 'an order was made for a thousand fresh colonists to be enrolled, no one to be included in the number who had been an enemy alien since the consulship of P. Cornelius and Tiberius Sempronius (218 BC)'.<sup>258</sup> In 197 an incident occurred with some colonists for the new colonies:

During the year the people of Ferentinum tried to claim the right of those Latins who had been enrolled in Roman colonies to be deemed Roman citizens. Those who had given in their names had been assigned to the colonies of Puteoli, Salernum and Buxentum, and on the strength of this assumed the status of Roman citizens. The Senate decided that they were not Roman citizens.

The problem, most likely, was not that the Ferentinates had claimed Roman citizenship, but that they had done so before the actual establishment of the colonies; these were not founded until 194, and the new citizens therefore had to wait until the next census after that before they could actually claim the citizenship.<sup>259</sup> In this case, and also that of the viratane distributions in 173,<sup>260</sup> those receiving land are reported as being Latins, who already enjoyed many

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deal of cultural continuity with the previous inhabitants, e.g. Brundisium, Thurii, and Vibo (see Kahrstedt (1959, 187)) would be solved by the idea that colonies in this period did not have as big an impact on the surrounding landscape as has previously been thought (see ch. 2.3.12).

<sup>258</sup> Liv. 33.24.8-9. See Potter (1987, 73).

<sup>259</sup> Liv. 34.42.5-6: *Novum ius eo anno a Ferentinatibus temptatum, ut Latini qui in coloniam Romanam nomina dedissent cives Romani essent: Puteolos Salernumque et Buxentum adscripti coloni qui nomina dederant, et, cum ob id se pro civibus Romanis ferrent, senatus iudicavit non esse eos cives Romanos.* Some use this passage as proof that Latins and allies did *not* receive citizenship in Roman colonies, e.g. Ilari (1974, 29); Frézouls (1981, 128); Keaveney (1987, 51); Coarelli (1989, 36); Wulff Alonso (1991, 87); but see Smith (1954), Badian (1970-1, 386), and Camodeca (1991, 14), who convincingly argue that the Ferentinates would have been admitted to citizenship once they had been counted in the census. Salmon (1963, 36) is wrong in stating that it had taken three years to find the colonists; there is no evidence for difficulties with finding colonists.

<sup>260</sup> Ilari (1974, 14-7). Gabba (1989a, 213) thinks Italian allies also benefited from the distribution in 173, but this is not attested. In 172 land, apparently Roman *ager publicus*, was distributed to the Statielli, see Càssola (1991, 17) and Appendix item 42.

rights as a result of their Latin status, but in the case of Cosa it seems as if anyone was allowed as a settler, whether Roman, Latin, or ally.

A second possibility would have been to allow the former inhabitants to remain in the town which had been turned into a colony, without granting them the rights the Roman colonists received. These people were then known as *incolae*. This term was also used for people who simply took up residence in the colony.<sup>261</sup> According to the sources, colonists and Roman settlers often lived together in the regal period: colonies took the form of garrisons placed within a city, and the colonists in some cases formed a minority within the larger group of local inhabitants. In Luceria, for example, the first Roman settlement was a garrison, which was only later replaced by a full colony.<sup>262</sup> In later times the native inhabitants often formed a *municipium sine suffragio* next to the colony that possessed Latin or Roman citizenship.<sup>263</sup> In this case the colonists and the original inhabitants lived alongside each other, in separate communities in the same territory or even in the same towns, each with their own rights, as can be seen from the Agrimensores: 'When the founder was expelling the other landholders and preparing the lands for division, he does not seem to have changed the legal status of those owners whom he permitted to remain on their holdings; for he did not order them to become citizens of the colony.'<sup>264</sup> There was apparently quite a bit of room for negotiations as to which land was to be confiscated and which returned to its former owners: 'Not all conquered peoples were deprived of their lands. For the status, or influence, or friendship of some persuaded the victorious commander to grant their own lands to them.'<sup>265</sup>

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<sup>261</sup> D.50.16.239.2 defines an *incola* as 'someone who has established his domicile in any region; the Greeks call such a person a *paroikos*. Nor are those who stay in a town the only people who are *incolae*, but also those who hold land within the territory of any town in such a way that they establish themselves there as if in a fixed abode' (*qui aliqua regione domicilium suum contulit: quem Graeci paroikon appellant. Nec tantum hi, qui in oppido morantur, incolae sunt, sed etiam qui alicuius oppidi finibus ita agrum habent, ut in eum se quasi in aliquam sedem recipiant*). See Comm. Bern. in Lucan. 4.397: *incolae qui ad coloniam paratam veniunt: accolae qui iuxta coloniam agros accolunt*. For an exhaustive discussion on the definition and rights of *incolae* and *accolae* see Laffi (1966, 76-83); Gagliardi (2006). An inscription from Aesernia (CIL I<sup>2</sup>.3201) records the presence of *Saunites iniquolae*: see La Regina (1971-2, 452-3); Galsterer (1976, 49); Salmon (1985, 17).

<sup>262</sup> Liv. 9.26.2. See DH 5.20.1, 5.43.2, 5.60.2, 7.28.3. Humbert (1978, 78) thinks the allies they lost their autonomy, but this does not need to have been the case. Circeii was a colony 'in which there were Roman colonists living intermingled with the native residents' (DH 8.14.1), but the status of these natives is not clear. The same in Cameria, DH 2.54.1.

<sup>263</sup> Salmon (1969, 76); Frederiksen (1984, 207) with respect to Cales; Brunt (1971, 298); Càssola (1988, 6); Galsterer (1992, 422); Oebel (1993, 74) for Ariminum; Campbell (1996, 93); Hermon (2001, 189) for Sabinum; Yntema (2006, 95) for Brundisium. Triebel (1980, 79) argues that the local population was settled in *fora* and then received citizenship, but this was not the case: see Beloch (1880, 219).

<sup>264</sup> Commentum 86.18-21: *Alioquin, cum ceteros possessores expelleret et pararet agros quos divideret, quos dominos in possessionibus suis remanere passus est, eorum condicionem mutasse non videtur: nam neque cives coloniae accedere iussit*.

<sup>265</sup> Siculus Flaccus 120.35-6. On *agri redditus* see Kaser (1942, 58).

Especially when a part of the population had helped the Romans to conquer the city, these people often received lands, as had happened in Veii.

If not all confiscated lands were needed for allocation to colonists, some could be returned to the original inhabitants (*agri redditi*), or they could receive land in exchange for confiscated land in another part of the colony (*agri commutati*), as is also stated in the *Lex agraria* of 111. However, it is not clear whether they always received the same amount they had held before, or that this always became their private property again, as happened in 111.<sup>266</sup> We may conclude that it was quite common for the original inhabitants to remain in the colony.<sup>267</sup>

Another possibility has become the standard picture of the incorporation of local inhabitants in the landscape of Roman and Latin colonies: the Romans occupied the town of the former inhabitants and distributed the land around it to the colonists. The locals were pushed to the lands on the edge of the colony, usually into the mountains or other infertile lands the Romans did not want to use themselves.<sup>268</sup> However, this reconstruction is much too simple; it may be valid in some cases, but there were many other possibilities for the distribution of land between Romans and local inhabitants. Sometimes the original inhabitants were apparently expelled, but received compensation in the form of money, at least in the first century BC: 'some people, as instructed, made their property returns on the basis of a valuation; money was given to them in accordance with the valuation, they were removed from their land, and the victorious veteran soldiery was settled there'.<sup>269</sup> Unfortunately, we do not know of any Republican cases in which people received money in exchange for their land; grants of money as compensation for land seem not to have occurred before the Caesarean period. The *Lex agraria* speaks only of giving new land to allies who were moved from their own lands.

People who were expelled from their original holdings did not receive any rights of citizenship in the colony, though they may have retained their own administrative independence, as in the case of those who lived intermingled with the colonists. It is possible that local inhabitants were employed as labourers on the land handed out to the colonists. In some colonies after the Second Punic War

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<sup>266</sup> Gagliardi (2006, 285) assumes that the land granted to *incolae* was *ager publicus populi Romani*, and that they therefore had to pay a rent for this land.

<sup>267</sup> Many scholars point to the presence of local inhabitants of colonies, but most of them unfortunately do not discuss the legal position of these people: Salmon (1967, 317-21); Galsterer (1976, 49-53); Humbert (1978, 77-8); Stockton (1979, 10); Gabba (1989b, 212); Oebel (1993, 74); Gargola (1995, 86); Luni (1995, 484-9); Bradley (2000, 133, 142); Hermon (2001, 291); Capogrossi Colognesi (2002, 22); Yntema (2006, 104). See Pareti (1997, 433) with reference to Thurii; Bispham (2006, 91-2, 103) for Cales and Cosa.

<sup>268</sup> Celuzza (2002a, 110).

<sup>269</sup> Siculus Flaccus 128.3-5. See Stephenson (1891, 30); Nagle (1973, 376-7); Gabba (1979, 52; 1983, 52; 1985b, 186); Kolendo (1983, 179); Salmon (1985, 14); Brunt (1987, 538); Campbell (2000, 395-6); Williamson (2005, 347). See La Torre (1999, 109) for Bruttium; Celuzza & Regoli (1985, 51) and Fentress & Jacques (2002, 126) for Cosa.

the amount of land granted was too large for one family to work, sometimes fifty *iugera* or more. It may be that the colonists used slaves as labourers, but it is also possible that they employed the defeated local population as wage labourers or tenants.<sup>270</sup> This practice is not securely attested, but it is a possibility we should keep in mind when reconstructing the Republican colonial landscape.

A fourth possibility existed, which in my view was by far the most common. Much of the *ager publicus* was not used for colonization or virgated distribution at all. Such land was in theory open to occupation by Roman citizens as *ager occupatorius*. However, it is likely that much of this land remained in the hands of its original owners, who possessed it without any legal title to it. In my view this happened much more often than is generally thought. There was only a limited number of Romans who could have made use of the *ager occupatorius*; for most of the poorer citizens this land was largely inaccessible (see ch. 4.3.7). The elite may have had better possibilities of occupying and exploiting *ager occupatorius*, but this does not mean that they would have indiscriminately occupied all land they could lay their hands on. In the fourth and third centuries the market for agricultural products was small, and it would have been useless to exploit large tracts of land. In the second century the market grew considerably, although it still did not become as large as is sometimes assumed, and large-scale commercial production occurred mainly in central Italy. Accumulation of large tracts of land in the Italian periphery therefore was still not necessary for Roman citizens. The amount of *ager occupatorius* available in the second century was so large that not all of it could be occupied by Roman citizens. This land was, moreover, not located in areas where the largest spread of commercial production took place (see ch. 4.3.6). It is likely therefore that much of it remained in use by Italians until the Gracchan period, when the allies launched protests against the confiscation of *ager publicus* they had been working.<sup>271</sup> The most common thing to happen therefore may have been the total absence of Roman interference after the creation of *ager publicus*.<sup>272</sup> Rome declared a certain part of the land to be *ager publicus*, but then took no further action, at least for

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<sup>270</sup> Keaveney (1982, 83); Gabba (1983b, 52); Arslan (1991, 461) and Grassi (1991, 38) for the Boii; Marchi & Sabbatini (1996, 19) for Venusia; Celuzza & Regoli (1985, 51) and Celuzza (2002a, 110) for Cosa; Osgood (2006, 136) for colonies of the first century BC. Contra: Mouritsen (1998, 15).

<sup>271</sup> Rathbone (2003, 150) states that lands conquered after the Second Punic War 'are normally, and plausibly, assumed to have remained occupied by their previous owners or possessors'. However, in my view this was not only the case after, but already before the Second Punic War.

<sup>272</sup> Beloch (1926, 335); Kaser (1942, 26); Tibiletti (1948, 181); Gabba (1956, 46; 1977, 276; 1979b, 40; 1989a, 199; 1990b, 677); Toynbee (1965b, 253); Hinrichs (1966, 255-6); Nicolet (1967, 104); Salmon (1967, 317 and 1969, 162 n 2); Nagle (1970, 376 and 1973, 368); Galsterer (1976, 177 and 1992, 416); D'Andria (1979, 278); Stockton (1979, 11); Chevallier (1980, 59); Staveley (1989, 429); Wulff Alonso (1991, 82); Dyson (1992, 50); Lintott (1992, 44); Belayche (1994, 182); David (1997, 142); Gargola (1995, 130); Tagliamonte (1996, 249); Bradley (2000, 139); Linke (2006, 44); Gualtieri (2003, 41), especially for Lucania. Beloch (1886, 62) and Toynbee (1965a, 167 and 1965b, 153) assume the people allowed to remain on their land received Roman citizenship, but this is not attested.

some time. This of course left the previous owners completely free to keep their lands. Some assume a rent had to be paid for the use of this land, but this is unlikely (see ch. 3.2.1).<sup>273</sup>

It is sometimes assumed that it was possible for the allies to acquire rights to use *ager publicus* by treaty. This idea is inspired by a statement of Cicero, which suggest that Tiberius Gracchus neglected treaties concluded with the Latins and allies: 'Tiberius Gracchus did right by the citizens, but ignored the rights and treaties of the allies and Latins.'<sup>274</sup> The *Lex agraria* of 111, moreover, stipulates that

whatever according to this statute, just as written above, in the lands which are in Italy, which were the public property of the Roman people in the consulship of P. Mucius and L. Calpurnius (133), it shall be lawful for a Roman citizen to do, it is likewise to be lawful for a Latin and a foreigner to do without personal liability, for whom it was lawful to do it in the consulship of M. Livius and L. Calpurnius (112) in those lands which are written down above, according to statute or plebiscite or *treaty*.<sup>275</sup>

This has led some scholars to believe that there were treaties allowing the allies access to the *ager publicus*: after the conquest of a certain town a treaty was drawn up that allowed the allied population to occupy a part of the *ager publicus* which was confiscated by Rome, with the security that they would not be driven off this land.<sup>276</sup>

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<sup>273</sup> Laffi (1966, 57); Brunt (1971, 283); Nicolet (1977, 122); Bernstein (1978, 123); Salmon (1982, 64); Kolendo (1983, 177); Garnsey (1988a, 190); Compatangelo (1989, 233); Gabba (1989a, 199, 230 and 1990c, 156); M. R. Torelli (1990, 96); De Lachenal (1993, xvii); Russi (1995, 24); Torelli (1999, 89); David (1997, 68); Pareti (1997, 435); Manzo (2002a, 138); Williamson (2005, 172); Konrad (2006, 167). See Ghinatti (1977a, 149) with reference to Tarentum; Toynbee (1965a, 126) with respect to Capua.

<sup>274</sup> Cic. *Rep.* 3.29.41: ... *Asia Ti. Gracchus perseveravit in civibus, sociorum nominisque Latini iura neglexit ac foedera*. Badian (1972b, 681) optimistically states: 'The sense of the fragment is made clear beyond serious doubt by comparison with 1.31', but matters are not so simple. In *Rep.* 1.19.31 Cicero states: 'Our difficulties during the movement of the Latins and their allies towards rebellion, violating all our treaties (*foederibus violatis*) in the presence of factious triumvirs, and creating every day some fresh intrigue, to the disturbance of the worthier and wealthier citizens.' Here, however, the allies are accused of breaking treaties, not the Gracchi.

<sup>275</sup> *Lex agraria* l. 29: [*Quod ex h. l. it]a ut ei s. s. est, in agreis qu[ei in Ita]lia sunt, qui P. Mucio L. Calpurnio cos. publiceis populi Ro[manei fuerunt c(ei)] Romano facere licebit, item Latino peregrinoque, quibus M. Livio L. Calpurnio [cos in eis agreis qui s. s. sunt id facere ex lege pleb]eive sc(ito) exve <f>oedere licuit, sed <f>raude sua <f>acere liceto.*

<sup>276</sup> Gelzer (1929, 98); Tibiletti (1955, 38 n 59); Boren (1968, 52); Shochat (1970, 28); Harris (1971, 259); Gabba (1974, 133; 1989a, 199; 1990b, 677; 1994b, 104); Pani (1976-7, 141); Triebel (1980, 187); Compatangelo (1989, 233); Bleicken (1990, 122); Wulff Alonso (1991, 203); David (1997, 142 and 2000, 132); Williamson (2005, 172); Galsterer (2006, 296). It may be more likely, however, that such treaties existed only for pasture land, since Italian peoples needed access to land if they were to carry out transhumant stockbreeding.

The sources referring to treaties with the allies are unfortunately very vague. In Cicero's passage the reference is expressly to *iura ac foedera* of the *sociorum nominisque Latini*. However, the passage is transmitted fragmentarily and the context is unclear. Moreover, it does not say that the rights and treaties had anything to do with *ager publicus*. On the other hand, the *Lex agraria* specifically refers to 'statutes, plebiscites or treaties' which gave the 'Latins and *peregrini*' access to *ager publicus* before the passage of the law of 111. There were apparently people who before the passage of this law had rights to the *ager publicus*, whether by earlier laws or by treaties; however, this may have been granted as a privilege to a specific person or community, and does not have to be a general right applying to all allies.<sup>277</sup>

Many scholars have doubted the allies' rights to *ager publicus* by treaty. The most important problem is that the *ager publicus populi Romani* was legally the property of the Roman citizens. Many have therefore assumed that it was impossible to give security of possession of land to allies in a formal treaty, unless they were granted citizenship.<sup>278</sup> There indeed appears to have been no legal basis for granting land to non-citizens. Land was a *res Mancipi*, and therefore could only be legally transferred to people with the *ius commercii*. Latin allies possessed this right, so they may have received land. To solve the problem of grants of land to Italians it is often assumed that many Italians also possessed the *ius commercii*. A passage often quoted as proof is Liv. 35.7.2-3 (193 BC): 'Though numerous laws had been made in restraint of avarice they were evaded through the fraudulent transferring of the bills to subjects of the allied states who were not bound by these laws.' It was decided that 'debts contracted with members of the Latin and allied communities should come under the same laws as those contracted with Roman citizens'. This episode suggests that it was possible to transfer property from Roman citizens to allies, which would mean they possessed the *ius commercii*.<sup>279</sup>

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<sup>277</sup> Lintott (1994, 64); Sacchi 2006, 113).

<sup>278</sup> Kontchalovsky (1926, 169-70); Toynbee (1965b, 547); Flach (1974, 267-70); Richardson (1980, 8-9); Burdese (1985, 66); Keaveney (1987, 15); Kukofka (1990, 50).

<sup>279</sup> Liv. 35.7.2-4: *Cum multis faenebribus legibus constricta avaritia esset, via fraudis inita erat ut in socios, qui non tenerentur iis legibus, nomina transcriberent. (...) Ut cum sociis ac nomine Latino creditae pecuniae ius idem quod cum civibus Romanis esset.* See Diod. Sic. 37.15.2. See Johannsen (1971, 261); Ilari (1974, 13-29); Galsterer (1976, 103); Stockton (1979, 112-3); Vallat (1995, 118); Mouritsen (1998, 92); Van Dooren (2008, 265 n. 125); Bispham (2008, 72 n. 84). Mouritsen (1998, 92) argues that the granting of land to allies in the *Lex agraria* must mean that they already possessed the *ius commercii*. Keaveney (1987, 48-9) also believes in the *ius commercii* of the allies, although the examples cited by him refer mostly to Latins receiving land in the early second century colonies. Sherwin-White (1973, 125-6) is more doubtful. Lintott (1992, 208, 224) assumes Italians did not usually possess the *ius commercii*. Galsterer (1976, 92) doubts whether having *commercium* enabled allies to receive land.

In reality, the problem is only apparent: it was legally not impossible to give land to allies, even if they did not possess the *ius commercii*.<sup>280</sup> Since *ager publicus* land was the property of the Roman citizens, its alienation required a law that was ratified by the popular assembly.<sup>281</sup> We have already seen how Latins and allies were admitted to colonies in the early second century. The state could also give land to a non-citizen as a reward for services rendered. A certain Onesimus, who had helped the Romans in the Macedonian wars, received 200 *iugera* of *ager publicus* in Tarentum, without receiving citizenship; indeed, it is expressly stated that he was 'enrolled in the category of allies (*formula sociorum*)'.<sup>282</sup> By these distributions the land became private, and it was apparently perfectly possible to grant land as private property to people not in possession of the *ius commercii* or the Roman citizenship, as long as the popular assembly was in favour of such a grant. Only in the case of private trading with an ally was it important whether he possessed this right.

Furthermore, these cases all discuss the granting of land in private ownership. The situation is fundamentally different from the holding of *ager publicus*. Appian says that 'they (the Romans) announced that this could for the moment be worked *by anyone who wished*',<sup>283</sup> although he is not specific as to the date of this proclamation. This means that Romans, Latins, and Italians were admitted as *occupatores* of *ager publicus*. Apparently not only Romans, but also Latins and allies were allowed to work *ager publicus*, and it seems entirely possible that some, especially richer allies, took this opportunity.<sup>284</sup> Furthermore,

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<sup>280</sup> Ilari (1974, 19 n 34) has tried to solve this apparent contradiction by pointing to the *Foedus Cassianum* of 486 BC, which granted a part of the land conquered in war to the Latins and Hernici. However, this treaty was only meant to regulate the equal sharing of land conquered in joint wars. It allowed the Latins and Hernici an equal share of the booty, including land, of any war they had fought together with the Romans. It gave them no right to the lands the Romans had conquered independently. It is therefore problematic to see the *Foedus Cassianum* as a precursor to treaties giving the allies rights to the Roman *ager publicus*, since in the case of these treaties Rome was always the dominant party and could therefore force anything onto the defeated people. See also Beloch (1880, 219). Badian (1970-1, 398-9) assumes the *Foedus Cassianum* was still valid in the second century and that because of this treaty the Latins held more *ager publicus* than the other allies. However, this is unlikely, as most of the *ager publicus* was located in areas where Latin citizenship was not common.

<sup>281</sup> Richardson (1980, 4-5); Keaveney (1987, 48).

<sup>282</sup> Liv. 44.16.7. Plin. *HN* 3.5.46 remarks that the Ligurian Ingauni 'received grants of land on thirty occasions', unfortunately without any indication of time, circumstances, and legal status.

<sup>283</sup> App. *BC* 1.7.

<sup>284</sup> Salmon (1962, 109); Bleicken (1990, 122); Van Dooren (2008, 189). Unfortunately, they do not say anything about the exact legal position of the allies. Van Dooren (2008, 191) argues that allies occupied great amounts of Roman *ager occupatorius*, not just the land they had held before, but also new land that had become *ager publicus*. On p. 227 he gives as an example the Samnite Mutilus, who owned land outside of Samnium. However, the lands appear to have belonged to his wife Bastia, and there is no evidence that these were *ager publicus*. However, it is certainly possible that the allies occupied Roman *ager publicus* which had not been theirs before the conquest.



the state could grant land to allies without the approval of the popular assembly, as long as the land was not permanently alienated. Whether or not the allies possessed the *ius commercii* is therefore irrelevant to the question of whether the allies could occupy *ager publicus*, and whether they needed a treaty for this. In any case, it was impossible for Roman citizens to acquire security of tenure on the *ager occupatorius* (see ch. 4.3.1), and this makes it unlikely that this can have been granted to Latins and allies. Some assume the allies also had the right to buy *ager publicus* when it was sold as *ager quaestorius*<sup>285</sup> or rented out as *ager censorius*,<sup>286</sup> but there is no evidence for this, and these two forms of alienation were rare (see ch. 3.3.1-3).

This has led to the suggestion that Tiberius Gracchus violated other rights of the allies, to which Cicero may refer, for example that he distributed land which belonged to the allied cities, or that he threatened to distribute private land of the allies. However, this still does not explain the statement that the *foedera* of the allies were damaged by the actions of Tiberius Gracchus. In my view there is another possibility that would explain this problem. After conquering a people a treaty was usually concluded that specified the relations between the Romans and their defeated enemy,<sup>287</sup> including a statement on which land became *ager publicus*.<sup>288</sup> It may be that the continued habitation of the land that was now *ager publicus* was acknowledged in these treaties, and that this right was laid down in the treaties referred to by Cicero. In this case the Roman state would not give the allies security of possession of the *ager publicus*, but only allow them to use the land until the state needed it. This would have important advantages for the Roman state: the state still had the power to take away the land from the allies whenever this became necessary, but at the same time the allies were able to provide an income for themselves. Moreover, the allies were now forced to acknowledge Roman overlordship over their land. The state therefore acquired a sort of tool to ensure the allies' loyalty: as long as they remained loyal, they could be reasonably sure that the land would not be taken away. The continued use of the *ager publicus* was a *beneficium* from the Romans, and if the allies did not accept Roman overlordship, it could be taken away from them. Especially after the Second Punic War the state often did not immediately need the land, and many allies occupied land in undisturbed possession for a very long time.<sup>289</sup> We may therefore conclude that the allies were not granted security of possession by treaties with the Romans, since in that case they would have received better rights than Roman citizens could achieve. It is possible, however, that there were

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<sup>285</sup> Castagnoli et al. (1985, 52). In Africa in 111 only Roman citizens were allowed to buy land that was sold as *ager privatus vectigalisque*, see De Ligt (2001b, 208).

<sup>286</sup> Lintott (1994, 64); David (1997, 68).

<sup>287</sup> Frank (1911, 375); Hantos (1983, 153).

<sup>288</sup> Harris (1965, 289).

<sup>289</sup> Tibiletti (1949, 30); Toynbee (1965b, 243-4); Rathbone (2003, 150).

treaties which allowed them to work the land for as long as the Romans did not want to use it.

Some scholars have suggested that both the Romans and their allies forgot that they were in fact working Roman *ager publicus*.<sup>290</sup> Although this may have been the case with the allies, the Romans certainly did not forget they owned large amounts of *ager publicus*. They may have been unaware exactly which land was public, as became clear in the Gracchan period, but they certainly knew that their holdings of public land were extensive. The state legally still had the right to take back the land, but the absence of any involvement during the second century had led the allies to believe that they would never be deprived of their holdings of *ager publicus*. By the time of the Gracchi the allies would be *veteres possessores* of *ager occupatorius*, because they had held this land for more than half a century. The actions of the Gracchi therefore came as a shock to them: after a long period of Roman disinterest the allies had not expected to lose the land, because they had not rebelled or protested against the Romans in any way. In this case they had every right to feel threatened by the Gracchan distributions, as did the Romans who possessed *ager occupatorius*. It is likely that the Gracchi were in fact forced to acknowledge the rights of the allied *veteres possessores* to *ager publicus*, and to grant them secure possession of a maximum of 500 *iugera* of *ager publicus*, just as the Romans received (see ch. 5.2.4).

## 6. Conclusion

In this chapter we have seen that the amount of *ager publicus* remaining in the hands of the state was considerable. Often the land was not used for colonization or virgane distribution until several decades after its confiscation; in some cases this period was as long as two hundred years. Rathbone's thesis that 'most land in Italy annexed by Republican Rome was distributed as private property' and that '*ager publicus* was essentially a transient category in which conquered and annexed land rested pending its transfer to private ownership' cannot be maintained. Moreover, not only pasture land, but arable land as well could remain public for a very long time. Especially after the Second Punic War much of the *ager publicus* was not distributed. However, the *ager publicus* which was left in state hands was spread unevenly over the Italian peninsula. Whereas most of the public land in central Italy – Latium, Campania, southern Etruria, and Sabinum – had been privatized at a relatively early date, this was not the case with the land in the more peripheral regions, such as Picenum, Samnium, and southern Italy. As we shall see, this has important implications for the role of the *ager publicus* in the economic and social developments of the second century.

The *ager publicus* which remained in state hands played an important role in the relation between Rome and its Italian allies. Many allies were allowed to continue working the lands they had previously owned, although it is unlikely

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<sup>290</sup> Tibiletti (1974, 91); Galsterer (2006, 296 n. 11).

that they were granted security of tenure on such lands. The Romans allowed their allies to work this land partly in order to keep them under control; as long as they obeyed the Romans, the allies could be relatively sure that they could keep their lands. However, as the second century progressed, the Romans experienced an increasing shortage of land, especially in central Italy. They were therefore forced to use the *ager publicus* they had confiscated decades and sometimes even centuries earlier, and this development threatened to have serious consequences for the interests of the allies.

### 3: The legal conditions of *ager publicus*

#### 1. Introduction

*Ager publicus* confiscated by the Romans could be administered in various ways. As we have seen, much was immediately assigned as private land. The Roman state had only limited authority over private land; *tributum* for example was levied on the basis of someone's private property it was declared in the census. Moreover, the state apparently could punish with loss of land those who failed to register in the census or evaded military service.<sup>291</sup> Overall, however, private land was totally under the control of its owner, who could do with it as he pleased.

In the preceding chapter we have seen that a large part of the confiscated land remained in the hands of the state as *ager publicus*. As long as ownership remained with the Roman state, this land was known as *ager publicus populi Romani*. Only the assembly of Roman citizens could act as its owner, and exercise the privileges of ownership, i.e. the right to alienate it or give it out in perpetual rent to an individual or community.<sup>292</sup> In practice, however, the actual control over *ager publicus* rested largely with the elite, since the influence of the poor in the assemblies was limited. Most initiatives for colonization were in fact taken by the Senate, and only ratified by the popular assembly.<sup>293</sup> However, even though the state owned the *ager publicus*, it often did not have as much control over it as an owner might be expected to have.

In this chapter I will discuss the various legal categories of *ager publicus* that existed in the Republican period. Management of *ager publicus* was not static; new legal categories of land could be created whenever this was necessary. The flexibility of Roman law in regard to public land is often overlooked by legal historians; the Roman juridical system is seen as systematic, with a certain number of categories of land into which all land should fit. Such reconstructions tend to neglect the ad hoc nature of many Roman laws, which were created as circumstances demanded.<sup>294</sup> The rigidity of conceptions about *ager publicus* is shown by the use of set terms for specific kinds of public land. Legal historians often discuss categories such as *ager quaestorius*, *ager censorius*, and *ager*

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<sup>291</sup> Liv. *Per.* 14.3; DH 8.81.3. D.49.16.4.10-2 mentions that 'in earlier times' people could be enslaved if they did not serve, and that those who did not register their sons were punished with loss of property and exile. D.10.3.20 mentions the destruction of property; Val. Max. 6.3.4 and Tit. Ulp. 11.11 the loss of property and enslavement, and Zonar. 7.19 enslavement. The *Lex Osca Tabulae Bantinae* l. 9-10 gives loss of property and flogging as punishment for not registering in the census. Liv. 24.18.8 gives only disenfranchisement as punishment for failing to serve.

<sup>292</sup> Bove (1960, 42).

<sup>293</sup> Laffi (1988); see Oakley (1997, 572).

<sup>294</sup> This flexibility is emphasized by De Martino (1956, 562); Frier (1983, 237-8); and Horvath (1994, 99). Capogrossi Colognesi (1988a, 641) emphasizes the problems that arise from neglecting developments in the concept of the *ager publicus* between the early and the late Republic.

*occupatorius* as if they existed during the whole Republican period, and the conditions applying to them were fixed and never changed. However, it must be noted that these terms actually do not appear at all in Republican sources, but only in the Agrimensores, dating to the Imperial period. It is likely that the Agrimensores applied these terms to lands with certain characteristics that they recognized to have existed under the Republic. However, it is possible that these categories were not yet so strictly defined in the Republican period, and that not all elements ascribed to them by the Agrimensores – and by many modern scholars – were valid under the Republic.<sup>295</sup> On the other hand, it seems possible to reconstruct the distinctive characteristics of the various types of land even for the Republican period, and we can see a clear difference between them already at this time. Therefore it appears justified to use terms such as *ager occupatorius* etc. also for this period, as long as we state clearly what we mean by this.

In this chapter I will demonstrate that the administration of *ager publicus* shows an increasing development of private rights of tenure during the Republic. In the early Republic there was only one category of public land, which was under the control of the state, but was open for occupation by Roman citizens. The state soon realized that some form of limitation of occupation was necessary, and it therefore introduced one or several *leges de modo agrorum*, limiting the amount of *ager publicus* one individual could take for himself. Much remains unclear with respect to the date(s) of the law(s), the limit set on the occupation of *ager publicus*, and the kinds of land involved.

Whereas the earliest form of occupation of land gave the possessors no official security of tenure over their lands, the economic developments of the Roman state made this way of possessing land increasingly unsatisfactory from the third century onwards. Producers welcomed greater opportunities to gain security of tenure on public land, which would allow them to invest with more confidence in land and thus cater for the growing market. Therefore in the third and second centuries various legal forms of possession were created that strengthened the hold of occupiers over their lands, but did not completely privatize the land to the holders. The privatization process reached its conclusion in the Gracchan period, which I will discuss in chapter 5.

## 2. *Ager occupatorius*

From the regal period onwards Rome conquered surrounding peoples and punished them with confiscations of land. In this way it acquired a large amount of land that became the property of the state.<sup>296</sup> In the regal and archaic period

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<sup>295</sup> Badian (1962, 213) and Botteri (1992, 52-4) maintain that there was no strict separation between the various legal categories of land, but this seems too pessimistic. Even if land could pass from one category to another quite easily, for example from *ager quaestorius* to *ager occupatorius*, as long as it rested in one category the conditions applying to it were clear enough.

<sup>296</sup> Land could also become *ager publicus* if its legal owner was not known. It was then called *ager vacuus* ('empty land') and could be occupied by anyone who wished to, who could then become

state ownership over such land was probably not very well established, as we have seen (ch. 2.1.1-2), but as the Roman state developed the idea of *ager publicus* was more strictly defined. This land was officially the property of the Roman state, but in practice it could be used by anyone – citizens, and, as we will see, Latins and Italians as well – who wanted to work it. It was held without a legal title, and the state could, at least in theory, take away the land from the occupier whenever it was needed. This arrangement was known as *occupatio*, and the land as *ager occupatorius*.<sup>297</sup>

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its official owner by *usucapio*. Since it was sometimes difficult to see the difference between *ager vacuus* and unused *ager publicus*, *ager vacuus* could also be considered public land and be treated as such by the state and the possessors of the land. De Neeve (1984, 7) thinks that after the Second Punic War there was much land of which the owner was unknown (e.g. because he had died and there was no heir) and that this was declared *ager publicus*. Crook (1976, 75) argues that this was the reason for much of the accumulation of land occurring in this period, since people could become the owners of such unused land by *usucapio*. Under a *Lex Cornelia* of 82 BC private land could be sold by the state when the previous owner was proscribed or had died in battle (presumably if there were no heirs): see Cic. *Rosc. Am.* 43.125-6.

There were other possibilities for the state to acquire *ager publicus*: Cic. *Off.* 1.10.33 and Val. Max. 7.3.4a record a case in which the jurist Labeo was asked to judge a land dispute between Nola and Naples, and decided that the land was to belong to the Roman state, in other words became *ager publicus*. A similar story is recorded of a dispute between Aricia and Ardea in the archaic period (see ch. 2 n. 60). Roman magistrates were called upon more often to set the boundaries of territories, and could then decide to make the disputed land public: CIL 12.2516 records a boundary stone with five sides, on four of which is stated *C. Caninius C. f. pr. urb. de sen. sent. poplic. ioudic.*, and on one side *privatum ad Tiberim usque ad aquam*. See also Liv. 41.27.3-4; CIL 12.636 and 663 for two other second-century cases of Roman judgement in land disputes, although no land was declared public on these occasions.

Front. *Strat.* 1.8.2 recounts how ‘when Hannibal had proved no match for Fabius either in character or in generalship, in order to smirch him with dishonour, he spared his lands, when he ravaged all others. To meet this assault, Fabius transferred the title to his property to the State, thus, by his loftiness of character, preventing his honour from falling under the suspicion of his fellow-citizens’. The state could apparently also receive land from citizens.

<sup>297</sup> Many scholars have argued that the term *ager occupatorius*, in the sense of land being available for occupation by all citizens, did not originate until the second century. Before that *ager occupatorius* was only used of land being taken from enemies, see Burdese (1952, 22). However, this land could be occupied by citizens as well, and it seems therefore possible to use this term for all undistributed, arable, state-owned land, which existed in the fourth and third centuries. Capogrossi Colognesi (1988a, 648) argues that *ager occupatorius* as a concept of land belonging to the Roman people did not develop until the conquest of Veii; the non-claimed public land existing before this time apparently remained the property of the kings or the *gentes*. This is possible, although we do not know much about legal instruments of landholding in the archaic period (see ch. 2.1.2); in the following discussion I will focus therefore on the period after the conquest of Veii.

*Ager occupatorius* is often equated with *ager arcifinius*, e.g. Burdese (1952, 17-8); Bignardi (1984, 65-8); Botteri (1992, 45-51); Hermon (2001, 134); Gargola (forthcoming). The Agrimensores explain that *ager arcifinius* or *arcifinalis* ‘has been given its name from the idea of driving away (*arcere*) the enemy’: Frontinus 2.20-1; see Hyginus (1) 82.13-6; Siculus Flaccus 104.28. Therefore *ager arcifinius* and *occupatorius* were essentially the same, *Commentum* 50.27-8 and 54.14-5; Siculus Flaccus 104.24-5. Some scholars see a difference between the two kinds of land; they think for example

### 2.1. *Ager occupatorius* before the *Lex Licinia*

Much remains unclear about the actual functioning of *ager occupatorius*, especially in the fourth and third centuries. In a much-quoted passage Appian writes:

As they subdued successive parts of Italy by war, the Romans confiscated a portion of the land and founded towns, or chose settlers from their own people to go to existing towns – this being the alternative they devised to garrisons. In the case of captured land which became theirs on each occasion, they distributed the cultivated area at once to settlers, or sold or leased it; but since they did not have time to allocate the very large quantity that was then lying uncultivated as a result of hostilities, they announced that this could for the moment be worked by anyone who wished at a rent of one tenth of the produce for arable land and one fifth for orchards. Rents were also set for those who pastured larger and smaller beasts.<sup>298</sup>

There are several intriguing points in this description. First of all, Appian mentions that a rent was due on the *ager occupatorius*. Many modern scholars have accepted this statement without question.<sup>299</sup> In fact, the statement is extremely puzzling. If a rent was asked for occupied land, this implies that an administration was needed of who had occupied land or, at least, of the amounts

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that *ager occupatorius* was usually demarcated by the individuals who possessed it, while *ager arcifinius* was not measured in any way, e.g. Castillo Pascual (1993, 149-50); Ducos (1999, 129). However, there is no evidence to sustain this. The Agrimensores use the terms as practically interchangeable and the differences, if any, seem not to have been important.

<sup>298</sup> App. BC 1.7: Ῥωμαῖοι τὴν Ἰταλίαν πολέμῳ κατὰ μέρος χειρούμενοι γῆς μέρος ἐλάμβανον καὶ πόλεις ἐνῴκιζον ἢ ἐς τὰς πρότερον οὐσας κληρούχους ἀπὸ σφῶν κατέλεγον. καὶ τὰδε μὲν ἀντὶ φρουρίων ἐπενόουν, τῆς δὲ γῆς τῆς δορικτῆτος σφίσιν ἐκάστοτε γιγνομένης τὴν μὲν ἐξειγρασμένην αὐτίκα τοῖς οἰκιστέοις ἐπιδίηρουν ἢ ἐπίπρασκον ἢ ἐξεμίσθουν, τὴν δ' ἄργον ἐκ τοῦ πολέμου τότε οὖσαν, ἢ δὴ καὶ μάλιστα ἐπλήθυνεν, οὐκ ἄγοντές πω σχολὴν διαλαθεῖν ἐπεκήρυττον ἐν τοσσοδε τοῖς ἐθέλουσιν ἐκπνεῖν ἐπὶ τέλει τῶν ἐτησίων καρπῶν, δεκάτη μὲν τῶν σπειρομένων, πέμπτη δὲ τῶν φυτευομένων. ὥριστο δὲ καὶ τοῖς προβατεύουσι τέλη μειζόνων τε καὶ ἐλαττόνων ζώων.

<sup>299</sup> Often a distinction between *ager occupatorius* and other forms of public land is not made. Many scholars therefore accept the demand of a rent: see Niebuhr (1834, 17-8); Tibiletti (1948, 182-9); Frank (1962, 93); Earl (1963, 35); Dilke (1971, 88); Hermon (1976, 180 and 1989, 278); Bernstein (1978, 123); Salmon (1982, 91); Compatangelo (1989, 233); Gabba (1989a, 202 and 1992, 400); Moatti (1992, 62); Lintott (1994, 54); Nicolet (1994, 622); Vivenza (1994, 31); Koba (1999, 270); Uggeri (2001, 34); Malmendier (2002, 35); Williamson (2005, 172); Gagliardi (2006, 238); Heftner (2006, 36); Konrad (2006, 167); Linke (2006, 10). Duncan-Jones (1976, 7) states that *ager occupatorius* was usually worked by tenants of the state, apparently meaning that a rent was required. Gagé (1979, 840) supposes rents on public land were already paid in the fifth century BC, but there is no evidence for this. Torelli (1999b, 8) believes that the burden of paying *vectigalia* was an important factor in the economic decline of the small farmers in the second century. On the other hand, Burdese (1952, 64-6) thinks a rent unlikely, at least for the early Republic. The amounts stated by Appian are often accepted as applying to all *ager publicus*, e.g. by Niebuhr (1834, 17), Kuziščin (1984, 17), and Gabba (1992, 401), but this is problematic: see below (ch. 3.3.3).

of produce harvested from this land. However, one of the characteristics of *ager occupatorius* was that it was not measured in any way; Appian describes how the state 'did not have the time' to allot it. Usually the land was not measured until it was used by the state for colonies or viritane distributions or as *ager quaestorius* or *censorius*.<sup>300</sup>

On the Ager Campanus, for example, no *forma*, showing the boundaries of the *ager publicus*, was set up until 165,<sup>301</sup> and this suggests that the *ager occupatorius* was not measured in any way until it was used for some purpose by the state. The only demarcation consisted of markers set up by the individual occupiers, as Siculus Flaccus explains for a later period:

There is no bronze record, no map of these lands which could provide any officially recognized proof for landholders, since each of them acquired a quantity of land not by virtue of any survey, but simply what he cultivated, or occupied in the hope of cultivating. Indeed some privately made maps of their holdings, which are not binding on them in respect of their neighbours, or on their neighbours in respect of them, since the matter is voluntary.<sup>302</sup>

This of course made it impossible to check in a written record who exactly held which land.

Appian states that the rent was paid in kind, which means that the land was not necessarily measured. Still, it would have been necessary to keep track of how much each farmer produced, which would have required administration by the state. The administration of a rent levied from the *ager occupatorius* would have involved a huge amount of work for the state, and it would probably have been less work to distribute the land than to keep track of its possessors. Even if rents were collected by the *publicani*, the state would have needed some sort of administration of who possessed which land, in order to make it possible for the *publicani* to do their job properly. However, *publicani* are not mentioned in the sources until the Second Punic War (see ch. 3.3.3), and there was therefore no

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<sup>300</sup> Bozza (1939, 33), who even argues that until the Gracchan period no *vectigal* was asked because the land remained unmeasured; Burdese (1952, 65); De Martino (1956, 564); Chouquer et al. (1987, 60-2); Compatangelo (1989, 233); Gabba (1989a, 198); Volpe (1990, 214); Vallat (1995, 52); Crawford (1996, 180); Ducos (1999, 126). Battista Sanguineto (2000, 577) argues that the measurement of land was necessary for the development of large *villae*, but this does not make sense. Franciosi (2002b, 234), Van Dooren (2008, 124, 198-9), and Bispham (2008, 71) argue that *ager publicus* was usually measured immediately after its conquest, because otherwise the collection of rent would have been impossible. However, if the state had no time to distribute the land, as stated by Appian, it would have had no time to measure it either. Bernstein (1969, 35) thinks the censors had a list of *ager publicus*. This is possible, but it is unlikely that they would have known exactly which land was public, as is clear from the events of the Gracchan period.

<sup>301</sup> Stephenson (1891, 26, 42); Bozza (1939, 33); Compatangelo (1989, 233); Gabba (1989a, 199). Contra: Van Dooren (2008, 205), who assumes the Ager Campanus had been centuriated earlier.

<sup>302</sup> Siculus Flaccus 104.29-33. See Frontinus 2.18-22; Agennius Urbicus 28.17-20.



institution that could arrange the collection of such rents in earlier periods. Collection by local magistrates is the only possible solution, but we hear nothing of this. Therefore it is likely that a record of who possessed *ager publicus* did not exist, or at least was not kept up to date. The Agrimensores tell us that in the case of *ager quaestorius*, the state was unable to keep track of this land, even though in theory it was supposed to be managed more carefully than *ager occupatorius*. Because of difficulties in its administration 'it happens that they revert virtually to the category of occupied land'.<sup>303</sup> Apparently, one characteristic of *ager occupatorius* was that it was usually not administered carefully. If *ager occupatorius* was not administered, it must have been impossible to collect rents.<sup>304</sup>

Many therefore believe that *vectigalia* may have been due in theory, but that in practice they were never collected.<sup>305</sup> It is to be expected that it was relatively easy for the rich to avoid paying *vectigalia* and that those due by the poor were never collected, since it was not worth the effort to collect small amounts of rent. Especially after the Second Punic War, there was so much *ager publicus* that the state did not have the ability or motivation to keep track of *ager occupatorius*; there was simply too much to control and no need for it to be used immediately.<sup>306</sup> It may be that the situation was less complicated and therefore

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<sup>303</sup> Siculus Flaccus 118.33-4: *Paene iam itaque fit, ut <ad> occupatoria<m> condicione<m> recidant*. The land reverted to *ager occupatorius* only in the sense that its boundaries became unclear, causing chaos in its administration; the legal status of the *ager quaestorius* did not change.

<sup>304</sup> Some argue that the payment of a rent would give someone a stronger claim on the land than someone who had used it without payment, e.g. Göhler (1939, 92); Tibiletti (1948, 183-4); Nicolet (1967, 99). This is thought to have been especially the case if there was a proclamation which allowed people secure possession of the land: see Zancan (1934, 11); Bozza (1939, 11-13). They argue that in theory the state could have reclaimed the occupied land whenever it was needed, but this would have been much more difficult if someone had paid a rent on it. Such land would legally have had the same status as land which had been rented out by contract (*locatio*). Even if the rent on *ager occupatorius* was only meant to acknowledge that the land was public and that the state could take it away, the long-term payment of a rent would have made it more difficult to take it away. However, although it indeed proved difficult to take *ager occupatorius* away from its possessors, this was not because they claimed that they had paid rents, but only because they had occupied it for a very long time. There is no reference at all to rents, which had apparently not been paid. Mouritsen (1998, 148) argues that rents, if they were imposed on allies working *ager publicus* (see ch. 2.5.2), would not easily have been forgotten by the Roman state, but it is unlikely that the state would have been able to administer rents imposed on allies better than those on citizens.

<sup>305</sup> Stephenson (1891, 33); Last (1932, 18); Kaser (1942, 28-9); Tibiletti (1948, 183 and 1955, 18); Scullard (1959, 21); Toynbee (1965b, 244); Boren (1968, 52); Brunt (1971, 283); Hopkins (1978, 60); Stockton (1979, 214-5); Burdese (1985, 46); Gargola (1995, 140 and forthcoming); Laffi (1998, 115); Rathbone (2003, 153); Van Dooren (2008, 190). Stockton (1979, 215) argues that only the rents of the rich were regularly collected. Rosenstein (2004, 78) argues that the rent on *ager occupatorius* as mentioned by Appian was high enough to be worth collecting, and was therefore regularly collected. However, in view of the practical difficulties referred to, this seems unlikely.

<sup>306</sup> Galsterer (1976, 175).

easier to control in earlier centuries, when the state owned less *ager occupatorius*, but the sources do not mention the collection of rents in earlier periods either.

Nevertheless, Appian's statement concerning the payment of a rent must be based on something. One possible solution is that the state at some point planned to demand a rent on the land, but was unable to execute this plan. It is very possible that the state wished to lease out its public land against the payment of a rent, like it did with the *ager censorius*. In this context we must also consider the problems surrounding the dating of the developments described by Appian. Some believe that Appian's account pertains specifically to the early second century, since the situation he describes – a large amount of available public land, accumulation of this land by the rich, an increase in slave-staffed estates, and expulsion of the poor – fits the second century much better than any earlier period. According to many scholars the law limiting possession of *ager publicus* to 500 *iugera* must therefore be dated to the early second century as well (see ch. 3.2.2). It is likely, moreover, that the first occasion of leasing out land as *ager censorius* is datable to the Second Punic War, since this occurs in the sources for the first time in 209 BC (see ch. 3.3.3). It may well be that when the Romans acquired large tracts of *ager publicus* after this war, they wanted all this land to become *ager censorius* as well, but since there was so much of it, and its administration so inadequate, this idea came to nothing. However, if the state proved unable actually to collect such a rent, this does not mean that it did not have the intention to impose it. The rent mentioned by Appian may therefore refer to an innovation attempted by the Roman state which in the end came to nothing.

In Appian's account the rent is mentioned before the law limiting possession of *ager occupatorius*. Even if this law was – at least in Appian's view – the *Lex Licinia* of 367 BC, as I believe, it is possible that Appian transferred a second-century attempt to impose a rent on all *ager occupatorius* back to the early Republic. It may be that Appian was not aware that the demand for a rent had not been attempted until the second century, and that he supposed this to have been a general characteristic element of *ager occupatorius* at all times. In his own time, the second century AD, all state-owned land was rented out, and he may have thought this had been the case with Republican public land as well.

Something similar may have been the case with the proclamation in which the state announced that *ager publicus* was open for occupation, apparently in some way granting permission to occupy the land. Appian mentions 'the original proclamation' as if it was some sort of public announcement which was issued at a specific moment,<sup>307</sup> but this moment is not indicated. Some scholars assume that this proclamation was issued in the second century as well, just as the law limiting possession of the land. Moreover, they think this proclamation gave the possessors security of tenure over the land. In that case it would have been

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<sup>307</sup> App. BC 1.18: τὸ κήρυγμα.

extremely difficult for the state to reclaim the land.<sup>308</sup> This is a strange idea, however, which raises more questions than it answers. What, for instance, happened to *ager publicus* which had been occupied before the proclamation was issued? Did possession of that land remain insecure?

There is no evidence for the passage of such a specific proclamation at any one time, nor for any difference in the level of security of holdings on different tracts of *ager occupatorius*. In fact, there is no evidence at all suggesting that security of tenure on occupied *ager occupatorius* ever existed. Appian's account says that the land was free for occupation 'for the moment' (ἐπὶ τέλει), suggesting that it was to be used for assignation later. This means that the land was not going to be used for any purpose immediately, but not that the land could not be taken away in the future. In practice, it turned out to be difficult to reclaim the *ager occupatorius* when the Gracchi finally attempted to do so, but this was not because people claimed that they had been awarded security of possession. Appian himself says only: 'it seemed neither easy nor altogether fair to take away from so many men so much property that they had held for so long, including their own trees and buildings and equipment'.<sup>309</sup> It seems more likely that Appian does not refer to an official announcement issued at a specific moment, but that he merely describes the conditions usually applying to *ager publicus*. It may be that the state issued a proclamation that allowed free occupation of public land each time land was confiscated and not distributed, but this would not have given the occupiers any kind of security of possession. There was no such thing as a secure title on the *ager occupatorius* as a result of a proclamation of any kind.

*Occupatio* lasted only for as long as the state did not need the land, and this means that the possessor of *ager publicus* had no legal title to his land, nor any way of obtaining security of tenure. Possession of *ager occupatorius* was always precarious.<sup>310</sup> The possessor of *ager occupatorius* could only take the land and

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<sup>308</sup> Bringmann (1985, 12 and 1986, 58) dates the granting of permission to between 180 and 167, followed by Flach (1994, 288). Moatti (1992, 72) takes the proclamation very literally; he assumes that every time land was conquered a proclamation was made announcing the land free for occupation; then everybody who was interested could make his interest known, and that the state installed the individuals on the *ager publicus*. Although this procedure may have been used for virginate distributions (see ch. 2.2.11), it is far too elaborate for *ager publicus*. Bozza (1939, 79) also thinks this edict must be dated to a specific period, although she does not indicate the date, apart from saying that it must have been issued later than the fourth century. Cf. Kaser (1942, 28), who also describes a rather elaborate involvement by the state.

<sup>309</sup> App. BC 1.8: ὡς οὐδὲ ῥάδιον ὃν οὐδὲ πάντῃ δίκαιον ἄνδρας τοσούδε ἐκ τοσούδε χρόνου κτήσιν τοσήνδε ἀφελέσθαι φυτῶν τε ἰδίων καὶ οἰκοδομημάτων καὶ κατασκευῆς.

<sup>310</sup> Stephenson (1891, 8); Kaser (1956, 240); Rathbone (2003, 143). Koba (1999, 273) argues that *possessiones* of *ager publicus* were not *possessiones* in the legal sense, because they were only precarious; however, the precarious nature of the tenure did not mean that some form of protection was not possible, and this argument therefore makes no sense. Frank (1979, 48) states that the censors could take back the land if it was not worked efficiently, but it is unlikely that the censors had this kind of power already in the archaic period.

work it as it was; Festus says: '*Possessiones* are lands (...) which are held not by *mancipatio*, but by use, and which were possessed by everyone in whatever way he occupied them.'<sup>311</sup> The possessor had no right to any protection in case of disasters, as was the case with land that was leased out: 'The following is the practice with regard to alluvial land, if this dispute is conducted in *agri occupatorii*. No one has any legal redress in respect of whatever the force of the water has removed.'<sup>312</sup> In the case of private land it was possible for a possessor to become the owner by *usucapio*: if someone used the land for an unbroken period of two years, he became the full owner of the land.<sup>313</sup> However, *usucapio* was only possible with *res nullius* or *res derelictae*, that is, objects deliberately given up by their owner or having no owner at all. *Ager publicus* could never become someone's private property by *usucapio*, since it belonged to the state, even if the state did not use it for a long time: 'Legal experts (...) argue that in no circumstances can that land that has become the land of the Roman people be acquired by *usucapio* by any mortal man.'<sup>314</sup>

Some have claimed that there was such a concept as 'illegal occupation', and use this phrase especially to refer to the occupation of large tracts of land and the establishment of large estates on it.<sup>315</sup> However, all occupation was legal, as long as the land was not acquired 'by fraud or force', and even then the possessor was protected in some cases. There were of course illegal acts one could perform while occupying *ager publicus*, for example claiming it to be private property and refusing to give it back when demanded by the state, or occupying the possessions of others. These acts were illegal and punishable by law, but in itself possession of public land unused by the state was not illegal. As long as the state

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<sup>311</sup> Festus 277 L: *Possessiones appellabantur agri (...) qui[a] non mancipatione, sed usu tenebantur, et ut quisque occupaverat, possidebat*. See Zancan (1934, 7); Bozza (1939, 44, 74); Kaser (1942, 3 and 1956, 240); Bignardi (1984, 70-1); Moatti (1993, 60); Ducos (1999, 127).

<sup>312</sup> *Commentum* 64.25-7. See also Hyginus (1) 90.18-20. Zancan (1931-2, 85 and 1934, 10-1) maintains that occupation of *ager publicus* was not precarious, but what he calls *privata possessio*, a form of possession with extensive rights, because it depended on the concession of the state. However, as we have seen, there was no proclamation or other concession by the state which could have given someone such rights on *ager occupatorius*.

<sup>313</sup> Gaius 2.42; *Inst.* 2.6.pr; Cic. *Top.* 4.23, *Off.* 1.7.21. Cf. the joke in Liv. 22.44.6: when Hannibal had been in Italy for two years it was said *quod Hannibal iam vel[ut] usu cepisset Italiam*. The joke may not be contemporary, however.

<sup>314</sup> Agennius Urbicus 40.1-2. See Hyginus (1) 96.4-5; D.41.3.9; Sen. *Ep. Mor.* 88.12. See Tibiletti (1948, 176); Stockton (1979, 207); Moatti (1993, 62); Gargola (1995, 32); Rathbone (2003, 140). Contra: Galsterer (1992, 423).

<sup>315</sup> Zancan (1931-2, 91); Burdese (1952, 29); Bove (1960, 4); Verbrugghe (1973, 33); Gabba (1989a, 202); Dyson (1992, 50); Nicolet (1994, 618); Mitchell (1996, 274); Levi (1997, 469); Manzo (2002a, 145); Sacchi (2006, 168); Van Dooren (2008, 200). Moatti (1993, 66) maintains there is a difference between legal and illegal occupation, but does not explain it. Frederiksen (1981, 267) seems to call all *occupatio* of *ager publicus* illegal, as if there was no possibility of legally occupying *ager publicus*. Contra: Bringmann (1985, 14); Rathbone (2003, 143).

did not demand the land back, one could possess *ager publicus* on a perfectly legal basis.

## 2.2. The *Lex Licinia de modo agrorum*

As the Roman state acquired more *ager publicus*, the occupation of this land became increasingly problematic: Livy reports how in the early Republic it had been mainly occupied by the rich, causing problems to the poor who had no access to land. Although his work is heavily influenced by later (especially Gracchan) accounts, we must assume that some problems of occupation of *ager publicus* appeared in the early Republic as well (ch. 2.1.2). The problems arising over the occupation of *ager publicus* led the Roman state to issue laws limiting the amount of land one person could possess, known as *leges de modo agrorum*. The first of these is usually dated to 367 and was one of the *Leges Liciniae (Sextiae)*; we do not know of any earlier laws limiting the possession of *ager publicus*.<sup>316</sup>

The Agrimensores say with reference to *ager occupatorius*: 'Each person occupied not only as much land as he could currently cultivate, but coveted as much as he had the hope of cultivating.'<sup>317</sup> This has led many scholars to assume that there was some sort of development in the rights to the possession of land: at first people could only keep the land they could cultivate; later also the land they 'hoped to cultivate', this being of course equivalent to as much as they wanted. They assume that after these informal regulations the *Lex Licinia* was the first to lay down a specific amount of land that could be occupied.<sup>318</sup> However, such a chronological development is unlikely and stems from a desire to reconcile the information found in the different sources. There are in fact no references to any limit on the amount of land that could be occupied before the *Lex Licinia*. In the sources concerning the early Republic, there are references only to people occupying as much as they wanted, but nothing about there being any legal limit on the land that could be worked (ch. 2.2.2). The Agrimensores do not indicate that it was first allowed to hold only as much land as could be worked and later as much as one hoped to work; they state only that people occupied more than they could work. We should therefore not consider this short statement to be a summary of rules governing the *ager occupatorius* before the *Lex Licinia*.

The first law about which we have information is the *Lex Licinia de modo agrorum*, which according to the ancient sources was issued in 367 BC. This law contained regulations about the amount of land that could be used;<sup>319</sup> the sources

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<sup>316</sup> Burdese (1952, 50) and Bignardi (1984, 77) say the *Lex Licinia* was based on an older law, but do not say when this was issued.

<sup>317</sup> *Commentum* 50.28-30: *Quia non solum tantum occupabat unus quisque, quantum colere praesenti tempore poterat, sed quantum in spe colendi habuerat ambiebat*. See also Siculus Flaccus 104.30-1.

<sup>318</sup> Tibiletti (1948, 173-4, 222-3 and 1949, 26-7); Hermon (1994a, 496); Dover (2001, 448). See discussion in Mantovani (1997), who concludes there was no limit on the land *in spem colendi*.

<sup>319</sup> Some have argued that the *Lex Licinia* also contained other regulations, for example that it allowed the plebeians access to *ager publicus*: see Stephenson (1891, 10); Tibiletti (1948, 216 and

are virtually united in stating that the maximum amount of land to be occupied by one individual was 500 *iugera* (125 hectares). Livy writes: 'The second (law), about the occupation of land, prohibited anyone from possessing more than five hundred *iugera*', and the other sources agree with him.<sup>320</sup>

Appian's version of the events is intriguing, because it gives a detailed account of the developments leading up to the law:

The rich gained possession of most of the undistributed land and after a while were confident that no one would take it back from them. They used persuasion or force to buy or seize property which adjoined their own, or any smallholdings belonging to poor men, and came to operate great ranches instead of single farms. They employed slave hands and shepherds on these estates to avoid having free men dragged off the land to serve in the army, and they derived great profit from this form of ownership too, as the slaves had many children and no liability to military service and their number increased freely. For these reasons the powerful were becoming extremely rich, and the number of slaves in the country was reaching large proportions,

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1949, 28, but cf. 1948, 174); Nicolet (1977, 129); Burdese (1985, 53); Gabba (1992, 408); Moatti (1993, 64); Carsana (2001, 271). However, the plebeians probably always had the right to use the *ager publicus*. It was only because the land was occupied by the rich (the patricians) that they were in practice excluded from it, a situation which the maximum was supposed to remedy (see ch. 2.1.1-2): see Niebuhr (1832, 21); Capogrossi Colognesi (1979, 319; 1994, 93); Drummond (1989b, 238); Doveve (2001, 450); Manzo (2001, 44).

<sup>320</sup> Liv. 6.35.5: *alteram de modo agrorum, ne quis plus quingenta iugera agri possideret*.

Val. Max. 8.6.3: *Licinius Stolo (...) cum lege sanxisset ne quis amplius quingenta agri iugera possideret*. *Vir. ill.* 20: *Idem lege cavuit, ne cui plus quingenta iugera agri habere liceret* (the word *quingenta* is not actually in the manuscripts; some have *quingenta* (50), others *centum* (100), others a lacuna). See Forsén (1991, 69-73).

Var. R. 1.2.9: *unum, cuius maiores de modo agri legem tulerunt (nam Stolonis illa Lex, quae vetat plus D iugera habere civem R.*

Plin. HN 18.4.17: *quippe etiam lege Stolonis Licini incluso modo quingentorum iugerum, et ipso sua lege damnato cum substituta filii persona amplius possideret*.

Tiro ap. Gell. NA 6.3.40: *plus quingenta iugera habere velle, quod plebiscito Stolonis prohibitum fuit*.

Cato ap. Gell. NA 6.3.37: *si quis plus quingenta iugera habere voluerit...*

Gell. 20.1.23: *Quid salubrius visum est rogatione illa Stolonis iugerum de numero praefinito?*

Vell. 2.6.3: *Vetabat quemquam civem plus quingentis iugeribus habere, quod aliquando lege Licina cautum erat*.

Plu. Cam. 39.5: 'It was a most vexatious law for the patrician, for it prohibited anyone from owning more than five hundred *iugera* of land.' (ἐκέλευσε δ' οὗτος μηδένα πλείονων πεντακοσίων πλείονα χώραν κεκτηῖσθαι).

Colum. R. 1.3.11: *criminosum tamen senatori fuit supra quinquaginta iugera possedissee*. The manuscript reading *quinquaginta* (50) is most likely an error for *quingenta* (500).

Siculus Flaccus 102.31-33 says that Gaius Gracchus 'passed a law to prevent anyone in Italy from possessing more than two hundred *iugera*' (*legem tulit, nequis in Italia amplius quam ducenta iugera possideret*), which would be strange, since the Gracchi apparently repeated the earlier law. But, as Campbell (2000, 369) points out, Flaccus may have confused the size of the allotments in Gaius' colony Iunonia with the maximum size mentioned in the Gracchan land law.

while the Italian people were suffering from depopulation and a shortage of men, worn down as they were by poverty and taxes and military service. And if they had any respite from these tribulations, they had no employment, because the land was owned by the rich who used slave farm workers instead of free men.

Under these circumstances the Roman people became concerned that they might no longer have a ready supply of allies from Italy, and that their supremacy might be at risk from such large numbers of slaves. They did not consider reform, as it seemed neither easy nor altogether fair to take away from so many men so much property that they had held for so long, including their own trees and buildings and equipment, and eventually they reluctantly decided, on the proposal of the tribunes, that no one was to hold (ἔχειν) more than 500 *iugera* of this land, nor pasture on it more than 100 larger or 500 smaller beasts. In addition it was stipulated that a fixed number of free men should be employed, who would watch and report on what was being done.<sup>321</sup>

His account is echoed by that of Plutarch, who writes:

Of the territory which the Romans won in war from their neighbours, a part they sold, and a part they made common land, and assigned it for occupation to the poor and indigent among the citizens, on payment of a small rent into the public treasury. And when the rich began to offer larger rents and drove out the poor, a law was enacted forbidding the holding (ἔχειν) by one person of more than five hundred acres of land. For a short time this enactment gave a check to the rapacity of the rich, and was of assistance to the poor, who remained in their places on the land which they had rented and occupied the

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<sup>321</sup> App. BC 1.7-8: οἱ γὰρ πλούσιοι τῆσδε τῆς ἀνευμήτου γῆς τὴν πολλὴν καταλαβόντες καὶ χρόνῳ θαρροῦντες οὐ τίνα σφᾶς ἔτι ἀφαιρήσεσθαι τὰ τε ἀγχοῦ σφίσιν ὅσα τε ἦν ἀλλὰ βραχέα πενήτων, τὰ μὲν ὠνούμενοι πειτοῖ, τὰ δὲ βίᾳ λαμβάνοντες πεδία μακρὰ ἀντὶ χωρίων ἐγεώργουν, ὠνητοῖς ἐς αὐτὰ γεωργοῖς καὶ ποιμέσι χρώμενοι τοῦ μὴ τοὺς ἐλευθέρους ἐς τὰς στρατείας ἀπὸ τῆς γεωργίας περισπᾶν, φερούσης ἅμα καὶ τῆσδε κτήσεως αὐτοῖς πολὺ κέρδος ἐκ πολυπαιδίας θεραπόντων ἀκινδύνως αὐξομένων διὰ τὰς ἀστρατείας. ἀπὸ δὲ τούτων οἱ μὲν δυνατοὶ πάμπαν ἐπλούτουν, καὶ τὸ τῶν θεραπόντων γένος ἀνὰ τὴν χώραν ἐπλήθυε, τοὺς δ' Ἰταλιώτας ὀλιγότες καὶ δυσανδρία κατελάμβανε, τρυχομένους πενία τε καὶ ἐσφοραῖς καὶ στρατείαις. εἰ δὲ καὶ σχολάσειαν ἀπὸ τούτων, ἐπὶ ἀργίας διετίθεντο, τῆς γῆς ὑπὸ τῶν πλουσίων ἐχομένης καὶ γεωργοῖς χρωμένων θεραπούσιν ἀντὶ ἐλευθέρων. Ἐφ' οἷς ὁ δῆμος ἐδυσφόρει μὲν ὥς οὔτε συμμάχων ἐξ Ἰταλίας ἔτι εὐπορήσων οὔτε τῆς ἡγεμονίας οἱ γενησομένης ἀκινδύνου διὰ πλῆθος τοσόνδε θεραπόντων· διόρθωσιν δ' οὐκ ἐτινοοῦντες, ὥς οὐδὲ ῥάδιον ὄν οὐδὲ πάντῃ δίκαιον ἄνδρας τοσοῦσδε ἐκ τοσοῦδε χρόνου κτήσιν τοσὴνδε ἀφελέσθαι φυτῶν τε ἰδίων καὶ οἰκοδομημάτων καὶ κατασκευῆς, μόλις μοτὲ τῶν δημάρχων εἰσηγουμένων ἔκριναν μηδένα ἔχειν τῆσδε τῆς γῆς πλέθρα πεντακοσίων πλείονα μηδὲ προβατεύειν ἑκατὸν πλείω τὰ μείζονα καὶ πεντακοσίων τὰ ἐλάσσονα. καὶ ἐς ταῦτα δ' αὐτοῖς ἀριθμὸν ἐλευθέρων ἔχειν ἐπέταξαν, οἳ τὰ γιγνόμενα φυλάξιν τε καὶ μηνύσειν ἔμελλον.

allotment which each had held from the outset. But later on the neighbouring rich men, by means of fictitious personages, transferred these rentals to themselves, and finally held most of the land openly in their own names. Then the poor, who had been ejected from their land, no longer showed themselves eager for military service, and neglected the bringing up of children, so that soon all Italy was conscious of a dearth of freemen, and was filled with gangs of foreign slaves, by whose aid the rich cultivated their estates, from which they had driven away the free citizens.<sup>322</sup>

Although neither account dates the law specifically, it is often assumed that both refer to the *Lex Licinia* of 367.<sup>323</sup>

However, this interpretation is questioned by many scholars. Discussion about the *Lex Licinia* has mainly focused on two points: the amount of 500 *iugera*, which is often considered to have been unrealistic for the fourth century BC, and the nature of the land involved in the law: did it limit the possession of *ager publicus*, *ager privatus*, or private and public in general?

Niese was the first to question the amount of 500 *iugera* mentioned in the sources. He argued that this amount was unrealistic for the fourth century: at this time there simply was not enough *ager publicus* to allow every rich Roman to occupy 500 *iugera* of arable land.<sup>324</sup> Those who believe that the stipulation about the animals mentioned by Appian also belongs to the fourth century have even more problems with the date of the law. As Tibiletti calculated, this number of animals would require 1,800 *iugera* of land. Of course, animals were also grazed on the common pasture lands, so that not every individual had to occupy 1,800 *iugera* of his own. However, if every Roman owned 600 animals, each would need 1,800 *iugera* of public pasture land, an amount of *ager publicus* which Rome at this time did not possess. It has been calculated that the *ager Romanus* measured 1,900 km<sup>2</sup> after the conquest of Veii, of which about 150 km<sup>2</sup> was not suitable for occupation, leaving 700,000 *iugera*.<sup>325</sup> Of this much was private land; the remaining *ager publicus* may have just been sufficient to grant 300 Senators

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<sup>322</sup> Plu. *TG* 8.1-4: 'Ρωμαῖοι τῆς τῶν ἀστυγειτόνων χώρας ὅσῃν ἀπετέμοντο πολέμῳ, τὴν μὲν ἐπιπρασκον, τὴν δὲ ποιούμενοι δημοσίαν ἐδίδοσαν νέμεσθαι τοῖς ἀκτήμοσι καὶ ἀπόροις τῶν πολιτῶν, ἀποφορὰν οὐ πολλὴν εἰς τὸ δημόσιον τελοῦσιν. ἀρξαμένων δὲ τῶν πλουσίων ὑπερβάλλειν τὰς ἀποφορὰς καὶ τοὺς πένητας ἐξελαυνόντων, ἐγράφη νόμος οὐκ ἔων πλεῖθρα γῆς ἔχειν πλείονα τῶν πεντακοσίων. καὶ βραχὺν μὲν χρόνον ἐπέσχε τὴν πλεονεξίαν τὸ γράμμα τοῦτο, καὶ τοῖς πένησιν ἐβοήθησε κατὰ χώραν μένουσιν ἐπὶ τῶν μεμισθωμένων καὶ νεμομένοις ἦν ἕκαστος ἐξ ἀρχῆς εἶχε μοῖραν. ὕστερον δὲ τῶν γειτνιώντων πλουσίων ὑποβλήτοις προσώποις μεταφερόντων τὰς μισθώσεις εἰς ἑαυτοὺς, τέλος δὲ φανερώς ἤδη δι' ἑαυτῶν τὰ πλεῖστα κατεχόντων, ἐξωσθέντες οἱ πένητες οὔτε ταῖς στρατείαις ἔτι προθύμους παρείχον ἑαυτοὺς, ἡμέλουν τε παίδων ἀνατροφῆς, ὥς ταχὺ τὴν Ἰταλίαν ἄπασαν ὀλιγανδρίας ἐλευθέρων αἰσθέσθαι, δεσποτηρίων δὲ βαρβαρικῶν ἐμπεπλῆσθαι, δι' ὧν ἐγεώργουν οἱ πλούσιοι τὰ χωρία, τοὺς πολίτας ἐξελάσαντες.

<sup>323</sup> E.g. in the Loeb edition of White (1913, 17); see Lomas (1996, 69). Göhler (1939, 89-92) thinks that Appian and Plutarch each refer to a different law.

<sup>324</sup> Niese (1888, 416), followed by Beloch (1926, 344).

<sup>325</sup> Beloch (1926, 620).



500 *iugera* of public land each, but not to provide land for their animals as well. Even if there was enough land for each senator to occupy 500 *iugera*, it is unlikely that Senators would have been rich enough to work 500 *iugera* at this time. Working so much land would require a large amount of capital in the form of slaves and equipment, and the Roman state had not conquered large territories from which money and slaves could be brought to Rome; besides, the market was not large enough to sell the products of such large estates.<sup>326</sup>

Some scholars have tried to overcome these objections by suggesting that the law of 367 specified certain limits to the use of land, but that the amount of 500 *iugera* was fixed at some later time. The law of 367 could have been adjusted over time to the amount of public land held by Rome. When the amount of 500 *iugera* was introduced is, again, much debated; some date the limit of 500 *iugera* to about 300,<sup>327</sup> others to the late third century,<sup>328</sup> while the period most commonly accepted is the early second century, some time before 167.<sup>329</sup> Some argue for an even later date, around 145,<sup>330</sup> or even 133 BC.<sup>331</sup>

The idea that the limit of 500 *iugera* was set only in the second century is inspired by the account of Appian. As we have seen, the situation he describes would at first sight seem to fit better the second century than the fourth. After the

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<sup>326</sup> Tibiletti (1949, 6-14 and 1950, 247) calculates that in modern Lazio 500 *iugera* would feed 27-8 large animals and 132 small ones, and therefore 500 small and 100 large animals would need 1,850 *iugera*; he also shows that the number of animals to be fed depends greatly on soil quality (from 200 *iugera* for 100 large animals on good soil to 4,000 *iugera* on poor soil, and between 400 and 2,000 *iugera* for 500 small animals). See also Stockton (1979, 47, 209-11); Rossi (1980, 51); Burdese (1985, 52); Bringmann (1986, 52); Labruna (1986, 100-5); Forsén (1991, 41-3); Lintott (1992, 37); Lomas (1996, 54); Schubert (1996, 119). Skydsgaard (1974, 16) argues that since summer pastures were not private, the law does not limit the possession of pasture lands; however, there had to be sufficient pastures under the control of the Romans to accommodate the animals owned by them.

<sup>327</sup> Rathbone (2003, 148-9).

<sup>328</sup> Scalais (1930-2, 225); Bozza (1939, 173-4); Valvo (1977, 209); Frank (1979, 48-9); Stockton (1979, 47); El Bouzidi (1997, 144). Some of these, e.g. Scalais, Valvo, and Frank, connect the limit to Flaminius, the initiator of the distribution of the Ager Gallicus in 232.

<sup>329</sup> Niese (1888, 416-22); Grenier (1905, 316); Beloch (1926, 344); Göhler (1939, 96); Tibiletti (1948, 223; 1950, 263; 1974, 20-1) (Forsén (1991, 24) thinks Tibiletti says this limit was set only at the time of the Gracchi, but this is not what he says); Gabba (1956, 20; 1977, 275; 1979b, 39; 1985b, 182; 1989a, 203; 1992, 401); Toynbee (1965b, 556); Nicolet (1967, 121 and 1977, 129-30); Boren (1968, 52); Frederiksen (1970-1, 332); Sirago (1971, 72); Badian (1972a, 44); Galsterer (1976, 172); Hermon (1976, 181 and 1994a, 497); Stockton (1979, 46-8); Rossi (1980, 51); Bringmann (1985, 11 and 1986, 53); Labruna (1986, 103); Oehme (1988, 20); Flach (1990, 32-4 and 1994, 288); Forsén (1991, 80); Bleicken (1992, 64); Lintott (1992, 37 and 1994, 55); Kolendo (1993, 177); Moatti (1993, 86); Perelli (1993, 23); Belayche (1994, 190); Vivenza (1994, 86); Gargola (1995, 137 and forthcoming); Schubert (1996, 120); Pareti (1997, 439); Mouritsen (1998, 16); Carsana (2001, 272); Heftner (2006, 45); Sacchi (2006, 419 n. 192). Uggeri (2001, 34) dates it to 167 exactly. Muschietti (1972, 234) believes the original amount laid down in 367 was 100 *iugera*, as stated in *Vir. Ill.* 20.

<sup>330</sup> Triebel (1980, 183); Marcone (1997, 145).

<sup>331</sup> Maschke (1906, 54-67); Carcopino (1967, 214); Finley (1980, 152); Lomas (1996, 69); El Bouzidi (1997, 143 n. 26), who says that Forsén dates it to 133, but this is not the case.

Second Punic War there was a large amount of *ager occupatorius* available, and this was an ideal opportunity to establish large slave-staffed estates on it. In such a situation a need may have been felt to establish limits on the amount of land that could be occupied by one individual.

We know for a fact that the limit of 500 *iugera* had been introduced before 167, since in this year Cato referred to it in a passage of his speech *Pro Rhodiensibus*, which is quoted by Aulus Gellius: 'What now? Is there a law that is so strict that it says 'if you want to do this, the fine will be a thousand; if you want to have more than 500 *iugera*, the fine will be so much; if you want to have a higher number of animals, the fine will be so much?''<sup>332</sup> It is true that Gellius wrote much later than the date of the actual speech, but his purpose was to give a reliable account of Cato's text. We may therefore conclude that the limit of 500 *iugera* indeed existed in 167 BC. In another speech, dated to 195 by Livy, Cato apparently also referred to the limit: 'What called out the Licinian Law which restricted estates to 500 *iugera* except the keen desire of adding field to field?'<sup>333</sup> However, it is possible that this reference is not genuine, since Livy's purpose was not to report accurately the words of Cato, but only to write a speech indicating what Cato might have said.<sup>334</sup> It is unlikely that the limit of 500 *iugera* would have been important in 195, especially since the abundance of land so soon after the Second Punic War would not have made occupation of this land a problem. The reference to the law dating to 167, however, is generally accepted as genuine, and is often produced as evidence for the introduction of the limit of 500 *iugera* shortly before this speech. If the law was passed shortly before 167, it would fit into a series of sumptuary laws passed in this period, aimed at limiting competition among the elite.<sup>335</sup>

Another indication that seems to point to a second-century date for the law is Appian's statement that 'they embodied these provisions in a law, which they swore to observe, and laid down penalties [for violating it]'. It is sometimes argued that the swearing of oaths, intended to make sure that the law would be obeyed by the appropriate magistrates – the *iusiurandum in legem* – did not occur until the second century.<sup>336</sup> This argument is problematic, since there are only

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<sup>332</sup> Gell. NA 6.3.37: *Quid nunc? Ecqua tandem lex est tam acerba, quae dicat 'si quis illud facere voluerit, mille minus dimidium familiae multa esto; si quis plus quingenta iugera habere voluerit, tanta poena esto; si quis maiorem pecuum numerum habere voluerit, tantum damnas esto?'*

<sup>333</sup> Liv. 34.4.9: *Quid legem Liciniam excitavit de quingentis iugeribus nisi ingens cupido agros continuandi?*

<sup>334</sup> Yardley (2000, 561).

<sup>335</sup> The *Leges Orchia* (182 BC), *Fannia* (161), and *Didia* (143). See Macr. Sat. 3.17.2-15 and Gell. 2.24.3-10 for a list of *leges sumptuariae*. See also Lucil. 1241; Ath. Deipn. 6.274c-e; Plin. HN 34.14.30; Schol. Bob. Sest. 138 (Stangl p. 141). See Maschke (1906, 56); Bringmann (1985, 13 and 1986, 62); Flach (1990, 33 and 1994, 289); Schubert (1996, 120); Gargola (1997, 566); Heftner (2006, 45). Rich (forthcoming) supports a date of 367 for the law, and argues that in this period as well there were concerns about the growth of personal power of some Senators.

<sup>336</sup> Luzzatto (1955, 37); Nicolet (1967, 125); Bauman (1979, 394-5); Gargola (forthcoming).

very few references to oaths sworn on laws. The two most famous examples are the *Lex agraria* of 111, which states that 'without personal liability he (the magistrate) is not to swear to obey those statutes and plebiscites'.<sup>337</sup> The other famous example dates from 100 BC, when the *Lex Appuleia agraria* required an oath by all Senators and Metellus Numidicus' refusal to swear led to his banishment.<sup>338</sup> The *Lex Latina Tabulae Bantinae* of the late second century BC states the swearing procedure in detail:

in front of] the temple of Castor, openly, before the light of day, facing the forum, and they are to swear within the same five days, in the presence of the quaestor, by Jupiter and the [ancestral] gods, [that he] will do [what shall be appropriate according to this statute,] and that he will not act contrary to this statute knowingly with wrongful deceit and that he will not act or intercede [to the effect that this statute may not be, or be improperly, observed].<sup>339</sup>

Other examples of laws requiring an oath are not known until the first century BC, the most famous being Caesar's agrarian law. On this law two oaths were sworn: one by the Senators, to make sure they would obey the law, and one by the people, to make sure that there would never be another law that annulled the first.<sup>340</sup> The fact that laws requiring oaths seem not to have appeared until the later second century has led many scholars to argue that the law *de modo agrorum* mentioned by Appian cannot have been passed earlier than the second century.

However, laws sealed by oaths according to the literary sources occurred in the early Republic as well. After the expulsion of the kings the people swore an oath that the kingship would never be reintroduced.<sup>341</sup> The *Lex Icilia* of 456 also seems to have required an oath, since Livy calls it a *lex sacrata*. He also mentions the existence of other such laws. The oath must have been sworn by the assembled people, not by the magistrates or Senators.<sup>342</sup> It would seem, therefore, that the idea of swearing to uphold a law had been introduced quite early in the Republic. At this time such oaths were sworn only by the people, not by magistrates, but the idea of swearing at least existed. The 'they swore to observe the law' in Appian also seems to refer to 'the people' mentioned earlier ('the Roman people became concerned that they might no longer have a ready supply of allies from Italy (...). They did not consider reform...'). The swearing of oaths

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<sup>337</sup> *Lex agraria* l. 42: *fraude sua nei iurato...*

<sup>338</sup> App. BC 1.29-32, *Vir. Ill.* 62, 73; Cass. Dio 38.7.3; Cic. *Sest.* 47.101; Flor. 2.3.16.3; Plu. *Mar.* 29.1. Bringmann (1986, 65) and Flach (1994, 293) argue that Saturninus' law was the first requiring an oath, but this is clearly not the case.

<sup>339</sup> *Lex Latina Tabulae Bantinae* (CIL 12.197) l. 14-22, ed. Crawford (1996, 203). See also the Tarentum fragment l. 20-7 in Crawford (1996, 214).

<sup>340</sup> Cic. *Att.* 2.18.2; Cass. Dio 38.7.1-2; App. BC 2.42; Plu. *Cat. Mi.* 32.3. See Carsana (2001, 263-4).

<sup>341</sup> Liv. 2.1.9.

<sup>342</sup> Liv. 3.32.7. Carsana (2001, 268-71); Manzo (2001, 74). See also Soltau (1895, 625) and Drummond (1989b, 223), who argue that oaths on laws were common in the early Republic.

by magistrates indeed is securely attested only for the later second century, but this cannot be adduced as proof that the law mentioned by Appian also dates to the second century: it is quite possible that Appian, seeing the importance of the *lex de modo agrorum* and the habit of swearing by the people to other important laws in the early Republic, ascribed such an oath to the law of 367, even if this had not actually taken place.<sup>343</sup> The swearing of laws by magistrates is not mentioned by Appian at all. In any case, the *lex agraria* of 111 BC and Saturninus' law are much later than the supposedly second-century law of Appian, and it would therefore be unwise to use the late second-century examples as evidence for the passing of the agrarian law in early second century.

Other scholars have for various reasons tried to rehabilitate the date of 367 for the *Lex Licinia*. They argue that at least the amount of 500 *iugera* was realistic, even if the stipulated amount of animals was not. As a result of the conquest of Veii in 396 the Roman state had acquired much land, and 500 *iugera* is therefore an acceptable amount, even after the deduction of private lands. There was as yet not a great number of people who were rich enough to occupy this land, so the limit of 500 *iugera* is reasonable for this period.<sup>344</sup> The developments described by Appian, furthermore, can also be applied to the fourth century: it appears from Livy that discussion about the occupation of land had been a continual issue from the fifth century onward. Slavery, moreover, existed in the fourth century as well, and it is possible that some rich men owned enough slaves to work such an amount of land.<sup>345</sup> The amount of 500 *iugera* is therefore possible for the fourth century; however, if we take into account the amount needed for cattle as well, the Roman territory was surely not large enough.

An important argument against the introduction of the limit in the early second century, the period favoured by many scholars, is that there is no reference anywhere to the passing of such a law shortly before 167. Livy does not mention it, although his account is usually quite complete, especially when it comes to controversial matters like agrarian laws.<sup>346</sup> To explain this supposed

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<sup>343</sup> Riecken (1911, 117).

<sup>344</sup> Stephenson (1891, 23); Soltau (1895, 628-9); Trapenard (1908, 125); Bozza (1939, 168); Burdese (1952, 54-6 and 1985, 52); Sterckx (1969, 331-5); Brunt (1971, 28-9 n. 5); Bignardi (1984, 77); Labruna (1986, 104-5); Hermon (1994b, 139; 1994c, 270; 2001, 162); Cornell (1995, 329 and 1996, 99); Mitchell (1993, 205 and 1996, 270); Oakley (1997, 657-9); Dovere (2001, 449); Manzo (2001, 123); Forsythe (2005, 265); Rich (forthcoming). Hermon (1982, 139-42) states that the limit of 500 *iugera* dates back to the fourth century and was only confirmed in the second. Cornell (1989b, 328) argues that the *Lex Licinia* was concerned only with rights of *possessio*, and that in this respect it differed from the Gracchan law. That the two laws are not described in exactly the same terms indeed provides a strong argument in favour of a fourth-century date for the *Lex Licinia*, which clearly was not just a 'fictitious anticipation' of the Gracchan legislation.

<sup>345</sup> Riecken (1911, 96); Manzo (2001, 123-4). See also ch. 3.3.1 and 4.3.4 on the importance of slavery.

<sup>346</sup> Oakley (1997, 659) points out that Livy omits such laws as the *Lex Cincia* of 204 and the *Lex Orchia* of 182, but agrarian laws may be expected to have been recorded with more care, judging from the importance of debates over land.

omission, Forsén points out that the first time the limit of 500 *iugera* was connected to Licinius Stolo and the year 367 was in Tiro's discussion of Cato's speech, written in 46, and in the works of Varro and Cornelius Nepos, all writing in the mid-first century BC. He argues that the connection between the year 367 and the limit of 500 *iugera* may have been first made around the time of the Gracchi, when the amount of 500 *iugera* became important. Livy may have taken up this tradition, and ignored any sources that referred to the introduction of the limit by a later law.<sup>347</sup>

Some argue that in the early second century the agrarian debate was not a big issue in politics, and that therefore the law disappeared from the sources.<sup>348</sup> It make sense to suppose that the passing of such a law at this time raised little protest, since there was enough land available for everyone. On the other hand, Livy can be expected to have reported an agrarian law if it was passed at this time, even if it did not become relevant until later. It would be very strange if he did not report the one law that introduced the 500-*iugera* limit, since this law set the later standard for occupation of *ager publicus*. In fact, it is clear that Livy himself thought that the law of 500 *iugera* dated to 367 BC, since this is what he states in his discussion of the *Leges Liciniae*, and there was therefore no reason for him to mention a law passed between 200 and 167 BC.<sup>349</sup> He does not show any knowledge of another law *de modo agrorum*, whether passed in the second century or at some other time. The tradition that the *modus* of 500 *iugera* was introduced in 367 was therefore already firmly established in the first century BC. As it is unlikely that the introduction of such an important limit would be completely neglected by all later writers, we cannot but conclude that the 500-*iugera* limit was set in 367.

In fact, we have evidence for the existence of a limit on the possession of land at an early date: Livy reports that in 298 'a large number of people were prosecuted by the *aediles* for possessing more than the legal quantity of land. Hardly one could clear himself from the charge, and a very strong curb was placed upon inordinate covetousness'.<sup>350</sup> The text of the reference is very short and does not serve to press any argument, which makes it likely that Livy took it from an annalistic source. It may therefore be genuine. Unfortunately the text does not mention what the limit on the possession of *ager publicus* was, but it at least shows that such a limit was in existence by 298 BC.

I believe that the debate about the date of the law can be solved by answering the second point of debate: the question of whether the limit of 500 *iugera* in the

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<sup>347</sup> Forsén (1991, 51-5, 60-9).

<sup>348</sup> Tibiletti (1950, 264). See also Göhler (1939, 94) and Valvo (1977, 224), who assume that the law dates from the second century, but that it disappeared from the sources because nobody obeyed it.

<sup>349</sup> Toynbee (1965b, 560).

<sup>350</sup> Liv. 10.13.14: *Eo anno plerisque dies dicta ab aedilibus, quia plus quam quod lege finitum erat agri possiderent; nec quisquam ferme est purgatus vinculumque ingens immodicae cupiditatis iniectum est.*

*lex de modo agrorum* limited the use of *ager publicus*, *ager privatus*, or both. Until the early nineteenth century most scholars assumed that the law limited the possession of private property,<sup>351</sup> until Niebuhr claimed that only *ager publicus* was meant. His only arguments for this were that Livy used of the word *possidere* instead of *habere* (see below) and that it was clear from the context that the law concerned *ager publicus*.<sup>352</sup> This was enough to make scholars unanimously believe the law to be about *ager publicus*.<sup>353</sup> Recently Rathbone has again taken up the argument that the law referred to private land. He states:

no source, apart from Appian, says that the pre-Gracchan law affected *ager publicus*. Appian says it affected 'this land', apparently referring back, although he does [not]<sup>354</sup> make it completely clear, to the 'undivided' (public) land held by the rich. Plutarch too implicitly takes it to refer to public land, but both these versions are suspect because, unlike the other references, they are embedded in accounts of the formulation of Tiberius Gracchus' law, which did aim to repossess *ager publicus*. Some passages about the pre-Gracchan law do use the verb '*possidere*', which in legal terms meant 'possess', not necessarily 'own', but since Latin had no verb 'to own', '*habere*' (Greek *echein*) and '*possidere*' were commonly used of ownership. The crucial testimony is that of the elder Cato in 167: read, as it was spoken and heard, with no knowledge of the Gracchi, it must refer to private property. (...) The long orthodox idea that the Licinian law related only to *ager publicus* is the outcome of a debate prematurely truncated in the nineteenth century. The older, more radical, interpretation of it as an equalising limitation on the ownership of private agricultural property also fits well with its probable historical context.<sup>355</sup>

I think, however, that a third possibility must be considered, recently taken up by Rich, namely that the *Lex Licinia* concerned both private *and* public land. This theory was already proposed by Huschke,<sup>356</sup> but was subsequently

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<sup>351</sup> See Forsén (1991, 29); Rich (forthcoming).

<sup>352</sup> Niebuhr (1832, 13-4).

<sup>353</sup> Niese (1888, 416); Zancan (1934, 8); Bignardi (1984, 72); Vallat (1987, 197); Cornell (1989b, 327); Forsén (1991, 30-4); Schubert (1996, 116). For the public-private debate see Ridley (2000b). Most scholars believe that only *ager occupatorius* was subject to the limit, not *ager quaestorius*, *ensorius*, and *compascuus*: see Burdese (1952, 68); Bernstein (1969, 169 n. 287); Kuziščin (1984, 17). Botteri (1992, 54) suggests that Appian is only speaking about the sale and lease of land, and that the concept of *ager occupatorius* was not created until the second century BC, but this seems very unlikely.

<sup>354</sup> Rathbone actually omits 'not.'

<sup>355</sup> Rathbone (2003, 145-6). For a similar idea see Kunkel (1995, 494).

<sup>356</sup> Huschke (1835, 3-8). Some scholars apparently believe it referred to both kinds of land: see Riecken (1911, 122); De Martino (1989, 230), but they do not explain this theory in detail. See now Rich (forthcoming).

discarded. Nowadays Hermon is the only one maintaining this possibility, but her explanation is linked to the controversial theory about the origin of *ager publicus* from lands owned by *gentes*: since, in her view, the difference between *ager privatus* and *ager publicus* was not as clear-cut in the fourth century as it became later, no distinction was made between the two.<sup>357</sup> However, since the idea of private property had been established very early in Roman history (ch. 2.1.1), this explanation cannot be correct.

There are several arguments against the idea that the state would limit holdings of private land only. Firstly, rights of private ownership were very important in Roman law. Rathbone himself states that

the first point to note is the centrality of private property, including *ager privatus*, in Roman society and law. Private ownership, in my view, was the first legal category of land tenure to be formalised at Rome. Probably from the late sixth century, the political status of individual citizens was dependent on their census, that is their private property, particularly land. The Twelve Tables (...) equally imply that the fundamental concept of private ownership was well established.<sup>358</sup>

It is difficult to see how the centrality of private property can be reconciled with the establishment of a maximum amount of private property to be owned by one individual. If, at the time of the introduction of the law, someone owned more than the maximum, he would be compelled to give up the excess amount. The state had no right to force people to limit their holdings of private property, whereas it had every right to dispossess people of public land. It might have been possible to take away private property in return for (monetary) compensation, but there is no mention of this. The limit can have involved *ager privatus* only if it was issued before anyone owned 500 *iugera*, and was only a theoretical maximum which had not been reached. In that case, however, the law would not solve the problems caused by the occupation of large plots of public land – if social problems occurred already when some people owned, say, 300 *iugera*, then they would not be solved by limiting private ownership to 500 *iugera*.

Another, more likely, possibility would be that the limit was about the possession of both private and public land, in an age when nobody had yet reached the amount of 500 *iugera* of private land, but holdings of private and public land together had in some cases reached this limit. If the *Lex Licinia* of 367 concerned both public and private land, this would mean that the Roman elite was relatively poor at this time, since no one as yet owned more than 500 *iugera*. In 167, when we are sure the 500-*iugera* limit was in force, many individuals had greatly profited from wars in the East, which had brought in enormous amounts

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<sup>357</sup> Hermon (1994b, 142; 1994c, 269; 2001, 168).

<sup>358</sup> Rathbone (2003, 138-9).

of wealth. It is to be expected that many rich men had acquired more than this amount of private land since the Second Punic War. There are many stories about Senators, even in the early second century, who were quite poor,<sup>359</sup> but in 167 many people probably owned more than this amount (see also ch. 5.2.3). To limit ownership to a total of 500 *iugera* would mean that the elite would lose much of its private land – unless as yet nobody owned 500 *iugera*, which is unlikely for the second century. It is therefore unlikely that a law limiting the amount of private land was enforced in this period.

However, in the fourth century things were most likely different: individual Senators owned less private land, while the amount of public land owned by the Roman state was also smaller. This made it possible to issue a law limiting the possession of all land, both private and public, to 500 *iugera*. The state could then take away the public land, and in this way make sure that total possessions of private and public land did not reach the maximum of 500 *iugera*. In this case the introduction of the limit did not rob people of any private holdings. In this situation it was quite possible to introduce a law that limited the total of private and public holdings of Roman citizens. This also explains why the law was totally ignored in the second century: if the law in force in 167 limited the total possession of land, both public and private, to 500 *iugera*, it would most likely have been completely out of date. That Cato refers to it does not mean that the limit was still relevant at this time, but only serves to reinforce his image as a supporter of ancient Roman frugality.

Some scholars, e.g. Niebuhr, have argued that the use of the terms *habere* and *possidere* in the sources can shed light on the kind of land involved.<sup>360</sup> They suppose that *habere* was used of ownership, while *possidere* was used for the possession of things not in full property. Supporters of this theory suggest that the concept of *possessio* was created especially for holdings of *ager publicus*. In older law there existed only a distinction between *dominium* (full ownership) and *usus* (practical use of land without any rights whatsoever).<sup>361</sup> In order to make it possible for people to occupy *ager publicus*, but at the same time receive some rights to the land, the idea of *possessio* was developed: an intermittent category that granted some sort of legal protection against third parties who wanted to

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<sup>359</sup> The examples are almost endless: Val. Max. 2.5.5; 2.9.4, 4.3.4-4.4.11; 4.8.1; Liv. 3.26.8; Vir. Ill. 17, 18, 40, 56, 58; Plin. HN 18.4.20, 21.7.10, 33.55.153; Polyb. 5.22.3; Cass. Dio 5.22.3, 20.67.1; Zonar. 9.24; DH 5.48.2, 6.96.1, 10.8.4, 10.17.4-5, 10.14.1-2, 10.24.1-2, 10.35.3, 19.15.1; Colum. R. 1.pr.13, 10.1; Plu. Paul. 5.7, 39.10, Cat. Ma. 2.1, 4.4, 6.1; Cic. Rosc. Am. 18.50-1, Mur. 36.75, Sen. 16.55-6; Gell. NA 1.14, 17.21.39; Flor. 1.5.11.13; Eutrop. 2.12; Front. Strat. 4.3; Sen. Helv. 12.5; Veg. Mil. 1.3.

<sup>360</sup> Oakley (1997, 677); Koba (1999, 278). Battista Sanguineto (2000, 582) suggests that Cicero's use of *possidere* in Tull. 19.44 may indicate *ager publicus*, but there is no real clue in the *Pro Tullio* that public land was involved.

<sup>361</sup> Other scholars have argued that the idea of *dominium* (*ex iure Quiritium*), meaning full property, did not originate until the second century, e.g. Diósdí (1970, 133); Capogrossi Colognesi (1979, 322). However, private property certainly existed already in the archaic period (ch. 2.1.2).



deprive a possessor of his land.<sup>362</sup> If this is the case, then the specification that *ager publicus* was involved in the *Lex Licinia* would be unnecessary, because this would follow logically from the term *possidere*.

Rathbone is right to emphasize that the difference between *habere* and *possidere* is not clearly defined; however, although it is true that both terms were commonly used of ownership, they were also both used to denote the possession of *ager publicus*.<sup>363</sup> While *possidere* was not used exclusively for possession by a non-owner, *habere* did not exclusively denote ownership. *Possessio* could be used for two different things: on the one hand full ownership, and on the other the possession of a legal right to a thing of which one was not the owner.

Two different kinds of *possessio* existed: first the *possessio civilis*, which allowed one to become owner by *usucapio*. We have seen that this was not possible for *ager publicus*, which fell under the second category, namely *possessio* after the *ius honorarium*. In this case *possessio* was protected by interdicts (for which see below), and therefore anyone who could avail himself of these was considered a possessor. It was not necessary for the possessor to actually hold the land; even if this was held by another, the possessor still had *possessio*: 'We possess also through our tenants, agricultural or urban, and through our slaves; and should they die or lose their reason or let to someone else, we are deemed to retain possession.'<sup>364</sup> Furthermore, one did not need to use the land at all times: one could, for example, be the possessor of summer pastures which were not used throughout the year.<sup>365</sup>

The term possession was not limited to public lands, but could also be applied to full ownership: '*Possessiones* are lands stretching far and wide, both publicly and privately owned, which at the start individuals occupied and possessed as they could.'<sup>366</sup> Thus, we see that anyone whose possession of land,

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<sup>362</sup> Kaser (1956, 239-41 and 1966, 319).

<sup>363</sup> Zancan (1934, 33); Forsén (1991, 31). Hopkins' (1978, 51 n. 69) statement that a possessor was someone without a full title of ownership is too simple.

<sup>364</sup> D.41.2.25.1. See also D.2.8.15.1: 'One who possesses *ager vectigalis*, that is, holds land under a contract of *emphyteusis* (long-term lease), is understood to be possessor. Likewise, one who has bare ownership is understood to be possessor.' D.41.2.3.7: 'Should you be in possession by will alone, you continue to possess the land, even though someone else be physically present on it.' D.41.2.52.pr: 'It is no barrier to possession that another has enjoyment' (*neque impediri possessionem, si alius fruatur*). D.43.17.1.2: 'It may happen that one person is a possessor but not an owner, the other an owner but not a possessor; and it may be that the same person is both possessor and owner.' *Inst.* 4.15.5: *Possidere autem videtur quisque non solum, si ipse possideat, sed et si eius nomine aliquis in possessione sit*. See D.2.8.15.2-7 for the definition of a possessor in specific cases. See Bove (1960, 157); Johannsen (1971, 229-31). Ducos (1999, 127) assumes that by having *possessio* one can become owner, but he seems to confuse *possessio* and *usucapio*. Capogrossi Colognesi (1981, 154) maintains that there is a difference between the *possessio* of *ager publicus* and that of private land, but does not explain it.

<sup>365</sup> D.41.2.3.11, 41.2.27, 41.2.44.2, 41.2.44.46, 43.16.1.25.

<sup>366</sup> *De agris* 272.1-2: *Possessiones sunt agri late patentes publici privatique, quos initio non mancipatione sed quisque ut potuit occupavit atque possedit*. See D.50.16.78: 'At times the word possession signifies

whether public or private, was protected by an interdict was called a possessor, even if he held the land only by *precarium*: 'We should remember that anyone who has something by *precarium* also possesses it.'<sup>367</sup> The term *possessio* denotes the power or legal control exercised by an owner or other holder over certain pieces of property, whether public or private; in later times it could therefore clearly apply to both private and public land. It is therefore to be expected that authors writing in the late Republic about the land covered by the *Lex Licinia*, if this was indeed *ager publicus*, would have needed to indicate that this was the case, since at this time *possessio* did not always refer to *ager publicus*.

*Habere* had a slightly wider meaning than *possidere*: not only the owner and the lawful possessor, but also the physical user, who did not have rights to the land, could be indicated with this term: "Have' is doubly acceptable; for we apply the word 'have' both to the man who is the owner of a thing and to the man who is not the owner, but holds it; for example, we are accustomed to use the word in relation to property deposited with us.'<sup>368</sup> *Habere* could therefore also be used as an equivalent of *tenere*, to simply hold a thing without being able to protect it by the possessory interdicts. This short overview shows that *ager publicus*, even if it was held by *precarium*, could be indicated both by *possidere* and *habere*. It is by no means the case that *habere* indicates stronger rights than *possidere*, as was argued by Niebuhr and others.<sup>369</sup>

The sources on the *Lex Licinia* are fairly equally divided between *possidere* (Livy, Valerius Maximus, Pliny, Columella, and Siculus Flaccus) and *habere* (Cato and Tiro in Aulus Gellius, Velleius Paterculus, Varro, *De viris illustribus*, and probably Appian and Plutarch, whose ἔχειν can be translated by *habere*). It is notable that the oldest sources, which we can reasonably assume to be the most trustworthy in reporting the actual text of the law, employ the term *habere*, while most of the later sources use *possidere*. However, because the term *habere* could indicate anything from full ownership to holding without any legal right, this does not tell us anything about the nature of the land dealt with in the *Lex Licinia*.

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property, as has been laid down in the case of someone who has bequeathed his possessions.' See Festus 277 L.

<sup>367</sup> D.43.26.4.1: *Meminisse autem nos oportet eum, qui precario habet, etiam possidere.*

<sup>368</sup> D.45.1.38.9: '*Habere*' dupliciter accipitur: nam et eum habere dicimus, qui rei dominus est et eum, qui dominus quidem non est, sed tenet: denique habere rem apud nos depositam solemus dicere. Watson translates *denique* as 'lastly', but in legal Latin *denique* usually precedes an example of something mentioned before. See also D.43.8.2.38: 'When we say he has it, we mean he uses it and enjoys its possession, whether he had the work done himself or acquired it by purchase, lease, inheritance, or any other way.' Non. 497 L gives the meaning of *habere* as *tenere, occupare* and 564 L says *occupare est etiam invenire, tenere vel possidere*. See Diósdi (1970, 51); Tibiletti (1974, 94); Labruna (1986, 148). Cic. *Quinct.* 29.89 states: 'I proved that the property had not been taken possession of at all, because goods are regarded as possessed, not when part only, but when everything that can be held and possessed (*quae teneri et possideri possint*) has been seized.' Therefore not only the actual use but also the right to the land must come to a person before the land can be considered to have been seized by him.

<sup>369</sup> See Zancan (1934, 33); Diósdi (1970, 51); Rich (forthcoming).

The sources never state which land was involved; they simply mention *ager* without adding any further qualification.<sup>370</sup> This does not tell us anything about which land exactly was involved. The only sources giving any indication of the sort of land involved in the law are Plutarch and Appian, who clearly indicate that it dealt with public land. Appian says that ‘no one was to hold more than 500 *iugera* of this land’, and the only land he has referred to earlier is the ‘undistributed lands’ which had been taken from defeated peoples, in other words, *ager publicus*.<sup>371</sup> Plutarch’s testimony also refers without doubt to *ager publicus*. However, both Plutarch’s and Appian’s accounts are influenced by the events of the Gracchan period; they are trying to give an air of paternal authority to the law of the Gracchi, which was definitely concerned only with *ager publicus*. If the Gracchi presented the older law as referring to *ager publicus* as well, it is not strange that Plutarch and Appian, who both used a pro-Gracchan source, give us this version. However, it stretches the limits of gullibility that the people listening to Gracchan speeches would accept an older law that was exclusively concerned with *ager privatus* as a forebear of a law that solely concerned *ager publicus*. A law that concerned both public and private land, however, may have served as a more acceptable example.

A further argument against the limit involving only private land is that discussion up until the promulgation of the *Lex Licinia* had centred on the distribution of *ager publicus*. The early Republican *plebs* continually asked for the allotment of *ager publicus*; not once was there any attempt to share out private lands. The sources for this period are influenced by later events, but if in later times the distribution of private land was an issue, we should expect this to be reflected in sources covering earlier periods. There is no indication that the distribution of private land had ever been an issue. For anyone hearing the arguments of Cato it must have been immediately clear that he was talking about *ager publicus* or land in general, since taking away private lands was so strange that it must have required some explanation – the situation is thus exactly opposite to that supposed by Rathbone. None of the sources, except for Appian and Plutarch, explicitly states that the law was only about public land, so it is possible that it covered both private and public land. By contrast, it is quite impossible that it concerned *only* private land.

In short, it cannot be accepted that the *Lex Licinia* of 367 limited the possession of private land only, as Rathbone would have it. The idea that it concerned both public and private land cannot be directly proved, but would solve many difficulties that are connected with the theory that the law limited the possession

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<sup>370</sup> Liv. 6.41.11 states ‘by expelling the occupiers (*dominos*) from their land, large deserts will be created’, but the word *dominus* does not shed any light on the status of the land.

<sup>371</sup> App. BC 1.8 states that the *Lex Licinia* limited the possession of τῆς γῆς, referring back to the *ager publicus* he just mentioned. Huschke (1835, 7) argued that the word τῆς γῆς was not in the manuscripts, but in fact it is in all the best manuscripts, and the reading τῆς γῆς is now generally accepted, see Rich (forthcoming).

of public land alone, most importantly the objection that the occupation of such a large amount of *ager publicus* is difficult to envisage for the fourth century.

Even if the limit of 500 *iugera* can reasonably be expected to have been introduced in 367 BC, there is still the problem of the limit on the number of animals that could be grazed and the obligation to employ free labourers. According to Appian these stipulations were introduced at the same time as the 500 *iugera* limit on *ager publicus*. Some scholars believe that this limit was introduced in 367, at the same time as the limit of 500 *iugera* of arable land.<sup>372</sup> Others maintain, however, that even if Rome controlled enough arable land for the 500-*iugera* limit to have been passed in 367, it is unlikely that it also held enough pasture land to allow such large numbers of beasts to be grazed.<sup>373</sup> It is to be noted that Appian says it was allowed to have 500 small *or* 100 large animals, not both of them at the same time. This would limit the amount of land considerably; however, it is generally assumed that the law was cumulative, like the *Lex agraria* of 111, and therefore allowed a total of 600 animals.<sup>374</sup> As we have seen, however, the introduction of a maximum of 500 small and 100 large animals would be unrealistic for the fourth century, and this has led scholars to assume that the limit on animals was introduced in the second century as well.<sup>375</sup> However, as I have argued, it would be better to date the 500-*iugera* limit to 367, and I do not believe that any law concerning the use of land, for agriculture or pasture, was passed in the early second century. The maximum limit on animals may have been introduced shortly after 367, for example after the Samnite wars in the early third century. As we have seen, it was at this time that Rome acquired extensive pasture lands in the Apennine mountains, for which such regulations would have been necessary (see ch. 3.4).<sup>376</sup>

There are several references to the early existence of a limit on the number of animals to be grazed on *ager publicus*. Livy recounts that in 296 and 293 fines were levied on cattle-breeders,<sup>377</sup> but does not mention the reason they were fined. Ovid refers to a prosecution of graziers in 241:

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<sup>372</sup> Sirago (1995, 108); Manzo (2001, 125-6); Russo (2002, 167).

<sup>373</sup> Oakley (1997, 657).

<sup>374</sup> Niese (1888, 411) assumes the law offered an alternative of either 100 large *or* 500 small animals. Most scholars assume, however, that the limit was cumulative, so that 600 animals in total were allowed: Tibiletti (1949, 6); Burdese (1952, 62); Rossi (1980, 51); Van Dooren (2008, 189).

<sup>375</sup> Tibiletti (1948, 231-3 and 1949, 561); Burdese (1952, 62); Nicolet (1967, 124-5); Sterckx (1969, 329-30); Pasquinucci (1979, 135-6); Kuziščin (1984, 17); Labruna (1986, 106); De Martino (1989, 229); Pareti (1997, 439). Hermon (1994a, 499 and 2001, 166-7) states that no limit on animals existed in the time of Cato, but Cato clearly refers to it.

<sup>376</sup> Rich (forthcoming) argues the law limited pasturing on both private and public land, in which case 367 is not an unlikely date. However, 600 animals needed the same amount of land whether it was public or private, and therefore the Roman state would still have needed enough pasture land for so many animals.

<sup>377</sup> Liv. 10.23.13 and 10.47.4. It is unclear what Sacchi (2006, 288) means when he says that there were no laws and that therefore a great number of lawsuits arose.

Some had unlawful wealth: by custom, for ages public lands were grazed without penalty. Folk had no one to defend the common rights, till at last it was foolish to use private grazing. This licence was pointed out to the Publicii, the plebeian *aediles*: earlier, men lacked confidence. The case was tried before the people: the guilty fined, and the champions praised for their public spirit.<sup>378</sup>

In 196 cattle breeders were again fined: ‘the plebeian aediles, Cn. Domitius Ahenobarbus and C. Scribonius Curio, brought several farmers of state lands before the popular tribunal’.<sup>379</sup> This happened again in 193: ‘they inflicted fines on a large number of graziers’.<sup>380</sup> Unfortunately, we cannot be sure that the graziers were fined because they had grazed more animals than was allowed on *ager publicus*.<sup>381</sup> There were other reasons for which shepherds could be fined, such as grazing cattle on lands which were not *ager publicus* or inflicting damage. However, as the only law in the sources concerning stockbreeding is the one limiting the number of animals, it may be that Livy thought this self-evident. We can conclude only that a limit existed in 296, and since there is no indication of a renewal of the number of animals allowed by this limit, it is likely that at this time it was 100 large and 500 small animals.

Appian’s statement that a regulation was issued obliging the employment of a certain number of free labourers has led some to believe that this measure was also introduced in 367,<sup>382</sup> or at least some time before the Gracchi.<sup>383</sup> However, apart from Appian there is no other source mentioning such a regulation. Some have argued that in the fourth century there were few large slave-staffed estates, and that therefore a date in the early second century would be more likely.<sup>384</sup> However, the statement sounds remarkably like a law of Caesar, which also demanded a minimum number of free labourers on each estate.<sup>385</sup> The regulation

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<sup>378</sup> Ov. *Fast.* 5.283-90. See Festus 276 L.

<sup>379</sup> Liv. 33.42.10.

<sup>380</sup> Liv. 35.10.11-2.

<sup>381</sup> As is assumed by Skydsgaard (1974, 19), Botteri (1977, 317), Stockton (1979, 46), Kunkel (1995, 496), and Morley (1996, 157). Tibiletti (1948, 228) suggests the *publicani* collecting the rents may have been meant, but this is unlikely. For conflicts in later times, which may have led to convictions, see CIL 9.5074.

<sup>382</sup> Niebuhr (1832, 19); Manzo (2001, 122-4); Russo (2002, 167).

<sup>383</sup> Tibiletti (1948, 233-6); Burdese (1952, 70 and 1985, 58); Nicolet (1967, 125); Sterckx (1969, 330); Galsterer (1976, 172); Gabba (1985a, 39); Labruna (1986, 106, 150); Pareti (1997, 439).

<sup>384</sup> Tibiletti (1948, 233).

<sup>385</sup> Suet. *Iul.* 42.1. See Bringmann (1986, 64); Flach (1990, 46 and 1994, 293-4); Manzo (2001, 106); Rathbone (2003, 144); Rich (forthcoming). Bringmann even maintains that the whole historiography about the *Lex Licinia* did not originate before Caesar, and points out that Caesar’s laws about debt were also very similar to those reported in the *Lex Licinia*. The fact that Tiro and Varro were the first to connect the limit of 500 *iugera* to Licinius Stolo and 367 could then point to a general reconstruction of agrarian history in the time of Caesar, in which the free labourers

about free labourers in Appian may then have been added to create a spurious precedent for the Caesarean law, since it has no basis in any historical source other than Appian. Admittedly, there is no compelling reason why it could not have been introduced in the fourth century. Slavery certainly existed in this period; Appian does not mention the exact number of free men who were to work on each estate, and a small number could have been sufficient to fulfil the functions required by the law. On the whole, however, it is more likely to have been a later measure.

Notwithstanding the recent doubts raised by Rathbone, we must conclude that the *Lex de modo agrorum* did indeed limit the possession of *ager publicus*. There is also a real possibility that it limited total possessions of both private and public land, in contrast to the Gracchan law, which concerned *ager publicus* only. If this is correct, then a date of 367 for the *Lex Licinia* is very well possible, at least for the limit of 500 *iugera* of arable land.

### 2.3. *Ager occupatorius* after the *Lex Licinia*

The law of 367 was apparently widely neglected. Appian writes: ‘No notice was taken either of the laws or the oaths; some who appeared to observe them made bogus transfers of land to their relations, while the majority completely ignored them.’<sup>386</sup> And Plutarch: ‘For a short time this law gave a check to the rapacity of the rich, and was of assistance to the poor, who remained in their places on the land which they had rented and occupied the allotment which each had held from the outset. But later on the neighbouring rich men, by means of fictitious personages, transferred these rentals to themselves, and finally held most of the land openly in their own names.’<sup>387</sup>

We have seen in Livy that in one case those who possessed too much land were punished and those who grazed too many animals on *ager publicus* were fined. There are thus very few references to punishment for using too much *ager publicus*. In consequence, most scholars agree that the limit of 500 *iugera* was universally neglected.<sup>388</sup> Moreover, the law did not state that the excess amount had to be taken away and distributed; Appian says that it was ‘expect[ed] that the remainder of the land would at once be sold in small parcels to the poor’,<sup>389</sup>

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were incorporated. However, it goes too far to suppose that the whole content of the *Lex Licinia* was made up in the first century BC. There is sufficient evidence for the existence of laws limiting possession of land already in the fourth century.

<sup>386</sup> App. BC 1.8. Shochat (1980, 66) suggests that until 167 the limit of 500 *iugera* was respected, but this is not what Appian says.

<sup>387</sup> Plu. TG 8.2.

<sup>388</sup> Stockton (1979, 10); Harris (1990b, 503); Moatti (1993, 70); Marcone (1997, 145); Mouritsen (1998, 16).

<sup>389</sup> App. BC 1.8: ἡγούμενοι τὴν λοιπὴν αὐτίκα τοῖς πένησι κατ’ ὀλίγον διαπεπράσσεσθαι. Some, e.g. Niebuhr (1834, 19-21), Capogrossi Colognesi (1980, 55), Gabba (1992, 401), and El Bouzidi (1997, 145 n 29), based on App. BC 1.8, argue that in 367 the land was to be distributed to plebs in

but he does not say that the actual punishment for possessing too much was the loss of the excess land. Even Licinius Stolo, who according to legend was the first to be punished under his own law, only received a fine;<sup>390</sup> in any case, no distributions of land are recorded for this period. If the excess land was not taken away, this means that if one did not dispose of the excess land, one could be fined over and over again. However, most magistrates had little inclination to fine their fellow nobles, since magistrates and perpetrators belonged to the same class.<sup>391</sup> Therefore, apart from the occasional fine, the rich possessors of *ager publicus* could simply continue possessing their land.

It has been argued that the *Lex Licinia* in some way granted the possessors more rights to the land.<sup>392</sup> As long as someone held less than 500 *iugera*, it may have been felt that it would be unfair to take the land away: after all, possessing land within the limit was allowed. Even if the state was still the owner of the *ager occupatorius*, and in theory could take the land away whenever it was needed, this would be very difficult. However, the 'stronger rights' granted by the *Lex Licinia* were only a matter of practice, not of legal right. Those possessing more than the maximum were not regularly punished either, and therefore the land held within the limit would be even harder to take back. The state in fact did not have much control over the *ager publicus* it in theory owned: many possessors were too powerful to just take the lands away from them, and, moreover, a great number of them belonged to the ruling class and would never implement laws obliging them to give up their own possessions. The longer the land had been left with the possessors the more difficult it would be to take it away, as became clear in the time of the Gracchi.

The possessors' legal hold over *ager occupatorius* was gradually reinforced by the development of legal instruments concerning this land. Although possession of *ager occupatorius* had always been precarious, it became possible to protect possession against third parties by the creation of the *interdictum uti possidetis*.

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seven-*iugera* allotments. There is, however, no reason to assume that this was the intention of the law, and there is no reference to such a distribution. See Bozza (1939, 171); Burdese (1952, 72). Bauman (1979, 397), Gabba (1979a, 160 and 1985b, 182), and Carsana (2001, 272), inspired by Plu. TG 8.1-2 and App. BC 1.8, argue that the law intended to stimulate the sale of the land as *ager quaestorius* to the poor, but that this led to its accumulation by the rich, who could pay higher rents. Riecken (1911, 112) thinks the law is talking about *ager censorius*. Bringmann (1985, 11) thinks that it was expected that the poor would buy land from the rich. However, it is unlikely that the poor would have been able to buy land, since they had no money to do so; the state must have realized that this was the case, and it is therefore unlikely that this had been the intention of the framers of the law. The use of the word 'sold' in Appian therefore cannot be easily explained.

<sup>390</sup> Liv. 7.16.9; DH 14.12.1. Koba (1999, 271) argues that Licinius Stolo was punished for granting some land to his son, even though this had been allowed by the *Lex Licinia* as Appian describes it; however, Appian mentions this stipulation only for the *Lex Sempronia*.

<sup>391</sup> Gargola (1995, 144-5) argues that the *aediles* conducted prosecutions when this could further their political status, but otherwise ignored the law.

<sup>392</sup> Manzo (2001, 152) assumes that through the *Lex Licinia* the possessor gained security of tenure over his land, even when confronted with the state, but this was certainly not the case.

When a dispute arose about who possessed a tract of *ager occupatorius*, the person who at the moment of the lawsuit was in possession of it was adjudged the rightful possessor, except if he had obtained the land by force (*vi*) or fraud (*clam*) or held it *precario* from the other party: 'the way you possess the land in question, which you possess neither by force, nor by fraud, nor without secure title from the other party, you will (continue to) possess in this way. I forbid violence to be carried out against this'.<sup>393</sup> If someone had obtained the land by violence or stealth, or if he possessed it without secure title, he was still protected, but not against one who had more rights to it; in this case the former possessor or the real owner could retake the land: 'The man who is said to have driven another away by violence has many pleas of defence allowed him, (and if he can prove any one of them to the satisfaction of the judge, then, even if he confesses that he drove him out by violence, he must gain his cause), either that he who has been driven out was not the owner, or that he had got possession from him himself by violence, or by stealth, or as a present.'<sup>394</sup> However, the possessor had no legal way to reclaim the land if the state retook it, because he held it as *precarium* from the state.<sup>395</sup>

By a lawsuit under the *interdictum uti possidetis* the person who possessed the land was confirmed in his possession, so that in case of a new lawsuit concerning the land, he would be the defendant and the other party would have the burden of proof. The interdict thus did not decide who owned the land, since that was always the state, but it only stopped someone from hindering the possessor in using it.<sup>396</sup> In some cases it was hard to establish secure possession: 'if however a site consists of pasture-land, scrub land, and places that have been left uninhabited and almost abandoned, these offer much less secure proof of possession. Therefore least of all in the case of these sites should we resort to an interdict'.<sup>397</sup> This uncertainty must have caused problems for those who did not have any method of proving their rights of possession, as can be seen in the Gracchan period (see ch. 5.2.3).

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<sup>393</sup> *Codex Just.* 8.6.1: *Uti nunc possidetis eum fundum, quo de agitur, quod nec vi nec clam nec precario alter ab altero possidetis, ita possideatis. Adversus ea vim fieri veto.* See also D.43.17, 41.2.6.pr, 43.24.1.4-5; *Inst.* 4.15.4-5; *Paul. Sent.* 5.6.1; *Gaius* 4.148-50 on this interdict. For the definition of *vi aut clam* see D.50.17.73.2: 'Something is regarded as being done by force if someone did it when he was forbidden to do it; done secretly if someone did it when he thought that he had or would have controversy over it.' D.43.26.1.pr for *precario*: '*Precarium* is what is conceded to one who asks for it for his use for as long as the person who made the concession suffers it.' *Paul. Sent.* 5.6.11 defines it as *qui nullo voluntatis indicio, patiente tamen domino possidet*. See Burdese (1952, 28); Kaser (1966, 319-23); Stockton (1979, 207); Bignardi (1984, 41); Labruna (1986, 55); Hermon (2001, 160).

<sup>394</sup> *Cic. Tull.* 19.45. See D.43.26.17: 'Anyone who possesses a farm by *precarium* may avail himself of the interdict for possession of land against all but the person he asked.'

<sup>395</sup> Stephenson (1891, 10); Bozza (1939, 74); Bove (1960, 130).

<sup>396</sup> D.43.17.1.1: 'This interdict is written with respect to the person whom the praetor has as the preferred possessor of the land, and it is prohibitory, for keeping possession.' See Bignardi (1984, 27).

<sup>397</sup> *Agennius Urbicus* 30.34-32.1.



Someone who had been driven from his possession, whether public or private, by violence could also use the *interdictum unde vi*, which restored possession to the injured party: 'If a person be evicted forcibly from possession, he is treated as still possessing, since he has the ability to recover possession by the *interdictum unde vi*.' <sup>398</sup> If someone was damaged in his right to use common pasture land, he was protected by the *interdictum de loco publico fruendo*.<sup>399</sup>

It is not clear when the *interdictum uti possidetis* originated. The interdict is not mentioned in the *Lex agraria* of 111, which mentions only the *interdictum unde vi*. However, it is assumed that the *uti possidetis* originated at some time in the second century.<sup>400</sup> Therefore until the early second century the only laws applying to *ager publicus* were the laws *de modo agrorum*.<sup>401</sup> What protection, if any, a possessor of *ager occupatorius* had before this time is not known. Apparently the need for protection of holdings of *ager occupatorius* became stronger in the second century BC; with the amount of *ager publicus* available in the second century, a large part of which was possessed by *occupatio*, the need for some sort of legal protection for the occupants may have been felt more strongly. Moreover, the value of investments made by the rich on land made more instruments for protection necessary (see ch. 3.3.1).<sup>402</sup>

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<sup>398</sup> D.41.2.17.pr. See Gaius 4.154-5; D.43.16.1.1, 43.16.4; *Cod. Theod.* 4.22. Cic. *Tull.* describes such a case; see also Cic. *Mur.* 12.26 and *Rep.* 1.13.20. See Frier (1983, 234-7).

<sup>399</sup> Attested in D.43.9.1, but it is unclear whether this already existed in the Republic. See Mitteis (1903, 17); Kaser (1942, 39); Burdese (1952, 105).

<sup>400</sup> Labruna (1986, 49) mentions Festus 260-2 L as the oldest authority: *Possessio est, ut definit Gallus Aelius usus quidam agri, aut aedifici, non ipse fundus aut ager. Non enim possessio est (...) rebus quae tangi possunt (...) qui dicit se possidere, his vere potest dicere. Ita quem legitimis actionibus nemo ex his qui possessionem suam vocare audet, sed ad interdictum venit, ut praetor his verbis utatur: uti nunc possidetis eum fundum quo de agitur, quod nec vi nec clam nec precario alter ab altero possidetis, ita possidetis, adversus ea vim fieri veto*. Labruna assumes that Aelius Gallus (fl. 170-150 BC) first formulated the *interdictum uti possidetis*. Bignardi (1984, 3) thinks the form of the interdict as cited by Festus did not appear until the first century BC. Kaser (1956, 247-8 and 1966, 322) assumes the *interdictum uti possidetis* was the oldest of the possessory interdicts, but does not date it exactly. He sees Plaut. *Stich.* 696, 'Age dice uter utrubi accumbamus' and 750, 'Utrubi accumbo? – Utrubi tu vis', as evidence for the existence of this interdict, but this passage seems to refer to the *interdictum utrubi* rather than the *interdictum uti possidetis*: see Watson (1968, 86-7). In Ter. *Eun.* 319-20, written in 161, one of the characters says: 'Do you make it your care to obtain her for me either by force, stealth, or entreaty; so that I only gain her, it matters not how to me.' This seems to be a clear reference to the words of the interdict, but Watson (1968, 89) is doubtful. See also Capogrossi Colognesi (1979, 324 and 1981, 246); Lintott (1994, 55); Ducos (1999, 128). Hermon (2001, 160) assumes the *interdictum uti possidetis* was created at same time as the limit of 500 *iugera*, but she dates this to 367 BC, which seems too early for the interdict.

<sup>401</sup> Bignardi (1984, 77); Ducos (1999, 128). This would have led to considerable legal insecurity: see Frier (1983, 239).

<sup>402</sup> Burdese (1952, 29); Bignardi (1984, 72-8); Labruna (1986, 95-7); Lintott (1994, 55). Kaser (1956, 269) argues that the interdicts were created especially for the *ager publicus*, but this kind of land was already much older than the interdicts. Labruna (1986, 52) thinks that they were created to counter the accumulation of *ager publicus*, but it is unclear how this could have worked.

We have already seen that in many cases it was very difficult for the state to keep track of its property. Even the simple task of administering which lands were *ager publicus* proved too much.<sup>403</sup> Since possession of *ager occupatorius* was always precarious, there were no documents of who possessed which land. Land could remain *ager occupatorius* for a very long time, as we have seen. All this time the possessors used the land virtually as if it was their own, transferring it to others, bequeathing it to their children, and marking its boundaries, all of which was never officially recorded. It seems therefore very likely that the state quickly lost track of which land was *ager occupatorius* and which was private, unless there were very clear boundaries specified.

Sometimes the state tried to remedy the situation by investigating which land was *ager publicus* and which was not. A very important region for the state was Campania, and here several attempts were made to distinguish *ager publicus* from private lands. Of course, this land was not *ager occupatorius*, but *ager censorius*; however, the fact that the state was unable to keep track of land which in theory was supposed to be strictly supervised shows that it must have been even more difficult to keep track of *ager occupatorius*. In its attempts to clear up the status of the Ager Campanus the state depended on the information given by private individuals, who were supposed to tell which land was public. Livy describes how in 205 'evidence was asked for of any cases where land had been appropriated by a citizen of Capua, that it might be included in the Roman state land. The informer was to receive a gratuity of ten per cent of the value of the land'.<sup>404</sup> In 210 all land previously belonging to Capua had been declared *ager publicus*, which means that the state had lost track of *ager publicus* within five years of its appropriation. It is not known whether anyone came forward to inform on his neighbours; in the time of Tiberius Gracchus people seem to have been quite eager to inform on others.<sup>405</sup>

In 173 – more than thirty years after its confiscation – the Senate finally tried to clear up the situation in Campania: 'The Senate decided that the consul L. Postumius should go into Campania to fix the boundaries between the State land and the land in private occupation. It was a matter of common knowledge that persons had appropriated a large part of the state domain by gradually advancing their boundaries.'<sup>406</sup> This had some effect, because 'a large part of the Campanian district, which had been in many places appropriated by private

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<sup>403</sup> Salmon (1969, 48); Ghinatti (1977a, 148); Gabba (1989a, 198). It is surprising to find in Cic. *Agr.* 1.1.3 a reference to a list of *relictæ possessiones*, apparently lands that were *ager publicus* and were not distributed in any way. However, it may be that they were some other kind of land.

<sup>404</sup> Liv. 28.46.5.

<sup>405</sup> App. *BC* 1.18: 'As the persons in possession neglected to hand in lists of their holdings, a proclamation was issued that informers should furnish testimony against them. Immediately a great number of embarrassing lawsuits sprang up.' In l. 90-1 of the *Lex agraria* informers are also mentioned.

<sup>406</sup> Liv. 42.1.6. See Frederiksen (1984, 273-4).

individuals, was by the survey of the consul Postumius recovered for the State'.<sup>407</sup> The facts that one of the consuls was charged with this task shows the importance of Campania for the Roman state, and that 'Postumius spent the summer in surveying the fields and returned to Rome for the elections without even having seen his province' <sup>408</sup> show that the confusion in Campania was great enough to occupy him for a long time.

The Ager Campanus was supposed to be leased out at this moment (see ch. 3.3.3), but this probably never happened, since in 165 another magistrate, P. Lentulus, was sent out to investigate:

When he was *praetor urbanus*, the Senate authorised him to buy up the Campanian territory, which was occupied by private individuals, in order that it should become public land. The owners of the land agreed to let Lentulus set the price, and being a just man he did not deceive them. Such was his moderation that he both served the interests of the republic and restricted private ownership, and he used public money to buy 1,500 *iugera* (*sic*, SR) of land. He brought the Campanian territory, which had been divided amongst private individuals, into public ownership, and let it out at a fair price. Put in charge of an investigation, he recovered much other land, and left a plan of the territory on a bronze tablet in the temple of Liberty, which Sulla later despoiled.<sup>409</sup>

Cicero likewise states: 'Publius Lentulus, who was chief of the Senate, had been sent into those parts by our ancestors, in order to purchase at the public expense those lands, being private property, which projected into the public domain in Campania.' <sup>410</sup>

Although Cicero and Licinianus phrase their accounts differently, it seems clear that Lentulus bought lands which were *ager publicus* but had been occupied like private lands by individuals.<sup>411</sup> This means that the state was obliged to buy back *ager publicus* which was officially its own property; it did not even have the power simply to take it from its possessors. This led to the paradoxical situation that although the state did in fact own huge amounts of *ager publicus*, in the second century there was not enough land available for distributions.

It might be expected that the situation in Campania was more complicated than in other areas, since there were many different forms of land tenure here:

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<sup>407</sup> Liv. 42.19.1.

<sup>408</sup> Liv. 42.9.7, see 42.8.4.

<sup>409</sup> Gran. Lic. 28.31-6. The figure of 1,500 *iugera* (only 3.75 km<sup>2</sup>) seems too low; Granus may have written something else, but what is not clear.

<sup>410</sup> Cic. Agr. 2.29.82. Bozza (1939, 31) thinks Lentulus was *princeps senatus* in 165, but this is definitely wrong, since he cannot have been *princeps senatus* before having been consul, which he became in 162. Granus clearly states that he was praetor when active in Campania.

<sup>411</sup> Manzo (2002a, 156); Russo (2002, 171); Rathbone (2003, 156).

land that had been sold by the censors and the quaestors, private property of loyal Campanians, and *ager occupatorius*.<sup>412</sup> However, in other areas of Italy most likely similar problems occurred. The distance from Rome was greater, and the level of control correspondingly smaller. If the state proved unable to keep control of the prime agricultural land of Campania,<sup>413</sup> it must have been much less capable of controlling *ager publicus* it had acquired in Lucania, Bruttium, Samnium, and Apulia, and the chaos must have been even greater in these regions.

When the Gracchi tried to distribute land, it became clear how large the problems caused by inadequate administration were:

When land of a different category which bordered on public land had been sold or distributed to the allies, in order to establish its dimensions the whole lot had to be investigated, and how it had been sold or distributed. Not all owners had kept their contracts of sale or titles of allotment, and such as were actually discovered were inconclusive. (...) Even in the beginning the division had never been done with any great accuracy, as this was territory seized by war. The proclamation that anyone who wished could work unallocated land encouraged many to cultivate what lay next to their own property and blur the distinction between the two, and the passage of time put everything on a fresh basis.<sup>414</sup>

As we will see, in the time of the Gracchi this situation forced the state to grant the possessors of *ager publicus* extensive rights of tenure on the land they had held only as a *precarium* before. We can see, therefore, that the holders of *ager occupatorius*, although in theory they still held the land as a *precarium* from the state, in fact had a very strong position in the second century. Their possessions were protected by a variety of interdicts, and the lack of administration on the *ager occupatorius* made it very difficult to retake the land from its possessors, who had held the land for many years without interruptions.

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<sup>412</sup> Bringmann (1986, 57).

<sup>413</sup> Vallat (1981b, 93) thinks that *ager publicus* was worked less well than private land, and that Postumius needed to sell it so that it would be cultivated. However, it is highly unlikely that the first-rate agricultural land in Campania would not be worked.

<sup>414</sup> App. BC 1.18: ὅση γὰρ ἄλλη πλησιάζουσα τῇδε ἐπέπρατο ἢ τοῖς συμμάχοις ἐπιδιήρητο, διὰ τὸ τῆσδε μέτρον ἐξητάζετο ἅπασα, ὅπως τε ἐπέπρατο καὶ ὅπως ἐπιδιήρητο, οὔτε τὰ συμβόλαια οὔτε τὰς κληρουχίας ἔτι ἐχόντων ἀπάντων· ἃ δὲ καὶ εὗρίσκετο, ἀμφίλογα ἦν. ἀναμετρουμένος τε αὐτῆς οἱ μὲν ἐκ πεφυτευμένης καὶ ἐπαύλεων ἐς ψιλὴν μετετίθεντο, οἱ δ' ἐξ ἐνεργῶν ἐς ἄργον ἢ λίμνας ἢ τέλματα, οὐδὲ τὴν ἀρχὴν ὡς ἐπὶ δορικτήτοις ἀκριβῆ πεποιημένοι. καὶ τὸ κήρυγμα, τὴν ἀνέμητον ἐξεργάζεσθαι τὸν ἐθέλοντα προλέγον, ἐπῆρε πολλοὺς τὰ πλησίον ἐκπονοῦντας τὴν ἐκατέρας ὄψιν συγχέαι· χρόνος τε ἐπελθὼν ἐνεόχμωσε πάντα. D.50.10.5.1 attests to problems with the administration of public property in later times: 'It is not right for public property to be held by private individuals. So the governor of the province will take care to separate whatever is public property from private and thus increase public revenue.'

### 3. The sale and lease of public land

Until the third century the only form of *ager publicus* was *ager occupatorius*. Although the possession of this land was protected against occupation by other parties, it could still be taken away by the state whenever it was needed. That this in fact proved difficult when the state finally attempted to take land back was of course not known beforehand; at the time the holders may have felt that some stronger form of possession was necessary. The economic developments of the third century made *ager occupatorius* increasingly unsatisfactory. In this period the Roman state rapidly acquired more and more territory. This led to more economic differentiation in society: the city of Rome itself already had some 150-200,000 inhabitants in 225 BC,<sup>415</sup> and the majority of them did not produce their own food. Thus the market for agricultural goods increased significantly. Moreover, Rome's increasing contacts with other regions of Italy and the Mediterranean created possibilities for overseas trade, even if such enterprises were still small in the third century. These combined processes led to the development of a larger market for agricultural products.<sup>416</sup>

The use of *ager publicus* for market-oriented production was problematic. The insecurity of tenure would prevent people from investing in land, since they could not be sure that their land would not be taken away from them. The presence of a large amount of *ager publicus* can therefore be assumed to have been an impediment to the development of commercial agriculture. From the description of Cato and the archaeological record it is clear that commercial agriculture demanded a relatively large investment. The owner needed to pay for slaves, equipment, livestock, seeds or plants, building material, transport, salaries for free labourers, and any other expense that would be incurred in running a farm.<sup>417</sup> This of course involved a considerable risk: if the harvest

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<sup>415</sup> Hopkins (1978, 68-9).

<sup>416</sup> See Cornell (1995, 380-90).

<sup>417</sup> We do not have much information about the costs involved in setting up a commercial estate. Information about land prices is only available for private land, but *ager publicus* could also be sold by its possessors, and the figures about private land may be helpful. Unfortunately, most of our information about the price of land and its development comes from the work of Columella from the first century AD. Colum. R. 3.3.8-10 makes a detailed calculation to show how much profit could be made on a vineyard of seven *iugera*. The total cost of buying and equipping this land would be HS 32,480, of which 7,000 would be the cost of buying the land. Columella's price of HS 1,000 per *iugerum* has widely been accepted as a 'standard' value for land, e.g. Shatzman (1975, 480-1) and Nicolet (1977, 109), who then make assumptions about the size of estates based on their value (e.g. Cicero owned 13,000 *iugera* because his estates were worth HS 13 million, Roscius owned 6,000 *iugera* because his were worth HS 6 million), but this totally neglects the other investments that would increase the value of an estate. In Columella's example only 21% of the total expense went to the buying of the land. It is quite risky to use information for Italy in the first century AD or for other periods or places. Prices varied according to soil, location related to markets, political situation (proscriptions), etc., and this most likely was not only the case for the land, but for the equipment as well. De Neeve (1985, 77-95) therefore argues against using

should fail or the produce could not be sold with profit, the owner would lose much of the invested capital. The same would happen if the owner held *ager occupatorius* which was suddenly taken away by the state. It is likely that insecurity of possession would inhibit a holder from making large investments in the development of the land: one would think twice before setting up an elaborate estate if the basic necessity, land, was not held securely.<sup>418</sup> That this was not a completely theoretical possibility is shown by the fact that Cato himself as censor ordered that 'wherever private owners had built up against public buildings or on public ground, they demolished these structures within thirty days'.<sup>419</sup> Cicero highlights the connection between insecurity of tenure and unwillingness to invest for a later period. He explains that distributions made by L. Antonius could easily be annulled, because 'those who had taken possession will depart with more equanimity. They had not been at any expense; they had not yet furnished or stocked their domains, *partly because they did not feel sure of their title, and partly because they had no money*'.<sup>420</sup> Apparently the insecurity of their tenure had made the recipients hesitant to invest in the land. Admittedly, possessors of land in the first century had more reason to feel insecure of their position than those in the second, since in the first century much land was redistributed again shortly after being assigned, even in the case of private land. However, in the case of *ager occupatorius* the state could in theory take the land away whenever it was needed, without having to pay any compensation to the dispossessed holder. Therefore it was unsatisfactory to be the possessor of *ager*

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Columella as a source for other times and locations; Harris (2007, 524) advises caution, but still uses the HS 1,000. Columella's price of HS 1,000 per *iugerum*, however, is quite close to the price of HS 11,500,000 for 1,000 *iugera* of land mentioned in Cic. *Att.* 13.31.4. Eus. *HE* 3.20.2 gives 9,000 *denarii* (HS 36,000) as the value of 39 *iugera* of arable land, which again comes close to HS 1,000 per *iugerum*. Maybe this was a standard value, but the fact that the figures in these examples seem not to be rounded off makes it likely that they had some basis in fact.

<sup>418</sup> Hopkins (1978a, 14); Kuziščin (1984, 45-6); Labruna (1986, 97); Perelli (1993, 101-2); Di Cocco & Tarozzi (2004, 75). Nicolet (1994, 623) emphasizes that the insecurity of tenure on land would have a negative effect on its market value. See Netting (1993, 160), who draws useful parallels to the lack of investment in land with an uncertain title in modern Africa. Scheidel (1994, 83) and Kehoe (1997, 15) point out that a secure income was appreciated over a high income by ancient landowners (see also Plin. *Ep.* 3.19 and 9.37), and security of tenure on land must therefore have been welcome.

<sup>419</sup> Liv. 39.44.4.

<sup>420</sup> Cic. *Phil.* 6.5.14. In App. *BC* 4.31 a similar reluctance to buy land with an insecure title appears. Cic. *Att.* 8.13.2 attests to the worries people in 49 BC had about the loss of their land, even if it was their private property: 'The people of the country towns and the farmers talk to me a great deal. They care for nothing but their lands, their small *villae* and their tiny hoards.' Uncertainty of property would cause problems when trying to sell land, for example; in 45 Caesar tried to have sales made in Sulla's time ratified, so that he would have more authority over those lands that he had bought himself. If his title would remain uncertain, then 'what possible right of property can his sales carry?' (i.e. sales that Caesar himself made of property of which he did not have full ownership); Cic. *Fam.* 13.8.2.

*publicus*: the insecurity of possession would make sure that such land usually did not yield the profit that it could potentially attain.

Therefore it may be assumed that already in the middle Republic insecurity of tenure formed a check on the amount of investments people were willing to make. Since this was problematic if a growing market had to be catered for, it was in this period that the Roman state first attempted to create new forms of tenure of *ager publicus*. Colonization and *virittane* distribution were aimed mostly at subsistence level agriculture, and for richer farmers it had up until now not been possible to acquire land in any other way than by occupation. In the third century the state therefore created methods of transferring land to people with an official title and security of tenure while the land still remained public.

### 3.1. *Ager quaestorius*

The earliest of these methods entailed the sale of *ager publicus*. This was usually done by the quaestors, and the land sold is therefore known as *ager quaestorius*, at least in the works of the Agrimensores; in Republican works the term does not appear. However, some land was sold by the quaestors in the Republic, and we may use the term *ager quaestorius* for this land.

*Ager quaestorius* was sold by auction in Rome.<sup>421</sup> According to the Agrimensores it was usually sold in fifty-*iugera* blocks: 'Agri quaestorii are those lands that the Roman people took over after the enemy had been conquered and evicted, and instructed the quaestors to sell. (...) These lands they enclosed within *limites* in squares of fifty *iugera* each, and in this way they sold a definite area to each person.'<sup>422</sup> If we assume that the land was sold at market rates, which seems likely since it was sold at auction, smaller farmers could not buy large amounts of land, and the *ager quaestorius* therefore ended up mostly in the hands of the rich.<sup>423</sup> For richer citizens it was an easy way to acquire additional land and for the state to obtain additional income.

There has been some discussion as to the legal status of the land that was sold. It is usually assumed that it remained *ager publicus*. An argument that is often adduced to support this thesis is the imposition of a *vectigal* on *ager quaestorius*. Many scholars assume that a *vectigal* had to be paid to the state, and that therefore the land on which it was paid must have been *ager publicus*,

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<sup>421</sup> Cic. *Agr.* 2.21.55.

<sup>422</sup> Hyginus (1) 82.23-6. See also Siculus Flaccus 102.35-104.3; 118.26-7. Kaser (1942, 27), based on Appian, assumes that only cultivated land was sold or rented out, while uncultivated land was left over for occupation. However, there is no reason to think that *ager occupatorius* could not also be cultivated land, or vice versa.

<sup>423</sup> Zancan (1924, 20); Bozza (1939, 66); Muzzioli (1975, 230); Mitchell (1996, 269). Gabba (1985b, 182 and 1992, 410) thinks that in the second century *ager quaestorius* was a way of giving land to the poor, but this was not the case (see ch. 3.2.3). Land was therefore sold especially when the state needed quick money: Bozza (1939, 176); Muschietti (1972, 223); Burdese (1985, 69).

because the state had no right to ask a *vectigal* on private land.<sup>424</sup> However, there is no direct evidence for the demand of a *vectigal* on *ager quaestorius*. Livy mentions this only for *ager in trientabulis*: ‘the consuls would value the land and impose a nominal tax of one *as* per *iugerum* as acknowledgment of its being public land.’<sup>425</sup> It may be that the circumstances of the creation of *ager in trientabulis* were different from those of *ager quaestorius*, and not all conditions imposed on the *trientabulis* may have applied to *ager quaestorius*.

Moreover, the presence of a *vectigal* cannot be used as proof for land being public, since the *Lex agraria* of 111 mentions *ager privatus vectigalisque*: land both private and burdened with a *vectigal*.<sup>426</sup> Others maintain therefore that *ager quaestorius* became the property of the buyer.<sup>427</sup>

There are other indications concerning the public status of *ager quaestorius*. Firstly, alienation or perpetual renting out of land could only be decided by the popular assembly, and not by a *Senatus Consultum*. Since the sale of land as *ager quaestorius* was decided by the Senate alone, it must have remained public.<sup>428</sup> However, the Senate usually decided over colonial foundations as well, even though technically only a popular assembly could resolve to found a colony. The absence of involvement of the people in the sale of land is therefore not conclusive for the status of the land.

Another indication is the fact that texts mentioning *ager quaestorius* always use the word *vendere* (or its equivalent *venire*). In contrast to our word ‘sale’, however, this term could also be used when rights of ownership were not actually transferred. The *Lex Coloniae Genetivae Iuliae* expressly states concerning the lands belonging to the colony: ‘Nor, if they shall have been sold, are they thereby any the less to belong to the colony Genetiva Iulia.’<sup>429</sup> Although the term *venire* is used, it is stated explicitly that the lands were to remain the property of the city. It looks therefore more like a lease, whether on a temporary basis or in perpetuity. This of course refers to land belonging to a colony instead of the Roman state, but it may be a useful parallel.

This already led Rudorff to argue that the ‘sale’ did not actually mean the sale of the land, but only sale of the right to possess it, in other words the usufruct of it, while the actual ownership remained with the state. This is now accepted by

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<sup>424</sup> Zancan (1934, 20); Bozza (1939, 67, 178); Kaser (1942, 7, 44); Burdese (1952, 45 and 1985, 69); Toynbee (1965b, 174 n. 5); Muschiatti (1972, 224); Nicolet (1977, 123, but cf. 120); Vallat (1981b, 89); Gargola (1995, 118); Sacchi (2006, 82). See De Martino (1956, 564) for a discussion of various possibilities suggested by previous scholars.

<sup>425</sup> Liv. 31.13.7: *in iugera asses vectigal testandi causa publicum agrum esse imposituros*.

<sup>426</sup> *Lex agraria* l. 49 and 66. Zancan (1934, 33), Bozza (1939, 32), and Behrends (1992, 274-6) assume the *ager quaestorius* was *ager privatus vectigalisque*. Contra: Kaser (1942, 44, but cf. 7).

<sup>427</sup> Nicolet (1967, 97 and 1977, 120).

<sup>428</sup> Bozza (1939, 177-8); De Martino (1956, 566); Bove (1960, 8). See ch. 3.1.

<sup>429</sup> *Lex Coloniae Genetivae Iuliae* 82 (CIL 1<sup>2</sup>.594): *neve, si venierint, itcirco minus c(oloniae) G(enetivae) I(uliae) sunt*. See Crawford (1996, 425).



most scholars.<sup>430</sup> Although the evidence is not strong, it seems therefore more likely that *ager quaestorius* remained the property of the state, in other words *ager publicus*.

However, even if the *ager quaestorius* was public in theory, the extent of state control over it was very limited. According to the Agrimensores some record was made of the sales, since 'in quaestorian lands yielding revenue, virtually the same kind of practice can be followed as in allocated lands, since disputes are based on maps'.<sup>431</sup> From this it appears that a map was made of the sales, and that the boundaries between the blocks were marked. However, the owners were apparently free to buy and sell the land, and this was not carefully recorded; it could also be bequeathed to heirs. Therefore problems with the administration of *ager quaestorius* often occurred:

The markers of these lands have now almost been effaced (...). Therefore, it happens that they revert virtually to the category of 'occupied' land. (...) So, in *agri quaestorii*, since in certain regions the stones still exist by which the *limites* can be found, some traces (of the original division) are preserved. But, as I said above, by buying and selling some pieces of land, the landholders have confused things to the extent that the lands have reverted to the category of 'occupied'.<sup>432</sup>

If the distinction between *ager quaestorius* and *ager occupatorius* became so easily obscured, any *vectigalia* which were supposed to be paid on it can no longer have been collected. It is likely therefore that if *vectigalia* were due in theory, they were never collected, since it was impossible for the state to collect them.<sup>433</sup> Some have argued that the land could be bought back by the state only at the initiative of the buyer and against the payment of compensation.<sup>434</sup> Again,

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<sup>430</sup> Rudorff (1852, 288); see also Bozza (1939, 67); Muzzioli (1975, 227); Pasquinucci (1985, 20); Gargola (1995, 118-9); Campbell (2000, 473-4).

<sup>431</sup> Hyginus (1) 92.8-9. See also 98.25-7 and the *Commentum* 62.13-4. It is unclear what is meant by *ager quaestorius vectigalius*; the reference may have been to *ager quaestorius et vectigalius*, thus indicating two different types of land; see Campbell (2000, 474).

<sup>432</sup> Siculus Flaccus 118.30-3: *horum vero agrorum paene iam oblit<t>erata sunt signa. (...). Paene iam ita fit, ut <ad> occupatoria<m> condicione<m> recidant. (...). Ergo in quaestoriis agris adhuc in regionibus quibusdam manentibus lapidibus, quibus limites inveniri possunt, aliqua vestigia reservant<ur>. Sed, ut supra diximus, emendo vendendoque aliquas particulas ita confunderunt possessores, ut ad occupatoriorum condicionem reciderint.* See also Hyginus (1) 82.28-30: *Vetustas tamen longi temporis plerumque paene similem reddidit occupatorum agrorum condicionem: <notum est> n<on> universos paruisse legibus quas a venditoribus suis acceperant.* See Muzzioli (1975, 227).

<sup>433</sup> Rathbone (2003, 153).

<sup>434</sup> Muzzioli (1975, 227); Hermon (1976, 180); Tibiletti (1977, 280); Behrends (1992, 277). Kaser (1942, 46) says that 'daß daneben auch der Staat von sich aus jederzeit die Einlösung verlangen, ja überhaupt das Land einziehen konnte, wird man vermuten dürfen'. However, there is no evidence whatsoever for this, and we must assume that the control of the buyer over the land was stronger than Kaser supposes.

this regulation is inspired by the *ager in trientabulis*, for which it is explicitly stated that ‘when the State could pay its debts any of them [the possessors] who wished to have his money rather than the land could have it and restore the land to the people.’<sup>435</sup> However, there is no reason to believe that this condition applying to *ager in trientabulis* held for *ager quaestorius* as well, and the difficulty of administration of *ager quaestorius* must have made it very difficult to take it back from the buyer when the state needed it.

Campbell therefore concludes:

In strict legal terms public land disposed of at auction remained in the property of the Roman people. (...) But it remains unclear what status lands originally designated as quaestorian had, or if they were regularly subject to a *vectigal* denoting that they remained under public control. It is possible, however, that some quaestorian lands subject to *vectigal* existed, either as a temporary arrangement, or because they had subsequently been sold on and then rented out.<sup>436</sup>

The creation of *ager quaestorius* was therefore an important step in the privatization of *ager publicus*. Whereas previously the only possibility to possess *ager publicus* had been occupation, which provided no certainty of possession, it was now possible to possess land that remained *ager publicus*, while having a secure title of possession. The limited amount of control that the state was able to exert over this land made its possession even more secure in practice than it legally was.

In fact there are very few references to *ager quaestorius* in the sources (Figure 1). This makes it difficult to date the creation of this type of landholding. Some think it originated as early as the fifth or fourth century,<sup>437</sup> but it is never mentioned for this period. The Agrimensores mention the sale of the land in Sabinum as an archetype for *ager quaestorius*: ‘As the Romans became masters of

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<sup>435</sup> Liv. 31.13.8: *si quis, cum solvere posset populus, pecuniam habere quam agrum mallet, restitueret agrum populo.*

<sup>436</sup> Campbell (2000, 474).

<sup>437</sup> Stephenson (1891, 10); Burdese (1952, 44); Basile (1978, 288); Chouquer & Favory (1991, 92); Mitchell (1996, 269). However, the only ‘evidence’ are references to the sale of public land in DH 8.73.3, where Appius Claudius states that ‘if large allotments offering varied and worthwhile tasks for the husbandmen are let out by the state, they will bring in large revenues’, and in Liv. 2.17.6, but these references seem very much influenced by later practice. Gabba (1992, 400) states that occupation of land was the last phase in the tenure of *ager publicus*, and that assignation, sale, and lease were older. This is, however, extremely odd, since sale and lease are not attested until the third century, while occupation is mentioned in the fifth century. Bozza (1939, 175) argues that the idea of leasing out land had not yet appeared to the Romans before the conquest of Sicily in the First Punic War, and therefore sale must have been the preferred method before the introduction of lease. It is also possible, however, that the sale of land as *ager quaestorius* was influenced by the method used on Sicily as well.

all nations, they divided up among the victorious people land captured from the enemy. But they sold other land, for example the land of the Sabines, which is called 'quaestorian.'<sup>438</sup> However, they do not indicate exactly when this happened; it sounds as if it happened immediately after the conquest in 290,<sup>439</sup> but this is not made explicit. In any case, it probably happened in the third century.<sup>440</sup> Indeed a centuriation has been found with squares of fifty *iugera* around Cures Sabini, which may be connected to the sale of land. However, there is no external evidence to date this centuriation.

The first and only account of the sale of land in the literary sources appears in the Second Punic War. In 205 a relatively small part of the Ager Campanus was sold: 'As money was needed for the war the quaestors received instructions to sell that part of the Capuan territory which extends from the Fossa Graeca to the coast.'<sup>441</sup> It is not known where exactly this land was located; however, as the majority of the Ager Campanus became *ager censorius* (see ch. 3.3.3), and another part was used for colonization, there was only a small part left which could have been sold, probably located near the Volturnus river. We may conclude that there was only a limited amount of *ager quaestorius*, at least in Italy, where the

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<sup>438</sup> Siculus Flaccus 102.34-104.3. See also 118.26-34 and *Ordines finitionum* 256.11-3. Manzo (2002a, 140) thinks that this sale failed, because the land was quickly occupied by the rich.

<sup>439</sup> As assumed by Muzzioli (1975, 226-8); Castagnoli (1984, 249); Gabba (1985b, 181); Torelli (1987, 44); Gargola (forthcoming).

<sup>440</sup> Chouquer & Favory (1991, 73). Di Giuseppe et al. (2002, 116) do not see much evidence for the sale of land in the third century. Rudorff (1852, 288), Burdese (1985, 69), and Hermon (1997, 40-2) argue that the third century was too early for the sale of land as *ager quaestorius*, and that the land here was not sold until the Sullan era. In that case, 205 would be the first case of the sale of land.

<sup>441</sup> Liv. 28.46.4: *Et quia pecunia ad bellum deerat, agri Campani regionem a Fossa Graeca ad mare versam vendere quaestores iussi*. See Vallat (1981b, 89); Sacchi (2002, 77). Andreau (1999, 114) states that in 205 large tracts of *ager publicus* were sold, but actually a rather limited amount of land seems to have been involved. There are some other references to the sale of land: Liv. 26.11.6 mentions 'the sale by auction of the spot on which he [Hannibal] had fixed his camp, and the fact that, in spite of his occupation of it, there was no abatement in the price.' See also Zonar. 9.6; Val. Max. 3.7.10b; Flor. 1.2.6.47-8; Front. *Strat.* 3.18.2. It is not explicitly said that this was done by the quaestors, but the fact that it was done by auction may indicate that it was similar to *ager quaestorius*. However, this seems to have been more of a propagandistic action than a genuine measure to raise money. Chouquer & Favory (1991, 127) say that in 205 Calatia and Atella were sold, but this is wrong; Calatia and Auximum (not Atella!) are mentioned in 174 by Liv. 41.27.10 as being sold by the censors (not the quaestors), but it is not said that these places were sold as a whole, only certain *loca publica* – which are defined by D.43.8.2.3 as 'public open spaces, tenement buildings, fields, roads, and highways', and therefore consisted not only of *ager publicus*. The text does not explicitly mention *ager publicus*, contra Van Dooren (2008, 222). App. *BC* 1.7 refers to the sale of land, but does not date or quantify this. DH 20.17.1-2 mentions land in Samnium being sold, but it is unclear which land was concerned and to whom it was sold. Quilici (1994, 130) says that after the Samnite Wars land was sold as *ager quaestorius*, but does not give any sources. Wild (1995, 309) suggests that land in the territory of Cosa was sold as *ager quaestorius*, but there is no evidence for this. See Burdese (1952, 44 and 1985, 69).

only known cases concern Sabinum and a small part of Campania.<sup>442</sup> That the state did not often revert to the sale of land may be explained by the fact that it knew it would be difficult to keep control over this land, since the sale of land practically turned this into the private land of the buyers.

### 3.2. *Ager in trientabulis*

In 210, in the middle of the Second Punic War, many citizens gave their gold, silver, and jewellery to the state to pay for the war:

They each brought their gold and silver and bronze to the treasury, and they were so eager to be among the first to have their names inscribed in the public register that the commissioners were not able to take over the amounts or the clerks to enter them fast enough. The equestrian order showed quite as much zeal as the Senate, and the plebs were not behind the equestrian order.<sup>443</sup>

It was decided that this money would be paid back in three instalments,<sup>444</sup> but when in 200 the time came for repayment of the second, there turned out to be no money available. Therefore

Many of the applicants had stated that there was land everywhere for sale and they wanted to become purchasers; the Senate accordingly made a decree that they should have the option of taking any part of the public land within fifty miles of the City. The consuls would value the land and impose a nominal tax of one *as* per *iugerum* as acknowledgement of its being public land, and when the state could pay its debts any of them who wished to have his money rather than the land could have it and restore the land to the people. They gladly accepted these terms, and the land thus occupied was called *trientabulus* because it was given in lieu of a third part of their loan.<sup>445</sup>

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<sup>442</sup> Bozza (1939, 180); Burdese (1952, 48); Rathbone (2003, 152). It is remarkable that the Agrimensores, writing in the Imperial period, mention the *agri quaestorii* several times. One would expect that if there was only a very small amount of such land, which had disappeared by the end of the Republic, it would not receive such attention in their works. It may be that there was more *ager quaestorius* than the Republican sources allow us to reconstruct, although it is unclear where this should have been located. Alternatively it may be that land was still sold by the quaestors under the Empire, but on different conditions as the *ager quaestorius* of the Republic, see Kaser (1942, 20-1 n. 58).

<sup>443</sup> Liv. 26.36.11-2.

<sup>444</sup> Liv. 29.16.1-3.

<sup>445</sup> Liv. 31.13.6-9: *Quoniam magna pars eorum agros volgo venales esse diceret et sibimet emptis opus esse, agri publici qui intra quinquagesimum lapidem esset copia iis fieret: consules agrum aestimatuos et in iugera asses vectigal testandi causa publicum agrum esse imposituros, ut si quis, cum solvere posset populus, pecuniam habere quam agrum mallet, restitueret agrum populo. Laeti eam condicionem privati acceperere; trientabulumque is ager, quia pro tertia parte pecuniae datus erat, appellatus.*

It is to be assumed that the amount of land they received in 200 depended on how much money each person had lent; the greater part of this land must therefore have gone to the rich, who had contributed the most.<sup>446</sup> Unfortunately, we do not know how much land belonged to this category; it is likely that already most of the land in the surroundings of Rome had been privatized before 200, and that therefore its amount cannot have been large (see ch. 2.2.1-2, 2.2.5, and 4.2).

In the case of the *ager in trientabulis* it is clear that the state was unable to regain control of it, even if it was expressly stated to have remained *ager publicus*. The land could only be taken away by the state at the initiative of the buyer,<sup>447</sup> and therefore they acquired virtually complete security of tenure on this land. There is no indication that anyone ever exchanged his land for money, and the *trientabula* are mentioned as an existing category of land in the *Lex agraria* of 111.<sup>448</sup> It had never been taken away from its possessors, who had now held it for almost ninety years.

The fifty-mile radius runs from Graviscae in Etruria via Narnia and Alba Fucens to a little north of Circeii in Latium (Figure 2).<sup>449</sup> Its proximity to Rome must have meant that it was in high demand among those wishing to produce for the market at Rome. It is expressly stated the rich preferred land to money, and this may be an additional indication of the increased importance of market production in central Italy in the late third century (see ch. 4.3.4). The creation of this land been another easy way for the rich to gain control of *ager publicus* and acquire on it a title that secured their possession, even though this may not have been the intention of the state.

### 3.3. *Ager censorius*

The state could also assign *ager publicus* to individuals by lease, while preserving its public status. As this was usually arranged by the censors, this land is known

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<sup>446</sup> Wild (1995, 305) argues that the veterans of Scipio also received land near Rome, but it is unlikely that they were involved at all.

<sup>447</sup> Contra: Muschietti (1972, 225).

<sup>448</sup> *Lex agraria* l. 31-32: *quei<ve> in trientabule[is sunt]*. Lintott (1992) reconstructs l. 32 to include the word *trientabula*, so that his translation runs 'any of that land which has accrued or accrues in the future to those, who are in the *trientabula*, by inheritance, will or cession, who had the right before the passage of this law to hold, enjoy, possess and defend land or territory which had been leased, apart from that land or territory (...) he shall have the right to hold, enjoy possess and defend it to the extent that anyone had the right to do so before the passage of this law...' However, according to Crawford (1996, 117), l. 32 does not contain the word *trientabula*, and he suggests that *ager in trientabulis* had in some way accrued to the colonies and *municipia* mentioned in the same line. Bozza (1939, 28) takes this line to refer to *ager quaestorius*, but this is not mentioned in the *Lex agraria* or in any later source.

<sup>449</sup> Sacchi's statement (2006, 159) that the *ager in trientabulis* was located partly in the Ager Campanus does not make sense.

as *ager censorius*.<sup>450</sup> Some confusion exists as to what exactly was rented out by the state: the land itself or the right to collect revenues from it. Some maintain that the land itself was rented out by the censors every five years, and that the highest bidder would gain the right to work the land for the coming five-year period, as long as he also paid a yearly rent.<sup>451</sup> Because it is difficult to envisage how this worked – it would mean that every five years the sitting tenants had to move out – some think that in practice the contracts of the sitting tenants were renewed every five years.<sup>452</sup>

It is likely that at first the state indeed planned to rent out the land itself. After the *Ager Campanus* had been made public in 210, ‘a measure was adopted by the plebs, with the sanction of the Senate, authorising these censors to let the territory of Capua to individual occupiers’.<sup>453</sup> It is possible that in this year the land was indeed leased out, with the intention to demand a regular rent from it; Livy tells us that ‘at Capua (the consul) Flaccus was occupied with the sale of the property of the principal citizens and the farming of the revenues from that part of the territory which had become Roman domain-land; the impost being paid in corn’.<sup>454</sup> However, since the state did not in fact collect this *vectigal*, in 173 the state had to send government officials into Campania to sort out which land was public and which private, as we have seen. The statement that ‘one of the tribunes of the plebs gave notice of a proposal that the censors should let out the Campanian land for cultivation, a thing that had not been done through all the years since the fall of Capua’,<sup>455</sup> suggests that since 209 the censors had not occupied themselves with farming out the land or the revenues.<sup>456</sup> In 173 therefore the state planned to rent out not the actual land, but only to farm out the revenues from this land.

This meant that the existing tenants could remain on their farms, and that the censors let out only the right to collect the rents from the land. This was most

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<sup>450</sup> By some *ager censorius* is equated with *ager vectigalis*, e.g. Kaser (1942, 34); Muschiatti (1972, 221); Tibiletti (1974, 97). This is not wrong in itself, since on *ager censorius* a *vectigal* had to be paid, but to call this land *ager vectigalis* may cause confusion with this term in the Digests, where it is used only for lands rented out by towns, not by the state.

<sup>451</sup> Manzo (2002a, 138). Sirago (1971, 25) also thinks the land itself was rented out, and that *ager censorius* therefore could be acquired only by the elite.

<sup>452</sup> Kaser (1942, 37).

<sup>453</sup> Liv. 27.11.8: *ii censores ut agrum Campanum fruendum locarent ex auctoritate patrum latum ad plebem est plebesque scivit*. Curreri (1971, 36) states the *Ager Campanus* was rented out as *ager quaestorius*, but this does not make sense.

<sup>454</sup> Liv. 27.3.1. However, Flaccus was consul, not censor; the censors of 209 in fact did not achieve anything, because one of them died, Liv. 27.6.18.

<sup>455</sup> Liv 42.19.2.

<sup>456</sup> Manzo (2002a, 140) and Rathbone (2003, 156-7) suggest that the Campanian land had never actually been let by the censors, and from the beginning private individuals had occupied it as they wished. Dilke (1971, 144) and Vallat (1981b, 87-8) believe the land was actually leased out in 209. Frederiksen (1981, 275) and Sacchi (2002, 76) say the land was sold in this year, but they may refer to rent.

likely done by the *publicani*, since the state itself had no machinery to collect taxes and rents on a large scale. This also happened with other state property, such as harbour dues and pasture taxes.<sup>457</sup> Every five years the highest bidder received the right to collect the rents in the next five years.<sup>458</sup> The farmers who actually worked the land could remain on it indefinitely and had to pay a rent to the *publicani*, perhaps with a system parallel to that used for the land belonging to cities: 'The lessees who bought the right to collect the rents due according to the conditions imposed, themselves rented out by *centuriae* or sold it to some of the adjacent landholders.'<sup>459</sup> It was therefore not the land itself which was rented out.<sup>460</sup> The *ager censorius* clearly remained the property of the state; it therefore remained *ager publicus*. This is shown by the use of the term *locare*, to lease, which is applied to this kind of land. Moreover, the state could only lease out the right to collect *vectigalia* from public property.

In contrast to *ager quaestorius*, the rents from *ager censorius* were regularly collected. This is shown by the fact that when in 59 BC Caesar distributed the Ager Campanus to individual citizens, 'the *publicani* asked for relief, he freed them from a third part of their obligation, and openly warned them in contracting for taxes in the future not to bid too recklessly'.<sup>461</sup> Now that the land was distributed the *publicani* could no longer obtain an income from the tenants with which to fulfil their obligations to the state, which meant they lost their money. Cicero warns about the loss of state income which would result from the privatization of the Ager Campanus: 'and this is certain, that when the harbour dues of Italy are cancelled and the Ager Campanus distributed, what domestic revenue will there be left except the twentieth (the 5% tax on manumission of

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<sup>457</sup> See Cic. *Agr.* 2.14.36, *Verr.* 2.3.7.18; Polyb. 6.17.2. See Gargola (1995, 119), Rathbone (2003, 158). Some even connect the emergence of the *publicani* system with the creation of *ager censorius*, e.g. David (1997, 72). However, the system of *publicani* already seems well established, and the power of these men great, in the early years of the Second Punic War, see Liv. 23.48.12-49.4 and 25.3.8-12; Val. Max. 5.6.8. See Bozza (1939, 184); Badian (1972a, 16-21); Garnsey & Rathbone (1985, 22); Malmendier (2002, 56-8).

<sup>458</sup> Bove (1960, 11-14, 54-5); Williamson (2005, 249). Stephenson (1891, 10) thinks perpetual rent was also possible, but this is unlikely. Tibiletti (1977, 280) thinks the land was rented out until a new law cancelled the old one.

<sup>459</sup> Hyginus (1) 84.7-8: *Mancipes autem, qui emerunt lege dicta ius vectigalis, ipsi per centurias locaverunt aut vendiderunt proximis quibusque possessoribus*. See Mitteis (1903, 15-22); Burdese (1952, 107); De Martino (1956, 577); Bove (1960, 36); Dilke (1971, 88); Vallat (1983b, 229); David (1997, 68). Kaser (1942, 36-40) thinks hereditary tenure originated only later, but it is likely that the *ager censorius* already created some form of this. Yeo (1948, 283) states that from the second century onwards the censors leased land in plots of 500 *iugera*, but this statement does not make sense.

<sup>460</sup> Contra: Bove (1960, 6), who thinks the state could also rent it directly to small farmers; but this would cost the state far too much trouble. Sirago (1995, 95) and Compatangelo-Soussignan (1999, 97) think the rich 'buyers' of the land actually worked the land themselves.

<sup>461</sup> Suet. *Iul.* 20.3. It is not entirely clear, however, that this reference is to the Ager Campanus; it may be to bids made by the *publicani* for tax collection in Asia.

slaves)?' <sup>462</sup> The amount of rent to be paid is connected by some scholars to the amount stated in Appian, namely one tenth of the grain and one fifth of the tree crops.<sup>463</sup> If, as we have assumed above, Appian made this general statement based on the lease of the Ager Campanus, this may indeed have been the amount demanded on *ager censorius*, but there is no proof that this was the case.

As with *ager quaestorius*, it seems that the leasing out of land by the censors happened only rarely (Figure 1). Apart from the Ager Campanus there are a few other references to the sale of land by government officials. In 199 the censors 'sold the land belonging to Capua which lay at the foot of Mount Tifata'.<sup>464</sup> In 174 there is a reference to 'the money which they received from the sale of portions of the State domain' in Auximum and Calatia.<sup>465</sup> These references are also sometimes considered to refer to *ager censorius*, but there are some differences between these cases and those of 209 and 173. It is remarkable that for 209 and 173 Livy uses the term *locare fruendum*, while for 199 and 174 he uses *vendere*, a term usually connected with the *ager quaestorius*. The statement that the motion of 173 caused protests, since this had not happened 'since the fall of Capua', is strange, because if in 199 and 174 land had been leased as *ager censorius*, 173 would not be the first occasion after 209. We must therefore conclude that in 199 and 174 land was not leased out but sold, maybe under conditions similar to those of the *ager quaestorius*. Apparently the censors could not only rent out but also sell *ager publicus*,<sup>466</sup> but the specifics of such sales, and their differences – if any – with *ager quaestorius* escape us.

There are no earlier references to *ager censorius*, nor are they known from Italy apart from the Ager Campanus.<sup>467</sup> The Agrimensores are silent on this category of land, so we must assume that in their time it did not exist any longer. Although there are few specific references to *ager censorius*, it may have been more common in the second century than appears from the sources. The *Lex*

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<sup>462</sup> Cic. *Att.* 2.16.1, see also *Phil.* 2.39.101. Strangely, in *Fam.* 11.21.5 Cicero expresses agreement with the plan brought forward by Decimus Brutus in 11.20.3 to distribute the Ager Campanus. See Vallat (1983b, 228); Williamson (2005, 66).

<sup>463</sup> App. *BC* 1.7. See Stephenson (1891, 10); Sirago (1995, 106). Manzo (2002a, 135) states that the rent was simply 10%.

<sup>464</sup> Liv. 32.7.3: *et sub Tifatis Capuae agrum vendiderunt*. See Vallat (1981b, 90). Manzo (2002a, 140) and Monaco (2002, 122) think this refers to lease instead of sale.

<sup>465</sup> Liv. 41.27.10: *iidem Calatiae et Auximi (...) venditisque ibi publicis locis pecuniam*. Hermon (1992, 126) unites all transactions in 205, 197, and 174 under the heading 'sale'.

<sup>466</sup> Burdese (1952, 48).

<sup>467</sup> Land in the provinces could be leased out as well, as happened in Sicily, Cic. *Verr.* 2.3.6.13: 'Very few cities of Sicily were subdued in war by our ancestors, and even in the case of those which were, though their land was made the public domain of the Roman people, still it was afterwards restored to them. That domain is regularly let out to farmers by the censors.' Apparently this land was leased out to the original inhabitants. Stephenson (1891, 10) assumes lease occurred already in the fifth century, but it is likely that the references to lease in DH are not reliable for this period (see ch. 2.2.2). Burdese (1952, 46) says leases of land occurred often in the second century, but this seems not to have been the case.



*agraria* of 111 mentions 'that land which [...] contracted out according to a *Senatus consultum* on September 20<sup>th</sup>, together with the land across the Curio'.<sup>468</sup> This appears to refer to a specific case of lease, and the fact that only one specific occasion of the lease of land is mentioned may indicate that this had not happened often. However, it shows that there may have been more occasions of leasing out land than can be said on the basis of literary sources alone. The *Lex agraria* also mentions a category of land known as *ager patritus*: 'For however much anyone may have it leased [*pro patrito*] in the censorship of L. Caecilius and Cn. Domitius (115-4) with the censors, whoever shall be appointed hereafter, they (the censors) are to see that [whoever of them] shall wish may have it leased *pro patrito* for as much, and that they register security in property.'<sup>469</sup> The nature of this land is unclear, but it may be that this was land held in long-term lease. It may in fact be the *Ager Campanus*, which is not mentioned by name in the *Lex agraria*.

The creation of *ager censorius* gave more security of tenure to people wanting to profit from commercial agriculture. Cicero calls the farmers of the *Ager Campanus* *plebs optima et modestissima*,<sup>470</sup> but it is unlikely that they were all small farmers. Some of them were rich enough to engage in market agriculture. They now worked the land on a quite secure basis; the leases were likely to be renewed indefinitely, as long as they paid the rents demanded from them by the *publicani*. At the same time, *ager censorius* made it possible for the state to keep more control over state-owned land; it was clear which land was *ager publicus*, and a regular income from it was ensured by the *publicani*.

We have seen that *ager quaestorius*, *ager in trientabulis*, and *ager censorius* were all created in the (late) third century, and that the recipients of this land were usually those rich enough to produce for the market at Rome. However, the amount of all these kinds of land seems to have been small, and they were all located in central Italy. Therefore, the *ager publicus* located in the periphery remained *ager occupatorius*. Any development of commercial agriculture taking place in regions outside of central Italy therefore had to take place on land that could only be held with an insecure title. This would, however, not have caused serious consequences until the Gracchan period.

#### 4. *Ager scripturarius*

Arable *ager publicus* was not the only type of public land. The Roman state also owned a large amount of non-arable *ager publicus*, the *ager scripturarius*. This comprised all pasture land which was not in any way occupied by individuals,

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<sup>468</sup> *Lex agraria* l. 21: *eum agrum, quem ... ex s.c. a.d. X<I> K. Octobris oina cum agro, quei trans Curione est, locaverunt.*

<sup>469</sup> *Lex agraria* l. 28: *quanti quis pro patrito L. Caecilio Cn. Dom[iti]o cens(oribus) redemptum habe[at], censoribus, queiquomque posthac facteis erunt, ei faciunto [ut]ei [quei eorum] volent, tantidem pro patrito redemptum habeant, p(raedia) supsignent.* See ch. 5.3.3.

<sup>470</sup> Cic. *Agr.* 2.31.84, although he may be exaggerating the poverty of these people.

and on which all citizens could graze animals against the payment of a rent, the *scriptura*. This means that many mountainous or forested areas, especially in the Apennines, were *ager scripturarius*. These lands, contrary to the maps presented in such works as Beloch and Toynbee, were not part of the territory of any specific town, but were under the control of the Roman state (see ch. 2.2.1).

The tax was probably, as in early modern grazing systems, collected before entering the pastures. These were reached by *calles*, drove-roads leading to pastures and between different pasture areas.<sup>471</sup> The collection of the *scriptura* was farmed out to the *publicani*, who rented the right to collect it from the censors for five years.<sup>472</sup> It may therefore have been more difficult to evade paying the *scriptura* than the rent on other kinds of public land; the *publicani* were notoriously more efficient than the state could be. The penalties imposed on graziers mentioned by Livy, whatever their exact reasons, suggest that the *ager scripturarius* was supervised more strictly than other kinds of *ager publicus* (see ch. 3.2.2).<sup>473</sup> At least in theory it was quite easy to collect the *scriptura* from everyone taking his animals to the pastures by setting up control posts at certain points. Pliny says that the *scriptura* was ‘for a long time the only *vectigal*’,<sup>474</sup> implying that it was regularly collected. Festus’ definition of *scripturarius* equally indicates that the *scriptura* was paid, although he does not refer to a specific period: ‘So that cattle may graze, there is a certain rent, of which the *publicanus* establishes the value with the shepherd.’<sup>475</sup>

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<sup>471</sup> Burdese (1952, 37); Pasquinucci (1979, 139).

<sup>472</sup> See Cic. *Verr.* 2.2.70.169-71.172. Farmers of pasture taxes are also mentioned in Plaut. *Truc.* 146-52 and the *Lex agraria* l. 19-20. See Skydsgaard (1974, 13); Corbier (1991, 152-4). Pasquinucci (1979, 137-8) gives Suet. *Iul.* 19.2 as proof that the *scriptura* was collected by the *publicani*, but in the first place this should be 20.3, and secondly this refers to the *Ager Campanus*, which was *ager censorius*, and so has nothing to do with the *ager scripturarius*. Nonetheless, there can be little doubt that *publicani* were involved in collecting this tax.

<sup>473</sup> Bortuzzo (1995, 197); Corbier (1999, 46). Rathbone (2003, 135), however, thinks that until the time of the Gracchi the *scriptura* was not usually collected from the public pasture lands confiscated after the Second Punic War in southern Italy and Cisalpine Gaul. According to him the problem of demarcation made it difficult to collect the *scriptura* until the later second century. This was not remedied until the *Lex agraria* of 111, which lays down rules for use of the *ager scripturarius* (l. 25-6), even though it uses the term *ager compascuus* to indicate such lands. However, there is no reason to assume that the same regulations could not apply to the *ager scripturarius* before the passing of the *Lex Agraria*, since this often repeats already existing regulations. Demarcation was not strictly necessary to collect tax from *ager scripturarius*. Pasquinucci (1979, 114) also thinks the *scriptura* was often not collected. Cic. *Agr.* 1.1.3 refers to the *censurum pascuis*, apparently a list of pastures in public possession.

<sup>474</sup> Plin. *HN* 18.3.11: *etiam nunc in tabulis censoriis pascua dicuntur omnia, ex quibus populus reditus habet, quia diu hoc solum vectigal fuerat*. See also Siculus Flaccus 104.4-7: ‘Other land remained, but in such a way that it was the territory of the Roman people, for example, in Picenum in the region of Reate, where there are mountains called ‘Roman’. They are the territory of the Roman people and the rent from them belongs to the public treasury.’ See Malmendier (2002, 56).

<sup>475</sup> Festus 446 L: *Scripturarius; ut pecora pascuantur, certum aes est, quia publicanus scribendo conficit valiolem cum pastore*. Var. *R.* 2.1.17 states that ‘flocks of sheep are driven all the way from Apulia

In theory every citizen was free to use the *ager scripturarius*, as long as the *scriptura* was paid. Some think that the plebs had no access to the *ager scripturarius*, because they had no money;<sup>476</sup> on the other hand, the *vectigal* was probably not very high and depended on the number of animals, so they may have been able to pay it. The *Lex agraria* decrees that a small number of animals was allowed on the *ager scripturarius* free of charge,<sup>477</sup> and thereby assures the access of small farmers to the public pastures. This might suggest that monopolization by the rich had caused the exclusion of the poor from the public pastures before the passing of this law, and that the law tried to remedy this, but it may also be the codification of an existing practice.

The origins of *ager scripturarius* are obscure. Some think it already existed under the kings, when the land conquered by Rome was possessed collectively as pasture land (see ch. 2.1.1).<sup>478</sup> The proof adduced for this is, however, doubtful; in fact, the reference by Pliny just cited is often quoted as evidence. However, this passage does not seem to refer to a specific period, and it is unlikely to be valid for the regal period. It is, moreover, unlikely that regulations for pasture lands in the archaic period were the same as those which later applied to the *ager scripturarius*. It is more likely that *ager scripturarius* developed when long-distance transhumance became more important as a result of the gradual conquest of the Italian peninsula by the Romans. The confiscation of larger tracts of unfertile land in the fourth and third centuries led to a need to more strictly regulate the use of this land, and this may have led to the introduction of the *scriptura* and the setting up of a system to ensure its collection.<sup>479</sup> The *Lex agraria* of 111 is the first source that describes this system, although it does not yet use the term *ager scripturarius* (see ch. 5.3.3).<sup>480</sup> This has led Rathbone to suggest the concept of *ager scripturarius* was created only during or after the Gracchan period,<sup>481</sup> but it is very unlikely that there were no earlier regulations concerning the large tracts of pasture land the state had acquired long before the second century.

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into Samnium for summering, and are reported to the tax-collectors, for fear of offending against the censorial regulations forbidding the pasturing of unregistered flocks.' Apparently, control was quite strict.

<sup>476</sup> Burdese (1952, 40). Gabba (1985c, 171) thinks the poor did not have to pay a *vectigal*, but this occurs only in the *Lex agraria*, not before. Nicolet (1977, 107) states that *ager scripturarius* could be given out in *possessio* to individuals, but he seems to confuse it with *ager occupatorius*.

<sup>477</sup> *Lex agraria* l. 26: [quei volet, pascere ad eum numerum pecudum qu]ei numerus pecudum in h(ac) l(ege) scriptus est, liceto, neive quid quoi ob eam rem vectigal neive scri[pturam da]re debeto.

<sup>478</sup> Badian (1972, 16-19); Burdese (1985, 50).

<sup>479</sup> This is assumed by Burdese (1952, 39 and 1985, 57); Skydsgaard (1974, 8); Botteri (1977, 319-20); Crawford (1978, 41); Frayn (1984, 55); Bortuzzo (1995, 197); Marcone (1997, 112); Corbier (1999, 47); Hermon (2001, 290).

<sup>480</sup> Capogrossi Colognesi (2002, 34) says the *Lex agraria* does mention the term *ager scripturarius*; this term is indeed not mentioned, but the law does mention *scriptura*, pasture tax.

<sup>481</sup> Rathbone (2003, 171).

The amount of *ager scripturarius* must have been considerable. As we have seen, there were large parts of Italy that were suitable only for pasture, and basically all of this land must have been *ager scripturarius*, as long as it was not *ager compascuus* or *privatus*. It must be remembered that not all pasture lands were *ager publicus*; Cato for example explains that pasture rights could also be rented from private individuals:

Winter pasture should be offered on these terms. State the boundaries of the pasture you sell. Pasture may be occupied for use from the Calends of September onwards. Dry meadow must be given up when the pear begins to blossom; irrigated meadow when neighbours, above and below, begin to irrigate. Or fix a date agreed on both sides. Other pasture must be vacated of the Calends of March.<sup>482</sup>

Private mountain pastures are also mentioned in Cicero: 'When some dispute (as is often the case) had arisen in the hills between the shepherds, the stewards of Habitus defended the property and private possessions of their master.'<sup>483</sup> In the Digests we also find references to privately owned summer pastures (*saltus*) in the mountains.<sup>484</sup>

The *ager scripturarius* was not subject to the privatization process that affected arable *ager publicus* during the Republic;<sup>485</sup> at the end of the Republic pastures were in fact the only kind of *ager publicus* still in existence. Of course, occupation of this land by private individuals may have occurred, just as it happened on arable land, even though this had been forbidden by the *Lex agraria* of 111 (see ch. 5.3.3).

### 5. *Ager publicus* belonging to towns

Until now we have only dealt with *ager publicus* belonging to the Roman state. However, not only the state, but individual towns as well could possess land as their public property. It is likely that when colonies were founded, they were usually granted some land to be the property of the community. Around colonies often much more land was centuriated than was necessary to accommodate the colonists. Around Bononia, for example, 1,200 km<sup>2</sup> were centuriated, while for the colonists only 427.5 km<sup>2</sup> were needed. Around Mutina 2,000 km<sup>2</sup> were centuriated, while the colony itself needed only 25 km<sup>2</sup>.<sup>486</sup> In the case of Sinuessa

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<sup>482</sup> Cato Agr. 149.1-2. Hermon (1976, 180) calls the leasing out of pasture land by individuals *ager scripturarius*, but this seems inappropriate.

<sup>483</sup> Cic. Cluent. 59.161: *Cum quaedam in callibus, ut solet, controversia pastorum esset orta, Habiti vilici rem domini et privatam possessionem defenderunt.*

<sup>484</sup> See note 77. See Skydsgaard (1974, 12).

<sup>485</sup> Rathbone (2003, 172).

<sup>486</sup> Tibiletti (1950, 220, 229). However, these centuriations were most likely not created at the time of the foundation of these colonies; in cases where more than one centuriation is visible, the

1.5 km<sup>2</sup> of the total centuriated area of 107 km<sup>2</sup> were distributed, and in that of Minturnae 1.5 km<sup>2</sup> out of 120.<sup>487</sup> These may be extreme cases, but in most colonies the centuriated territory was larger than the amount necessary for the settlers. It is not clear in all cases that the centuriations were carried out at the time of the colony's foundation; in the case of the towns in Cisalpina Gaul, this is more likely to have happened in the first century BC. However, as we have seen (ch. 2) earlier centuriations were sometimes also larger than the amount needed.

In Roman colonies the amount of land received per colonist was smaller than in Latin ones, so that there was more need for extra land, not only for pasturing but also for agriculture. Nevertheless, in Latin colonies as well, a substantial amount of extra land was added to the colonies (see ch. 4.3.7). It is also possible that additional unmeasured land was granted to communities. Not only colonies founded by the Romans, but other towns as well possessed lands held under the direct control of the community.

The origins of land belonging to towns have been much discussed. It is likely that most communities, already in pre-Roman times, had some (pasture) land that could be used only by the inhabitants of this community,<sup>488</sup> and that this came under the formal control of the cities in Roman times. Arable land under the control of towns does not appear in the sources until the *Sententia Minuciorum*, a judgement pronounced in 117 BC by two Roman magistrates in a conflict between the allied communities of Genua and the Langenses in Liguria. This does not concern a colony, but it is possible that this existed in colonies of Republican date.

Many scholars have assumed that the land belonging to towns was used only as pasture land, on which the locals could graze their animals.<sup>489</sup> However, in the immediate surroundings of many colonies there were also large amounts of land perfectly suitable for agriculture. It is therefore more likely that people also used town lands for agriculture. This can be seen, for example, in the *Sententia Minuciorum*. It states that the Langenses are allowed to work the public land of Genua in exchange for a payment of 400 *victoriati* per year to the Genuates. If this sum was not paid 'the Langenses shall be required to pay into the public treasury

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oldest, which is then often dated to the time of the foundation, is usually much smaller than the newer ones, and often smaller than the amount needed for the recorded number of colonists. See Chouquer et al. (1987).

<sup>487</sup> Galsterer (1976, 49). For public land belonging to colonies, see Duncan-Jones (1976, 8); Behrends (1992, 256). It is almost impossible to locate *ager compascuus*; Wightman & Hayes (1995, 34-5) identify the infertile border zone between Interamna and Casinum as public pasture belonging to the colony of Interamna. This may be true, but there is no evidence that allows us to make such statements.

<sup>488</sup> Burdese (1985, 56).

<sup>489</sup> Toynbee (1965b, 550-1); Laffi (1998, 112).

at Genua every year one twentieth part of the corn and one sixth part of the wine which shall have been produced on the said land'.<sup>490</sup>

Likewise it was not allowed for others than the Genuates or the Langenses to use this land 'for the purpose of tilling' (*colendi causa*).<sup>491</sup> Apparently this public land, which was accessible only to the people of Genua and the Langenses, was not used only for pasturing, but also for the production of grain and wine. The *Lex agraria* likewise speaks of land granted to colonies or *municipia* for exploitation (*fruentus*), which clearly indicates arable land.<sup>492</sup>

Such arable lands could be rented out in order to provide additional income for the town, and was then known as *ager vectigalis*. Unfortunately, evidence for land being rented out by towns dates almost exclusively from the Imperial period. Hyginus writes: 'Lands left over were made subject to rent, some for a period of <five> years, others for one hundred years when lessees procured, that is, leased them. But a large number (of these lands), after the appointed time has elapsed, are put on sale again and leased out, as is the practice with land yielding revenue.'<sup>493</sup> This clearly was not a permanent sale, since after the lapse of the contract the lands were sold again; it looks therefore more like a lease. The only evidence from the Republic, albeit late, is from the *Lex Coloniae Genetivae*. This law deals with the renting out of land, whether *agri* or *silvae*, belonging to the town. It stipulates: 'Whatever land and woods and buildings shall have been assigned or attributed to the colonists of the colony Genetiva Iulia, in order that they may make public use of them, no-one is to sell those land or those woods, or lease (them) out for longer than for five years.'<sup>494</sup> It is likely that not only the

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<sup>490</sup> *Sententia Minuciorum* (ILS 5946) l. 26-8: *Quod in eo agro natum erit frumenti partem vicensumam vini partem sextem Langenses in poplicum Genuam dare debento in annos singulos*. It is to be noted that the amounts stated here are different from those in Appian, which makes us aware that rents on public land were not necessarily 20% on fruits and 10% on grain (see ch. 3.2.1). Moatti (1992, 71), for example, sets the standard rent at one sixth for sown land (which is not 10% anyway) and one fifth for land planted with trees, but there is no evidence for this.

<sup>491</sup> *Sententia Minuciorum* l. 31: *Dum ne alium intro mitat nisi Genuatem aut Veiturium colendi causa*. See Laffi (1966, 55-7).

<sup>492</sup> *Lex agraria* l. 31: *Quibus coloneis seive moi]nicipieis (...), [ceivium Rom(anorum)] nominisve Latini, poplice deve senati sententia ager fruentus datus [est]...* The *Lex agraria* constantly uses *agri* to indicate arable (public) land, while it refers to pasture lands as *ager compascuus* and the imposition owed for its use as *scriptura pecoris* (e.g. l. 19-20, 25-6). D.32.30.1 mentions 'public gardens' (*hortos publicos*) that were rented out.

<sup>493</sup> Hyginus (1) 82.35-84.2. See also D.50.8.5(3.1). See Mitteis (1903, 23); Lanfranchi (1938, 47); Kaser (1942, 34, 49); Duncan-Jones (1976, 9); Stockton (1979, 213); Vallat (1981b, 85); Laffi (1998, 111); Bispham (2008, 77-8). Bozza (1939, 150) and Wild (1995, 303) assume that land could also be sold as *ager quaestorius*. Of course, a town could sell land, but it is not necessary that this happened on similar conditions as *ager quaestorius*, and it is therefore misleading to use this term for sales other than those by the Roman state.

<sup>494</sup> *Lex Coloniae Genetivae Iuliae* 82: *Qui agri quaeque silvae quaeque aedificia c(olonis) c(oloniae) G(enetivae) I(uliae), quibus publice utantur, data adtributa erunt, ne quis eos agros neve eas silvas vendito neve locato longius quam in quinquennium*. Not only land could be rented out, but also other town

colonists themselves, but also other people using land belonging to towns, such as the *incolae*, had to pay a rent for its use (see ch. 4.4.1).<sup>495</sup>

Town lands remained the property of the city. Some of these could not be alienated by the town council: 'Similarly, if something has been allocated to a territory, it will belong to the city itself, and it may not be sold or alienated from public ownership. We shall write this down as follows: 'such and such granted to the territory for its support', as in the case of woods and public pasture land.'<sup>496</sup> However, other lands could be sold: 'Public places are those inscribed, for example 'the woods and public pastures of the Augustan colonists.' These seem to have been granted by name; they can even be put up for sale.'<sup>497</sup> Similarly 'the Pisaurenses officially sold off this area of land, and we must suppose that it was bought by the nearest neighbours, who had lands adjoining it'.<sup>498</sup> It is sometimes difficult to distinguish between leases, which were often indicated with *vendere* or *venire*, and real sales, in which the land became the private property of the buyer. This is expressly indicated by Gaius 3.145, who says: 'The affinity between sale and hire goes so far that in certain cases there is a standing question whether the contract is one of sale or of hire, for example where a thing is let in perpetuity. This is the practice with the lands of municipalities: they are let upon the terms that, so long as the rent is paid, the land shall not be taken away from either the tenant or his heir. But the prevailing opinion is that this is a letting.'<sup>499</sup> However, there is no reason to assume that a town could not decide about the sale of the land assigned to it, and it must therefore have been possible to alienate land in perpetuity. Even if the land was not alienated permanently, it could not be taken away from the tenants as long as they paid the rents. In the Imperial period they could maintain their rights over the land not only against third parties, but also against the city itself.<sup>500</sup>

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property, such as *silva caedua* (forests) and even factories, see D.8.5.8.5 and 18.1.80.2 See Lanfranchi (1938, 47-50).

<sup>495</sup> Laffi (1966, 83); Oebel (1993, 46).

<sup>496</sup> Hyginus (2) 154.34-156.2. See Frontinus 6.9; Agennius Urbicus 42.30-3.

<sup>497</sup> Agennius Urbicus 42.28-9.

<sup>498</sup> Siculus Flaccus 124.21-2. See Agennius Urbicus 40.19-32. CIL 10.5853 tells of an individual who bought land from a town, but then granted it in perpetual rent to the same town: *Fundos Cepenian(um) et Roianum et Mamian(um) et pratum Exosco ab r(e) p(ublica) redem(it) (...) et in avit(um) r(ei) p(ublicae) reddid(it), ex quor(um) reditu de (sestertium) IV m(ilibus) CC quodannis VI id(us) Mai(as) die natal(i) suo perpet(uo) daretur present(ibus) municipib(us) et incol(is) et mulierib(us) nuptis...* Plin. Ep. 7.18 on the other hand relates how Pliny gave land to a town and then rented it back in order to provide the town with a secure income.

<sup>499</sup> Gaius 3.145: *Adeo autem emptio et venditio et locatio et conductio familiaritatem aliquam inter se habere videntur, ut in quibusdam causis quaeri soleat, utrum emptio et venditio contrahatur an locatio et conductio, veluti si qua res in perpetuum locata sit. Quod evenit in praediis municipum, quae ea lege locantur, ut, quamdiu [id] vectigal praestetur, neque ipsi conductori neque heredi eius praedium auferatur; sed magis placuit locationem conductionemque esse.*

<sup>500</sup> D.6.3.1pr: 'They are called vectigalian when they are let on perpetual leases, that is, on terms that as long as the rent-charge is paid, neither the original tenants nor their successors may be

The land belonging to a town was sometimes occupied by private individuals, even though this was officially not allowed: 'Private individuals without any respect for religion are in the habit of appropriating parts of these places [reserved for burials], since they are on the outskirts of town, and adding them to their own gardens.'<sup>501</sup> In that case, it often became unclear who owned it over time and disputes could arise, as Agennius Urbicus explains: 'Over a long period of time, neighbouring landholders encroached on unoccupied land, as if the availability of idle ground had prompted them, and over a long period of time attached it to their land with impunity.'<sup>502</sup> Public pasture lands were not allowed to be occupied either, but this sometimes happened as well: 'Many areas were left over [in colonies] that were not granted to veteran soldiers. These are given different names in different regions; in Etruria they are called 'common land' (*communio*). (...) In general, this pasture land was given to certain individuals for pasturing at the time when the lands were allocated. Many have taken over this pasture land arbitrarily and cultivate it.'<sup>503</sup>

Apart from public arable land, every town had public pasture lands, or *ager compascuus* (Figure 3).<sup>504</sup> Some of this remained under direct control of the town authorities. It could be earmarked for direct use by the town, for example woods that were used for building projects or heating the public bath house: 'In order to support the urban fabric, forests were allocated, from which wood could be brought for the repair of the city buildings.'<sup>505</sup> Other lands were used by all inhabitants of a community as pasture lands and for such purposes as cutting wood. The *Sententia Minuciorum* states: 'As for the land that will be *compascuus*, it will be allowed to the Genuates and the Langenses to pasture the flocks just as it

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removed from the land.' D.6.3.1.1: 'It is accepted law that those who take a lease of land from a municipality, to be enjoyed in perpetuity, although they do not become owners, yet have an action *in rem* against anyone who has possession and even against the municipality itself.' D.39.4.11.1 and Paul. *Sent.* 5.1a.11: 'Public lands held under a permanent lease cannot be reclaimed by a curator without Imperial authority.' If cities were not careful, their land could become full property of an individual by *usucapio*, see D.39.2.15.27. Land rented from cities could also be bequeathed to heirs: 'When a community rents out a revenue producing estate on condition that it may go to the heir of the man who took it, the right of heirs may be transferred also to a legatee' (D.50.16.219). See also Gaius 3.145 quoted above. See Mitteis (1903, 25); Bove (1960, 93); Vallat (1981b, 85).

<sup>501</sup> *Commentum* 68.32-70.1.

<sup>502</sup> Agennius Urbicus 38.10-2. See also Frontinus 6.21-3; *Commentum* 70.15-7.

<sup>503</sup> Agennius Urbicus 36.10-3. See also the *Commentum* 64.11. Incidentally, this shows that pasture could also be used for agriculture.

<sup>504</sup> The term *ager compascuus* is usually applied to land that was limited to specific (neighbouring) individuals, e.g. Kaser (1942, 51 n. 163); Tibiletti (1950, 256); Burdese (1952, 125); De Martino (1973, 23); Laffi (1998, 112-3); Capogrossi Colognesi (2002, 23); Rathbone (2003, 142). However, in many cases it seems to be used to indicate all public pasture lands belonging to a community, and this is how I will use it in this chapter. Burdese (1952, 117) seems to use it both for pasture land belonging to the whole town and to specific individuals.

<sup>505</sup> *Commentum* 66.22-4. See Frontinus 6.11, Agennius Urbicus 42.33-4. See Dilke (1971, 107).



is in the other land of Genua that is destined for public pasture; no one may hinder them or oppose it by force or hinder them to take or use wood or fuel from the land.’<sup>506</sup> The extent of public pastures could be very large: ‘In many colonies the vast quantity of land exceeded what was required for allocation, and since more land was left over than had been allocated, it was granted in common to the neighbouring landholders under the name of common pasture.’<sup>507</sup>

Not only outside of the centuriated land, but also within the distributed *centuriae* there were lands that could not be used for agriculture, because it was marshy, rocky or forested. These were known as *subseciva*, and they were also part of the community’s property (Figure 4). Frontinus says: ‘There are two types of *subseciva*, one when on the outer boundaries of allocated lands a *centuria* could not be completed; the second type of *subsecivum* is that which occurs in the middle of allocated lands and within completed *centuria*.’<sup>508</sup> *Subseciva* could also be rented out, like other land belonging to a town: ‘Some communities, that is, the colonists, sold off the *subseciva* that had been given to them; some attached them to adjoining land in return for a rent; some normally lease them out for five-year periods, and enjoy the return through the lessees, while others lease them out for longer periods.’<sup>509</sup>

Access to the *ager compascuus* could be limited to certain citizens of the town; only the inhabitants of the colony (including the *incolae*) could use the land assigned to the city as *ager compascuus*. Sometimes it was limited to more specific individuals, for example those living directly adjacent to the land: ‘Some places are marked as ‘common pasture land;’ this is a type of land like *subseciva*, or a place where all the closest neighbours, that is, those whose property adjoins it, pasture.’<sup>510</sup> Apparently this did not always happen at the time of assignation, but could also be the result of an agreement between neighbours: ‘Several citizens of a municipality, who held different estates respectively, purchased a tract of woodland as their common property so as to have a common right of

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<sup>506</sup> *Sententia Minuciorum* l. 32-5: *Quei ager compascuos erit in eo agro quo minus pecus [p]ascere Genuates Veiturosque liceat it utei in cetera agro Genuati compascua; ni quis prohibeto nive quis vim facito neve prohibeto quo minus ex eo agro ligna materiamque sumant utanturque.*

<sup>507</sup> Hyginus (2) 158.15-7. See also Frontinus 6.36-8.2; Agennius Urbicus 40.23; Hyginus (1) 82.34-5. See Beloch (1880, 219); Tozzi (1974, 50); Duncan-Jones (1976, 8); Gabba (1979b, 21); Stockton (1979, 213); Salmon (1985, 17); Potter (1987, 122); Colicelli (1998, 118); Van Dooren (2008, 112). Curti et al. (1996, 174) for some reason assume that Latin colonies received common land from the start, but Roman colonies only at some later date. In fact, given the small amounts of private land in Roman colonies, it would be more likely if there was more common land in Roman ones than in Latin ones, see Rosenstein (2004, 77), cf. ch. 4.3.7.

<sup>508</sup> Frontinus 2.24-7, Agennius Urbicus 38.4-5. See also the *Commentum* 54.21-2, 68.17-8; *De agris* 272.16-9. See Moatti (1993, 36); Guillaumin (2007, 157-66). Behrends (1992, 224) thinks the *subseciva* were centuriated, but not distributed, but this is clearly wrong.

<sup>509</sup> Siculus Flaccus 130.3-5.

<sup>510</sup> Siculus Flaccus 124.4-6.

pasture.’<sup>511</sup> Even the centuriated land could be used as pasture, if it proved impossible to lease out all of it: ‘In these lands (i.e. subject to rents), therefore, some places did not find any buyers (i.e. lessees) because of the rough or infertile terrain. So, on the maps of these sites the following notation has sometimes been made, namely, ‘for an area of common pasture,’ or ‘so much common pasture’; these areas should therefore belong to those adjacent landholders whose boundaries touch them.’<sup>512</sup>

It is usually assumed that for the use of town pasture a rent was required.<sup>513</sup> The Agrimensores say that common pasture lands ‘furnish a rent, though it is a small amount’.<sup>514</sup> If there was a *vectigal* on *ager compascuus*, it may not always have been collected;<sup>515</sup> since *ager compascuus* was used mainly by small farmers, it might not have been worth the effort of collecting it. On the other hand, it may have been easier for a local community to collect *vectigalia* than it was for the Roman state. The Agrimensores continually state that there were maps indicating which land was common pasture land, and so there seems to have been a reasonably correct administration of this.

There is some discussion as to whether the land assigned to towns was *ager publicus populi Romani*; some have argued that the Roman state kept some form of control over the land assigned to towns.<sup>516</sup> Others assume it became the full property of the towns.<sup>517</sup> In the case of towns that were not conquered by the Romans, it is of course difficult to see how the Roman state could have established any control over their public land. The town of Genua held common land, but the Romans had never conquered this town, which makes it difficult to envisage how the town’s public land could have been *ager publicus populi Romani*.

However, for towns that were colonies there are some indications of Roman authority over the town lands. After the Second Punic War the state decreed that of the unfaithful Campani ‘those who had been deported beyond the Tiber were forbidden to acquire or to hold either for themselves or their posterity landed property anywhere *except in the territories of Veii, Sutrium and Nepes*, and in no

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<sup>511</sup> D.8.5.20.1. See also Frontinus 4.36-8: ‘There is also ownership of pasture land, which belongs to the farms but in common. Because of this, in many areas of Italy this pasture land is referred to as common’ (*communio*). Siculus Flaccus 118.21-4: ‘I have discovered that certain woods, which are in a sense public property, are in the hands of the neighbours, indeed are in a sense the property of these neighbours, and that no one except those who are adjacent to the woods has the right to cut down trees or pasture there.’ Festus 40 L: *compascuus ager, relictus ad pascendum communiter vicinis*. The pastures mentioned in Cic. *Quinct.* 6.28 and 14.46 also belonged to a partnership.

<sup>512</sup> Hyginus (1) 84.8-12. See Burdese (1952, 119).

<sup>513</sup> Liebenam (1900, 14); Burdese (1952, 126); Rathbone (2003, 142).

<sup>514</sup> Hyginus (2) 158.21: *nam et vectigal quamvis exiguum praestant*.

<sup>515</sup> Burdese (1952, 126).

<sup>516</sup> As assumed by Mitteis (1903, 20); Trapenard (1980, 141); Bozza (1939, 150); Tibiletti (1974, 91). See Baldacci (1986, 97) for the land mentioned in the *Sententia Minuciorum*.

<sup>517</sup> Beloch (1880, 122, but cf. 219); Laffi (1966, 59-60), but cf. (1966, 93-4 and 1998, 114) where he considers both arrangements possible. Bernstein (1978, 123) thinks the state could rent out *ager publicus* to towns.

case was such holding to exceed fifty *iugera*'.<sup>518</sup> This implies that the state assigned land belonging to these cities to the Campani, and that the state had some authority over the land held by these cities. All the land of Veii had become *ager publicus* in 396, and it is possible that some was still held as such by the state, but this does not explain how the state could assign land in the territory of the colonies Sutrium and Nepes. It may be that the Second Punic War had caused the depopulation of these two colonies, and that therefore the state assigned the land that was no longer used to the Campani, maybe with the permission of the colonies.

Both the *Sententia Minuciorum* and the *Lex agraria* mention land which had been *fruentus datus*, given to towns in order to be worked: 'granted by the people or by a decree of the Senate to exploit, [which land those colonies or those *municipia* or any] equivalent of a colony or *municipium* or of *municipia* (there may be) shall exploit'.<sup>519</sup> It is not stated that these towns gained full property over this land, which makes it possible that the state retained some measure of control over these lands, and could take them back if necessary. A parallel may be drawn with the reservation of land that took place in the territory of Thurii (see ch. 2.3.8), where one third of the land was reserved for later distributions.<sup>520</sup>

Some towns possessed land in areas far away. Agennius Urbicus says: 'They (the towns) normally have some privileges by the gift of emperors, in that they have received in far-distant places some tracts of land in order that they might have the yield from them. The ownership of these clearly belongs to those to whom it was allocated.'<sup>521</sup> This phenomenon is already attested for the late Republic. The towns of Atella, Arpinum, Aquinum, and Rhegium owned land in Cisalpine Gaul. Placentia, Parma and Luca all owned land in the *Ager Veleias*.<sup>522</sup>

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<sup>518</sup> Liv. 26.34.10: *Qui eorum trans Tiberim emoti essent, ne ipsi posterive eorum uspiam pararent haberentve nisi in Veiente Sutrinum Nepesinove agro, dum ne cui maior quam quinquaginta iugerum agri modus esset*. Harris (1971, 204) assumes that there were large amounts of state *ager publicus* in the possession of towns in Etruria, and that Tiberius Gracchus saw that this was occupied by great estates when he travelled to Numantia. However, there is no evidence that this land actually was *ager publicus*, and even if it was, there is no reason why it should be land belonging to the Etruscan towns and not to the state.

<sup>519</sup> *Lex agraria* l. 31: *Poplice deve senati sententia ager fruentus datus [est, quo agro eae coloniae eave moicipia seive quae] pro colonia moicipiove prove moicipieis fruentur...* Unfortunately, we do not have enough information to allow us to make a distinction between the land of Roman and Latin colonies.

<sup>520</sup> D.50.16.15 moreover, states that 'the goods of a community are wrongly called public; for only those things are public that belong to the Roman people' (*bona civitatis abusive 'publica' dicta sunt: sola enim ea publica sunt, quae populi romani sunt*). See also D.50.16.16: 'For the designation 'public' relates in a number of cases to the Roman people; for communities are regarded as being in the position of private people.' However, it may be that the definition of 'public property' in the late Empire was different from that in the Republic.

<sup>521</sup> Agennius Urbicus 36.21-3. See the *Commentum* 64.17-9.

<sup>522</sup> Atella: Cic. *Fam.* 13.7.1; Arpinum: Cic. *Fam.* 13.11.1; Rhegium: Cic. *Fam.* 13.7.4; Aquinum: Plin. *HN* 3.15.116; *Ager Veleias*: CIL 11.1147. See Galsterer (1976, 168); Wulff Alonso (1991, 85);

Capua received land in Crete when its own land was distributed by Octavian.<sup>523</sup> This land of course could not practically be used by the colony's inhabitants, and only provided the town with income from rents taken from the people working it.

As far as we can tell, land held by towns was not subject to any process of privatization during the Republic. Its existence is widely attested in the Imperial period, especially in the Digests. Such land was, therefore, available to most people in Italy in the Republican period; it is indeed likely that for many people public land belonging to their towns formed an essential condition for their survival. In this it may have been far more important than *ager publicus* belonging to the state (see ch. 4.3.7).

#### 4. Conclusion

What emerges from this analysis of the different forms of landholding in the Republic is a gradual privatization of much of the original *ager publicus populi Romani*. In the early Republic there were no laws concerning public land. Even though at this time the amount of *ager publicus* was small, most of it appears to have been occupied by the elite, causing problems for small farmers. In 367, when it had become clear that the occupation *ager publicus* was a problem, a law was issued to the effect that limited the amount of land (private and public) that could be occupied by one individual. There is no reason why the limit introduced at this time should not be the 500 *iugera* stated in the sources. Although the law did not give any official security of tenure on *ager publicus*, in practice it made it more difficult for the state to take away land held within the limit.

In the third century the growth of the market for agricultural products and the increase of (inter)regional trade caused an increase in demand for land on which to produce for the market. Investments in public land, however, were dangerous, since the possessor might lose the land if the state chose to retake it. The creation of *ager quaestorius*, which was probably developed in the third century, was a first step in granting more security of tenure on *ager publicus*. Although the land in theory remained state property, the buyer had security of tenure and could sell and bequeath it as he liked. It could not be taken away as long as the rent was paid. Moreover, the inadequate administration of *ager quaestorius* meant that it soon became indistinguishable from the private property of the buyer. In the Second Punic War the state furthermore created the *ager in trientabulis* and *ager censorius*. These also provided the leaseholder with secure tenure of the land, which could not be taken away from him.

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Campbell (2000, 361); Biundo (2004). Broadhead (2000, 165) suggests that this land had belonged to private individuals who had moved to Gaul and bequeathed the land to their original towns in wills etc. Toynbee (1965b, 550-1) without reason assumes that this land consisted mostly of pasture.

<sup>523</sup> Vell. 2.81.2. See Keppie (1983, 70).

In the early second century there was so much *ager publicus* that there was no reason for the state to maintain strict control over it. Although in theory the law limiting possession to 500 *iugera* remained in force, no attempts were made to deprive anyone of land in excess of the upper limit. Those who acquired public land in this period may have been confident that it would not be taken away from them. During the second century many possessors of *ager publicus* appear to have considered the tenure over their holdings secure, and to have invested in them, as is shown by the protests that were voiced against the Gracchan reform plans.

However, as the century progressed competition for land grew. With the continued growth of pressure on the land in central Italy, it proved impossible to leave to the occupiers of *ager publicus* the land they had cultivated. In previous centuries it had been an ongoing policy of the Roman state to remove people from central Italy to the more peripheral regions to mitigate the effects of population growth in central Italy. The pressure on the land that occurred in this region in the second century made it necessary to renew this policy. However, the only land that was available for the state to use was *ager publicus*, especially that in southern Italy. Distributing this land would improve the situation of many landless proletarians, and would, at least temporarily, alleviate the pressure on the land in central Italy. This, however, caused protests from those who had occupied *ager publicus* for a very long time, both Roman and Italians. We will discuss this process in more detail in the next two chapters.

## 4. The second century and the economy of *ager publicus*

### 1. Introduction

In the second century the Roman state rapidly developed from a city-state to an empire spanning the Mediterranean. This brought unprecedented opportunities to Italy, but at the same time it caused social and economic problems for those who were unable to benefit from the favourable economic climate. The traditional picture is familiar: the new conquests brought an enormous amount of wealth from the eastern part of the Mediterranean into Italy, in the form of money and slaves. This was accumulated mostly by the elite; they occupied the land, especially the *ager publicus*, and used their new wealth to establish large slave-staffed *latifundia* and sheep ranches. The small farmers, suffering from increasing burdens of military service, were driven from their lands. Some of the landless poor flocked into the cities, while others remained in the countryside and formed a rural proletariat. Thus the soldiers who had conquered the Mediterranean in service to the Roman state did not partake of the spoils; in Hopkins' famous words: 'Roman peasant soldiers were fighting for their own displacement.'<sup>524</sup> The proletarianization of the poor, and the consequent increase in their dependence on the market, in turn caused an increase in the demand for foodstuffs, which were produced by the rich. This made the rich even richer, and caused a further increase in the demand for land, since more land was needed for the establishment of cash crop estates. Since the impoverished and landless proletariat had no means to cover their subsistence needs, they became reluctant to raise children; this seems to have caused an absolute decline in their numbers. *Ager publicus* in this reconstruction was central to the problems of the small farmers: it was this land on which they depended for their subsistence, and this land that was occupied by the rich. Thus the loss of access to public land was directly responsible for the crisis of the Roman peasantry. This famous reconstruction of the 'crisis of the second century BC' occurs in many modern works, most notably those of Toynbee, Hopkins, and Brunt, who do not hesitate to use rhetoric like 'the deracination of the Roman peasantry' and 'the disappearance of the small Roman farmer.'<sup>525</sup>

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<sup>524</sup> Hopkins (1978, 30).

<sup>525</sup> The traditional picture is based mainly on App. BC 1.7-8 and Plu. TG 8. Other writers comment on the 'greed of the rich' and their accumulation of land as well: Plaut. *Trin.* 287; Sall. *Iug.* 41.5-8; Juv. *Sat.* 9.140-51; Colum. *R.* 1.3.12; Sen. *Ep.* 89.22; 90.39; Ps-Quint. *Decl. mai.* 13.2-3. Many modern scholars have taken over this picture, to name just most influential: Tibiletti (1949, 30-6); Toynbee (1965b, 9-14, 177-9, who coins the phrase 'deracination of the Roman peasant'); Brunt (1971, 142-3); Gabba (1977, 277-9; 1979b, 32); Hopkins (1978, 11-3, 30-1); Stockton (1979, 6-9); Salmon (1982, 92); De Neeve (1984, 30). In fact this reconstruction is almost universally repeated in scholarly works, even until the present day; see for a few recent examples Arthur (1991a, 64); Kolendo (1993, 168-74); Perelli (1993, 20); Capogrossi Colognesi (1994, 130); Hermon (1994a, 503); Lloyd (1995, 210); Sirago (1995, 305); Cornell (1996, 110); Mitchell (1996, 270); David (1997, 88-9); Levi (1997, 33-4); Celuzza (2002a, 113); Regoli (2002, 145).

This increased proletarianization of the free Roman citizen is considered to have culminated in the Gracchan reform. The Gracchi recognized that the occupation of *ager publicus* by the rich was the most pressing problem facing the Roman peasant. To address this problem, they attempted to distribute public land to landless citizens. As we shall see in the next chapter, the idea held by the Gracchi that the distribution of *ager publicus* was both the problem and the solution of the peasants' problems led to the gradual disappearance of the public land by the middle of the first century BC.

Even though this traditional reconstruction is still upheld by many, several ideas emerging from recent scholarship have made it impossible to maintain. One of the most radical new ideas is that the second century was not a period of population decline, but of population growth. Population decline was not caused by the proletarianization of the small farmer, but proletarianization was itself caused by *growth* of the free population of Italy and the resulting competition for land. Another important issue that has been brought forward concerns the importance of elite competition for land: it is now recognized more and more that the market for which the elite – and other producers, for the elite were not the only group involved in commercial agriculture – could have produced its goods was limited. Urbanization was not as substantial as it would later become, and the market for agricultural products was correspondingly smaller. This has serious implications for the importance of aristocratic competition for land: if there was no market for the products of a great number of large estates, there seems to have been no reason to accumulate large tracts of land, whether public or private.

The idea, central to the traditional picture, that the land accumulated by rich farmers was *ager publicus* has not as yet been questioned. However, in my view the role of *ager publicus* in the reconstruction of second-century developments was much more complicated than is usually assumed. As we have seen, the insecurity of tenure on *ager publicus* made it unattractive as an object of investment, which had already led to the creation of new forms of tenure in the third century (see ch. 3.3.1). Moreover, as we will see, the location of the arable *ager publicus* makes it difficult to assume that the spread of cash crop estates took place mainly on public land. Furthermore, many small Roman farmers were not depending solely on public land, because this was in many cases difficult to obtain.

In this chapter I will investigate in more detail the economic and social developments of the second century and the role played by *ager publicus*. I will investigate the interrelationship of proletarianization, population growth, increasing competition for land, and the growth of urbanization and commercial production, as they appeared in Italy in the second century (see Figure 5 for a flowchart of second-century developments). For this discussion it is sometimes necessary to move away from *ager publicus* for a while: we must first investigate the extent of the spread of cash crop estates in Italy and the causes of the

accumulation of land for the purpose of commercial agriculture. As this, in my view, was usually not located on *ager publicus*, public land will not be the main focus of this part of the chapter. However, after investigating the importance of market agriculture we will return to *ager publicus*, in order to see how important this kind of land was for commercial producers and small farmers. My main aim will be to argue that, even if many elements of the traditional picture of the second century are correct, it is possible to offer a very different reconstruction of this crucial period in Roman history, especially where the role of *ager publicus* is concerned.

## 2. *Ager publicus* after the Second Punic War<sup>526</sup>

Before investigating the role of *ager publicus* in the developments of the second century, it is necessary to start with a short overview of the location of *ager publicus* shortly after the Second Punic War. As we have seen in chapter 2, a considerable proportion of the *ager publicus* that was confiscated in the fourth and third centuries remained public until after the Second Punic War. After this war a further increase in the amount of public land took place, since the rebellious allies were punished with the confiscation of large tracts of land, which were now declared *ager publicus*. In northern Italy the conquest of Cisalpine Gaul was taken up again and completed in the 170s BC, which led to the creation of further extensive tracts of public land. Most *ager publicus* that existed during the second century, therefore, was situated either in the recently conquered territory in Cisalpine Gaul, or in the south, where much land had been taken from unfaithful allies. Only a relatively small amount was located in central Italy, where it had been left over from before the Second Punic War.

In the early second century a large number of colonies was founded. Most colonists were sent to Cisalpine Gaul, with only a small number receiving land in southern Italy; this left much *ager publicus* in the south available for occupation, while much land in the north became private. As the number of Roman colonies outside central Italy was small, most of the privately owned *Ager Romanus* and the majority of Roman citizens were still located in central Italy; this will be important when we turn to the consequences of social and economic developments in the second century. Only a few new colonies were founded on land that had already been confiscated before the Second Punic War. The reason for founding so many colonies at this time was probably the need to make sure the defeated peoples would not resist Roman rule; the Romans had found out that their control over Italy was not as secure as they might have thought, and wanted to make sure their hold over it would not be compromised again. The only way of doing this was by strengthening the Roman presence across Italy by establishing strongholds in all conquered areas.

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<sup>526</sup> For the details of the colonies and land distributions mentioned in this section, see the Appendix.



It is not immediately clear why colonization stopped after the last virgine distribution in 173, with the possible exceptions of Auximum and Heba. One likely explanation is the fact that there was no longer any military reason to found new colonies, because the whole of Italy had been pacified. The allies in the south had proved obedient, and the conquest of Cisalpine Gaul was complete. No further colonization was necessary to make sure the defeated peoples remained loyal. Some have argued that by the 170s much of the remaining *ager publicus* had been occupied by rich Romans, who were unwilling to give it up.<sup>527</sup> However, the events of the Gracchan period show that much *ager publicus* in the south had remained in the hands of the Italian allies; if the state had really wanted to establish colonies, it could have taken this land and used it for distributions. It has also been suggested that the nobility feared the power of the men who founded the colonies. The inhabitants of the new colonies would become their clients, and such men would thus gain many clients if a great number of colonists were to receive land.<sup>528</sup> Livy usually mentions the names of the men chosen as triumvirs for the establishment new colonies in this period; it was clearly a prestigious position, and a record was kept of the men chosen for this honour, but there is no indication that the men assigned to the founding committees abused the influence they had over the inhabitants of the new towns. There is no reason why the grant of such a position would suddenly have been viewed as a danger from the 170s onwards, when this had not been the case in the previous decades. It may be, however, that increasing competition within the elite – which seems to have been an issue in the second century, judging from the number of *leges sumptuariae* – prevented the foundation of colonies.<sup>529</sup>

Another possible explanation for the sudden end of colonization may be deduced from the census figures preserved for the second century. During the Second Punic War the population had declined, and therefore it proved difficult to find enough colonists for the new colonies. We have seen that Latins and even allies were admitted into the official body of colonists in several colonies and virgine distributions after the Second Punic War (ch. 2.5.2). Several colonies, moreover, were abandoned shortly after their foundation. Apparently the survivors of the war had ample opportunities to acquire land, and could be picky about the land assigned to them.<sup>530</sup> We must remember that those sent out to Latin colonies no longer counted as citizens, and therefore were no longer

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<sup>527</sup> See Toynbee (1965b, 206) for the lack of *ager publicus* in Cisalpine Gaul; in general Stockton (1979, 135); Perelli (1993, 20); Cornell (1996, 111); Jehne (2006, 82).

<sup>528</sup> Badian (1958, 162-3); Salmon (1969, 112-3 and 1985, 19); Stockton (1979, 135); Triebel (1980, 188); Jehne (2006, 77).

<sup>529</sup> Salmon (1969, 112-3); Patterson (2006, 202). For *leges sumptuariae* see ch. 3.2.2. Stockton (1979, 135) and Gabba (1989a, 216) assume that the nobility was anxious to keep the land for itself, and feared the competition of new men who would become rich by receiving great parcels of land in colonies. However, the amounts of land, even in Latin colonies, were not large enough to raise the recipients to the level of wealth of a Roman Senator.

<sup>530</sup> Flach (1990, 31).

included in the census. This may have been a reason for the large number of Roman colonies instead of Latin ones after the war: the state wanted to distribute the land, but did not want the census figure to fall even more. The census figures, however, show a quick recovery from the decline during the war (Figure 6): the census of 169/168 recorded an impressive rise to 312,805 citizens, more than 40,000 above the last pre-war figure, 270,713. If the state believed that land distributions were an incentive to stimulate population growth, it was now no longer necessary to distribute land for this purpose. Even if the Roman state for ideological reasons was always looking to increase its manpower, the fact that at this time colonies were strategically no longer necessary, combined with the fast increase in population, may have led to an end to colonization after 173 BC. That land distributions were used in this way may be shown by their use in the Gracchan period. The general decline of the population was considered a serious problem in the later second century, and the distribution of land was suggested as a possible solution: men who were able to support a family would be more eager to have children.<sup>531</sup> In the same way it is possible that the politicians of the 170s BC, observing the rise in the census figures, concluded that land distributions were no longer necessary to increase the population. This would mean that the census figures were used by Roman politicians as a basis for policy, and that they were also considered to be, at least roughly, reliable. I will discuss this further in the next chapter (ch. 5.2.2).

The end of colonization led to a situation where the majority of the Roman citizens owned private plots of land, sometimes supplemented by public lands in the vicinity. Moreover, there were still considerable tracts of *ager occupatorius*, which, in principle, were open for occupation by anyone who wanted them. However, this type of land was not spread evenly throughout Italy. While there was still much *ager occupatorius* in southern Italy and Cisalpine Gaul, this does not apply to central Italy. In the *suburbium* of Rome – Latium, Campania, southern Sabinum and southern Etruria – there was only a very limited amount of such land left.

As we have seen (ch. 2.2.2-5), most of the public land in Latium had been distributed as private property to Roman citizens in virginate distributions or in colonies after the Latin War. Furthermore, many towns in Latium had been granted Roman citizenship without losing any land. The same goes for Sabinum, where most local inhabitants had received Roman citizenship without loss of land, and most of the land that had been confiscated was distributed to Roman

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<sup>531</sup> Already in 393 land had been distributed so 'that men might be willing to bring up children in the hope that they would receive their share': Liv. 5.30.8. Cass. Dio 38.1.3 states that the depopulation of Italy in the first century would be solved by land distributions of Caesar. Fraccaro (1919, 203), Brunt (1971, 28), Càssola (1988, 14), Gargola (1995, 142), and Patterson (2006, 196) hint at the impact of land distribution on demographic development. Bernardi (1973, 108), on the other hand, argues that colonization stopped, because after a quick rise in the early second century, the population now began to stagnate.

citizens in virginate distributions. In Etruria some land had remained public for a considerable period, but this had gradually been turned into the private property of Roman citizens by the establishment of colonies in the early second century. Finally, all *ager occupatorius* in southern Etruria, Sabinum, and Latium within the fifty-mile boundary had been turned into *ager in trientabulis* in 200 BC.<sup>532</sup>

In Campania as well much land had been privatized during the third century by the establishment of colonies or by virginate distributions. However, in Campania new public land had been created during the second Punic War: the territory of Capua, known as the *Ager Campanus*, had been confiscated as a punishment for Capua's disloyalty. Most of this land had been quickly disposed of: new colonies were established along the coast, and the rest of the *Ager Campanus* had been sold or leased out. This means that again there was only a limited amount of *ager occupatorius* available; what was left in Campania was located mainly in the mountainous areas on its northern and eastern borders. It is therefore unlikely that during the second century a large amount of *ager occupatorius* was located in central Italy.

This means that the only forms of *ager publicus* still available in central Italy were special kinds of public land: *ager in trientabulis* and other land that had been sold or leased out. The extent of each of these types of public land seems to have been small, as we have seen (ch. 3.3), and they seem to have accrued especially to the rich. More importantly, once this land had been obtained by its first possessors, it could be treated by them as their private land, in the sense that it could be sold or bequeathed to heirs. It was not comparable in nature to *ager occupatorius*, and was therefore not threatened by the Gracchan land distributions, which involved only *ager occupatorius*. *Ager in trientabulis*, for example, is mentioned in the *Lex agraria* of 111 as an existing category of land, and its possession remained protected by law (see ch. 5.3.3).

In short, we can conclude that most of the *ager occupatorius* was located not in central Italy, but in the more peripheral regions: southern Italy, Picenum and Cisalpine Gaul. There was therefore almost no *ager occupatorius* in central Italy of which 'the rich', or any other group, could have taken possession by expelling the poor. This will have had important implications for the role of *ager publicus* in the developments of the second century, as we will see. With the end of colonization after the 170s, it is to be expected that pressure on the land would gradually increase, at least if commercial agriculture continued to grow in importance, and if the population as a whole continued to grow.<sup>533</sup> We will now turn to the developments in commercial agriculture, before examining the role of population developments in the second century.

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<sup>532</sup> Gargola (1995, 116) sees the passage in which Tiberius Gracchus' journey through Etruria is described as proof for continued existence of *ager publicus* in the area. However, the southern part of the route would have been included in the *ager in trientabulis*, while most of the northern part, between Graviscae and Cosa, would have belonged to the territory of these two colonies.

<sup>533</sup> Rich (2007, 165).

### 3. The growth of commercial agriculture after the Second Punic War

Appian and Plutarch leave no doubt as to the consequences of the increased wealth coming into Italy: 'the rich' occupied the land and established large slave-staffed estates on it, driving the poor from the land. Thus it became impossible for the poor to gain a living and they were reduced to destitution. According to the literary sources, the land monopolized by the rich was mainly *ager occupatorius*:

The rich gained possession of most of the undistributed land and after a while were confident that no one would take it back from them. They used persuasion or force to buy or seize property which adjoined their own, or any smallholdings belonging to poor men, and came to operate great ranches instead of single farms. They employed slave hands and shepherds on these estates to avoid having free men dragged off the land to serve in the army.<sup>534</sup>

However, although there is certainly some truth in this picture, it does not accurately represent the situation during the second century, especially with respect to the legal status of the occupied land and the regional variations which can be discerned throughout Italy.

In studying *ager publicus*, and the economic developments of the second century in general, it is important to distinguish between the various regions of Italy. In some areas, mainly in central Italy, an increase of estates producing for the market, largely staffed by slaves, certainly took place. In other regions, however, the production of goods for the market did not play such an important role. Moreover, it is now widely accepted that commercial production did not always take place on large estates; instead, cash crop farms came in many shapes and sizes, and were mostly small during the second century. If we want to assess the consequences for the small farmer of the accumulation of land by those producing for the urban market, we must study this development in more detail. In which regions did an increase in commercial production occur, and when did this happen? Which crops were cultivated, and to which markets were they transported? How large were these markets? How large were the estates producing goods for the market, and how many slaves were involved in such enterprises? And, most importantly for our purposes: was the land used for commercial production *ager publicus*, private land, or both?

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<sup>534</sup> App. BC 1.7: οἱ γὰρ πλούσιοι τῆσδε τῆς ἀνευμήτου γῆς τὴν πολλὴν καταλαβόντες καὶ χρόνῳ θαρροῦντες οὐ τίνα σφᾶς ἔτι ἀφαιρήσεσθαι τὰ τε ἀγχοῦ σφίσιν ὅσα τε ἦν ἀλλὰ βραχεὰ πενήτων, τὰ μὲν ὠνούμενοι πειτοῖ, τὰ δὲ βίᾳ λαμβάνοντες πεδία μακρὰ ἀντὶ χωρίων ἐγεώργουν, ὠνητοῖς ἐς αὐτὰ γεωργοῖς καὶ ποιμέσι χρώμενοι τοῦ μὴ τοὺς ἐλευθέρους ἐς τὰς στρατείας ἀπὸ τῆς γεωργίας περισπᾶν, φερούσης ἅμα καὶ τῆσδε κτήσεως αὐτοῖς πολὺ κέρδος ἐκ πολυπαιδίας θεραπόντων ἀκινδύνως αὐξομένων διὰ τὰς ἀστρατείας.

Whereas the traditional reconstruction of economic developments asserts that the growth of commercial estates took place mainly on *ager occupatorius*, I shall argue that this thesis does not hold. As noted above, in central Italy, where commercial agriculture was most widespread, the amount of *ager occupatorius* was in fact rather limited. It is therefore impossible that in this area the land on which large estates were established consisted mainly of public land. This would coincide with the developments described in the previous chapter: investments with a view to producing for the market would not easily take place on public land due to the insecurity of such holdings, and this had already led to the creation of new legal forms of public land in central Italy. How then can the occupation of public land be considered a problem for the poor, as the sources would like us to believe?

### 3.1. Market production on arable land

The idea that large slave-staffed estates producing for the market became the dominant form of land possession in the second century is presented over and over again in the works of modern historians. The ‘crisis of the second century’ is often attributed to the growth of large estates called *latifundia*, which described as vast enterprises worked by large numbers of slaves. Such ideas are partially influenced by the slave plantations in the United States, especially in older works such as those of Frank and Toynbee.<sup>535</sup> However, estates that can realistically be termed *latifundia* did not appear until the first century BC, when estates were far larger and more luxurious than in the second century. The word *latifundium* is not used in the sources until the Imperial period.<sup>536</sup> All estates that can be securely dated to the second century were much smaller, a few hundred *iugera* at most, employed only a small number of slaves, and produced not only for the market, but also for the subsistence of their own personnel.<sup>537</sup> Moreover, they

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<sup>535</sup> Stephenson (1891, 40); Scalais (1930-2, 234); Tibiletti (1949, 36; 1950, 210; 1955, 23); Gabba (1956, 47; 1972, 63-4; 1977, 278; 1979b, 42); Toynbee (1965b, 160-8, who mentions ‘plantations’); Frank (1962, whose sixth chapter is called ‘The establishment of the plantation’); Nicolet (1967, 92); Boren (1968, 21); White (1970, 346); Sirago (1971, 62); Hermon (1976, 182 and 1994a, 503); Torelli (1976, 108 and 1995b, 26); Garnsey (1980, 35 and 1988a, 190); Frederiksen (1981, 271); De Neeve (1984, 79); Bleicken (1992, 63); Tagliamonte (1996, 251); Levi (1997, 469 and 1999, 33); Pareti (1997, 429); La Torre (1999, 109).

<sup>536</sup> Plin. *HN* 18.4.17, 18.7.35; Sen. *Ep.* 90.36; Petron. *Sat.* 48, 77; Colum. *R.* 1.3.12. Flor. 2.3.19.3. For descriptions of such estates see White (1967, 65); Shatzman (1975, 472-4); Garnsey (1980, 35); Frederiksen (1981, 272); Pucci (1985, 16); Oehme (1988, 23); Horvath (1994, 88); Purcell (1995, 168-72); Accardo (2000, 42); Marzano (2007, 126-7).

<sup>537</sup> Many scholars point out that second-century estates were small, even if they sometimes still call them *latifundia*: White (1967, 65 and 1970, 388); Gabba (1979b, 42); Potter (1979, 116, 122); Stockton (1979, 13); Evans (1980, 23, 30); Frederiksen (1970-1, 331 and 1981, 269); Mansuelli (1988, 143); Perelli (1993, 24); Torelli (1995a, 13); Lomas (1996, 146); Schubert (1996, 108); Marcone (1997, 136); Accardo (2000, 43); Bradley (2000, 230-1); Heftner (2006, 35). The number of larger estates as a percentage of the total number of sites was always small in this period: Vallat (1987, 194), for example, states that in Etruria and Latium *villae* never made up more than 10% of the total

produced a variety of goods instead of one cash crop. It would therefore be unwise to call the estates of the second century *latifundia*; and the term *villa* is now considered to be the most suitable for the second-century establishments.<sup>538</sup> This will be used throughout this chapter to indicate any reasonably large estate that was clearly above subsistence level and therefore likely engaged in production for the market. Of course, commercial agriculture was not a new development after the Second Punic War; as we have seen, the market was already considerable in the early third century. However, it now increased significantly in scale, with both the number of cash crop estates and their individual size becoming larger. To assess how important the accumulation of land actually was, we must first find out how large such estates were, and where they were located.

Cato's treatise *De agri cultura* is the first literary source that describes production with the aim of making a profit. His observations are often confirmed by those of Varro in the mid-first century BC, and by Columella in the first century AD, although individual farm buildings and the estates connected to them were much larger in their time.<sup>539</sup> It is clear that the main aim of Cato's estates was to make a profit, and he shows constant awareness of the importance of the market: 'There must be a sizeable town nearby, or the sea, or a river used for traffic, or a good and well-known road.'<sup>540</sup> Since transportation was very expensive, the presence of a market nearby, or good possibilities for transporting

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number of sites. Nicolet (1994, 622), on the other hand, states: 'if there had not been an accumulation of 'big estates' – over 120 hectares at least, and in fact much bigger – there would *not have been* a socio-political problem in 133 B.C.' (author's emphasis). However, if many people, at least in central Italy, competed for the limited amount of land that was available, some of them would have been able to accumulate large estates, some medium-sized ones, and many of them would have ended up with too little to support their families, in which case there was a socio-political problem after all. Kehoe (2007, 555) ambiguously states 'the villa system became the dominant form of agriculture in early Imperial Italy', but at the same this was 'largely confined to coastal regions'. However, even in early Imperial Italy and even in coastal regions there were always more small than large sites.

<sup>538</sup> Capogrossi Colognesi (1981, 450); Kuziščin (1984, 44); Desy (1993, 76); Lomas (1993, 90). However, it should be remembered that the size of the establishments called *villae* can vary greatly.

<sup>539</sup> Varro and Columella do not explicitly mention farm sizes, although Varro's description of a farm in *R.* 3.5.9-17 shows that such enterprises were much more luxurious in his days than in Cato's time. See also *Cic. Q.* 3.1.3.

<sup>540</sup> Cato *Agr.* 1.3.

goods, was very important.<sup>541</sup> In general it is clear that the goal of the farm was to produce a surplus and sell this on the market, and thus to make a profit.<sup>542</sup>

On the other hand, the estates described by Cato were also supposed to be self-sufficient. The main products were wine and olive oil, but the farms also produced grain to feed the slave workers and many other products that were needed to support the farm and its labourers. Throughout Cato's work it is clear that a wide variety of crops are produced. He starts by listing the elements that should be present on a good farm: 'A vineyard (or an abundance of wine), second an irrigated kitchen garden, third a willow wood, fourth an olive field, fifth a meadow, sixth a grain field, seventh a plantation of trees, eighth an orchard, ninth an acorn wood.'<sup>543</sup> Not only foodstuffs, but many other utilities as

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<sup>541</sup> Cato *Agr.* 22.3 lists some prices for transport, such as a crushing mill, which would take six days to transport from Suessa with the help of oxen and six labourers, and cost 72 sesterces; if the same mill was transported from Pompeii (with apparently the same amount of labourers), this would increase to 280 sesterces. See Var. *R.* 1.16.3. See Toynbee (1965b, 298); Spurr (1986, 125-6); Jongman (1988, 141); Dyson (1992, 34); Lomas (1996, 146); Morley (1996, 63-8); Marcone (1997, 133); Erdkamp (1998, 62-72); Rosenstein (2004, 15).

<sup>542</sup> Cato *Agr.* 3.2 encourages his readers to make sure that there are 'plenty of [storage] vats so that one is free to wait for prices to rise, which will be better for income, self-esteem and reputation'. Cf. Var. *R.* 1.22.4. See also Cato *Agr.* 2.7: 'The master has to be a selling man, not a buying man.' See also Var. *R.* 1.2.8: 'the Italian seems to have had two things particularly in view in his farming: whether the land would yield a fair return for the investment in money and labour.' Cato has often been criticised for the small scale of his profits, for instance when he advises to sell useless implements like 'aging oxen, runty calves, (...) an old slave, a sickly slave' (*Agr.* 2.7), but this advice may be more inspired by the sober image he wanted to present to his peers than by the economics of a large estate. See also Var. *R.* 1.69.1 and 3.16.11. For Cato's frugal image see Cic. *Sen.* 7.24; Plu. *Cat. Ma.* 1.1, 2.1, 3.2, 4.4-5, 6.1; Nep. *Cat.* 1.1. See Tibiletti (1955, 15); Capogrossi Colognesi (1981, 445); Spurr (1986, 3).

<sup>543</sup> Cato *Agr.* 1.7: *Praedium quod primum siet si me rogabis, sic dicam: de omnibus agris optimoque loco iugera agri centum, vinea est prima, vel si vino multo est, secundo loco hortus irriguus, tertio salictum, quarto oletum, quinto pratum, sexto campus frumentarius, septimo silva caedua, octavo arbustum, nono glandaria silva.* This passage has often been understood as a listing in descending order the most profitable types of agriculture, e.g. by Var. *R.* 1.7.9-10; Plin. *HN* 18.6.29, and by modern scholars, such as Bernstein (1969, 67); White (1970, 391-2); Shatzman (1975, 16); De Martino (1980, 88); Tchernia (1986, 120); Oehme (1988, 27-8); Erdkamp (2005, 171); Marzano (2007, 108). However, the prominence of willow woods in the list is surprising; it has therefore been suggested that this is not a list of profitable types of agriculture, but of the requirements for a good farm: it is 'a list of added-value features whose presence (...) helps to promote self-sufficiency, to reduce marginal expenditure and to provide added sources of profit. That is why (...) there is less need for a vineyard if the neighbourhood already offers abundant, and therefore cheap, wine': Dalby (1998, 57), following De Neeve (1981, 54). This is supported by the fact that the whole passage gives advice on the elements needed for a farm to be a good investment, and that the farm described by Cato is a mixed farm anyway. He also advises on the planting of a wide variety of trees (40.1) and gives instructions for fruit and olive nurseries (48). His ideal olive yard includes 100 sheep (10.1), see also Var. *R.* 3.12.1 and 3.13.2. On the other hand, if even Varro and Pliny interpret Cato's passage as a list of profitable types of agriculture, this makes it more likely that this was Cato's intention. In any case, monocultures, in the sense of farms devoted to only one crop, were non-existent in the Roman Republic, see Toynbee (1965a, 160 and 1965b, 308-9); White (1970, 51);

well could be made on the farm, like 'articles which are made of withes and woods, such as hampers, baskets, threshing-sledges, fans, and rakes; so too articles which are made of hemp, flax, rush, palm fibre, and bulrush, such as ropes, cordage, and mats'.<sup>544</sup> All these crops were produced on the farm in order to make its level of self-sufficiency as large as possible. However, more specialized objects, like ploughs, crushing mills, spades, carts, vats, tiles, yokes, horse gear, clothes and boots, were usually bought.<sup>545</sup> The farm was thus very much a part of the market, not only on the supplying side, but also on the buying side.

An important question involves the size of the estates described by Cato, since this can tell us something about the accumulation of land by cash crop producers. Cato himself gives lists of inventory for olive plantations of 120 and 240 *iugera* and vineyards of 100 *iugera*.<sup>546</sup> Usually it is assumed that much of the total farm size of 100, 120 or 240 *iugera* was used for other products than the main crop.<sup>547</sup> However, in my view the land for the other products must be added to the land needed for the main crop, so that the total size of the farm would be larger than the size mentioned. The main evidence for this is Cato's inventory for the 100-*iugera* vineyard, which includes 'enough vats for five vintages, total 800 *cullei*'.<sup>548</sup> If 800 *cullei* (413,600 litres, the *culleus* being 517 litres) were produced in five harvests on a surface of 100 *iugera*, this means that 827 litres of wine were produced per *iugerum* per year. Estimates of the yield of ancient vineyards are usually around or even below this figure, even if some ancient sources boast about extremely large yields.<sup>549</sup> Jongman for example reckons with a production

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Rawson (1976, 93); Nicolet (1977, 102); Spurr (1986, 9); Oehme (1988, 24); Lomas (1993, 142); Sirago (1995, 244); Morley (1996, 75-6); Accardo (2000, 43); Kehoe (2007, 554). Contra: Tibiletti (1955, 23).

<sup>544</sup> Var. R. 1.22.1-2, 1.2.21. See Plin. *Ep.* 2.17. Cf. Pall. 6.12, 9.12 for the production of tiles and iron wares at the farm, D.8.3.6.pr for the production of *amphorae*, *dolia*, and tiles. This is attested by archaeological finds from Moltone: Isayev (2007, 46). See Bradford (1957, 162).

<sup>545</sup> Cato *Agr.* 135. See 162 for the buying of pork. See Var. R. 1.16.3.

<sup>546</sup> Cato *Agr.* 3.5, 10-11. In 1.7 he cites the ideal size of a farm as *iugera agri centum*.

<sup>547</sup> The exact surface area needed for other crops is debated; Carandini (1980, 2) estimates that of the 100 *iugera* about 20-33 were used for wine production, De Martino (1980, 91) 45, Vallat (1987, 197) 30, and Bergqvist (1992, 124) 16-20. Rathbone (1981, 12) estimates that at Settefinestre 100 *iugera* were used for wine, 60 for grain, 60 for beans, and 14 were forested. Salomon (1964, 50) assumes that Cato's *villae* were used mainly for cattle and forest and that only a small part was planted with vines and olive trees, but this was certainly not the case. See in general White (1970, 391-2); Duncan-Jones (1982, 327); Oehme (1988, 30); Scheidel (1994, 162).

<sup>548</sup> Cato *Agr.* 11.1: *Dolia ubi V vindemiae esse possint culleum DCCC*.

<sup>549</sup> Colum. R. 3.3.8 argues that a vineyard yielding less than three *cullei* per *iugerum* should be rooted out; Colum. R. 3.3.3 mentions the estates of Seneca in Nomentum, which yielded 8 *cullei* per *iugerum*; he states that 20 *amphorae* (less than one *culleus*) per *iugerum* is low, but 100 (five *cullei*) is very much. Plin. *HN* 14.5.52 mentions a yield of seven *cullei* per *iugerum*. Var. R. 1.2.7 and Colum. R. 3.3.2 cite Cato's *Origines*, in which he estimates the yield of vineyards in the Ager Gallicus at *dena cullea* (5,250 litres) per *iugerum*, according to Varro, or 600 *urnae* (7,875 litres) according to Columella. Var. R. 1.2.7 tells us that the Ager Faventinus yielded 15 *cullei* per



of only 500 litres per *iugerum* per year.<sup>550</sup> Even if this is too low, it is unlikely that, apart from the wine, other crops could have been produced on only 100-*iugera* as well.<sup>551</sup> The estate would therefore need additional land to produce the other food and non-food items needed for the subsistence of its workers.

It is possible to make a rough estimate of how much land was needed apart from the 100 *iugera* for the vineyard or 240 for the olive yard. Cato gives information about the amount of grain his slaves received as rations: each field worker received four *modii* per month in winter and 4.5 in summer, except for the *vilicus* and *vilica*, the supervisor and the shepherd, who received three *modii* per month. This means that for Cato's estate with sixteen slaves, twelve of whom were counted as field workers, a total of 760 *modii* of grain per year would be necessary. To this should be added seed-corn, amounting to 2-300 *modii*, a total of about 1,000 *modii* per year.<sup>552</sup> Jongman estimates that one *iugerum* produced 100 kilos (15.3 *modii*) of grain, in which case the labour force of sixteen slaves that lived on the 100-*iugera* vineyard needed at least an additional 70 *iugera* to provide its own grain supply. However, others have argued that this yield estimate is too low. Erdkamp has accepted a yield of 40-50 *modii* per *iugerum*,<sup>553</sup> and this would lower the necessary amount of land to about 20 *iugera*.

It is more difficult to quantify the amount of land needed for the other products of the farm. The sixteen slaves also received at least 2,500 litres of wine per year, which would require an additional three to five *iugera* in the case of the farm producing olive oil; on the vineyard, wine for the slaves was deducted from the amount sent to market.<sup>554</sup> Cato also mentions several fodder crops, namely lupin, acorns, hay, beans, and vetch.<sup>555</sup> It is likely that each of the leguminous crops did not require more than one *iugerum* to produce the amounts mentioned

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*iugerum*, and that yields of 10 to 15 *cullei* per *iugerum* were normal in many parts of Italy. It is likely that such figures were exceptional, and that the normal yield of vineyards was much lower.

<sup>550</sup> Jongman (1988, 132). See Carandini (1980, 4); Rathbone (1981, 12); Duncan-Jones (1982, 40, 45); Desy (1989, 188-9); Marcone (1997, 143). However, Purcell (1985, 13) agrees with Columella's estimate of at least three *cullei* per *iugerum*, and Vallat (1987, 197) estimates the average yield at four to six *cullei* per *iugerum* per year; see also Kron (forthcoming). With a yield of 500 litres per *iugerum*, 165.4 *iugera* would be needed to produce 82,700 litres per year; apparently, the yield on Cato's estates was higher, at about 1.5 *cullei* per *iugerum*.

<sup>551</sup> Desy (1989).

<sup>552</sup> Cato Agr. 56.

<sup>553</sup> Jongman (1988, 135); Duncan-Jones (1982, 328); Kehoe (2007, 551). Erdkamp (2005, 34-44) argues that yields of 8:1 or 10:1 were normal for large estates on fertile soil, which means that one *iugerum* could yield 40-50 *modii* of grain. For peasant smallholdings, yields were probably lower (p. 48-9). De Martino (1980, 75) assumes a yield of 28-30 *modii* per *iugerum*.

<sup>554</sup> From Cato Agr. 57 it appears that the slaves received a total 2,440 litres of wine a year, which would take five *iugera* to produce if one *iugerum* produced 500 litres, but only three if one *iugerum* produced 832 litres. In Agr. 25 Cato states 'when grapes are ripe and are harvested, first be sure that enough is kept by for the household and the owner's people', so the provisions for the slaves did not require extra land on a vineyard.

<sup>555</sup> Cato Agr. 60.

by Cato;<sup>556</sup> for the hay and acorns this is more difficult to establish. Cato also recommends that a farm should have its own irrigated garden, willow wood, olive plantation, meadow, coppice, orchard, and acorn wood. Some farmers will have owned additional land for these purposes; others may have had access to public lands on which they could find their willow and acorn woods, meadow, and coppice, as these were not present in all locations and so could not always be part of the private estate. The garden and orchard, however, must always have been present on the private estate of the owner.<sup>557</sup>

We must remember that the practice of intercropping most likely was widespread in antiquity. This means that grain and other crops were sown between the vines or olive trees (Photo 7).<sup>558</sup> The sheep that Cato mentions in his olive grove could graze on the land between the trees, so that no extra land was needed for the sheep. In the case of vineyards this was not possible, because the sheep might damage the vines, and for this reason Cato does not include them in his inventory.<sup>559</sup> However, it may be that planting other crops between the trees would lower the yield of the trees themselves, so that intercropping probably did not significantly reduce the total amount of land needed. The total number of additional *iugera* needed can therefore be set at a minimum of 30 *iugera*, the largest part of which was taken up by the production of grain. If all this land was added to the land necessary for the main crop, a vineyard of 100 *iugera* would mean a minimum estate size of 130 *iugera*, and an olive yard of 240 *iugera* would mean an estate size of 270 *iugera*. Although such estates are not to be compared to the enormous *latifundia* that would come into being in the early Empire, they were still quite large.

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<sup>556</sup> Lupines yield about 4000 kilos/ha ([www.lupins.org](http://www.lupins.org)); beans a few hundred kilos/ha: <http://www.hort.purdue.edu/newcrop/1492/beans.html>; <http://aphorticulture.com/Beans.htm>. Vetch yields on average about 1000 kilos/ha: [http://www.hort.purdue.edu/newcrop/1492/legume\\_animal.html](http://www.hort.purdue.edu/newcrop/1492/legume_animal.html). These figures are taken from experiments in modern developing countries, without the use of advanced technology, but local circumstances may of course differ from those in ancient Italy. See Flint-Hamilton (1999).

<sup>557</sup> This was the case, for example, in Boscoreale, see Jashemsky (1994, 104-10). See Catul. 114; Petron. *Sat.* 38, 48 for estates with different kinds of land. Last (1934, 5) argues that estates were large because one person required different kinds of land (arable, summer and winter pastures), but it unlikely that a person would have one estate in which all kinds of necessary land were present.

<sup>558</sup> Cato *Agr.* 33 and Plin. *HN* 17.35.197-8 refer to the sowing of *ocinum* between vines. Colum. *R.* 5.6.5 mentions growing vines tied to other trees, 5.6.11, 5.7.3, 5.9.7 and 5.9.12-3 mention grain sown between olive trees, a normal practice in modern Italy as well. In 2.9.6 he mentions grain sown between vines. See in general 5.10.5. See Bradford (1957, 162); Salomon (1964, 29); Pekáry (1979, 87); De Neeve (1981, 64); Duncan-Jones (1982, 327-8); Spurr (1986, 6); Oehme (1988, 24); Gallant (1991, 38); Goodchild (2006, 202); Goodchild & Witcher (forthcoming).

<sup>559</sup> MacKinnon (2004, 113). Var. *R.* 1.2.21 and 2.2.12 refer to animals grazing on the land after harvest so that their manure will increase fertility. Pall. 3.26 mentions the grazing of pigs in the vineyard in order to cut the vines.

Cato's is the first literary description of a commercial estate, and it first sight his description seems reasonable for the second century. However, it has recently been pointed out that there seems to be a discrepancy between the villa as described by Cato and the finds that turn up in the archaeological record. Terrenato has argued that the archaeological sites dating from the second century cannot be equated with the 'Catonian villa' as described by Cato. He argues that not a single 'Catonian villa' has turned up in the archaeological record until the late second century. Instead, from the third century onwards (and in some areas even earlier) there appear what Terrenato calls 'Hellenistic farmsteads', sites that show evidence of commercial production, but are built on a much smaller scale than the *villae* described by Cato. He points out, for example, that while Cato states that a villa should have five olive presses,<sup>560</sup> no establishment with five presses has been found.<sup>561</sup> Most 'Hellenistic farmsteads' have only one press, and larger numbers do not appear until the late second century. On this basis Terrenato argues that the estates connected to such small farm buildings would not run into the hundreds of *iugera*.<sup>562</sup>

It is unlikely, however, that the *villae* described in Cato's work would have had no relation at all with the reality of his time. The main source of the problem lies in the fact that it is very difficult to determine what a 'Catonian villa' actually looked like; Cato himself gives no clear description of the buildings associated with the estates. The only information given on the building of the farmhouse is that it had 'foundations in stone and mortar to a foot above ground level, then walls in mud-brick. (...) Walls 1½ feet thick'.<sup>563</sup> There were also various adjacent buildings: 'Specify ox-sheds winter and summer, feed-racks, stable, slave rooms.'<sup>564</sup> The 'Catonian villa' as described by Cato himself therefore seems to have been

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<sup>560</sup> Cato Agr. 10.2.

<sup>561</sup> Marzano (2007, 105-6) mentions the *villae* at the Via della Fattorie in Cosa, which had four wine presses, and Settefinestre, which had one olive and three wine presses. These *villae*, however, do not date from the second century BC. Most *villae* around Rome had only one or sometimes two presses, see Mari (1991, 34); Marzano (2007, 104).

<sup>562</sup> Terrenato (2001a, 20-5). His view has been criticized by many scholars, e.g. Gualtieri (2003, 134); Marzano (2007, 9-10); De Nardis & Rosafio (forthcoming). Many other scholars maintain that the 'Catonian villa' did not appear until the late second century, e.g. Frederiksen (1981, 277); Vallat (1995, 64). Lafon (1993, 273) tries to solve this apparent contradiction by arguing that, since Catonian *villae* did not come into being until the late second century, *De agri cultura* must date from the very end of Cato's life, after 150 BC. However, 150 BC still does not constitute the late second century, and, moreover, it is unlikely that Cato would at the first appearance of such *villae* immediately sit down and write a treatise on them.

<sup>563</sup> Cato Agr. 14.4-5, 15: *villa lapide calce fundamenta supra terram pede, ceteros parietes ex latere: iugumenta et antepagmenta quae opus erunt indito, cetera lex uti villa ex calce caementis (...) sesquipedalem parietem.*

<sup>564</sup> Cato Agr. 14.1-2: *Praesepeis bubus hibernas aestivas, faliscas, equile, cellas familiae.*

a rather modest affair: built of mud-brick and apparently unplastered,<sup>565</sup> it was a long way from the later monumental *villae*.

It is difficult, moreover, to connect the size of a villa building with the size of the farmland connected to it.<sup>566</sup> For example, Cato's olive yard, although more than twice as large as his vineyard, did not require a larger number of slaves, and so the slave quarters would not have to be larger. Nor did the larger surface lead to a significantly larger amount of space needed for processing the harvest or storage: the inventories of both types of farm include a similar number of instruments for processing and storing the harvest, carts and smaller tools, and draught animals, which would demand an equal amount of space in both cases. The only thing missing from the vineyard as compared to the olive yard are the sheep and the three mills specified in *Agr.* 10.4. It does not follow therefore that a larger amount of land automatically meant that the villa building was larger. The only thing that could indicate the size occupied by a villa is the number of vats used for the storage of the harvest: a larger number of vats would probably mean a larger estate. However, as Cato says that the number of *dolia* should be large enough for five vintages, the presence of a certain number of vats does not necessarily mean that the harvest to be stored in them had to be produced in one year.

The problem, therefore, seems to be that many scholars have misunderstood the nature of the Catonian villa. The term 'Catonian villa' is often applied to the monumental villa buildings that existed in the first century BC and later. However, the villa Cato describes was a quite different affair, and the buildings associated with it must still have been fairly small. Several sites that Terrenato classifies as 'Hellenistic farmsteads' have been excavated, such as Giardino Vecchio and Villa Sambuco in Etruria, Via Gabina in Latium, Posta Crusta in Herdonia, and San Vito in Salapia. The size of these buildings is limited to a few hundred square metres; for example, Villa Sambuco measured 530 m<sup>2</sup>, Posta Crusta measured 400 m<sup>2</sup>, while Giardino Vecchio measured 4-500 m<sup>2</sup>.<sup>567</sup> Most of

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<sup>565</sup> Gell. *NA* 13.24.1: 'His country-seats were plain and unadorned, and not even whitewashed' (*ne tectorio quidem praelitas fuisse*). Terrenato (2001a, 25), however, points out that no unplastered buildings have been found.

<sup>566</sup> Some scholars have attempted this; Mari (1991, 36), for example, states that the size of *villae* in the western part of the Ager Tiburtinus was 55 to 100 *iugera*, and in the area close to the Tiber 100-240 *iugera*, based on the size of the individual buildings, but it is unclear on what her estimates are based. Carter (1994, 184 and 2005, 245) likewise states that sites in Metapontum measured 100-500 *iugera*.

<sup>567</sup> Villa Sambuco: Rathbone (forthcoming); Posta Crusta: Torelli (1999a, 112), who assumes that this house was owned by a Gracchan settler and calls it the first Catonian villa in Apulia. He assumes the same for San Vito and Masseria Nocelli, but these sites were smaller and can therefore not be called *villae*, see Rathbone (forthcoming). Giardino Vecchio: Celuzza & Regoli (1985, 51); Attolini (1991, 144); however, Celuzza (2002b, 167) states its size as 750 m<sup>2</sup>, and 1200 m<sup>2</sup> when the adjacent buildings are taken into consideration. Cambi (2002, 142) identifies Giardino Vecchio as a house belonging to a colonist of Cosa. In Poggio del Bronco, also in the territory of Cosa, three sites measure 24 by 48 metres (1152 m<sup>2</sup>), and they may have been the house of richer

these buildings, with possibly some adjacent sheds, would be large enough to fit the demands of a villa as described by Cato.<sup>568</sup> It is therefore very possible that the 'Hellenistic farmsteads' identified by Terrenato are the same as the 'Catonian villae'. Terrenato himself dismisses this possibility: 'Archaeologists have failed to bring to light settlements that fit the bill, unless one is prepared to admit that they were one and the same as the Hellenistic farmsteads, which were certainly not introduced at the time of the Censor.'<sup>569</sup> In other words: since the Hellenistic farmsteads were not a recent introduction in Cato's lifetime, Cato could not have written a treatise about them. However, Cato does not claim to describe new developments in his work; he simply wants to give advice on how to manage a farm. The Second Punic War was not a watershed in the development of *villae*; an increase in the number of larger *villae* producing for the market had already occurred from the late third century onwards, and these may be called 'Catonian villae'.<sup>570</sup> There is no reason why Cato should not have described villa structures that had appeared some decades earlier.

The only significant problem that remains is that no *villae* have been found that answer Cato's description of 'major processing structures', as Terrenato calls the five olive presses prescribed by Cato. There are, however, several possible explanations for this: first of all, Cato's writings are only applicable to a fairly small region, namely northern Campania,<sup>571</sup> and not much archaeological research has been undertaken in this area. Furthermore, this number of olive presses was useful only when the estate had a certain size. Estates came in many different shapes and sizes; Cato may have described the most advanced and largest estates of his time, but there need not have been many such estates in existence. Given the small number of *villae* that have been excavated in their entirety, it may be that estates of the type described by Cato simply have not yet

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colonists, see Celuzza (2002b, 167). Several farms at Boscoreale also measured between 240 and 600 m<sup>2</sup>, see Rathbone (forthcoming). In Selvasecca, in the territory of Cosa, several houses measured about 1000 m<sup>2</sup>, and they are called by Cambi (2002, 144) 'Hellenistic farmsteads' belonging to richer colonists. Wightman & Hayes (1995, 37) state that *villae* in the lower Liris valley measured between 500 and 1,250 m<sup>2</sup> in the second century.

<sup>568</sup> Rathbone (forthcoming), however, estimates the size of the estates belonging to these *villae* as much smaller than the 'Catonian villa', at between 20 and 50 *iugera*, and considers them to be 'family farms' instead of slave-staffed estates.

<sup>569</sup> Terrenato (2001a, 24-5).

<sup>570</sup> See on market agriculture in the third century Frederiksen (1970-1, 339); Nicolet (1977, 111); Torelli (1981, 425 and 1990, 128); Pucci (1985, 15); Morel (1989, 496); Bradley (1994, 14); Cornell (1995, 380-90); Morley (1996, 126); Rosenstein (2004, 17); Di Giuseppe (2005, 9). Hopkins (1978, 24) downplays too rigorously the presence of commercial, partially slave-staffed agriculture in the third century.

<sup>571</sup> Dalby (1998, 22) locates it in the vicinity of Venafrum; see Bernstein (1969, 66). This is clear, for example, from the fact that Cato *Agr.* 135 mentions several places where tools can be bought, and all of these are located in Campania; this advice would not be useful for someone living farther away. Cato's work is thus not to be seen as a general guide for keeping an estate, but is only applicable to Campania, see Perelli (1993, 25).

been discovered. Another explanation may be that Cato's work was influenced by Mago's treatise on African agriculture; in Africa some farms with five presses have been found, and it is therefore not necessary for the five presses to appear in Italian archaeological record.<sup>572</sup>

In any case, many smaller farms dating to the third and early second centuries show evidence of the commercial production of wine and olives, as is attested by the presence of *amphorae*, *dolia*, and wine and olive presses. It is likely therefore that commercial production as described by Cato did not take place on large *villae*, which occur in the archaeological record only from the late second century onwards, but on the smaller 'Hellenistic farmsteads'. Terrenato himself must admit that 'no villas in central Italy can be clearly associated with agricultural intensification before the 1<sup>st</sup> century B.C., but the massive diffusion of wine- and oil-*amphora* production in the same areas began at least a century and a half before. To find sites that match the massive amphora output (...), for now one can only point to the Hellenistic farmsteads'. Assuming that Cato describes the reality of his time,<sup>573</sup> we may conclude that the smaller buildings that have been excavated are identical with the 'Catonian villa', or at least are typical for estates producing for the market in the early and mid-second century.

However, such *villae* were still on a completely different scale from the monumental affairs that appeared later in the century. Only in some parts of Campania and Latium larger and more luxurious *villae* of the type described by Varro appeared already from the mid-second century onwards.<sup>574</sup> In most parts of Italy it was not until the later second century that villa buildings became much larger. The peak of activity in *villae* building took place between 140 and 25 BC, especially after the age of Sulla. In this period a large number of luxurious *villae* were built and many older *villae* were enlarged and/or embellished.<sup>575</sup> *Villae*

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<sup>572</sup> Rathbone, pers. comm. See Var. R. 1.1.10 for Mago's importance.

<sup>573</sup> Terrenato (2001a, 24-6, quotation p. 27) assumes that Cato's description of modest and simple farms was unrealistic, and that he wanted to present a picture of frugality to his political peers. This would be in keeping with his, most likely exaggerated, representation as a hard-working farmer in other sources. It is, however, unclear what kind of farm Terrenato wants Cato to have owned: he states on the one hand (p. 24) that Cato 'is unlikely to have been born in a small farm' (by which he means the Hellenistic farmsteads), but the only large farms of which he admits the existence are 'aristocratic palaces' dated by him to the fifth century BC. What kind of farm was typical for the elite in Cato's time remains unclear. See Habinek (1998, 48) on literary construction in agricultural writers; he assumes that Cato pretends to present something old in order to reinforce his traditionalist image, but is in fact describing an new kind of agriculture.

<sup>574</sup> D'Arms (1970, 1-18); Vallat (1983b, 224-5); Bringmann (1985, 16); Pucci (1985, 17); Horvath (1994, 88).

<sup>575</sup> The largest number of Republican villa sites in the *suburbium* catalogued by Marzano (2007) can be dated to the late second or early first century BC, with only a few dating back to earlier periods. See White (1967, 74 and 1970, 388); Hopkins (1978, 71); Evans (1980, 23); Frederiksen (1981, 271, 279); Rathbone (1983, 162 and 1993b, 19); Frayn (1984, 113); Spurr (1985, 125-6 and 1986, 126); Vallat (1987, 200-4); Pucci (1985, 17); Perelli (1990, 238 and 1993, 78); Lintott (1992, 42); Curti et al. (1996, 177); Accardo (2000, 42); Celuzza (2002a, 113); Regoli (2002, 145); Rosenstein

built in this period were usually much larger than those of the early second century, often measuring several thousand square metres. Surface scatters in Etruria sometimes measured up to 80,000 m<sup>2</sup>; the *villae* connected to them were of course smaller.<sup>576</sup> It is likely that the size of the estates attached to such enormous buildings would be larger than the few hundred *iugera* of Cato's time.<sup>577</sup> Of course, regional variation occurred in the size of *villae*; in the territory of Volaterrae for example, which was located further away from the central market at Rome, villa size still did not exceed 10,000 m<sup>2</sup>.<sup>578</sup> For most of the second century, therefore, the size of individual buildings, and probably also the estates to which they were connected, was limited. Although relatively small, they are markedly larger than would be necessary for a subsistence farmer, and many show architectural elements that indicate the production of cash crops.

Of course, changes in the labour organization of estates could take place without there being physical changes in the buildings. For example, an increase in the use of slavery as opposed to family labour, which according to the sources took place in the second century, did not require the construction of new buildings. It is also possible that a number of smaller farms ended up in the hands of one owner, who thus accumulated a large amount of land, spread out over various locations. It is widely attested that many large landowners did not have one large estate, but many smaller ones. Roscius from Ameria, for example, owned thirteen different farms in the Tiber valley, and it is generally accepted that this was the normal pattern of landholding of the late Republican elite.<sup>579</sup> In this way accumulation of land in the hands of the elite would be possible without this being reflected in the archaeological record.

However, for the second century we are still dealing with rather small farms, which produced partly for their own subsistence and were worked by a small number of slaves. Even if some people owned several of such farms, their total landed possessions will have been limited by the small size of the market, to

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(2004, 6). For the political developments leading to the accumulation of land in the Sullan period, see Keaveney (1982, 184-5). See also ch. 5.4.3.

<sup>576</sup> Marzano (2007, 68). Regoli (2002, 146) gives 50,000 m<sup>2</sup> as a maximum for surface scatter in the Albegna valley; Vallat (1987, 196) states that the size of actual buildings in Cosa varied from 1,800 to 25,000 m<sup>2</sup>.

<sup>577</sup> Fentress & Jacques (2002, 126) estimate that in Saturnia each villa controlled 150 hectares (600 *iugera*). In the western part of Heba each villa controlled one km<sup>2</sup> (400 *iugera*) of land: Attolini (2002, 130-1); Marzano (2007, 127). In Cosa average villa size may have been 250-300 hectares (1,000-1,200 *iugera*): Marzano (2007, 128).

<sup>578</sup> Saggin (1994, 472).

<sup>579</sup> Cic. *Rosc. Am.* 7.20. This was not only the case with the top of the elite, but also with the only moderately rich; see Ascon. *Mil.* 46 for Causinius Schola, who owned land in Interamna and Alba. See White (1967, 74 and 1970, 388); D'Arms (1970, 11); Finley (1999, 112); Duncan-Jones (1976, 12); Bernstein (1978, 84); Crawford (1978, 103); Stockton (1979, 14); Frederiksen (1981, 269); Kuziŝčin (1984, 42); Garnsey & Saller (1987, 68); Perelli (1993, 78); Lomas (1996, 139); Marccone (1997, 131); Kehoe (2007, 556). Dyson (1992, 32-3) denies accumulation of land because individual estates were small, but it is possible that one person owned more than one small estate.

which we will turn shortly. The accumulation of land which is supposed to have occurred in this period, therefore, seems not to have been as serious as the traditional reconstruction of events would have it. It seems difficult to uphold the idea that small farmers throughout Italy were expelled from the land by 'the rich', as the ancient sources would have it. Do we therefore have to dismiss this idea altogether? Or does the loss of land by small farmers still have some role to play in the supposed misery of the Roman peasantry? To answer this question, we must now look at the regional variation in the spread of cash crop *villae*.

### 3.2. Regional specialisation

Although there were many commercial farms in the second century, they were not spread evenly throughout Italy. Some regions specialized in specific products destined for the largest market, the city of Rome, while others remained focused on local markets. The importance of Rome as a central market can be illustrated by using the well-known model developed by Von Thünen. This model states that, if there is central market, the land closest to the market will produce perishable foods, like flowers, fruit, and vegetables; farther away staple foods, such as grain, will be grown, and beyond that extensive animal husbandry will take place. A similar spatial distribution of production can be seen in Italy.<sup>580</sup>

Close to Rome the production of perishable goods took place. Varro explains: 'It is profitable near a city to have gardens on a great scale; for instance, of violets and roses and many other products for which there is a demand in the city; while it would not be profitable to raise the same products on a distant farm where there is no market to which its products can be carried.'<sup>581</sup> In the first century the immediate surroundings of Rome were used mainly for *pastio villatica*, the large-scale production of luxury perishable goods. The locations Varro mentions for this kind of production are all situated in Latium and Campania, at relatively close distances from the city.<sup>582</sup> Although this kind of production did not reach

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<sup>580</sup> Von Thünen (1875, 1-13, 172-223, 229-45), although he works with six zones instead of three. See for the application of this model to Roman Italy Salomon (1964, 26); De Neeve (1984, 11-9); Carandini (1985a, 66) Pucci (1985, 17); Morley (1996, 58-63); De Ligt (2006a, 594).

<sup>581</sup> Var. R. 1.16.3.

<sup>582</sup> Ostia: Var. R. 3.2.7; Alba: 3.2.17; '24 miles from Rome on the via Salaria': 3.2.14; Tusculum: 3.4.3, 3.5.9; Casinum: 3.5.9; Bauli: 3.17.5; Naples: 3.17.9. Apparently the breeding of poultry even took place within cities: 3.4.2 mentions 'the enclosures which those who supply fowl for the market keep, some in the city'. See also Var. R. 3.2.14 and 3.3.2-3 and Pall. 1.22-30 on the various kinds of food. See Jongman (1988, 132) for Pompeii; Alvino & Leggio (1995, 204) for Sabinum; Purcell (1995, 157); Lomas (1996, 138); Morley (1996, 88-90 and 2001, 57); Valenti (2003, 27) for Tusculum. Mari (1991, 35) and Purcell (1995, 155) assume that *pastio villatica* was practiced mainly by small farmers, and therefore only located very close to the city. There is, however, no reason to assume that this was the case; on the contrary, the production techniques described by Varro and Columella required substantial investments.



its greatest extent until the first century BC, Cato already advises: 'Close to the City be sure to grow all kinds of vegetables; all kinds of flowers for wreaths.'<sup>583</sup>

The large-scale production of wine, olive oil, and grain for the market at Rome took place in Etruria, Latium, Sabinum, and Campania.<sup>584</sup> The possibilities for commercial production for the market in Rome in areas farther away was limited, since at further distances profits would be curbed by increasing costs, especially of transport. However, some sites located far away from the market at Rome produced exclusive specialties, which were transported to the central market, no matter the cost.<sup>585</sup>

An increase in the scale of commercial production had already taken place in the fourth and third century in some parts of Latium. For example, in the middle Tiber valley the number of sites declined after 250, but the sites that remained became larger, indicating a growth of the importance of market agriculture.<sup>586</sup> After the Second Punic War *villae* that may be called 'Catonian' appeared in many parts of Latium: small to middle-sized, slave-staffed *villae* with a specialized production of wine, oil, and grain for the market.<sup>587</sup>

Not only in Latium, but in many other areas surrounding Rome and increase of wine and oil production took place in the second century. Some parts of Campania, especially on the coast between Terracina and Naples, in the Garigliano basin, the territory of Sinuessa, and the Ager Falernus, had already specialized in the production of wine, oil and fruits since the third century.<sup>588</sup> As in Latium, *villae* in Campania were usually relatively small during the second century: they were mostly of the 'Catonian' type, a few hundred *iugera* at most. Not until the first century did their number and size begin to increase significantly, as we have seen.

The second century saw an increase in the number of larger sites in southern Etruria as well.<sup>589</sup> Again, large estates were located mainly along the coast, in the

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<sup>583</sup> Cato Agr. 8.2: *Sub urbe hortum omne genus, coronamenta omne genus*.

<sup>584</sup> There is no sharp distinction between this zone and that of *pastio villatica*, Von Thünen's first zone: wine and oil production also took place in the immediate vicinity of Rome, for example in the Alban Hills, Praeneste, and Collatia: Tchernia (1993, 283-4). However, the zone in which these crops were produced extended slightly farther than *pastio villatica*, and so forms Von Thünen's second zone of production. Conversely, *pastio villatica* took place farther away from Rome as well, but may in that case have been destined for markets in other towns. See Torelli (1995a, 9).

<sup>585</sup> Plin. *HN*, e.g. 14.4.39 and 14.8.69 mentions many kinds of grapes that were produced in specific places, and Strab. 6.1.14-5 various kinds of wine with special qualities. See Pasquinucci & Menchelli (1995, 212); Mansuelli (1988, 98); Morley (1996, 146).

<sup>586</sup> Di Giuseppe (2005, 13-5); see Cornell (1996, 111); David (1997, 92); Russo (2002, 173).

<sup>587</sup> This transformation of market-oriented small farms to *villae* in the early second century is visible in many parts of Latium, for example on the coast: Lafon (1993, 274); in Gabii: Musco & Zaccagni (1985, 91); in Praeneste, Anagnia, Tibur, and Crustumium: Vallat (1987, 200-1); in Tibur: Mari (1991, 29-32, 35); in Tusculum: Valenti (2003, 55); and in the Ager Pomptinus: Van Joolen (2003, 16).

<sup>588</sup> Ghinatti (1977b, 101); Arthur (1991b, 155-7); Marzano (2007, 13-4).

<sup>589</sup> Potter (1979, 117); Terrenato (2001a, 27); Fentress & Jacques (2002, 126).

territory of Cosa, and in the Albegna valley, from where the produce could easily be transported to Rome and other parts of the Roman empire (see ch. 4.3.4). *Villae* in the interior were usually smaller, and produced mainly grain and legumes for the local market.<sup>590</sup> In the Tiber valley in Sabinum the first large *villae*, staffed with slaves and producing for the market at Rome, appeared in the second century as well.<sup>591</sup>

In applying the Von Thünen model to Roman Italy we must take geographical factors into account. Mountains fragment Italy into a large number of smaller units. Cities, which are usually located in the valleys or on the lower hills, have their main arable land in the immediately surrounding lower areas, while the mountains are often unsuitable for anything other than extensive animal husbandry. Even hills quite close to Rome, such as the Monti Lepini (Photo 8) or the Monti Simbruini, could not be used for agricultural purposes. Moreover, large estates needed to be near markets or transport routes, so that many parts of Italy, even if the soil was perfectly fertile, were not suitable for large-scale production.<sup>592</sup> It must also be remembered that in the Von Thünen model each city has its own production zones, so that around each city there is a zone producing perishable goods and foodstuffs.<sup>593</sup> As a result, not all large farms in Italy produced for the market at Rome: cash crop estates were usually located in the most fertile valleys, close to a market, or, if their products were to be transported to a market further away, near a road, waterway, or the sea.<sup>594</sup> In the Ager Pomptinus, for example, most villa sites are clustered around the markets at Norba, Setia, and Cora.<sup>595</sup> The presence of local markets, combined with geographical factors, means that the Von Thünen model cannot be applied to ancient Italy without serious modifications – as Von Thünen himself actually realized.<sup>596</sup>

The importance of local markets means that commercial production of grain, wine and olive oil was not exclusively limited to central Italy. In many areas in southern Italy the second century saw an increase in the production of wine and oil on larger estates than before. Wine and olives were produced around most cities in the south, e.g. Tarentum, Thurii, Oria, Canusium, Arpi, and

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<sup>590</sup> Nagle (1976, 488); Spurr (1985, 125-6); Delano Smith et al. (1986, 114) for Luna; Greene (1986, 109); Vallat (1987, 198); Perelli (1990, 238); Arthur (1991a, 64); Attolini et al. (1991, 149); Saggin (1994, 472-3); Terrenato (1998, 101); Ikeguchi (1999-2000, 16-7); Regoli (2002, 145-6).

<sup>591</sup> Cic. *Att.* 4.15.5; Var. *R.* 1.7.10. See Reggiani (1985, 61-2); Coccia & Mattingly (1992, 271-4); Alvino & Leggio (1995, 203-4); Di Giuseppe et al. (2002, 115); Ikeguchi (1999-2000, 25-7).

<sup>592</sup> Frederiksen (1970-1, 336); Pucci (1985, 18); Rosenstein (2004, 15).

<sup>593</sup> Delano Smith (1978, 166); Jongman (1988, 132); Morley (1996, 71); Burgers (1998, 287).

<sup>594</sup> Cambi (2002, 144); Marzano (2007, 155-9).

<sup>595</sup> Attema & De Haas (2005, 10); Marzano (2007, 176-9). The same occurred in Apulia, where commercial *villae* were clustered mostly round the towns and along the main roads, see Burgers (2001, 260-2).

<sup>596</sup> Von Thünen (1875, 268-75).

Brundisium.<sup>597</sup> An important external market for the products of Apulia were the Roman armies in the Eastern Mediterranean. Brundisium was the centre of export for wine, oil, grain, leather, and wool that were produced in its hinterland, and these were transported across the Adriatic rather than to central Italy.<sup>598</sup> Apulia and southern Italy had been able to provide Hannibal with supplies for a number of years during the Second Punic War, and it was still important as a producer of grain in the second century (Photo 9). In 172, for example, the Senate sent an embassy to Apulia to buy grain when production in central Italy was insufficient.<sup>599</sup> Commercial production and a certain degree of accumulation of land seems to have occurred in Apulia in the second century as well: compared to the previous era, the number of estates declined, but those that survived became larger than they had been before. However, estates in the south were usually smaller than in central Italy, in Gravina for example they measured no more than 1,000 m<sup>2</sup> and in Oria they were not larger than 2,000 m<sup>2</sup>.<sup>600</sup> In any case, as in central Italy, the dominant form of land possession in the south was still the small farm with mixed agriculture.<sup>601</sup>

In Bruttium and Lucania the production of crops for the market during the second century was limited to coastal regions, from where products could easily be transported to Rome. One special item exported from these areas was fish.<sup>602</sup> In the interior agriculture took place mostly in the fertile valleys, such as the Tanager valley (Photo 10), and was meant for the local market. Larger *villae* producing for the central Italian market did not appear in the interior until the late second and early first century, and measured no more than 1,000-3,500 m<sup>2</sup>.<sup>603</sup> However, the amount of land held by some proprietors could be large; a building in Monte Irsi, which seems to have been a stable, may have housed six or eight

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<sup>597</sup> Brunt (1971, 364); Ghinatti (1977b, 106-7); Small (1978, 198); D'Andria (1979, 285); Grelle (1981, 193); Guzzo (1981, 83); Compatangelo (1989, 81-2); Desy (1993, 56-8); Lafon (1993, 265); Tchernia (1993, 283-5).

<sup>598</sup> Zevi (1976, 88); Pasquinucci (1979, 147); Rickman (1980, 102); Boersma (1990, 91); Volpe (1990, 265); Desy (1993, 165); Simelon (1993, 54); Cornell (1995, 129-31); Morley (1996, 71); Erdkamp (1998, 170); Yntema (2006, 105-6).

<sup>599</sup> Liv. 42.27.8. Hor. *Od.* 3.4.15 mentions 'the ploughland of low-lying Forentum'. See Delano Smith (1978, 119); Jones (1980); Desy (1993, 41-2, 104); Sirago (1995, 138); Erdkamp (1998, 113); Yntema (2006, 96).

<sup>600</sup> Gravina: Small (2001, 45); Oria: Boersma et al. (1991, 129). See Ghinatti (1977a, 154); D'Andria (1979, 285); Compatangelo (1989, 81-2); Desy (1993, 132); Battista Sangineto (1994, 583-4); Lippolis et al. (1995, 23); Colicelli (1998, 117); Erdkamp (1998, 289); Torelli (1999a, 109-10); Fentress (2005, 484-6); Yntema (2006, 105-6).

<sup>601</sup> Delano Smith (1978, 162-3); Vallat (1987, 207); Boersma (1990, 41); Desy (1993, 66); Lomas (1993, 119-20); Sirago (1995, 138); Morley (1996, 156-7); Van Joolen (2003, 140).

<sup>602</sup> Lomas (1993, 116); Colicelli (1998, 120).

<sup>603</sup> Ghinatti (1977b, 106-7); Guzzo (1981, 124); Simelon (1993, 49-56); Colicelli (1998, 117); La Torre (1999, 110); Battista Sangineto (2000, 579-80); Gualtieri (2003, 45); Carter (2005, 244) for Metapontum; Fentress (2005, 484-6). For villa size see Fracchia (2001, 64) for the Buxentum area and Bracco (1978, 19) for the Tanager valley.

oxen, and therefore a large amount of arable land may have been under the control of their owner.<sup>604</sup>

Samnium was mostly important as an area with summer pastures for transhumant animal husbandry (see ch. 4.3.3). The crops most often cultivated were grain and legumes, produced for subsistence and for local markets (Photo 11). Some accumulation of land by the local elite, however, seems to have taken place.<sup>605</sup> For Picenum less information is available, but it appears that small farms were still the norm, and large *villae* were mostly absent.<sup>606</sup> Wine seems to have been important, however, judging from the large *amphorae* production in the region.<sup>607</sup> Likewise, in Umbria *villae* did not appear until the first century BC.<sup>608</sup>

Cisalpine Gaul was far away from the market at Rome, and therefore its involvement with the market across the Apennines was limited. Because of the limited importance of commercial agriculture, farms in Cisalpine Gaul were generally small and produced mainly grain and wine for the local markets.<sup>609</sup> However, Varro's reliance on the statements of the Sasernae, a father and son from Cisalpine Gaul who wrote a book on *villa* agriculture in late second century BC, shows that some increase of commercial agriculture had taken place in the North as well.<sup>610</sup>

### 3.3. Animal husbandry

The breeding of livestock makes up the third zone in Von Thünen's model, and is supposed to be located furthest away from the central market. Many scholars assume that in the second century the large-scale breeding of animals was the most important purpose for which *ager publicus* was used by rich farmers.<sup>611</sup> This

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<sup>604</sup> Small (1978, 198 and 2001, 49).

<sup>605</sup> White (1970, 71); Barker et al. (1978, 43-5); Alvino (1991, 226); Lloyd (1991, 184); Curti et al. (1996, 180); Tagliamonte (1996, 249); Ikeguchi (1999-2000, 20).

<sup>606</sup> Vallat (1987, 212). White (1970, 70) argues that there were many large estates and that most of the small farmers became tenants of the rich, but there is not much evidence for the existence of large estates before the literary sources referring to Pompey's and Mamurra's possessions in the first century; see Catul. 114-5, Vell. 2.29.1.

<sup>607</sup> Guidobaldi (1995, 207).

<sup>608</sup> Heurgon (1964, 125); Bradley (2000, 230).

<sup>609</sup> Toynbee (1965b, 181-2); Dall'Aglio (1994, 21); Schubert (1996, 114); Bonetto (2004, 58); Corti (2004, 80).

<sup>610</sup> Var. R. 1.18.6: *in Sasernae fundo in Gallia*. See Kuziščĭn (1984, 73); Bortuzzo (1995, 194-6). However, Calzolari (1986, 94) and Denti (1991, 31) point out that subsistence agriculture was dominant in Cisalpina.

<sup>611</sup> This misconception is mainly held by those who believe that all or most of the *ager occupatorius* (or *ager publicus*, often a distinction between the two is not made) was used as pasture, e.g. Gabba (1977, 278-9); Stockton (1979, 10); Grelle (1988, 42); David (1997, 90); Levi (1997, 469 and 1999, 35). Stephenson (1891, 28) and Oebel (1993, 26), for example, assume that the *Ager Gallicus* had been used as pasture by rich Romans until the distribution in 232. However, this was by no means the

apparently happened especially in southern Italy, where much *ager occupatorius* was still available.<sup>612</sup> Some of the animal husbandry in Roman Italy took the form of long-distance (horizontal) transhumance. Varro himself owned 'flocks that wintered in Apulia and summered in the mountains around Reate, these two widely separated ranges being connected by public cattle-trails' (*calles*).<sup>613</sup> Most likely the summer pastures for this kind of transhumance were *ager publicus*, since it would be useless to have private summer pastures. The flocks never stayed long in one place, because there was not enough vegetation to feed on for very long. However, in winter they were kept in lowland plains near the farm building and sometimes in stables, and the owner of large flocks therefore also needed some land on which to build the winter accommodation. This may well have been private land, and so there is no reason to assume that all land used for animal husbandry was public.<sup>614</sup>

Short-distance (vertical) transhumance was most likely common from a very early date; in many places Italy is so rough that mountain pastures are never far away, and there is no reason to assume that the mountains were not used as such from a very early date onward.<sup>615</sup> The origins of long-distance transhumance, on

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case, and much of the *ager publicus* was used for agriculture (see ch. 2.4). It may be that this idea is influenced by the commons of early modern societies, which had a mainly pastoral purpose.

<sup>612</sup> The picture of great cattle ranches occupying all *ager publicus* in southern Italy is extremely widespread, and is described for example by Earl (1963, 25); Toynbee (1965b, 286-95); Gabba (1969, 218; 1979b, 33; 1985c, 170; 1992, 405); Brunt (1971, 358); Galsterer (1976, 153-4); Rawson (1976, 91); Ghinatti (1977b, 108); Nicolet (1977, 145); Hopkins (1978, 3); Pasquinucci (1979, 143); Stockton (1979, 12); De Martino (1980, 62); Grelle (1981, 193); Clavel-Lévêque (1983, 24); Rathbone (1983, 161); Deman (1988, 213); Lomas (1993, 50); Perelli (1993, 20); Lintott (1994, 56); Sirago (1995, 137); Van Joolen (2004, 116); Heftner (2006, 36). Only recently some scholars have tried to change this picture: Desy (1993, 132); Rosafio (1993, 168-9).

<sup>613</sup> Var. R. 2.2.9. See also Var. R. 2.9.6 (Umbria-Metapontum), 2.1.16 (Apulia-Samnium), and 2.1.17: from the Rosea in Sabinum to the (unknown) *Burbures montes*. See Hor. *Epod.* 2.27-8 (Lucania-Apulia) and Pall. 4.11-3. It is to be noted that the winter pastures could be located both in Sabinum and in Apulia; in the latter case, the owners of these pastures and flocks may have been Italians instead of Romans. Kuziščin (1984, 46) argues that there was a maximum to the number of animals that could be held, and that flocks could therefore not be as large as Varro states, but such limits could easily be avoided, and it is moreover not clear that such a maximum was still in force in the first century BC.

<sup>614</sup> D.33.7.12.8 states that animals are kept on the farm for one part of the year and on 'rented pastures' for the other part; it may be that these pastures were rented from the state, in which case they would be *ager publicus*, but they may also be rented from an individual: Cato *Agr.* 149 already explains how to rent out pasture rights on privately owned pastures (see ch. 3.4). Some assume that owners of flocks in the Republic accumulated *ager publicus* in order to turn it into private pasture, e.g. Yeo (1948, 284); Shatzman (1975, 16); Gabba (1977, 283 and 1979b, 51); Stockton (1979, 12); Corbier (1991, 155). However, owners of great flocks will have used *ager scripturarius*, but they did not necessarily own the land; they only needed private land in the valleys on which to keep their animals in winter.

<sup>615</sup> References to fights over cattle appear very early, e.g. Liv. 1.22.3, 3.38.3, 4.21.2. See Salmon (1967, 68); Halstead (1987, 77); Gabba (1985c, 168); Garnsey (1988b, 200); Barker (1989, 3); Waldherr (2001, 343); Sallares (2002, 238).

the other hand, are much debated. The most plausible view is that the combination of increased security in Italy and availability of *ager scripturarius* and money led to an increase in long-distance transhumance after the Second Punic War.<sup>616</sup> In fact, references to long-distance transhumance are quite sparse; movements from one region of Italy to another are not attested until Varro's time. However, the importance of animal husbandry, at least some of which took place on *ager publicus*, is hinted at by the fact that in 296, 293, 196, and 193 fines were imposed on holders of livestock, who may have exceeded the maximum number of animals to be kept on *ager publicus* (ch. 3.2.2).

Indeed the literary sources often refer to the breeding of livestock. The southern regions had various specialities in the production of animals: Apulia was famous for its horses;<sup>617</sup> the region around Tarentum produced high-quality wool.<sup>618</sup> The statements found in the literary sources are corroborated by archaeological evidence. The finds of animal bones show that the largest number of animals in Italy was located in the Apennines and southern Italy. The animals found here are mostly sheep and goats, which were the species kept in large transhumant herds. In Latium and Campania the number of finds was significantly lower, and they were especially oxen, which were held as draught animals.<sup>619</sup> The mountains of Campania, bordering on Samnium, produced mainly wool and pigs, notwithstanding their relatively close distance to Rome.<sup>620</sup> Winter pastures were located in lowland Apulia: on such sites, e.g. in Herdonia, many bones of young animals (under 6 months) were found. These animals were apparently not sent out into the mountains in summer, but were butchered beforehand.<sup>621</sup>

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<sup>616</sup> See for the growth of transhumance after the Second Punic War Grenier (1905, 316); Toynbee (1965b, 155-7, 286-95); Brunt (1971, 723); Ghinatti (1977b, 110); Nicolet (1977, 107); Crawford (1978, 42); Pasquinucci (1979, 94); Frayn (1984, 55); Oehme (1988, 22); Garnsey (1988b, 199-201); Deman (1988, 209); Barker (1989, 13); Corbier (1991, 161); Morley (1996, 152); Marcone (1997, 112); Laffi (1998, 116-7); Waldherr (2001, 344); MacKinnon (2004, 130). On the other hand, some maintain that long-distance transhumance had been a feature of the Italian economy long before the Romans appeared on the scene; they assume that it was not necessary for transhumance to take place within the borders of one political unit, and that informal agreements could have sufficed to allow access to pastures located in another people's territory: Skydsgaard (1974, 1, 21); Gabba (1977, 281; 1979b, 48-9; 1985c, 169; 1990d, 156-60), although he admits that the system developed further after the Second Punic War; Pasquinucci (1979, 87-90); Lomas (1993, 122-3 and 1996, 143); Corbier (1999, 46). However, it is difficult to envisage how flocks could have travelled halfway through Italy without encountering enemy peoples.

<sup>617</sup> Lucil. 4.154; Var. R. 2.7.1; Strab. 6.3.9; Hor. *Epod.* 3.16. On animals in Apulia in general, see Strab. 6.3.5; Juv. *Sat.* 9.55. See White (1970, 73); Delano Smith (1978, 121); Morley (1996, 153-4).

<sup>618</sup> Strab. 6.3.9; Plin. *HN* 8.7.190; Hor. *Od.* 3.15.14. See White (1970, 73); Yntema (2006, 98).

<sup>619</sup> MacKinnon (2004, 91-3).

<sup>620</sup> Lomas (1993, 121); Alvino & Leggio (1995, 205) for Sabinum; Fentress (2005, 488). For the production of wool in Pompeii see Moeller (1976, 105-6); Kehoe (2007, 565); its importance is downplayed by Jongman (1988, 158-84); Lomas (1996, 145).

<sup>621</sup> MacKinnon (2004, 123).

Another indication of the importance of animal husbandry in the south is formed by several references to shepherds in the literary sources. Like labourers on *villae*, shepherds were usually slaves, who were armed to defend the herds against wild animals and thieves: 'Those who range the trails should be sturdier than those on the farm who go back to the farmhouse every day. Thus on the range you may see young men, usually armed.'<sup>622</sup> The existence of shepherds of unfree status is recorded from the second century onwards, although their absence in earlier periods may be related to the scarcity of sources for the third century. In any case, there are some second-century references to slave rebellions in southern Italy in the second century, and usually those involved are 'shepherds': 'There was a wide-spread movement amongst the slaves in Apulia this year [186]. The herdsmen had entered into a conspiracy and were making the highroads and public pastures insecure through acts of brigandage.'<sup>623</sup> Apparently, the shepherds in this area were numerous enough to become a danger to the public order.

For Lucania and Bruttium the archaeological record shows an increase in animal husbandry in the second century. A villa in Moltone in Lucania, measuring 600 m<sup>2</sup> and dated to the late third or early second century, was located next to a transhumance route, and is likely to have been aimed mainly at livestock breeding.<sup>624</sup> For Metapontum pollen analysis shows that typical fodder crops, such as *Centaurea* (Thistles) and *Plantago* (Plantains), became more common in the third to first centuries BC, although the increase was only slight. Some sites in areas that were suitable for grain production, e.g. in the Basento valley, were abandoned. Many skeletal remains of horses have been found here,

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<sup>622</sup> Var. R. 2.10.1.

<sup>623</sup> Liv. 39.29.8-9, 39.41.6. In the first century shepherds still were considered dangerous elements of society, e.g. the shepherds that supported Catilina (Cic. *Sest.* 5.12, *Cat.* 3.6.14). There was continuous fear that shepherds would be used as private armies; Cicero accused G. Antonius Hybrida of selling his flocks, but keeping the shepherds, so that he could use them as an army (Ascon. *Tog.* 87). Cf. also Spartacus' rebellion; Liv. *Per.* 90-7. See Tac. *Ann.* 4.27. See Toynbee (1965b, 319-31); Valvo (1977, 221); Deman (1988, 212-8); Torelli (1999a, 109-10). Frederiksen (1981, 277) maintains that the people involved in 186 were agricultural slaves, not shepherds. D'Andria (1979, 285) suggests that these were protests of shepherds and farmers against the 'bad economy', but there is no evidence for this. Desy (1993, 79-84) connects this rebellion to the Bacchanalia scandal and suggests that there were not many shepherds in Apulia at all. Vallat (1987, 207) maintains that shepherd rebellions occurred mainly in Lucania and Bruttium, but we do not have any reference to rebellions in this area. In fact, the one in 186-4 is the only rebellion specifically mentioned to have involved shepherds, and only one of six slave rebellions reported for Italy in the whole second century (two others, occurring in 198 and 196, seem to have involved mainly Carthaginian prisoners of war: Liv. 32.26.4-18, 33.36.1-3); another one occurred in Sinuessa and Minturnae in 141 (Oros. 5.9.4), one in 132 (Obs. 27b), and one in 104 (Obs. 43).

<sup>624</sup> Terrenato (2001a, 22-3); Gualtieri (2003, 137); Isayev (2007, 75). Small & Buck (1994, 38) mention its size as 770 m<sup>2</sup>.

which points to the breeding of horses in this area.<sup>625</sup> There were also many finds of pig bones, which were usually bred in forests, and wild animals, such as roe deer and wild boar. This suggests that the area was heavily wooded. The Silva Sila in Bruttium was an important forest in southern Italy; it seems therefore that animal husbandry was an important element of the economy of this area.<sup>626</sup> However, this development had apparently already started before the Second Punic War,<sup>627</sup> and neither the war nor an increase in the amount of *ager publicus* can therefore be held solely responsible.

Samnium is indicated in the literary sources as the most important region for summer pastures. This is supported by archaeological evidence: on sites located next to transhumance routes, such as S. Giacomo, Matrice, Saepinum, and Campochiaro, many remains of young animals (7-12 months) are found, in contrast to those found on the locations of winter pastures. These were apparently slaughtered while on the summer pastures.<sup>628</sup> However, not all animals in Samnium were owned by people living in Apulia or Lucania; many local farmers owned livestock as well, mainly sheep, which they pastured in the nearby mountains.<sup>629</sup>

Several literary sources criticize the fact that arable lands in the south were changed into pasture, although they do not indicate when or where exactly this happened: 'In a land where the shepherds who founded the city taught their offspring the cultivation of the earth, there, on the contrary, their descendants, from greed and in the face of the laws, have made pastures out of grain lands.'<sup>630</sup> Although most of these statements may be part of a standard representation of the south as a poor and backward area, some credibility is lent to this process, at

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<sup>625</sup> Carter (2005, 243-8). See Kron (2004) for the view that stock raising in southern Italy in the Republic was very sophisticated. See for the importance of Lucania and Bruttium as suppliers of meat in the later Empire Cass. *Var.* 11.39.3.

<sup>626</sup> The most important product of the Silva Sila was pitch (Cic. *Brut.* 21.85; DH 20.15.2), but animal husbandry surely played a role as well. See Enn. *Ann.* 6.181-5 for forests in Heraklea; Hor. *Od.* 2.9.6 for M. Garganus. See for cattle and forests in Lucania also Strab. 6.1.9, 6.3.9; Lucil. 6.262, *Var. R.* 2.1.2, 2.7.1; Vitruvius 8.3.14; Calpurnius *Ecl.* 7.17; Seneca *Tranq.* 2.13; Hor. *Epist.* 2.2.177-8, *Od.* 3.4.15; Verg. *Georg.* 3.146-9. See White (1970, 74); Ghinatti (1977a, 154 and 1977b, 110); Giardina (1981, 96-7); Frayn (1984, 20-5); Simelon (1993, 44-8); Lomas (1993, 120); Small & Buck (1994, 34); Colicelli (1998, 118-9); Small (2001, 50); MacKinnon (2004, 93, 123); Fentress (2005, 484); Isayev (2007, 7). Yeo (1948, 300) and Kolendo (1993, 174) speak of deforestation in southern Italy, apparently connected to overgrazing by large herds, but this does not seem to have taken place at all. Barker (1977, 265) concludes that there forests became more important in the area of Monte Irsi in the late Republic, based on the fact that the amount of pig bones in the archaeological record increases in this period relative to those of sheep and goats.

<sup>627</sup> Morel (1989, 498).

<sup>628</sup> MacKinnon (2004, 128). See Lloyd (1995, 202-4); Curti et al. (1996, 180); Ikeguchi (1999-2000, 20).

<sup>629</sup> Ghinatti (1977b, 107); Lloyd (1995, 204).

<sup>630</sup> *Var. R.* 2.pr.4. See also Cic. *Rosc. Am.* 46.132; Strab. 5.2.1, 6.3.5; Juv. *Sat.* 4.27. See Ghinatti (1977b, 108); Hopkins (1978, 3); Small (1978, 197); Gualandi et al. (1981, 163); Heftner (2006, 36). Contra: Small & Buck (1994, 26).



least in Lucania, by an inscription known as the *Elogium Pollae*. The subject of this stone, found in Polla in Lucania, prides himself on being 'the first to have made the shepherds give way to farmers on *ager publicus*'.<sup>631</sup> All this suggests that in Lucania agriculture lost some ground to stockbreeding, and that the situation described by Toynbee and other scholars, if it can be applied to any region at all, may have been partially correct for this part of Italy.<sup>632</sup>

The assumption that livestock breeding was especially prevalent in southern Italy has contributed to the idea that small farmers disappeared from this area in the second century, which led to the virtual depopulation of the south.<sup>633</sup> However, as we have seen, Apulia did not only breed animals, but still played an important role as a producer of grain and other crops. Representations of this area as depopulated and improvised are therefore exaggerated. Conversely, southern Italy was not the only region in Italy that specialized in animal products. Many regions had their own specialities: Liguria and Umbria were

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<sup>631</sup> CIL 12.638 = CIL 10.6950 = ILS 23: *primus feci ut de agro poplico aratoribus cederent paastores*. The question to whom this inscription refers has been widely debated. Various scholars attribute it to an enemy of the Gracchi, especially P. Popilius Laenas, e.g. Last (1932, 3); Marzullo (1937, 34); Ewins (1952, 57); Earl (1963, 43); Panebianco (1963-4, 7-9); Schneider (1977, 96); Shochat (1980, 40); Clavel-Lévêque (1983, 36); Pareti (1997, 441); Heftner (2006, 59). Other suggestions have been T. Annii Rufus, Wiseman (1964, 36); Howarth (1999, 290 n 24); and T. Annii Luscus, Bracco (1962, 441). It is, however, very strange that an enemy of the Gracchi should have prided himself on having given out land to farmers. Others have therefore claimed that the inscription refers to actions of the magistrate, maybe Laenas, while he was in Sicily, e.g. Grenier (1905, 316); Burdese (1952, 102); Pobjoy (2006, 58-9); that the reference was to the creation of *viasii vicanei* in connection with the building of the Via Popilia, Franciosi (2002, 212-3); or have proposed an identification with a pro-Gracchan individual, for example Ap. Claudius Pulcher; Verbrugghe (1973); MacKinnon (2004, 91), but see Burckhardt (1989, 5). This is not the place to go into the details of this debate, but at least the inscription does show that some of the *ager publicus* had in some way been occupied by stockbreeders.

<sup>632</sup> Ghinatti (1977b, 108); Small (1978, 197); Gabba (1985b, 190); Fentress (2005, 482).

<sup>633</sup> This image is upheld by many ancient sources, e.g. Cic. *Att.* 8.3.4, *Lael.* 4.13; Sen. *Ep.* 87.7. The poverty of the south is attested in Cic. *Rosc. Am.* 46.132; Juv. *Sat.* 4.27. The 'depopulation' of southern Italy is believed by many modern historians, e.g. Hushke (1835, 11); Riecken (1911, 98); Scalais (1930-2, 196-200); Toynbee (1965b, 13-4); Gabba (1969, 219; 1976, 105; 1985a, 34; 1989a, 201-2; 1990d, 157-9; 1992, 405-6); Brunt (1971, 371); Ghinatti (1977a, 167 and 1977b, 107); Hopkins (1978, 30-6); Frayn (1979, 80); Stockton (1979, 7-8); Evans (1980, 29); Rossi (1980, 60); Frederiksen (1981, 265-6); Rathbone (1981, 18-9); Kuziřcin (1984, 16); Bringmann (1985, 18); Torelli (1990, 130 and 1995a, 3); Corbier (1991, 159); Lomas (1993, 87); David (1997, 90); Cornell (1995, 127 and 1996, 104-11); Sirago (1995, 244); Morley (1996, 103); David (1997, 69); Levi (1997, 469); Marcone (1997, 124); Erdkamp (1998, 289); Veenman (2002, 148); Heftner (2006, 33). See Kolendo (1993, 183) for a map which happily shows the whole of southern Italy as having 'prevalenza di latifondi.' Contra: Von Ungern-Sternberg (1988, 170). Even if some population decline in some areas of the south may be visible from the third century onwards, see Yntema (2006, 120), this picture has been greatly exaggerated by many scholars, see Dyson (1985, 74-6).

known for breeding sheep and cattle,<sup>634</sup> and in Sabinum the famous meadows of the Rosea bred high-quality horses and mules.<sup>635</sup> Sheep and goats were an important part of the economy in Cisalpine Gaul as well. Its most important export products were wool, especially from Liguria, and pigs, which thrived in the oak forests of the Po valley. These were even transported to Rome, notwithstanding the great distance between the two.<sup>636</sup>

Animals were not only kept on rough mountain pastures: there were also more delicate and therefore more expensive animals, such as those described by Varro: 'Jacketed sheep, those which, on account of the excellence of the wool, are jacketed with skins, as is the practice at Tarentum and in Attica (...). More care is employed in the case of these than in the case of rough-fleeced sheep, to keep the folds and stalls clean.'<sup>637</sup> Cato describes how flocks of sheep could be leased to another. This allowed the lessee to pasture the sheep close to a market town, where customers could buy lambs, milk, and soft cheese.<sup>638</sup> Such more valuable animals were not pastured on waste lands, but on irrigated and manured meadows (*prata*), as described by Cato: 'Manure the pastures at the beginning of spring at new moon, or, if they are not irrigated, when the Favonius begins to blow. While the animals are out of the pastures, clear them and root out all invasive weeds.'<sup>639</sup>

Many animals were held on the farm on a year-round basis. This applied of course to draught animals used for ploughing the fields, transporting the harvest, and many other tasks occurring on the farm. Cato's inventories include oxen (three teams in case of the olive yard, one for the vineyard) and donkeys (four for the olive yard, three for the vineyard).<sup>640</sup> Animals played a crucial role in the daily work; notwithstanding the cost of transport over land, in many areas there was no other possibility but to put goods on the backs of donkeys and bring them down the mountains. Varro for example describes how 'the trains are usually formed by the traders, as, for instance, those who transport oil or wine

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<sup>634</sup> Umbria: Cic. *Div.* 1.42.94; Liguria: Strab. 4.6.2. See White (1970, 69-71); Pasquinucci (1979, 143); MacKinnon (2004, 115). Even each city could have its own specialization: see Simelon (1993, 48) on the various towns of Lucania.

<sup>635</sup> Var. *R.* 2.1.14, 2.6.1, 2.8.3, 2.10.11; Strab. 5.3.1. See White (1970, 71, 148, 205); Pasquinucci (1979, 143-5 and 1984, 39); Coccia & Mattingly (1992, 271); Alvino & Leggio (1995, 204); Morley (1996, 153-4); Sirago (1995, 137).

<sup>636</sup> Strab. 5.1.12; Plin. *HN* 8.7.191; Polyb. 2.15.2. See Toynbee (1965b, 181, 289); White (1970, 320-1); Brunt (1971, 184); Nicolet (1977, 145); Frayn (1984, 20-5); Calzolari (1986, 35); Sirago (1995, 147); Morley (1996, 153-4); Corti (2004, 80); MacKinnon (2004, 91-2, 125, 153). See in general on animal husbandry in Cisalpine Gaul Bortuzzo (1995).

<sup>637</sup> Var. *R.* 2.2.18; see Colum. *R.* 7.4.1. Lucil. 1253 talks of the 'coarse wool' of the animals that graze in the mountains. See Frayn (1984, 59).

<sup>638</sup> Cato *Agr.* 150, see Dalby (1998, 213). This does not necessarily refer to winter pastures, contra Oehme (1988, 44). The same practice occurred in Greece, Polyb. 9.16.6.

<sup>639</sup> Cato *Agr.* 50.1. See Pall. 3.1. See Spurr (1986, 122); White (1970, 152, 200).

<sup>640</sup> Cato *Agr.* 10.1, 10.4, 11.1, 11.4. Colum. *R.* 2.12.3 states that an estate of 200 *iugera* needed two teams of oxen.

and grain and other products from the region of Brundisium or Apulia to the sea in donkey panniers'.<sup>641</sup> Furthermore, animal manure was essential to maintain the fertility of arable land. The importance of animal manure, as well as an apparent concern with a shortage of it, is attested by Cato's repeated advice about the collection and storage of manure.<sup>642</sup> The practice of grazing animals in the arable fields, either between the vines or olive trees, or in the grain fields after the harvest, was common: 'It is profitable to drive [sheep] into the stubble fields for two reasons: they get their fill of the ears that have fallen, and make the crop better the next year by trampling the straw and by their dung.'<sup>643</sup>

All in all, for Italy as a whole the Von Thünen model proves fairly accurate: production of vegetables, fruit, and other fresh products was concentrated in the immediate vicinity of Rome, while wine and oil were produced in Etruria, Campania, and further along the coast. Animal husbandry for the Roman market was located mainly in southern Italy. This variety in the use of land meant that the pressure to accumulate large tracts of land was not the same in all regions of Italy. Where a large market was present, such as in the vicinity of Rome, it would be profitable to hold a greater amount of land and to produce on larger units. In areas where only a local market, essentially limited in size, was available, accumulation of land took a slower pace – unless external markets could be accessed, as happened in Apulia and other regions that exported their wares outside of Italy (see ch. 4.3.4).

The development of regional specialisation is often linked to population growth. By using each soil type for the crop for which it is most suitable, instead of practicing subsistence agriculture in all areas, the total amount of food produced increases. Regional specialisation can be observed in many countries that experienced population growth. England in the Tudor period is a clear example: in many regions arable land was turned into pasture, a development that would not be immediately expected in periods of growing population, since arable land can feed more people from the same surface than pasture.<sup>644</sup> However, these regions were especially suitable for the commercial breeding of animals, and therefore specialized in raising livestock. This actually caused a decline in population in these areas, since many people became unable to live off the land and migrated to areas where more work could be found. In the early modern period regional specialisation meant that many people who produced for the market became dependent on the market for their own basic subsistence, since they did not produce all the goods that they needed.<sup>645</sup> Regional variation

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<sup>641</sup> Var. R. 2.6.5; see Verg. *Georg.* 3.162. See Pasquinucci (1979, 163); Desy (1993, 183); Erdkamp (1998, 22).

<sup>642</sup> Cato *Agr.* 5.8, 10.1, 10.4, 10.36; Var. R. 1.38.2.

<sup>643</sup> Var. R. 2.2.12, see Cato *Agr.* 30; Plin. *HN* 18.40.161; Accius *Oenomaus* 509-12; Juv. *Sat.* 14.146-9; Pall. 12.13. See Skydsgaard (1974, 15); Allen (1992, 26); Erdkamp (1998, 212); Bonetto (2004, 61).

<sup>644</sup> Gonner (1966, 36-7); Yelling (1977, 217); Dahlman (1980, 167); Grigg (1980, 38); Clay (1984, 116).

<sup>645</sup> Allen (1992, 38).

therefore presupposes a stable supply of basic consumption goods, especially grain, at least for small farmers (large farmers can take higher risks). This means an integration of markets: goods must be traded freely throughout the country, so that they can be transported to those areas where demand is largest.<sup>646</sup>

Something similar may have happened in second-century Italy, but the situation here was different in some important respects: even *villae* producing for the market still also produced their own grain, and imports of grain went only to Rome itself. There was no fully integrated grain market in the second century BC (see ch. 4.3.4). On the other hand, in this period the whole of Italy was united for the first time in one political unit, and there were no more internal wars after the defeat of the Cisalpine tribes in the early second century. This allowed the unhindered movement of goods and people through Italy, and some products were therefore transported from one part of Italy to another in larger amounts than before. Since regional variation increased the total amount of foodstuffs produced, a larger total population would be able to live off Italian production.

#### 3.4. Competition for land in the second century

It is a widely accepted view that the Roman aristocracy gained the bulk of its income from agriculture.<sup>647</sup> It is also generally acknowledged that there was fierce competition among the rich to acquire ever more land. Because the elite were always eager to acquire more land, the poor were gradually expelled from their holdings. The land from which they were expelled was, according to this traditional view, mainly *ager publicus*: 'the rich' were supposedly able to pay higher rents on the public land,<sup>648</sup> or simply expelled the poor by force.<sup>649</sup> However, in recent years many elements of the traditional view have been challenged. We have seen that commercial production was limited to areas located close to the market, and that second-century *villae* were usually quite small. As a result the importance of competition for land among large slave-owning producers in the second century is now considered to have been smaller than was previously assumed. If this was the case, however, then how can it be maintained that the greed of the rich was important as a factor in the increasing proletarianization of the small farmer that occurred in this period? To answer this question, we need to look in more detail at the size of the market and the resulting competition. Moreover, not only the total size of production must be taken into account, but also the location where this production took place: it may be that regional variation caused widely divergent developments in various regions of Italy.

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<sup>646</sup> Walter & Schofield (1989, 10). See Erdkamp (2005, 328-9) for the ancient world.

<sup>647</sup> Ancient sources emphasize the importance of agriculture, which was the most profitable and respectable in comparison with trade or industry, e.g. Cic. *Off.* 1.42.151, *Sen.* 15.51. See Hopkins (1978, 49-54); Kolendo (1993, 167); Gabba (1994b, 106); Erdkamp (2001, 348).

<sup>648</sup> As stated by Plu. *TG* 8.2 and accepted by Tibiletti (1948, 206) and Morley (1996, 90, 133).

<sup>649</sup> As stated by App. *BC* 1.7 and accepted by Toynbee (1965b, 251) and Morley (1996, 133).

A first modification to the traditional picture has been made by research into the size of the market. In recent years it has been argued that the size of the Italian market for agricultural goods was quite limited. The most important calculations in this respect have been carried out by Jongman. He starts by estimating the urban population of Roman Italy in 28 BC at some 1.9 million people, including slaves. Based on the average nutritional needs of adults and the estimated yields of crops, he concludes that to produce the grain, wine and oil to feed these 1.9 million people, only 20,800 km<sup>2</sup> of land were needed, or about 20% of all arable land in peninsular Italy.<sup>650</sup> The size of the urban population had increased rapidly between 133 and 28 BC, and the amount of agricultural land needed to feed the urban market was therefore even smaller in the second century. If we put the number of urban dwellers in 133 at 750,000 to 1 million,<sup>651</sup> they could have been fed on only about 10% of the arable land in peninsular Italy.

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<sup>650</sup> Jongman (2003, 112-6); see also Jongman (1988, 76-85, 132-5 and 2007, 602-5). He assumes that the annual consumption of the average Roman amounted to 100 litres of wine (i.e. a total of 1.9 million hectolitres for the whole urban population), see also Tchernia (1986, 21-7, 58-60), 20 litres of oil (i.e. 380,000 hectolitres in total), and 200 kilos of grain (i.e. 380 million kilos in total). He also assumes that one hectare of land in antiquity produced 2,000 litres of wine, 440 litres of oil or 400 kilos of grain (meaning wheat, although of course not all grain grown was wheat). This means that to supply 1.9 million urban inhabitants with grain 19,000 km<sup>2</sup> were needed; for wine and oil these figures are 950 km<sup>2</sup> and 850 km<sup>2</sup> respectively. If the amount of arable land in the Italian peninsula was 100,000 km<sup>2</sup> – as assumed by Beloch (1880, 417, 439), see Hopkins (1978, 7 n. 13), Jongman (1988, 67), and Lo Cascio (1999a, 237) – about 20% of the total amount of arable land could feed the urban population in 28 BC. Lo Cascio (2001, 122) argues that the agricultural surface of Italy may have been larger than 40% – a likely percentage is 50 – in which case an even smaller percentage will have been required. Of course, the ‘arable surface’ is not an unchangeable category of land; if really necessary many lands which would be considered marginal can be made to yield crops, and the reclamation of such lands, which occurred already from the second century onwards (see ch. 4.4.2) shows that pressure on the land played a role in this period. It may also be that the production figures proposed by Jongman are too low (see ch. 4.3.1), or that wheat was not the most important grain consumed. However, his consumption estimates seem a bit low as well, see Hin (forthcoming), and if both production and consumption estimates must be increased, the relation between the two will not change significantly. See also Lo Cascio & Malanima (2005, 20-1).

<sup>651</sup> In 28 BC the city of Rome may have held one million people, including slaves; see Garnsey & Saller (1987, 83-4); Garnsey (1988a, 190); Morley (1996, 182); Jongman (2001, 1078). Some estimates are slightly lower; David (1997, 95) estimates the number of people in Rome in about 28 BC at 700,000-1 million; Nicolet (1977, 86) at 800,000; Brunt (1971, 384) at 750,000, and Lo Cascio (1999b, 166) at 7-800,000. Hopkins (1978, 68-9) estimates the free population at 600,000. He admits, however, that his estimates are ‘arbitrar[y]’ and ‘very high for a pre-industrial state’ (69 n. *h*). See Jongman (2003, 103). Witcher (2005, 132) reckons with 750,000 people living in the city, while another 350,000 lived in the direct surroundings.

The size of Rome in 133 BC is difficult to establish; De Ligt (2003, 13 and 2004, 742) reckons with an adult male population of Rome in 133 of about 100,000 men, which would mean 300,000 free citizen men, women and children, and that there were an additional 100,000 slaves and *peregrini*. Rosenstein (2004, 144) assumes that Rome held 500,000 people in the time of the Gracchi; Brunt

All this means that the Italian market for agricultural products, at least basic foodstuffs, must have been rather small. Since the needs of the urban population could be met by a relatively small part of the Italian countryside, competition for land among market producers would be limited. After all, if there was only a limited market on which to sell their products, why would people fight for the land on which to cultivate them?

Furthermore, it must be considered that 'the rich' were not the only ones producing for the market. In contrast to the ancient sources and the traditional picture, which uphold a strict division between 'rich' and 'poor', recent scholarship has drawn attention to the existence of a considerable middle class. Very rich producers of course existed, but most small farmers regularly sold some of their produce on the market as well,<sup>652</sup> and no doubt there were many farmers we could call 'middle class'. One of the arguments to support this thesis can be found in the spread of slavery throughout society: to own slaves was not only a prerogative of the richest segment of society, as has been recently pointed out by Rosenstein. When in 214 the Roman state needed rowers for its fleet,

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(1971, 384) and Garnsey (1988a, 190-1) keep the number at 375,000 and Jongman (2000, 272) at 250,000. This would amount to about 20% of the total free citizen population, see Brunt (1962, 69). The growth rate of other Italian cities was much slower than that of Rome: according to Hopkins (1978, 68-9) they doubled in size from 250,000 in 225 to 500,000 in 28; in 133 the number of urban inhabitants may therefore have lain in between, at about 375,000. Gabba (1972, 102) assumes that migration was mainly directed at Rome and that other cities grew much slower, but Jongman (2001, 1078) points to the growth of such towns as Ostia, Capua, Naples, Puteoli, Teanum, and Cumae. Urbanization in Roman Italy, however, never became as large as in early modern England, for example, where almost 40% of people worked outside of agriculture in 1700; Clay (1984, 165); Mingay (1997, 143), but cf. Schofield (1989, 293-4) whose estimates are much lower. It is likely, moreover, that many urban dwellers in Italy would still be engaged in agriculture, see White (1970, 345); Delano Smith (1978, 164); Scheidel (2004, 5); Pelgrom (forthcoming). Veg. *Mil.* 4.7, for example, explains that gardens and other public spaces in cities were used for agriculture. The urbanization rate is therefore not the same as the percentage of people working outside of agriculture (and therefore the number of people depending on the food market). On the other hand, it is also possible that many people living in the countryside were not employed in agriculture. Morley (1996, 52 and 2001, 57) sets the urbanization rate at 10% in the Augustan period, but the number of people working in agriculture at only two thirds. Nicolet (1977, 80 and 1994, 607), however, puts the urbanization rate at 40%. Erdkamp (2005, 12) estimates that 80% worked in agriculture. See Lo Cascio & Malanima (2005, 17) for the urbanization rate according to the supporters of the 'high count'; Lo Cascio (1999b, 165) estimates it at 15-20%.

<sup>652</sup> Apul. *Met.* 9.32; D.50.11.2. See Rickman (1980, 12); Evans (1980, 144); Perelli (1993, 243); Purcell (1995, 155); Garnsey (1999a, 21 and 1999b, 23); Rosenstein (2004, 15-6); Erdkamp (2005, 58). De Ligt (1990, 17-9) draws attention to the fact that many non-food needs of small farmers could not be met by production at home: many tools needed in working the land, no matter how simple, could only be produced by specialized craftsmen. Moreover, services, such as those of midwives, undertakers, and priests, had to be paid for by small farmers as well. See Le Roy Ladurie (1976, 311) and Allen (1992, 9) for the involvement of small farmers in the market in the early modern era.

Everyone who had been assessed or whose father had been assessed in the censorship of L. Aemilius and C. Flaminius (220) at between 50,000 and 100,000 asses or whose property had since reached that amount, was to furnish one sailor with six months' pay; those whose assessment was between 100,000 and 300,000 were to supply three sailors with twelve months' pay; between 300,000 and 1,000,000 the contribution was to be five sailors, and above that amount seven. The Senators were to furnish eight sailors and a year's pay.<sup>653</sup>

The property classes in this passage can be connected to the census classes; the group owning between 50,000 and 100,000 sesterces would then be the third and second census class.<sup>654</sup> This means that the members of these classes were expected to own at least a few slaves.<sup>655</sup> A small number of slaves sufficed to work a generous amount of land (see below), and the group of people owning a few slaves can therefore reasonably be expected to have been engaged in market production, even if on a small scale.

There are other indications to suggest that the number of 'middle class' citizens in the second century was actually quite large. Archaeologists have pointed out that the traditional classification of sites in 'large' and 'small' sites is unsatisfactory. Buildings came in all shapes and sizes, and many would have to be classified as 'medium-sized' sites.<sup>656</sup> As a family of four could be fed on the

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<sup>653</sup> Liv. 24.11.7-9.

<sup>654</sup> Rosenstein (forthcoming). The existence of a large group of middle-class landholders may also be surmised from the alimentary tables of the early second century AD (CIL 9.1455 and 11.1147), where about 30% of the listed holdings belonged to the group of moderately rich landholders. Landholdings listed range in value between HS 14,000 and 501,000 in Ligures Baebiani, and between HS 50,000 and 1,508,150 in Veleia (however, these were often made up of more than one estate; in Veleia individual holdings were valued between HS 2,100 and 400,000). This means that those holding less land were not included at all. Especially in Veleia a reasonably large middle class is present, see Duncan-Jones (1976, 17). There is no reason to suspect that the situation was different in the second century BC; if some accumulation had occurred in the intervening period, the 'middle class' had been even larger under the Republic.

<sup>655</sup> See for middle classes working with slaves and producing for the market Nicolet (1977, 111); Rathbone (1993b, 19); Morley (1996, 80-1); Pareti (1997, 439); Regoli (2002, 145). Scheidel (2006b, 51) assumes that at least 20% of the population could be considered part of the middle class, and that those belonging to the fourth census class were 'reasonably secure commoners.' See also Jongman (2007, 610) for slaves owned by those who were 'just well-to-do'. See also De Ligt (1990, 49-56), who argues that there was normally a considerable class of richer peasants, who created demand for more expensive consumer goods.

<sup>656</sup> A traditional division is that between farms of 10-80 *iugera*, which are termed 'small farms', 80-500 *iugera*, called 'middle class' farms, and 'large farms' of over 500 *iugera*, e.g. White (1970, 387); Christ (1984, 75). It is clear that such a range is meaningless for the second century BC, when almost all farms were smaller than 500 *iugera*, and many of those holding less than 80 *iugera* were producing not only for subsistence, but clearly also for the market. It must be remembered that there is much discussion about the nature of peasants' farms. If the houses of the poorest class of farmers are not recognized in the archaeological record at all, because they were built of

produce of no more than seven *iugera* (see par 4.3.7), and could work this by themselves. It is to be expected that those holding more land were engaged in production for the market. It should be remembered, moreover, that the size of an estate does not mean that profits could not be considerable. Varro tells the story of two brothers who had 'a bit of land certainly not larger than one *iugerum*, [where] they had built an apiary entirely around the villa, and kept a garden. (...) These men never received less than 10,000 sesterces from their honey'.<sup>657</sup>

The implication of all this is that, if so many people were engaged in market production, the number of potential sellers was even larger than just the elite. This would mean that the profit a producer could expect to gain from his estates was much smaller than is usually thought. Columella calculates the net profit for seven *iugera* of vineyard at 150 sesterces per *iugerum* per year at the lowest, which does not seem to be an amount to get very excited about. Nevertheless, it was apparently much more than 'meadows, pastures and woodland, [which] seem to do very well by their owner if they bring in a hundred sesterces for every *iugerum*'.<sup>658</sup> The fact that Columella praises the profit to be made from viticulture above all other crops shows that the profit that could be expected from other products was not very large.<sup>659</sup> Rosenstein calculates that if the market of urban dwellers consisted of one million people in the late second century, 100 million litres of wine and 200 million kilos of grain would be required to feed them. He sets the number of producers at 23,300 (300 Senators plus the 23,000 knights mentioned in Polybius 2.24 – in fact, many producers would not be Senators or knights, but belong to the middle classes, which even increases the number of producers).<sup>660</sup> This would mean that each producer must produce 4,292 litres of

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perishable material, then a large group would not be recognized. This would also mean, incidentally, that the Italian countryside would be more densely populated than is assumed by the adherents of the 'low count', and that a higher number for the Italian population would not be impossible. However, there is no indication that a large number of people lived in very poorly built houses; excavations of Roman towns show a large number of good quality stone houses, in which lived people which we would call 'lower class', so that a large group of even poorer citizens would be hard to imagine. See for this discussion Witcher (2006, 97-8); Rathbone (forthcoming).

<sup>657</sup> Var. R. 3.16.10-1. Of course, this may be exaggerated, but the figures are not impossible. See De Neeve (1984, 27); Sirago (1995, 45); Purcell (1985, 155).

<sup>658</sup> Colum. R. 3.3.3.

<sup>659</sup> Colum. R. 3.3.8-13. See White (1970, 268-9), who mentions several other costs that have not been included in the calculation, which would even lower the profit.

<sup>660</sup> The *Lex Tarentina* l. 26-31 from the early first century BC stipulates that 'whoever is or shall be a decurion of the municipium of Tarentum (...) he is to have in the town of Tarentum (...) a building which be roofed with no less than 1500 tiles.' According to Crawford (1996, 310), 1,500 tiles would mean a surface of about 440 m<sup>2</sup>; the owner of such a house must have been engaged in some form of production for the market or some other profitable enterprise. According to Brunt (1988, 245), in the late Republic there were about 50,000 *decuriones* in Italy, who cannot be assumed to have worked in subsistence agriculture. This means there were many more producers than the 23,300 Senators and *equites* appearing in Polybius.



wine and 8,584 kilos of grain on average, for which an estate of only 93.83 *iugera* was required.<sup>661</sup> Moreover, the *Lex Claudia* of 218 BC stipulated that 'no senator, no one whose father had been a senator, was allowed to possess a vessel of more than 300 *amphorae* (7875 litres) burden. This was considered quite large enough for the conveyance of produce from their estates.'<sup>662</sup> At a – rather low – yield of 500 litres per *iugerum*, only 15.75 *iugera* would be needed to produce this amount – indeed not a very large estate for a senator. Of course, some producers would have more land at their disposal, while others would have much less, but in any case the profits to be made from agriculture seem to have been limited, at least from the production of basic foodstuffs. We cannot but conclude that the share of agriculture in the income of the elite must have been much more limited than has been assumed previously, and that many men who were very rich must have made their fortunes by other enterprises.<sup>663</sup>

As a result of all this, the number of slaves in Italy should also be downsized. Earlier estimates put the number of slaves as high as two to three million in the early Empire,<sup>664</sup> but there is no evidence whatsoever for this. A more realistic estimate may be reached by comparing the number of slaves necessary to work the land with the amount of land needed for market production. Ancient sources

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<sup>661</sup> Rosenstein (forthcoming), see Scheidel (2005, 67). 94 *iugera* with a profit of HS 150 per *iugerum* for viticulture would mean an annual income of 14,100 sesterces, hardly an impressive income for a rich man, and for other crops the profit was even lower. See also Wightman & Hayes (1995, 45). Halstead (1987, 86) also draws attention to the problem of 'how the rich first got rich'. Garnsey (1988b, 204) likewise argues the market in Antiquity was never very large.

<sup>662</sup> Liv. 21.63.3-4. It is likely that the harvest from one estate was transported in several shipments, in which case the estates were larger. However, even if we assume five shipments, the estates need not have been larger than 80 *iugera*.

<sup>663</sup> See e.g. Plu. *Cat. Ma.* 25.1, who states that Cato obtained most of his income from sources other than agriculture, such as investing in fisheries, baths, pastures and woodland, and from usury; see also 24.11. The profit to be made from pasturing was apparently much higher than that from agriculture, see Cic. *Off.* 2.25.89; Var. *R.* 1.7.10. See Shatzman (1975, 76); Harris (2007, 529). Other sources of income may have been the production of materials such as clay and animal products like wool and leather, see Pasquinucci (1979, 166-7); Corbier (1999, 49); Kehoe (2007, 560-1).

<sup>664</sup> Toynbee (1965b, 170-4); Brunt (1971, 124 and 1988, 241); Bernstein (1978, 86); Hopkins (1978, 68-9); Garnsey (1980, 35); Pucci (1985, 16); Spurr (1985, 124); Dumont (1987, 71-5); Garnsey & Saller (1987, 83); Potter (1987, 52); Nicolet (1994, 605); Morley (1996, 47); David (1997, 87 and 2000, 93). The supporters of the 'high count' also assume a large number of slaves, e.g. Lo Cascio & Malanima (2005, 11). A slave population of two to three million in 28 BC would mean 33-40% of the total population at that time in the case of a 'low count' population. Nicolet (1977, 210) estimates the number of slaves at 10-50% of the population, but such a wide range of possibility is not very informative. The presence of a large percentage of slaves cannot have originated at once, and it is therefore often assumed that their number must already have been large in the third century and earlier; numbers for enslavement in the Samnite Wars were very high. See Scullard (1959, 13); Nicolet (1977, 83); Hopkins (1978, 9); Finley (1980, 148-51); Garnsey (1980, 35); Rathbone (1981, 22); Cornell (1989a, 388; 1995, 393; 1996, 98); Harris (1990b, 498-9); Oakley (1993, 24-6); Morley (1996, 126). Bradley (1989, 19) even assumes that already in 225 one third of the population were slaves, but in (1994, 13) he states that before the mid-third century there were not yet many slaves.

state that only one slave was needed per eight *iugera* of vines, and this was even lower for olive and grain production.<sup>665</sup> Of course, slaves not only produced basic foodstuffs for urban market, but also worked in *pastio villatica* and other profitable enterprises. It is unfortunately impossible to calculate the number employed in such jobs, but as these seem to have been relatively limited in the second century, the total number of slaves does not need to have been much larger. It does not matter, of course, whether slavery was spread widely throughout society. The total size of the market does not rise, and so the distribution of slaves among producers does not raise the total number of slaves.<sup>666</sup> In sum, it is unlikely that more than a few hundred thousand slaves were employed in the production of basic foodstuffs in Italy in the second century.<sup>667</sup>

The number of slaves employed in stockbreeding is more difficult to establish. Varro states that one shepherd was needed per 80-100 sheep, or two for 50 horses.<sup>668</sup> The slave rising in Apulia in 186 already involved some 7,000 men, apparently all shepherds. Even if we assume that the number of shepherds was five times as high, still only 35,000 shepherds would be needed. The number of shepherds needed for horses was higher, but if we add a few tens of thousands of shepherds who pastured horses, the number of slaves employed in livestock breeding would not rise above 100,000.<sup>669</sup>

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<sup>665</sup> From Cato *Agr.* 11.1 it appears that 16 slaves were needed for a vineyard of 100 *iugera*, or one slave per 6.25 *iugera*; cf. Var. *R.* 1.18.1: one slave per eight *iugera* (Brunt (1971, 124) assumes that this refers to grain production, but this must be incorrect). Colum. *R.* 3.3.8 mentions one slave per seven *iugera* for a vineyard, and Plin. *HN* 17.37.215 one slave per ten *iugera*. For Cato's olive plantation only one slave was needed per 18.5 *iugera* (*Agr.* 10.1). This means that 950 km<sup>2</sup> of vineyard would require about 60,800 slaves, and 850 km<sup>2</sup> of olives would need only about 18,000 slaves, see De Ligt (2004, 746-7 and 2006a, 600); Scheidel (2005, 68). For grain land the required number is more difficult to establish; Scheidel (2005, 70) estimates one slave per 20 *iugera* of grain land, which would mean 380,000 slaves for 19,000 km<sup>2</sup>. Brunt (1975, 628) reckons with only one slave per 25 *iugera* of grain, which would lower the number by 20%. De Martino (1980, 96), on the other hand, assumes one slave per 12.5 *iugera* of grain land. Scheidel (2005, 70) argues that slaves did not supply the urban grain market, but only produced the grain on which the slaves working in viticulture were fed. He assumes that this required another 65,000 slaves, which would lower the total number of slaves even more. However, it is unlikely that all the grain consumed by the urban population was produced on the estates of small farmers or was imported from the provinces, especially in the second century; at least some must have been produced on slave-staffed estates.

<sup>666</sup> Contra: Finley (1980, 148).

<sup>667</sup> If we halve the numbers calculated in note 128 for the urban market in 28 BC, the number of slaves in grain, wine, and olive production in 133 BC can be set at about 250,000. Other profitable agricultural enterprises would perhaps add another 100,000. A low number of agricultural slaves is assumed by Riecken (1911, 100); Garnsey (1979, 2); Harris (1990a, 65); Dyson (1992, 37); Scheidel (1999; 2004, 1; 2005, 71); Rosenstein (2004, 10-11, 171-3).

<sup>668</sup> Var. *R.* 2.10.11.

<sup>669</sup> Contra: Yeo (1948, 293-4).

At first sight, therefore, both competition for land and the extent of the 'slave mode of production' seem to have been much smaller than has previously been assumed, and it seems unlikely that commercial agricultural production could have been solely responsible for the precarious position of many small farmers. However, it is necessary to study the interplay of consumption and production in the second century in more detail. First of all, the figures provided by Jongman are not as straightforward as they seem at first sight. Only 10% of the agricultural land in Italy was needed for the production of food for the urban population, but the population was of course larger than just one million urban dwellers. If, for the sake of argument, we put the total population of Italy at 4 million free inhabitants and a maximum of 500,000 slaves and *peregrini* in 133. If one million people need 10% of the arable land, then 4.5 million people would need about 45% of the arable land just for their basic subsistence. In this calculation it does not, of course, matter whether people live in cities or in the country: their nutritional needs remain the same.

Moreover, land was not needed only for the production of foodstuffs. Jongman's calculation does not include land used for growing vegetables and fruits. Moreover, not only foodstuffs required a part of Italy's surface, but also non-food products, such as flax and linen, which were used as raw materials for clothes and other items. Furthermore, we must not underestimate the importance of animal husbandry. Some breeding of animals would have taken place in mountainous areas which were not suitable for agriculture; however, agriculture and animal husbandry are not always mutually exclusive categories. Much animal husbandry would have taken place on land that was also suitable for agriculture. We have already seen that many animals were kept on the farm; all these animals needed fodder crops, which were sometimes cultivated on land that could otherwise have been used for commercial production of foodstuffs.<sup>670</sup>

Apart from the products needed for the inhabitants of Italy itself, there was also some export of Italian products, especially wine, to other parts of the Empire. Tchernia estimates the export of Italian wine to Transalpine Gaul alone at 50-100,000 hectolitres per year at the end of the second century BC.<sup>671</sup> The increased importance of wine export can be glanced from the large amount of first 'Graeco-Roman' and later Dressel I *amphorae*, which were used for exports from Italy and are found throughout the Mediterranean from the early third

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<sup>670</sup> MacKinnon (2004, 95) estimates that 12 *iugera* were needed to feed two oxen. Cf. White (1970, 336). It is possible, however, that in the case of a two- or three-field rotation system the fodder crops were grown on land that would otherwise be fallowed; typical fodder crops include vetch, lupines, beans and other leguminous crops, see Cato *Agr.* 60 with White (1970, 214-9). In this case, fodder crops would not compete directly with the production of human foodstuffs.

<sup>671</sup> Tchernia (1983, 91-2; 1986, 86-97). However, the amount stated by Tchernia would require no more than 500 km<sup>2</sup> to produce, even using Jongman's low estimates.

century onwards.<sup>672</sup> However, the largest growth of wine production for export seems to have taken place after the Gracchan period.<sup>673</sup>

It may be that the amount of land needed for products exported from Italy was cancelled out by imports into Italy; most importantly grain from Sicily, Sardinia, and Africa. The amount of grain imported to feed the people of Rome alone in the early Imperial period has been estimated at 40 to 60 million *modii* of grain per year.<sup>674</sup> It is sometimes argued that already from the early second century Italy depended mainly on the import of grain from the provinces, and this has traditionally been seen as one of the reasons for the decline of the small Italian farmers: because of the competition of cheap provincial grain, Italian farmers could no longer sell their products.<sup>675</sup> However, this was certainly not the case: Italian cities always relied on their own hinterland for the production of grain, and imports went mainly to the city of Rome.<sup>676</sup> In the second century even the market at Rome was still partially supplied by grain from Italy itself.<sup>677</sup> Imports of grain to Rome were organized by the state from the early second century, but this did not happen on a regular basis until later in the century. Livy records several instances of grain being imported from Sicily, Africa, and Spain,<sup>678</sup> but this did not happen every year, and the amounts imported, though impressive, were insufficient by far to support the entire population of Rome.

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<sup>672</sup> Middleton (1983, 76-7); Pucci (1985, 20); Purcell (1985, 7); Morel (1989, 497); Attolini et al. (1991, 147); Arthur (1991b, 155 and 1995, 241-3); Lafon (1993, 274); Rathbone (1993b, 19); Curti et al. (1996, 176); Fentress (2005, 488); Morel (2007, 500). The increasing number of shipwrecks of Italian ships from 200 BC onwards also indicates a growth of the export of products from Italy to the provinces, see Middleton (1983, 76-7); Parker (1992). Another indication of the increased importance of trade is the settlement of Romans and Italians on Delos and elsewhere in the East, see Harris (2007, 513). Furthermore, a large number of buildings was constructed at Rome and on the Italian coast for trade purposes in the early second century (see ch. 4.4.2).

<sup>673</sup> De Ligt (2004, 747). Hopkins (1978, 15) does not consider exports at all; he states that 'an extremely large proportion of all that was produced both in Italy and in the provinces was never traded'.

<sup>674</sup> Garnsey (1983, 118); see on the grain supply of Rome also Rickman (1980); Jongman (2000, 279 and 2001, 1082). See for the importance of imports to Rome from Sicily Liv. 27.5.5; Cic. *Verr.* 2.2.2.5; *Phil.* 8.9.26; Polyb. 1.16.10; Diod. Sic. 25.14; DH 7.2.1, 7.20.3; Strab. 6.2.7. For Sicily and Sardinia: Flor. 2.4.2.22. For Egypt and Africa: Liv. 36.3.1; Jos. *BJ* 2.383-6.

<sup>675</sup> Scalais (1930-2, 216); Yeo (1948, 282); Salomon (1964, 33); Sirago (1971, 21); Pekáry (1979, 81); Gabba (1972, 102; 1990d, 158); Lomas (1996, 144); Levi (1997, 467-9 and 1999, 31).

<sup>676</sup> Cic. *Phil.* 8.9.26 calls the Ager Campanus the grain store of Rome. See Last (1934, 4); Bradford (1957, 162); Scullard (1959, 19); White (1970, 398); Badian (1972b, 672); Garnsey (1976, 191); Pekáry (1979, 80); Rickman (1980, 103); Spurr (1986, 144); Perelli (1993, 24); Scheidel (1994, 159 and 2007, 62); Cornell (1995, 128). The same applied for other foodstuffs, as well as manufactured goods.

<sup>677</sup> See Liv. 27.3.9 for the buying of grain from Etruria. This was transported to the armies in Tarentum, but since the soldiers were (partly) Roman citizens, their nutritional needs must be deducted from those of the total Roman citizen population. Imports of grain to Rome from the Volsci, Cumae, and Syracuse are already reported for the early Republican period, see DH 7.12.3 and Morel (2007, 496). See Garnsey & Saller (1987, 58); Morley (1996, 114).

<sup>678</sup> Gifts or requisitions of grain are reported in Liv. 22.37.6, 23.21.5, 27.8.19, 30.26.6, 31.19.4, 33.42.8-11, 36.2.12, 36.4.5-9, 43.6.11-2; Eutrop. 3.1.

Further shipments of grain were sent not to Italy, but to the armies serving in the provinces;<sup>679</sup> however, since most of the soldiers were Romans or Italians, they form part of the four million free inhabitants of Italy that we postulated, and this means that Italy itself did not need to produce the grain for these men. In sum, the role of imports in the food supply can be said to have been irregular and relatively small compared to the amount of food required. Since exports in the second century seem to have been larger than imports, and moreover have taken place on a more regular basis than imports, some Italian land must be reserved for them.

Finally, land was not only used for agricultural production, but also as a safe investment. In societies where, in the absence of a complex banking system,<sup>680</sup> there are few possibilities of keeping money safe, buying real estate is the most secure investment that can be made. Land, as opposed to many other investments, does not lose its value and cannot be stolen as easily as precious metals.<sup>681</sup> Land was used as the security for other investments; therefore people who did not own any land would find it difficult to invest in other enterprises.<sup>682</sup> Therefore, even those who were not interested in producing for the market may have been willing to buy land. Moreover, short-term investment (speculation) in land may also have occurred. Large profits could be made on buying land and selling it again as soon as prices had risen.<sup>683</sup>

In sum, the amount of Italian land used was much larger than the 45% of the arable land necessary for the production of basic foodstuffs, and the demand for land can therefore be assumed to have been considerable. However, as we will see below, the population of Italy was still rather low in the second century, and much land was still available for cultivation. It seems therefore that the available surface of arable land in Italy was large enough to accommodate all these functions, without there being any shortage of land. It is therefore unlikely that the demand for land by itself would have been sufficiently large to warrant the change of Italy into a land dominated by large slave-staffed farms. The

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<sup>679</sup> Transports of grain from Africa and Sicily to the Roman armies outside of Italy are reported in Liv. 27.8.19, 32.27.2, 37.2.12, 37.50.9. See Erdkamp (1998, 85-94 and 2005, 210-3).

<sup>680</sup> See for possibilities and limitations of the banking system Andreau (1987 and 1999); Harris (2007, 521-3).

<sup>681</sup> Last (1932, 6); Brunt (1962, 79); Bernstein (1969, 77); Crawford (1978, 106); Garnsey & Saller (1987, 44); Netting (1993, 155); Nicolet (1994, 623); Lo Cascio & Malanima (2005, 23); Jehne (2006, 72).

<sup>682</sup> Osborne (2006, 5). This is shown, for example, by the protests raised against the Gracchan distributions of *ager publicus*: 'moneylenders could show loans made on this security' (App. BC 1.8).

<sup>683</sup> Cicero gives examples of real estate that changed hands rapidly: *Balb.* 24.56, *Att.* 4.5.2. It is likely that this was mostly a development of the first century, when prices of land fluctuated more strongly because of political events; however, speculation may have occurred in the second century as well. See Ghinatti (1977a, 150); Hopkins (1978, 52); Frederiksen (1981, 280); Vallat (1981a, 296); Marzano (2007, 75-8). Gabba (1989a, 233) states that 'the major speculative schemes of the wealthy revolved around *ager publicus*', but there are no sources to support this.

archaeological evidence supports this assumption, as we have seen: although an increase in the number of *villae* for the commercial production of foodstuffs is already visible from the early second century, and in some areas even earlier, for most of the second century the size of individual buildings, and probably also the estates to which they were connected, was limited. Moreover, small sites, presumably held by subsistence farmers, seem to have been the dominant form of landholding in all regions of Italy during the Roman period.<sup>684</sup> It is therefore unlikely that the picture painted by the literary sources – the rich expelling the poor from the public land because of their greed – can be applied to the whole of Italy, and competition for land in the second century cannot have been the sole cause of the proletarianization of the small farmer in this period. How, then, can the expulsion of the poor from the land, described by the sources, be explained?

I argue that it was not just a question of the amount of land that was needed, but also of the location of this land. As we have seen, the size of the market and the importance of commercial production were the largest in central Italy. The population of the city of Rome itself in 133 may have amounted to about 300,000 citizens and perhaps 100-200,000 *peregrini* and slaves (see n. 128 above) – about 10% of the total population of Italy at this time. The area immediately surrounding it must have added another considerable (although incalculable) number of people, who together made up the market of central Italy.

It was important for commercial farms to be located in the vicinity of the market, since transport costs over land were high, and so profit would be severely limited if products had to be transported over long distances. From estates in central Italy products could be most easily and cheaply be transported to the market, either over land, by the Tiber, or by ship from the coasts of Etruria, Latium, and Campania. The presence of a market in central Italy meant that production for this market was practical only in the nearby countryside. If there was land (private or public) available in Cisalpine Gaul or in southern Italy, this was not of much use to someone producing for the market of central Italy, except in the case of specialities which would fetch high prices no matter the transport costs. It is likely, therefore, that competition for land was strongest in the *suburbium*. As we have seen, the number of estates producing in some way for the market was highest in central Italy, and the size of individual estates was largest in this area as well. Incidentally, the land of those individuals of whom

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<sup>684</sup> Many scholars point out the continued importance of small farmer: White (1970, 52, 346); Badian (1972b, 671); Ghinatti (1977b, 107); Gabba (1977, 271; 1979b, 18); Hopkins (1978, 3); Frayn (1979, 22); Garnsey (1979, 2, 9; 1980, 36; 1988a, 44); Spurr (1986, ix); Jongman (1988, 134); Dyson (1992, 44); Lomas (1993, 139 and 1996, 146); Lintott (1994, 42). The continuing presence of small farmers in the second century has been attributed by some, e.g. Pekáry (1979, 81) and David (1997, 95) to distributions of land to veteran soldiers, but in the second century these mostly took place in northern and southern Italy, not in the centre. It was not until the first century BC that land in central Italy was distributed to veterans.

we know the locations of the land they possessed was located mainly in central Italy, not only in the second, but also in the first century BC.<sup>685</sup>

Moreover, central Italy was politically the most important region of the Roman state. This area roughly coincided with the old *Ager Romanus*, the combined total of private land and *ager publicus* in central Italy which had been Roman before the early third century BC. It is likely that even in the second century the majority of Roman citizens still lived in the old *Ager Romanus* in central Italy,<sup>686</sup> and if in this period the population had grown, then the same amount of land had to be shared with more people. The fate of the Roman citizens living in this area was a very important factor in the political process. These people could vote in the popular assemblies, and make their sufferings known to the political leaders. Those Roman citizens who became landless would have made their dissatisfaction known in the city of Rome itself, thus making their leaders quickly aware of the problems they were facing.<sup>687</sup> It was these people who had to be satisfied by the state, and they therefore had to be provided with the means to feed themselves, either by working their own land or receiving food from the state. If the Italian or Latin allies were dissatisfied, this would not be of immediate concern for the Roman leaders. The fate of the Roman citizens is therefore likely to have been disproportionately large in Roman decision-making, and therefore also in our sources for Roman politics, economy, and society. If Roman citizens in central Italy were suffering from economic decline, this would be seized upon by political leaders trying to make a name for themselves, which is exactly what the Gracchi tried to do.

All in all, we can conclude that increased competition for land played an important role in the second century, but especially in central Italy. This may have made it difficult for small farmers in this area to hold on to their land, and

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<sup>685</sup> See Shatzman (1975, 440-64) for an extensive survey of all known individuals and their property from the second century onwards. In the second century estates were located almost exclusively in Latium, Campania, and southern Etruria; from the late second century more properties in locations farther away are known, for example Umbria, Picenum, and Sardinia. In the first century many Senators owned property all over Italy and in the provinces, but at the same time they all held land in central Italy as well. However, not all these properties were farms; some, such as the villa of Cicero in Astura, had only residential functions. A few examples are Cicero, who owned property in Astura, Arpinum, Tusculum, Caieta, Naples, and Pompeii: Cic. Q. 2.5.5. Pompey owned land in Picenum, Formiae, Alba, Tusculum, Falerna, Lucania, and elsewhere: Cic. *Phil.* 13.6.11; Plu. *Pomp.* 6.1; Vell. 2.29.1. Columella (*R.* 3.9.2) had lands in Ardea, Carseoli, and Alba; Augustus owned land in Campania, Lanuvium, Tibur, and Praeneste: Suet. *Aug.* 72.

<sup>686</sup> De Ligt (forthcoming b). Cornell (1989a, 414) states that 'the mass emigration of tens of thousands of poor peasant families must have led to a gradual depopulation of the old *Ager Romanus*', but emigration was most likely mitigated by population growth and the growth of slavery in central Italy.

<sup>687</sup> Erdkamp (1998, 204). Salmon (1967, 317) suggests that the social problems of the second century were important mainly in the *Ager Romanus*. This may not be entirely true, but it is likely that they were more serious in this area than elsewhere in the peninsula.

may have led to a gradual displacement of small farmers from the land. For this area there may be some truth to the picture sketched in the sources. However, although the growth of market production in central Italy played an important role, this factor in itself cannot sufficiently explain the extent of the problems as they are described in the sources. We must therefore turn to another factor that contributed to the increasing demand for land, namely population increase.

### 3.5. Population developments in the second century

The development of the Roman population during the second century BC has been hotly debated, especially in recent years. The most obvious short-term effect of the Second Punic War was a significant decline in the free Roman citizen population due to war casualties.<sup>688</sup> Another effect had been a significant increase in the amount of *ager publicus*. This combination of a low population and an abundant supply of land made sure that there was no shortage of land in the period immediately after the war. In fact, there was so much land that the state could not distribute all of it to Roman citizens: in many colonies founded shortly after the war, not only Roman citizens, but also Latins and allies were accepted. A large part of the *ager publicus* was simply left open for occupation. This abundance of land ensured that those in need of land could obtain some; landless citizens could profit from state-sponsored colonization schemes, while those having some capital could set up a farm on public land. Italian allies, who had technically lost their land because of its confiscation as *ager publicus*, need not have suffered much: in many cases the confiscated land remained in the hands of those who had held it before, since the Roman state did not find it necessary to distribute this land.

The Second Punic War is often considered a cause for the proletarianization of the peasant farmer: many people had fled to the cities because of war, and when it was over their farms had been destroyed and could not be rebuilt. The most serious damage caused by the war had occurred in the south of Italy, which led to the depopulation of this area.<sup>689</sup> It is, however, unlikely that the Second Punic War would have had such long-term consequences: most rich men would have had enough resources to rebuild their estates, and small farmers who could not restore their own farms could make a new start in the governmental colonization schemes. Moreover, even if some damage had occurred as a result of the war, this had happened mostly in the south, and therefore did not directly involve many Roman citizens: the view that Roman citizens had been suffering

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<sup>688</sup> Brunt (1971, 419, 694-6); Bringmann (1986, 58). For war mortality in the period 200-168 BC see Rosenstein (2004, 109-40, 191-2).

<sup>689</sup> See Liv. 28.11.8-11; Cass. Dio 9.40.27; Polyb. 23.15.1 on the negative effects of the Second Punic War; Cic. *Imp. Pomp.* 6.15 on later wars. See note 110 on the supposed depopulation of the south.



from the war, which is suggested by the ancient sources and by many modern scholars, cannot therefore be maintained.<sup>690</sup>

In fact, even though the Second Punic War had negative effects for those who had lost family members or land, overall conditions were ideal to support a quick increase in population. Most people after the Second Punic War were able to find sufficient land to support themselves, and the number of proletarians must have been low.<sup>691</sup> The ample supply of land led to the concentration of labour on the most productive lands, and so to an increase in labour productivity per head. This, in turn, led to an overall increase in living standards for the majority of people. The availability of land may have lowered the age at marriage, since men could more easily establish their own farms, instead of being dependent on their paternal estates. If we assume that many colonists, at least in Latin colonies, were veterans (in the sense of former soldiers, who were *assidui* or their sons),<sup>692</sup> these men could profit from opportunities of acquiring an estate independent from their fathers' possessions. All this encouraged rapid population growth in the decades immediately after the Second Punic War.<sup>693</sup>

Equally important were the wars fought in the east: enormous amounts of money were brought into the country as booty or indemnity payments from the

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<sup>690</sup> Yeo (1948, 276); Desy (1993, 66-7); Lomas (1993, 87 and 1996, 51); Cornell (1995, 127); El Bouzidi (1997, 142-3); Marcone (1997, 133-4); Erdkamp (1998, 271); Yntema (2006, 97). Torelli (1999b, 8) and Morel (2007, 499) state that most of the damage in southern Italy was caused by the Roman conquest in the third century, not by the Hannibalic War. On the other hand, recent research, e.g. Isayev (2007, 173), has argued for the need for re-dating the Black glaze pottery, which would mean that many sites in southern Italy were in fact abandoned in the second century BC. Burgers (1998, 277) denies any serious effects of both the third-century conquest and the Second Punic War. See Harvey (1986, 209-17) on the damaging effects of war on arboriculture: it is very difficult to completely destroy vines and olive trees by fire; only cutting them down would really be efficient, but this would be too time-consuming for an army. However, if people were prevented from planting new crops, they would have no harvest in the coming year. Of course, poor people could usually not afford to lose the harvest of even one year, so they suffered most from pillaging armies.

<sup>691</sup> Turchin & Nefedov (forthcoming) argue that around 300 BC Roman society consisted mostly of small farmers, and that the number of proletarians was low. In the late Republic, however, quick proletarianization took place. While this likely was the case, it may be that the number of proletarians in the third century was higher than that immediately after the Second Punic War, since population pressure was higher before than after the war, see De Ligt (2006b, 10). Hopkins (1978, 57) argues that the small plots handed out in colonies between 194 and 177 indicate impoverishment of many farmers, but at this time population was still low and there was much land available. On the contrary, it shows that many farmers were restored to privately owned subsistence plots.

<sup>692</sup> Galsterer (1976, 50); Càssola (1988, 8); Rosenstein (2004, 82-8).

<sup>693</sup> Malthus already stated that when the availability of land increases people will marry earlier and have more children, so that populations grow: Malthus (1989, 20). The same development occurred in England after the Black Death: the combination of low population, abundance of land, low rents, and high wages led to a rapid population growth of 1% per year: Grigg (1980, 2); Clay (1984, 2, 13). For the ancient world see Erdkamp (1998, 279); Rosenstein (2004, 154; 2006a, 236, 240-241; 2006b, 81-4); Scheidel (2006a, 211).

defeated states.<sup>694</sup> Not only the military leaders profited from the money coming into Italy: Livy lists eighteen donatives to soldiers between 200 and 167 BC.<sup>695</sup> Donatives could be equal to 100 daily wages, a considerable sum.<sup>696</sup> It is often argued that military service was dangerous for small Roman farmers in this period: those owning a small farm could not work the land while they were away, and when they returned found their land neglected and were forced to sell it. Others simply lost their land to rich and greedy neighbours who occupied it while they were away.<sup>697</sup> However, service in the army in this period was clearly a very attractive option for many Roman citizens, especially for families with several adult sons: they received a reasonable daily wage, they could usually count on considerable donatives after successful campaigns, and often received their own plot of land when they were discharged (see ch. 4.4.2). All citizens, moreover, profited from the new wealth through the abolition of the *tributum* in 167.<sup>698</sup>

Of course, the amount of money flowing to the upper classes was large as well. Individual commanders could keep a large part of the spoils for their own use. An important part of the booty were people taken captive during the wars and sold as slaves. The increased contacts with the East also allowed for more

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<sup>694</sup> Indemnity payments and (forced) monetary contributions to the Roman cause are mentioned very often in the sources, and could vary from 25 (Liv. 38.13.13) to as much as 15,000 talents (demanded from Antiochus III in 188, Liv. 37.45.14; Polyb. 21.17.4; App. *Syr.* 38; Plu. *Aem.* 7.2). Booty figures are equally impressive; for example, the booty from the Third Macedonian War brought into the treasury 200 (or 300) million sesterces (Vell. 1.9.6, Plin. *HN* 33.17.56). See also Plaut. *Epid.* 160. See De Neeve (1984, 8); Oehme (1988, 22).

<sup>695</sup> Liv. 31.20.7 (200), 33.23.7 (197), 33.37.12 (196), 36.40.13 (191), 37.59.6 (189), 39.5.17 (187), 39.7.2 (187), 40.34.8 (181), 40.43.7 (180), 41.7.3 (178), 41.13.7 (177), 45.34.5 (167), 45.40.5 (167), 45.42.3 (167), 45.43.7 (167). See Plu. *Apophth. Cat. Mai.* 26 (194), Val. Max. 5.1.1 (gift to allies, 168), Plu. *Aem.* 29.3 (167). See Brunt (1971, 394); Perelli (1993, 19).

<sup>696</sup> After the triumph over the Ligurians in 179 foot soldiers received 300 *asses*, centurions 600, and cavalry 900 (Liv. 40.59.2), and this was not an exceptional amount. For the standard wage of soldiers see Crawford (1974, 622-4); the crucial evidence is Polyb. 6.39.12, who states that the foot soldiers were paid two obols a day, which equalled one third of a drachma. The drachma was used as an equivalent for the denarius, so strictly a soldier would receive one third of a denarius, or 3 1/3 *asses*. The daily wage was probably three *asses*, in the light of Plaut. *Most.* 357, where three *nummi* (*asses*) are considered an acceptable wage for a soldier. Stockton (1979, 6) argues that profits went mainly to the generals, but this was evidently not the case.

<sup>697</sup> See Liv. 2.23.5-6, 5.10.6-9; DH 6.22.1, 6.26.1; Sall. *Iug.* 41.5-8 for soldiers claiming to have lost their lands due to military service. The theory that this was an important factor in the 'decline of the small farmer' is still widely believed, see Scalais (1930-2, 216); Last (1932, 6); Scullard (1959, 19); Toynbee (1965b, 95); Boren (1968, 21); Badian (1972b, 684); Crawford (1978, 102-3); Stockton (1979, 17); Gabba (1979b, 38); Rathbone (1981, 19 and 1993b, 19); De Neeve (1984, 9); Bringmann (1985, 18); Brunt (1988, 73); Von Ungern-Sternberg (1988, 170); Bleicken (1992, 64); Kolendo (1993, 181); Horvath (1994, 91); Lintott (1994, 57); Nicolet (1994, 619); Morley (1996, 103); Levi (1997, 467); Linke (2006, 10); Yntema (2006, 122). The supposed negative consequences of male absenteeism for women and children are sketched in Evans (1991). See Burgers (1998, 289) especially for Italian allies.

<sup>698</sup> Cic. *Off.* 2.22.76; Plin. *HN* 33.17.56; Val. Max. 4.3.8.

state-sponsored and private trade contacts with the new provinces, while the organization of the conquered territories as provinces allowed for further enrichment through the collection of taxes and other revenues by their governors. Various sources attest to the growth of luxury displayed by the Roman elite in the early second century: Plutarch speaks of the 'hydra-like luxury and effeminacy of the time' against which Cato the Elder acted.<sup>699</sup> This economic prosperity led to increased welfare for many Roman citizens, and is likely to have been a stimulus for population growth.

Much has already been said on population developments in the second century, and I do not wish to present any new argument here. However, demographic developments are crucial to my reconstruction of the economy in the second century and the role of *ager publicus*, and it is therefore necessary to take a stand in this debate.

The traditional account of the second century, following the ancient sources, suggests that the rich invested their new wealth in land, driving off the poor and thus causing population decline: due to the uncertainty of access to land, the poor were unwilling to have children and therefore the absolute number of free inhabitants of Italy declined: 'Then the poor, who had been ejected from their land, no longer showed themselves eager for military service, and neglected the bringing up of children, so that soon all Italy was conscious of a dearth of freemen.'<sup>700</sup> Adherents of this thesis have found support in the census figures for the second century. From a maximum in 164/3 the censuses of the later second century show a continuous, if slow, decline, until in 131/0 the reported number of citizens was 25,000 lower than 33 years before. This would, at first sight, indicate a slight decline in population.<sup>701</sup>

A slightly modified theory is the 'low count' by Beloch, Brunt, and Hopkins, which was almost universally agreed upon until some years ago. Based on the population lists in Polyb. 2.24, Brunt argued that the total number of free men, women, and children in the Italy (including Cisalpina) in 225 BC had been 4.5

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<sup>699</sup> Plu. *Cat. Ma.* 16.5, see 18.2 and *Marc.* 21.5. See Liv. 39.6.7-9; Flor. 1.3.12.8; Plin. *HN* 33.53.148, 34.8.14, 34.16.34; Nep. *Cat.* 2.3; Val. Max. 9.1.3; Lucil. *Sat.* 5.2. See D'Arms (1970, 10); Coarelli (1976, 24).

<sup>700</sup> Plu. *TG* 8.3. See also App. *BC* 1.7: 'The Italian people dwindled in numbers and strength, being oppressed by penury, taxes, and military service.' Gell. 1.6 and Suet. *Aug.* 89.2 cite a speech, given in 131 by Metellus Macedonicus called *De prole agenda*, in which he exhorted the Romans to marry and have children. For the traditional analysis of the effect of economic adversity on nuptiality and fertility see Brunt (1971, 136-43). Whether it is a logical assumption that people refuse from having children when facing economic adversity cannot be discussed here; in modern societies this is usually not the case, see Hin (forthcoming).

<sup>701</sup> As is assumed by Levi (1922, 58); Göhler (1939, 87); Tibiletti (1949, 35 and 1950, 211); Gabba (1956, 47 and 1985a, 35); Scullard (1959, 21); Earl (1963, 32); Nicolet (1967, 87); Bernstein (1969, 45); Bernardi (1973, 110); Triebel (1980, 195); Rossi (1980, 59); Clavel-Lévêque (1983, 23); Bringmann (1985, 20); Pucci (1985, 15); Càssola (1988, 14); El Bouzidi (1997, 149); Pareti (1997, 439); Sallares (2002, 52). Even Morel (2007, 509) seems to believe it.

million.<sup>702</sup> The census figure of 28 BC is interpreted by these scholars as representing men, women, and children, which would mean the free population had shrunk by about 0.5 million in 200 years. Furthermore, the rate of urbanization in the last two centuries BC caused the free rural population of Italy to decline from 4.1 million in 225 to only 2.9 million in 28, a decline of almost 30%. This would have taken place especially after the Gracchan period; the census figures for the second century showed an undeniable rise in the number of citizens, but, as a result of the serious economic difficulties experienced by many people from the middle second century onwards, they are supposed to have refrained from rearing children. That the population figures showed stagnation instead of outright decline was attributed to the manumission of slaves, while 'by 124 or earlier an actual decline in the number of citizens of the old stock may have begun'.<sup>703</sup>

Recently, however, a radically new interpretation of the census figures has been suggested. It had already been suggested earlier that the stagnation of the census figures was caused not by an actual decline in the number of free Roman citizens, but by the increasing underregistration that occurred in the later second century. In other words: the census became more unreliable, because it failed to record the population growth that was actually taking place. Support for this thesis has been found mainly in the census figure for 125/4, which shows an increase of about 75,000 as compared to the census of six years earlier. Since the census was supposed to count all adult male citizens, such a growth can only be explained either by a sudden increase in the number of citizens,<sup>704</sup> or by the inclusion of a part of the citizen population which had not been counted in census earlier. The latter explanation is usually favoured by modern scholars, who argue that the censuses of the later second century were unreliable, because they show an increasing underregistration of the male population.<sup>705</sup>

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<sup>702</sup> Brunt (1971, 44-60, 189); Hopkins (1978, 68-9).

<sup>703</sup> Quote in Brunt (1971, 79). The theory of the decline of the free citizens of Roman origin was first put forward by Beloch (1886, 370-8); and was supported, most notably, by Tibiletti (1949, 36); Badian (1962, 209); Earl (1963, 32); Toynbee (1965a, 438-79); Brunt (1971, 77-9, 138-45 and 1988, 242); Gabba (1972, 64; 1989a, 201; 1990b, 674), Nicolet (1967, 95 and 1977, 83-6), Hopkins (1978, 68-69), and David (1997, 69). Morley (1996, 46-50) thinks this scenario more likely than the high count, but is still doubtful. Population decline is denied by Shochat (1980, 47-9), Kuziščin (1984, 15), Greene (1986, 86), Dyson (1992, 28), Lomas (1993, 139), and Schubert (1996, 107), but they do not give precise estimates.

<sup>704</sup> See ch. 5.2.6. Some, e.g. Fraccaro (1914, 273), have assumed that there is an error of transmission in the figure, but this is unlikely.

<sup>705</sup> Frank (1962, 131 n. 3); Brunt (1971, 78-81); Molthagen (1973, 443); Nagle (1976, 489); Crawford (1978, 100-2); Stockton (1979, 50); Rich (1983, 303); Dyson (1992, 28); Horvath (1994, 91); Lo Cascio (1999, 234); Rosenstein (2004, 156-7); De Ligt (2004, 754; 2006a, 603; 2006b, 6). Shochat (1980, 39) does not believe that underregistration was a likely explanation, because when 75,000 people were missing this would constitute a miscount of about 20%, which seems too large. However, I think the difference between the real figure and the census figure was still small enough for state

This underregistration was most likely caused by the increased proletarianization of the small farmer: many men who had been *assidui* in the beginning of the century now became too poor to be counted as such. While in theory *proletarii* were also counted in the census, they were of less practical interest to the censors, since they did not serve in the wars.<sup>706</sup> The censors therefore put in less effort to count these people correctly, and the *proletarii* themselves were not interested in reporting themselves at the census, since there was no tangible advantage to being registered. Furthermore, those who still qualified as *assidui*, and thus were of interest to the censors, evaded the census because of the unrewarding situation facing them in Spain (see ch. 4.4.2). This led to a smaller segment of the population being counted in the census than before and thereby to an apparent decline of the population.

Although it is now widely assumed that the second century was a period of population growth, scholars do not agree on the rate of growth that occurred in this period. Doubts are caused mainly by the Augustan census figures; the first of these, dating from 28 BC, shows 4,063,000 citizens.<sup>707</sup> The relation between these figures and those for the second century has recently been the subject of much debate. Two mutually exclusive theories now exist.

A radically different reconstruction of population developments, recently introduced by Lo Cascio, suggests that the Augustan census figures represented only adult males. The Republican census, after all, had included only adult males, and it is not immediately obvious why Augustus would now include women and children in his total figure. Working with a low multiplier of three to

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officials to believe the results of the census were correct. See Evans (1988, 128-9) and Frier (2001, 144) for examples of deficiency in modern censuses

<sup>706</sup> In the time of the Gracchi the threshold to qualify as an *assiduus* was probably no more than the possession of a hut and a small garden, which leads Rich (1983, 298-9) to suppose that all who lived on the land had enough to qualify as *assidui*. However, people who had no land of their own at all could not comply with this qualification. Some sources indicate that *proletarii* (sometimes) served in the army; Plu. TG 9.4-5 cites a speech by Tiberius Gracchus: 'The wild beasts that roam over Italy have every one of them a cave or lair to lurk in; but the men who fight and die for Italy enjoy the common air and light, indeed, but nothing else; houseless and homeless they wander about with their wives and children.' See also Hemina fr. 21 P (Non. 94 L): *Tunc Marcius † pro consule † primum proletarios armavit*. Many have therefore argued that a considerable number of proletarians served in the army, even before the Marian reforms: Brunt (1971, 18); Gabba (1976, 7; 1990b, 693); Shochat (1980, 27); Mitchell (1993, 207); Perelli (1993, 79-82); Rathbone (1993a, 148); Erdkamp (2006, 42). In emergencies proletarians could be called upon to serve, and therefore their inclusion in the census would serve some purpose. However, during most of the second century there were not many emergencies, and there was therefore no need to regularly include proletarians. Therefore the efforts undertaken in registering them may have slackened; see De Ligt (2006b, 18). It was only in the latter half of the century, when recruitment became increasingly difficult (see ch. 4.4.2 below), that more proletarians may have been recruited. Gaius Gracchus' law to provide free clothes to soldiers (Plu. CG 5.1) is an indication of the poverty of many soldiers joining the army in this period; many of them may have been proletarians.

<sup>707</sup> RG 8.2; in RG 8.3 4,233,000 citizens are reported for 8 BC, and RG 8.4 reports 4,937,000 citizens for 14 AD.

arrive at the total population, this would mean that the total Roman citizen population had grown from about 2 million in 225 BC to at least 12 million in 28 BC, and thus had experienced extremely rapid growth in the last two centuries BC.<sup>708</sup> A consequence of this position must be that the census figures for the second century were totally unreliable, since they did not record the enormous population increase that apparently took place. Moreover, there must have been a very large number of slaves in Italy, since natural growth of the citizen population alone cannot have caused the total to have grown so quickly.

There are, however, severe problems with this 'high count' scenario.<sup>709</sup> First of all, to achieve such growth, the population must have had an average growth rate of about 0.5-0.8% per year during 200 years.<sup>710</sup> This does not sound very impressive, but this occurs only rarely in pre-industrial societies, and it is unprecedented that such a growth rate was maintained over such a long period. Moreover, it would mean that the population density of the Italian countryside in the first century AD would have reached a level that it did not reach again until the late nineteenth century. It would have been difficult to feed all these people with the produce of the Italian countryside: we have seen that to feed a population of about five million people in 133 BC, already more than 50% of the surface of Italian arable land was needed.<sup>711</sup> To feed another seven million, imports from other parts of the empire must have been huge, but there is no evidence that this was the case, not even in the first century BC.

A new scenario has therefore been proposed by De Ligt.<sup>712</sup> This scenario agrees with the 'low count' theory of Brunt and Hopkins that the population during the second and first centuries experienced only limited growth. However,

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<sup>708</sup> This theory had earlier been proposed by Frank (1924, 340 and 1959, 314-5). It has most recently been supported by Lo Cascio (1994; 1997; 1999a; 2001), Morley (2001, 53), Lo Cascio & Malanima (2005, 7-12), Kron (2005), and Harris (2007, 516). Rosenstein (2004, 13), although not giving it his wholehearted support, at least emphasizes its value in suggesting new directions for research.

<sup>709</sup> See Scheidel (forthcoming a) for an analysis of the problems connected with the 'high count' scenario.

<sup>710</sup> Rosenstein (2004, 146) calculates a growth of 1.3-1.5% per year between 200 and 168, and 0.6-0.8% between 168 and 124.

<sup>711</sup> Morley (1996, 48-50 and 2001, 53-7), assumes that the carrying capacity of Italy would allow for about 7.5 million people, based on the estimates of Jongman (1988, 81), who estimates the carrying capacity at eight million; however, there is no evidence for this. Crawford (forthcoming) believes the high count, but suggests that several million Roman citizens lived in the provinces already in the second century, which would solve the problem of the carrying capacity of Italy, see also Kron (forthcoming). However, there is no evidence for this, and Scheidel (2007, 64) assumes that no more than 750,000 citizens were living outside Italy in the Augustan period. See Hin (forthcoming) and Witcher & Goodchild (forthcoming) on the difficulty of establishing the carrying capacity of Italy. Goodchild (2006, 202-25) shows that there are many variables that have to be taken into account, and that even one of the most fertile areas of Italy was not capable of producing a large surplus.

<sup>712</sup> De Ligt (2003 and 2004); his theory is supported by Scheidel (2004, 2-9 and forthcoming); Turchin & Nefedov (forthcoming).

its supporters believe that Brunt's and Hopkins' estimates of the number of people in Italy in 225 are too high. Whereas Brunt assumed the population of Italy amounted to 4.5 million people in 225, an estimate of 3.5 to 4 million may be more realistic.<sup>713</sup> If in the Augustan era some one million citizens lived outside of Italy, the total becomes 5 million in 28 BC, and this would mean a relatively slow (about 0.3% per year) population growth over the two preceding centuries. Moreover, the supporters of this alternative deny the presence of several millions of slaves in Italy, and assume that growth of the citizen population was caused mainly by the natural growth of the free citizen population. The census figures for the second century in this case involve an increasing degree of underrepresentation, since they do not record the fact that the population was actually growing; but since they were still close enough to the real figure, they were accepted as roughly correct by Roman politicians.

In my view, the problems connected with the 'high count' scenario are too serious to allow us to accept this theory at this moment. However, the 'low count' scenario is not free from problems either. It would be wise to maintain a critical outlook towards the basic assumptions of the model, such as the idea that the Republican census figures include all adult males, and keep an open mind toward other possible explanations that might lead to a different reconstruction of Italian population developments.<sup>714</sup>

It is likely, moreover, that while Italy as a whole experienced only limited population growth, the population was not spread out evenly throughout the peninsula. It is difficult to distinguish between the rate of growth of the Roman citizen population and the allies; there are, however, no reasons to assume that the allies experienced widely different growth rates than the citizens – in my view, not much land was actually taken away from the Italians after the Second Punic War, so loss of land cannot be brought forward as a reason for population

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<sup>713</sup> The difference lies mainly in the interpretation of the figures for the Italian population given in Polyb. 2.24. Brunt assumed that these represent all adult males in the case of the Romans, but that in the case of the allies only the *iuniores* were included. If, however, the numbers as cited by Polybius do not represent *iuniores*, but all adult men in the case of both the Romans and the allies, the total population of Italy in 225 would be much smaller than assumed by Brunt. If we assume that the undercount was 0% and the figure of 770,000 in Pol. 2.24.16 represents all adult males, a multiplier of three would give only 2.3 million people in the whole of peninsular Italy. A (more likely) undercount of 10% would give 2.54 million. The same goes for the population of Cisalpine Gaul: Brunt reckons with a Gallic adult male population of 3-500,000 in 225, but the lower figure is more probable than the higher. A multiplier of three would give 900,000 Gauls, and a total number for the whole of Italy of about 3.5 to 4 million in 225 becomes possible. See De Ligt (2003, 8-9 and 2004, 734-8); Scheidel (2004, 4). This scenario would mean a net growth rate of about 0.3% for the last two centuries of the Republic; the actual growth rate was higher, but some emigration from Italy must be taken into account.

<sup>714</sup> It may be, for example, that the Augustan census did not count all men over seventeen, but all citizens (men, women, and children) who were *sui iuris*. This has been suggested in the past by e.g. Bourne (1951-2, 133), but has not received much attention in recent scholarship. It is now time for a re-evaluation of this theory, see Hin (forthcoming).

decline among the allies. It would be difficult to maintain that population growth among Roman citizens alone can have been responsible for the total growth of the Italian population, and it is therefore likely that natural growth rates among both groups were roughly equal.<sup>715</sup> It is certain that the city of Rome experienced rapid growth in the second century, although its exact size remains unclear (see above, note 128). It may have been the case that this growth was caused partly by migration of non-citizens to Rome.

It is difficult to quantify migration movements, but we do know that several cities complained to the Roman authorities because their subjects had moved to Rome. It is not clear which towns exactly suffered from migration toward the capital; in the first instance, in 187, the complaints were voiced by *sociorum Latini nominis, qui toto undique ex Latio frequentes convenerant*; apparently, the towns of Latium itself were hit hardest by the emigration of their citizens. 12,000 Latins were removed from the city, since 'even then the City was overcrowded by the multitude of immigrants'.<sup>716</sup> This apparently did not have much effect, since in 177 another embassy came from 'the Latins' in general, together with the Samnites and Paeligni, who opposed the emigration of their people to the Latin colony Fregellae; in 173 those allies still resident in Rome were ordered to move back home.<sup>717</sup> In the later second century migration to Rome was still an issue: in 126 the tribune Pennus again expelled people without citizenship from the

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<sup>715</sup> Brunt (1971, 89); Foraboschi (1992, 102); Perelli (1993, 26-7). Contra: Salmon (1982, 119); De Neeve (1984, 36); Gabba (1985a, 35).

<sup>716</sup> Liv. 39.3.4-6. However, the expulsion of aliens occurred mainly on the initiative of their home towns and not because Rome had become overpopulated by the stream of immigrants. Livy is apparently exaggerating the crowdedness of Rome at this period. For the 'depopulation' of Latium, apparently caused by migration to the city itself, see Cic. *Planc.* 9.23; DH 4.53.1; Prop. 4.1.33, 4.10.9.30; Hor. *Epist.* 1.11.7-8. See Fraccaro (1914, 70); Tibiletti (1950, 189); Evans (1980, 29); Frézouls (1981, 129); Liverani (1984, 44-7); Gabba (1989a, 201-2); Sallares (2002, 249); Rosenstein (2004, 7). It is likely that those migrating to Rome were not the elites, but the lower classes, see Broadhead (2001, 83). The importance of migration may also be deduced from the large number of references to *incolae*, see Gagliardi (2006, 29). On migration in general, see Erdkamp (forthcoming a).

<sup>717</sup> Liv. 41.8.6-12, 41.9.9-12, 42.10.3; Cic. *Sest.* 13.30. Tagliamonte (1996, 152) states that these people migrated to Rome exactly in 177, but this was not the case. For these episodes see Tibiletti (1950, 203-5); Toynbee (1965b, 137-41); Humbert (1978, 112-7); Keaveney (1987, 50-3); Broadhead (2001); Scheidel (2004, 5). Brunt (1971, 85-6) suggests that migration to Rome from nearby cities was larger than from other cities, and that this was connected to the creation of large estates near the city. During the Second Punic War indeed complaints were voiced by a number of Latin colonies, namely Ardea, Nepes, Sutrium, Alba, Carseoli, Sora, Suessa, Circeii, Setia, Cales, Narnia, and Interamna. It is notable that all these places were located in quite close proximity to Rome, whereas the other Latin colonies founded up until this time were located farther away and apparently had no reason to complain of a lack of soldiers. It might be that the colonies nearest to Rome were more heavily hit by recruitment for the war; alternatively, it may be the case that the inhabitants of these cities especially had moved to Rome.



city,<sup>718</sup> and the *Lex Licinia Mucia* of 95 aimed at removing allies who had infiltrated the census lists, presumably by moving into Roman territory.<sup>719</sup>

It is likely therefore that central Italy, and especially Rome itself, experienced a rate of population growth that was higher than in the rest of Italy. In the first decades of the century the growth of the population in central Italy was mitigated by the establishment of colonies in the periphery, especially in Cisalpine Gaul.<sup>720</sup> However, after colonization stopped the people moving to Rome had fewer opportunities to emigrate away from central Italy, and the population of this area was therefore growing due to natural increase, the manumission of slaves, and migration from other areas of Italy to the centre. As the century progressed the negative effects of unhindered population growth became clear: 'Inevitably, sooner or later, population would have to exceed the supply of available farmland, helping (...) to create the widespread poverty and landlessness that were the underlying causes of the 'crisis without alternative' from which the late Republic suffered.'<sup>721</sup> Population growth in the case of the 'low count' scenario was relatively small, and at first sight it seems doubtful whether the economic and social problems occurring in the second century could be caused by such a relatively small population growth.<sup>722</sup> However, combined with increased competition for land, which, as we have seen, also took place mainly in central Italy, a limited growth in population may have been sufficient to cause the process of proletarianization described in the sources. If, as I would suggest, this was the region in which these negative developments mainly manifested themselves during the second century, then regional variations in population and economic developments may well have been essential in explaining the reforms attempted by the Gracchi.

### 3.6. *Ager publicus* and commercial production

After this – seemingly overlong – discussion it is time to return to the *ager publicus*. Following Appian, many modern scholars have asserted that the developments described in the sources took place on public land: the rich established large farms on *ager publicus*, especially *ager occupatorius*, and used these both for agriculture and animal husbandry. This deprived the poor from

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<sup>718</sup> Cic. *Off.* 3.11.47. See Wulff Alonso (1991, 213-4); Lintott (1994, 76).

<sup>719</sup> Cic. *Balb.* 23.54, see *Sest.* 13.30. See Badian (1970-1, 405-8).

<sup>720</sup> Gabba (1976, 315); De Neeve (1984, 36); Broadhead (2000, 147); Rosenstein (2004, 145). For non-official migration to Gaul see Gabba (1990a, 74 and 1994b, 108); Denti (1991, 31); Lo Cascio (1999b, 170); Kron (2005, 472).

<sup>721</sup> Rosenstein (2006, 241); see Scheidel (forthcoming).

<sup>722</sup> Morley (2001, 61) argues against the low count, because he believes that such a small population would not have caused the problems of competition for land described in the sources. However, if these were mainly a regional phenomenon, it is very well possible that they were caused by a limited population growth.

access to the public land.<sup>723</sup> In my view, however, the distribution of large estates and that of *ager occupatorius* throughout Italy makes this hypothesis very difficult to maintain. When looking at the location of cash crop estates in Italy an important observation can be made: the number and size of such estates was largest in the areas *where there was the least ager occupatorius*. The largest expansion of cash crop farms took place in the Ager Romanus in central Italy, where, as we have seen, only a limited amount of *ager occupatorius* was still in existence.<sup>724</sup>

We have seen (ch. 3.3.1) that the presence of *ager publicus* would actually be an obstacle for investment in land, and that this led to the assignment of private rights of tenure on *ager publicus* already in the third century. We would therefore expect that anyone wanting to engage in market agriculture would have preferred to use private land, and that the spread of large estates took place mostly on such land. Van Dooren argues that the presence of *villae* in an area is a strong indication of the presence of *ager publicus* there, because one would expect *villae* to come into being in those areas that were centuriated, but not distributed. In fact, he uses the presence of *villae* as an argument to establish the location of *ager publicus*.<sup>725</sup> However, first of all, land was usually not centuriated until it was distributed (see ch. 3.2.1), and secondly, *villae* were located especially in places where not a great amount of *ager publicus* was available (see ch. 2.3.2-5 and 4.2). It is therefore far more likely that *ager publicus* would be an *obstacle* to the growth of large *villae* rather than a stimulus.

Most of the *ager publicus* that still survived in central Italy was *ager censorius*, *ager quaestorius*, or *ager in trientabulis*, and as such it was held with a secure title by its possessors. It was, therefore, in many ways similar to private land, and was not subject to redistribution by the Gracchi. The presence of large amounts of private land and public land with security of tenure in this region would fit nicely the presence of large estates in this region.

That *ager publicus* in general, and *ager occupatorius* specifically, played a limited role in the creation of large estates, at least in central Italy, may be inferred from Cato's *De agricultura*. Cato never mentions *ager publicus*, but speaks only about buying land. Even his pastures were apparently private, as in chapter 149, where the leasing out of pasture rights is described.<sup>726</sup> Furthermore, there

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<sup>723</sup> Sirago (1971, 61); Frank (1979, 48-9); Vallat (1983b, 227); De Neeve (1984, 79). Quilici (1994, 130) assumes that large *villae* in Terracina, Ardena, and Cosa were located on *ager publicus*. Bancalari Molina (1987, 431) assumes the same for large estates in Etruria; Perelli (1993, 240) states that the Etrurian coast was public land in the Gracchan period. See Small & Buck (1994, 38) for Lucania; Accardo (2000, 42-3) for Bruttium; Regoli (2002, 148) for Cosa; Torelli (1999b, 5) for central Italy in general.

<sup>724</sup> This is suggested by Shatzman (1975, 15) but he does not elaborate.

<sup>725</sup> Van Dooren (2008, 202).

<sup>726</sup> E. g. Cato Agr. 1. See Bernstein (1969, 67), Capogrossi Colognesi (1981, 155), and Kuziščin (1984, 33-5), who, however, assume that Cato did use public pastures. In Cato's case the absence

are hardly any examples of Senators or other members of the upper class making use of *ager publicus*. We know of several Senators who owned large estates already in the early second century – the most famous being the estate of Scipio Africanus in Liternum – but none of them is described as holding *ager publicus*.<sup>727</sup> It is not until the Gracchan period that specific individuals are credited with holding *ager publicus*.

In other areas of Italy the situation was different. In southern Italy there was still a large amount of *ager occupatorius*. Much of this was suitable for agriculture, and could be occupied by Roman citizens as long as the state did not need it. Yet Roman citizens were not the only ones interested in occupying *ager publicus*. During the second century, only a minority of all inhabitants of Italy possessed the Roman citizenship. Most of these people were located in the Ager Romanus in central Italy. Most of the inhabitants of southern Italy, where much *ager occupatorius* was located, did not possess the Roman citizenship. In areas where large tracts of land had been confiscated by the Romans, not only small farmers, but also many rich Italian allies had no access to land other than *ager publicus*. There were some areas where hundreds of square kilometres had been turned into *ager publicus*, and for the people living there no other land was available.<sup>728</sup> These farmers therefore held a larger proportion of their total holdings as *ager publicus* than Roman citizens did, and were forced to carry out all agriculture on public land. *Ager publicus*, then, was mainly located outside the old Ager Romanus, in areas where most people were *not* Romans. We have seen that some increase in animal husbandry took place in the south, which would fit with the image created by the sources. However, it may be that many of these stockbreeders were not Romans, but Italians, who used the Roman *ager occupatorius* for their own purposes (see ch. 2.5.2 and 5.2.4). The villa in Vittimose, for example, dating to the late second century and aimed especially at animal husbandry, was the property of a local noble.<sup>729</sup>

This does not mean that Italian small farmers did not experience any negative developments in the course of the second century; it is possible that in the

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of public land may be attributed to the fact that his estate was located in the vicinity of Rome, and that there was hardly any *ager occupatorius* here.

<sup>727</sup> Scipio Africanus in Liternum: Liv. 38.52.1; Sen. *Ep.* 86.1; Val. Max. 2.10.2b; Fabius Maximus: Liv. 22.23.4; Aemilius Paullus in Terracina: Liv. 40.51.2; Laelius in Puteoli: Suet. *Vit. Ter.* 3. See Frederiksen (1970-1, 340); Shatzman (1975); Kuziščīn (1984, 58). Liv. *Per.* 11.4 recounts how already in 296 'former consul L. Postumius was condemned because he had ordered the soldiers of the army he commanded to work on his land'. See also DH 17/18.4.3. However, it is not said that this involved public land, contra Frank (1979, 48); DH actually states 'his own estate', which seems to point to private land. On competition for land especially in the *suburbium* see also Nagle (1973, 369-70).

<sup>728</sup> David (1997, 144).

<sup>729</sup> Gualtieri (2003, 140-1). See Battista Sanguineto (2000, 568, 579) for *villae* in Lucania and Bruttium; Terrenato (2001b, 62) for Etruria; Volpe (2001, 323) for Arpi. See in general Gabba (1956, 59 and 1994a, 226); Wulff Alonso (1991, 82).

periphery as well, more land was accumulated by those producing for the market.<sup>730</sup> As we have seen, commercial agriculture became more important in northern and southern Italy as well, albeit on a smaller scale than in central Italy, and it may be that some of this was Roman *ager publicus*. In this period the Romans did not seem to be interested in the land that was legally theirs, and as long as the allies did not rebel, they assumed that they would be able to continue working the land, even though it was officially Roman property. As long as the Romans decided not to use this land, there was no problem – but in the end, this was exactly what the Romans planned to do.

In short, we may conclude that the discrepancy between the location of large estates and that of *ager occupatorius* means that the developments going on in the second century were not as straightforward as has been suggested. The accumulation of *ager occupatorius* by the rich cannot be used as an explanation for the problems of the small farmers in central Italy. However, the accumulation of *private* land in central Italy is likely to have been a main cause of economic and social difficulties for small farmers.

### 3.7. The use of *ager publicus* by the small farmer

Many textbooks speak of a drastic decline in the number of free peasant during the second century, and assume that Italy became a land filled with large slave-staffed estates, while the poor dispossessed farmers formed an urban proletariat much like the poor of the nineteenth century. Because the rich preferred to staff their estates with slaves, there were no possibilities for the poor to find permanent employment on the land of the rich, and the landless became unable to support themselves. Some remained in the countryside where they worked as seasonal wage labourers on the land of the rich,<sup>731</sup> others moved to the cities and formed an urban proletariat.

In this reconstruction the possession of *ager publicus* is seen as indispensable for small farmers: some depended entirely on public land, while others worked land that was partially their own and state land for another part. Even though possessors of *ager occupatorius* were protected by law (see ch. 3.2.3), in practice it was difficult for the poor to act against the occupation of the public land by the rich, and so the poor could easily be deprived of the public land they held. It remains unclear, however, exactly which *ager publicus* was used by small farmers and in what way they could have profited from its use. For public land to be useful to a small farmer, it had to be located close to his private lands, which means that many kinds of *ager publicus* would be inaccessible to small farmers, especially the wide tracts of *ager occupatorius* of which there was a great amount during the second century.

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<sup>730</sup> Richardson (1980, 5).

<sup>731</sup> Brunt (1971, 161-3) and Rosenstein (2006, 228) assume the majority of impoverished farmers remained in the countryside. See Yntema (2006, 123) for the Salento.

Before further investigating the possible locations of *ager publicus* accessible to small farmers, we first need to answer the question of how much land a family actually needed to survive. The idea that many small farmers were dependent on *ager publicus* has mostly been inspired by the small amounts of land assigned to settlers in colonies and viridane distributions, which have long puzzled scholars. The traditional amounts cited in the sources, two *iugera* as the Romulean *heredium* and as attested in the colony Terracina, and seven *iugera* in various viridane distributions and colonies, are believed to have been insufficient to sustain a family. It is therefore assumed that the use of *ager publicus* must have constituted an important source of income for many colonists and other small farmers.<sup>732</sup>

While it is universally accepted that two *iugera* were insufficient to provide an income for a family,<sup>733</sup> opinions are more divided over the amount of seven *iugera*.<sup>734</sup> Many scholars believe that seven *iugera* was not enough to provide a living for an average Roman family,<sup>735</sup> but others are more optimistic as to the possibilities of survival on a small plot.<sup>736</sup> It is difficult to arrive at definite conclusions using comparisons with other societies, since soil and climatic

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<sup>732</sup> Tibiletti (1950, 228), only in case of unfertile soil; in general Kaser (1956, 233); Brunt (1971, 194); Dilke (1971, 16); Crawford (1978, 104); Oehme (1988, 21, 25); Drummond (1989a, 121); Gabba (1979, 20; 1988a, 19; 1989a, 216); Triebel (1980, 72); Mitchell (1996, 257); Hermon (1999, 22); Morley (2001, 60); Rosenstein (2004, 76); Konrad (2006, 167); Van Dooren (2008, 190). Contra: Capogrossi Colognesi (1979, 346 n. 20), who argues that *ager publicus* was unimportant for small farmers, and that this is shown by the fact that the Gracchi only wanted to distribute land as private property. However, this does not say anything about the earlier importance of public land. Other sources of additional income are proposed: wage labour on large estates, trade, tenancy, manufacture, fishing, salt production, and the money made from temples and wells; see Salmon (1963, 33-4); Brunt (1971, 194); Garnsey (1976, 99 and 1980, 37); Frayn (1979, 93); Garnsey & Saller (1987, 81).

<sup>733</sup> Even if Plin. *HN* 18.2.7 states that this was traditionally seen as a sufficient amount.

<sup>734</sup> The multiplier used to arrive at the total population based on the number of adult males varies between 3 and 3.5; White (1970, 336) uses 3.25, while Hopkins (1978, 68-9) uses 3. We will take 3.5 as the average family size; if the multiplier was lower, a family would have needed even less land. The amount needed varied, however, throughout the family cycle: a family of two parents and two small children needs less land than a family of two parents and two adolescent children, see Gallant (1991, 82); Rosenstein (2004, 68-9).

<sup>735</sup> Frederiksen (1975, 168); Nicolet (1977, 103); Hopkins (1978, 21), who suggests that at least fourteen *iugera* were needed, Garnsey (1980, 37); De Neeve (1984, 30); Pasquinucci (1984, 38); Brunt (1971, 194 and 1988, 246), who estimates 20-30 *iugera* (although in (1975, 623) he seems to suggest that seven *iugera* could be sufficient); Oehme (1988, 20); Campbell (1996, 90), who puts the minimum at 20 *iugera*; Oakley (1997, 677); Levi (1999, 34); Corti (2004, 98); Rosenstein (2004, 68-9); Lo Cascio & Malanima (2005, 21), who suppose 12 *iugera* were needed; Heftner (2006, 33). Some argue therefore that small viridane distributions only make sense as bonuses for people who already had other land. If the recipients did not have access to extra *ager publicus*, they must have sold, leased out, or exchanged the land they received, see Galsterer (1976, 59); Frederiksen (1984, 202 n. 102).

<sup>736</sup> Tibiletti (1950, 228); White (1970, 336); Chevallier (1980, 57); Evans (1980, 161); Christ (1984, 68); Carandini (1985a, 69); Celuzza & Regoli (1985, 50); Halstead (1987, 84); Sirago (1995, 45); Schubert (1996, 75); Finley (1999, 99); Jongman, pers. comm., and Rathbone, pers. comm.

conditions can vary enormously even over short distances. For example, the amount of land needed in Greece has been estimated at 16-20 *iugera*,<sup>737</sup> but since the climatic and ecological conditions of Greece are very different from those in Italy, the necessary amount in Italy was most likely smaller.

We may try to calculate the necessary amount of land by using consumption estimates. Jongman's consumption estimate of 200 kilos (22.8 *modii*) of grain per person per year would set average necessities for a family of 3.5 people at about 80 *modii* of grain per year. Brunt assumes the net yield of seven *iugera* (after deduction of seed and assuming one half of the land was fallowed) at 52.5-105 *modii*.<sup>738</sup> Erdkamp assumes that a family of 3.5 people consumed 94 *modii*; for a farm of seven *iugera* he assumes a yield of between 84 and 128 *modii*.<sup>739</sup> In both cases the family would, under favourable circumstances, be able to produce a slight surplus; this amount of land would therefore in many cases be sufficient. If grain yields on peasant farms were usually higher than those favoured by Brunt, whose estimates are rather low, seven *iugera* would be even more likely to be sufficient.<sup>740</sup> Moreover, grain was not the only crop grown on small farms; if the family also grew legumes, vegetables, fruit, etc, seven *iugera* may well have been sufficient. Pliny for example mentions vegetable gardens: 'At Rome a garden was in itself a poor man's farm; the lower classes got their market-supplies from a garden.'<sup>741</sup> Of course, most people will have embraced every opportunity to obtain a little extra food; for those living on the coast, fishing may have been a daily activity, while those living near forests or other uncultivated areas may have supplemented their income by hunting.<sup>742</sup>

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<sup>737</sup> Gallant (1991, 82-7). Walter & Schofield (1989, 13) put the subsistence limit at ten acres (16 *iugera*), see Grigg (1980, 68). In modern-day Pakistan five hectares (20 *iugera*) is considered the minimum, in Zimbabwe 2.1 (8.5 *iugera*), see Grigg (1980, 5).

<sup>738</sup> Brunt (1971, 194).

<sup>739</sup> Erdkamp (2005, 48-9). However, these estimates are valid only for commercial farms; yields on subsistence farms were most likely lower.

<sup>740</sup> Yield of course depends on the amount of land fallowed; some assume a traditional two-year fallowing cycle, with an alternation of cereals and fallow, based on Columella's calculations for the number of labourers in *R.* 2.12.7-9, e.g. White (1970, 119); Finley (1973, 108); Pekáry (1979, 87); Duncan-Jones (1982, 328); Halstead (1987, 78); Jongman (1988, 81 and 2000, 279); Bergqvist (1992, 127); Kehoe (2007, 551). Others assume that less land was fallowed, e.g. only one third: Pasquinucci (1984, 39); Lo Cascio (1999a, 239); Lo Cascio & Malanima (2005, 21). Erdkamp (2005, 38) is unclear on the issue. See for the importance of fallowing *Cic. Brut.* 4.16; *Var. R.* 1.44.2. If much land was fallowed, seven *iugera* would not be sufficient, but unfortunately we have no information on fallowing by small farmers.

<sup>741</sup> *Plin. HN* 19.19.52 and 54. See Evans (1980, 140-3); Garnsey & Saller (1987, 81); Garnsey (1988a, 53 and 1999a, 36); Lloyd (1995, 204-5); Erdkamp (1998, 192 and 2005, 80); Rosenstein (2004, 70).

<sup>742</sup> *Plaut. Rud.* 289-305; *Greg Naz. Or.* 43.34; *Dio Chrys. Or.* 7.45-7; *D.7.1.62.pr.* For the importance of fishing see *D.33.7.27.pr.* MacKinnon (2004, 190) argues that wild animals were not an important part of the diet, because they do not often show up in the bone record. Gallant (1991, 115-20) argues likewise that the collection of wild foods was very time-consuming, and therefore not widely practised.

There is therefore no pressing need to see the stories about people receiving only seven *iugera* as legends. The fact in itself that such small amounts of land were distributed by the state indicates that the Roman officials thought seven *iugera* sufficient to support a family. Dentatus, who distributed to each of his veterans seven *iugera* with the statement 'may no Roman ever think that land too small which suffices to maintain him'.<sup>743</sup> This shows that seven *iugera* was an accepted view among the Roman elite. Even if such legends were aimed mainly at illustrating the frugality of archaic leaders, very small allotments are actually attested in various cases in the second century (see ch. 2.2.12). The additional circumstance that seven *iugera* were sufficient to provide food for a family, especially if worked in intensive mixed agriculture, supports the conclusion that the Roman state viewed a seven-*iugera* plot as the minimum amount of land required to maintain a subsistence farmer. Caesar's distributions in Campania in 59 granted ten *iugera* to families of five or more people, and they are likely to have involved enough land to feed such a family. If a family owned draught animals the amount needed would quickly rise to at least twenty *iugera*. However, most farmers would not have owned oxen;<sup>744</sup> animals like chicken, geese, goats, and pigs, would have been more common, since they could easily fed on leftovers and in marginal areas.<sup>745</sup>

The geography of viritane distributions moreover supports the idea that seven *iugera* were considered a sufficient amount for subsistence. Whereas in colonies there was usually some communal land belonging to the town that could be used by all inhabitants, in viritane distributions there was no communal land.<sup>746</sup> The settlers were simply assigned their own private plots, without the creation of a central administration which could be given authority over common land. To make sure that the settlers in viritane distributions would be able to survive, they were supplied with the whole amount of land the state considered the minimum for subsistence. Access to arable *ager publicus* would not be easy for most settlers in viritane distributions, depending on the geography of such a

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<sup>743</sup> Val. Max. 4.3.5b; *Vir. ill.* 33; Plin. *HN* 18.4.18. The same story is told of Marius in Plu. *Crass.* 2.8, where 14 *plethra* is given as the distributed amount. The word *plethra* was often used as a synonym for *iugera*, see Kolendo (1980, 42); Liverani (1984, 36). It is unclear whether ideas about the minimum amount of land had changed over time, or that a *plethrum* is used here as the equivalent of half a *iugerum*. See also the story about Atilius Regulus, consul in 257, who apparently owned a plot of seven *iugera*, Val. Max. 4.4.6.

<sup>744</sup> It is likely that such valuable resources as draught animals were shared by a number of families, and that family or neighbour assistance in general played an important role in peasant survival. See e.g. Cato *Agr.* 136 (a communal mill); Gell. *NA* 2.29.11 (harvesting together); Cic. *Lael.* 7.23, *Off.* 1.18.59; Dio Chrys. *Or.* 7.10-22, 7.68; Var. *R.* 1.17.2; D.19.5.17.3 (shared oxen), 17.2.58.pr (shared horses). See Gabba (1977, 272); Gallant (1991, 82); Lirb (1993, 285-93); Erdkamp (2005, 17).

<sup>745</sup> White (1970, 273); Brunt (1975, 623); Rosenstein (2004, 70); Erdkamp (2005, 76).

<sup>746</sup> Contra: Toynbee (1965b, 291); Wild (1995, 303); Hermon (2001, 205). The only common lands conceivable are unfertile tracts of land which were located within the distributed territory.

settlement: if a settler happened to be located close to *ager occupatorius*, he may have been able to use this as an addition to his own plot, but if there was no *ager occupatorius* in the vicinity, the settlers would not be able to supplement their income by using *ager publicus*. To make sure that the settlers were able to survive, they received as private land the whole amount of land needed for their survival, and this was estimated by the state to be seven *iugera*.

In situations, then, where access to secure sources of income besides agriculture could not be granted, the state provided its citizens with the amount of land deemed necessary for survival. In other cases, however, it may be that the Roman state *expected* the colonists to be partly dependent on *ager publicus* for their livelihood, and therefore gave them an amount of land that was insufficient to sustain them without other sources of income.<sup>747</sup> Two *iugera*, the amount received in various Roman colonies, were certainly not enough to sustain a family. Although in some cases two *iugera* of land may have been fertile enough to earn a considerable amount of money, as in Varro's example (note 134), some Roman colonies are located terrain that was not extremely fertile, which does not make this likely. Moreover, the estimates for yield cited above show that seven *iugera* of land were not always sufficient to feed a family.

Of course, it would make no sense if the Roman state would give its citizens an amount of land that would be insufficient to support themselves, without making sure that the colonists would be able to complement their income in some way. It is possible that poor Roman citizens on their own initiative occupied *ager occupatorius*, without an official distribution of land,<sup>748</sup> but for many of them this must have been impossible. Setting up a new farm required some money, which many subsistence farmers would not have had,<sup>749</sup> and for many of them *ager occupatorius* would be too far away. A solution to this problem lies in the possibility that *ager publicus* was supplied to colonies, to be governed by the colonial magistrates and for the use of all colonists. As we have seen, not only colonies, but many other towns as well, possessed some form of public land belonging to the community as a whole (see ch. 3.5), both arable and pasture. In colonies therefore people could use both the common arable land and the common pasture lands to add to the income from their private plots. If at any time during the family life cycle they needed more arable land and their private

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<sup>747</sup> Brunt (1971, 194-5 and 1975, 623); Rosenstein (2004, 76-9). It is not clear what Sirago (1971, 64) means when he states that Roman colonists had the right to use *ager publicus*, but Latins did not, because they received a fixed plot.

<sup>748</sup> This can be seen in the early Republic, when people apparently had occupied the Ager Pomptinus before the state had decided what to do with it, Liv. 6.6.4. The same happened in Veii, *Vir. Ill.* 23.

<sup>749</sup> Bringmann (1985, 13); however, in some cases the reclamation of new land requires mostly labour and not a great amount of money. Labour was usually available in sufficient amounts.



plots were insufficient, they could also use this land as an additional resource.<sup>750</sup> Since the control held by the community over its communal land was secure, there was no need to give more private land to the colonists; their income would be secured by the use of the common lands of their towns.

Public pasture lands were probably available everywhere, even if they were not officially the property of the town, and people could use these to pasture animals or to gather wild foods. Apart from products such as wool, milk and meat, animal manure was the most important reason for keeping animals. It was the main source of fertilizer in the ancient world, and it was therefore very important that pasture land was available in the near surroundings of private land.<sup>751</sup> Outside the cultivated area of towns there may have been other pasture land, for example in surrounding mountainous areas.

The loss of access to public pasture lands would have serious consequences for small farmers. Besides the loss of animal products produced on the land, it would cause a decline in the amount of manure they could obtain.<sup>752</sup> If there was a decrease in the available amount of manure and other fertilizers, arable land would become less fertile. After a few years the produce from arable land would decline to a level where it would become impossible to support a family from a small plot of private land only.<sup>753</sup> However, the land held by towns, both arable and pasture, could not simply be occupied by anyone who wanted to; it was controlled by the town council, which could have people ejected who occupied it illegally (see ch. 3.5). The state-owned *ager scripturarius* may have been used mainly by rich men during the second century, but it is unlikely that a serious shortage of pasture land occurred in this period. In the *Lex agraria* it was stipulated that small farmers could graze up to 10 large and (probably) 50 small animals free of charge; apparently, at this time it was felt that there was no immediate shortage of pasture land, and it was expected that small farmers would also be able to use it.

All this means that *ager publicus* was important for many small farmers, but also that not all farmers were dependent on the same type of *ager publicus*. Most of them used mainly the public land belonging to their towns, and maybe some public pasture lands, whether those belonging to the town alone or the state-owned *ager scripturarius*, if there was any nearby. The loss of access to *ager publicus* would therefore have serious consequences for small farmers, but only

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<sup>750</sup> De Neeve (1984, 31-4) states that before the second century it was easy for small farmers to acquire extra land, but that this changed after the Second Punic War; however, shortly after the war there was still a large amount of land available.

<sup>751</sup> The animals did not necessarily have to graze on the arable land in order for the manure to be useful; it could also be collected from the pasture land and brought to the arable land in baskets or carts: Netting (1993, 31).

<sup>752</sup> See Cic. *Quinct.* 6.28 for small farmers being driven from the common land. See Allen (1992, 99) for the negative effects of the reduction of public pastures in early modern societies.

<sup>753</sup> Yelling (1977, 100-2).

in the case of specific kinds of *ager publicus*. *Ager occupatorius*, in the sense of large tracts of arable public land, was not available in many places, especially in central Italy, where the problems of peasant farmers were most serious. Therefore, the land used most by small farmers was not land that could easily be occupied by the rich. It is therefore impossible to maintain the idea that the occupation of public land after the Second Punic War led to a 'decline of the small farmer'.

#### 4.4.1 Population growth and the privatization of common lands

We must now turn to the consequences of the increased pressure on the land that occurred in the second century BC. Even if the loss of access to *ager publicus* was not central to the problems of small farmers in this period, the growth of population and the increasing demand for land, which were both especially prominent in central Italy, will have had serious consequences for those farmers who were unable to profit from the increasing wealth flowing into the peninsula.

In many pre-industrial societies one consequence of increasing pressure on land that often occurs is the increasing privatization of common or publicly owned lands. As population grows, competition for land intensifies, and those that hold the land want to secure their rights to it. Access to lands that had been open to common use are increasingly limited, first by setting a maximum on the amount that can be exploited by one person, and then by complete privatization. Whereas at first each person could access the land and exploit as much of it as he wanted, the lands are now demarcated and each person formerly holding rights of access to the common lands receives a share as his private property.<sup>754</sup>

Although this process is visible in many societies, the example that springs most readily to mind are the enclosures in early modern England. Whereas in the Middle Ages, much of the land was held in so-called 'common fields', from the thirteenth century onwards much land was privatized. Because this was a very slow process, which did not end until the nineteenth century, the process was diverse, and it is very difficult to reach any generalizing conclusions on the basis of the multitude of local developments. Nevertheless, some general trends can be discerned: it is certain that the two major phases of enclosure, in the Tudor era (late fifteenth and early sixteenth century) and the so-called Parliamentary enclosures (late eighteenth and early nineteenth century), coincided with fast population growth.

Common lands played a crucial role both in early modern England and in the Roman Republic, but the system of open fields in England was very different

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<sup>754</sup> Boserup (1965, 78); Demsetz (1967, 350-9), Libecap (1986, 230-5 and 240-2); Garnsey (1988a, 46); Turner, Hyden & Kates (1993, 19, 51). A concise discussion is found in Monson (2008, 24-9), who shows that land in Egypt was privatized under the influence of population growth in the early Roman period (p. 83-7). See for this also Roselaar (forthcoming b).

from the Roman *ager publicus*.<sup>755</sup> Land in open fields was usually the property of a lord, who rented out the land on long-term contracts. The tenants each had a private plot or plots they rented, which were clearly demarcated from the plots of others; the arable land was usually not worked by the farmers collectively. The open character of this system of landholding showed most clearly after the harvest had been taken from the fields. The boundaries between the individual plots temporarily disappeared; the people now let their animals graze on the stubble on the arable fields. There was usually also a considerable amount of land that was fallowed during the whole year, and on this the village flocks were also grazed.

The tenure of a plot of arable land carried with it rights of access to the public lands, the commons, which consisted of pasture. Some pastures were meadows of good quality, while others, the so-called wastes, consisted of mountainous or otherwise infertile land. The animals belonging to all inhabitants of a village were usually gathered in one flock, which was taken to the common pasture by one shepherd. The number of animals someone could keep on the common pasture depended on the amount of arable land he had; however, the maximum was sometimes ignored, which led to overgrazing. There were also common forests, in which the tenants had the right to cut trees and collect fuel and wild foods.

In the Middle Ages most rents of private plots were prolonged indefinitely; the tenant did not have to be afraid that he would lose the land, even if he was unable to pay his rents. This changed in the fifteenth century, when many peasants lost control over the land they had held. Apparently this was the result of population growth: as more and more people needed land, the lords could be stricter with their tenants, evicting those who did not pay their rents. There were enough new tenants to be found, who would willingly pay increasingly high rents.<sup>756</sup>

Although enclosures had already taken place in the Middle Ages, the first great wave occurred in the fifteenth and sixteenth centuries. The enclosures in this period were a direct result of the population growth that had occurred after the Black Death. Population immediately after the plague had been low, which had led to favourable economic circumstances for the survivors. This had encouraged rapid population growth, but a century later the amount of arable land in England was no longer sufficient to support the increased population. We see that this development is fairly similar to that for second-century BC Italy sketched above. The enclosures in England were undertaken mostly at the initiative of the large landowners, who, with the permission of the government, enclosed the land and forbade their former tenants access to it. Often, as we have

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<sup>755</sup> The system of English open fields and common lands is explained in Gonner (1966, 5-13), Dahlman (1980), Kerridge (1992), and Mingay (1997, 7-9).

<sup>756</sup> Yelling (1977, 109); Allen (1992, 59).

seen (ch. 4.3.2), the enclosed land was turned into pasture, and, since cattle did not need as much labour as agriculture, many peasants migrated from these areas. This led to the depopulation of areas specializing in cattle breeding.<sup>757</sup> The government recognized the problems that this created, and tried to protect small farmers against loss of land by giving them security of possession on their land.<sup>758</sup>

In the period 1750-1850 the population of England grew at an unprecedented rate of 1% per year.<sup>759</sup> This was the period of the Parliamentary enclosures, when at the instigation of the government all remaining common lands were enclosed, in the hope that enclosed land would be worked more efficiently and therefore would produce more food. The common fields were distributed and privatized, and all land that was even remotely suitable for agriculture was brought under cultivation.<sup>760</sup> The reactions to the enclosures in this period were remarkably like those in the Roman Republic: some writers bewailed the decline in population, arguing that because the land was appropriated by the rich there was nothing left for the poor, thus causing depopulation. It was even feared that this would cause a shortage of soldiers, just as in Italy. In reality, the population was growing at an unprecedented rate in the eighteenth century, but, just as in Roman Italy, this was not perceived by most members of the elite. Enclosure did not cause the depopulation of country; even in enclosed villages, the population continued to rise.<sup>761</sup> Only in a few areas did the population decline, especially those specializing in stockbreeding.

In many other European countries similar developments occurred. In Germany, for example, the population rose quickly after 1750, and much of the public land (*marken*), which had been used as pasture, for cutting turf, and for illegal occupation by the poor, was turned into private land.<sup>762</sup>

Moreover, the problems of possession for the poor were often similar to those in Roman Italy. In theory, all people renting a private plot of land received a part of the commons as their private property when the land was enclosed. However, many people could not show proof that they had a right to access the commons, because their leases had been renewed for many generations and the original titles had been lost. There were also country-dwellers who had simply moved onto the common lands and started to work the land there without any title. Others did not have any private arable land and had been totally dependent on the commons for their survival. All these people had no right to a private plot of

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<sup>757</sup> Gonner (1966, 387); Yelling (1977, 191, 217); Dahlman (1980, 167); Grigg (1980, 88); Goldstone (1991, 70); Allen (1992, 32-4).

<sup>758</sup> Allen (1992, 66-8).

<sup>759</sup> Yelling (1977, 2); Grigg (1980, 2).

<sup>760</sup> Grigg (1980, 216).

<sup>761</sup> Yelling (1997, 223); Neeson (1993, 13, 22-3).

<sup>762</sup> Turner (1984, 27); Brakensiek (1991, 21). The same process occurred in eighteenth-century Norway, Grigg (1980, 216).

land upon enclosure. Furthermore, in many cases the amount of (formerly common) pasture received by the peasants as private plots was so small that it was insufficient to feed their animals, so that they had no manure for their arable land. This led to a decline in the fertility of the private land held by the small farmers. Moreover, they also lost the rights of gleaning (collecting the remains of the harvest from the open fields) and of cutting firewood and gathering wild foodstuffs from the common forests. The privatization of common lands in England therefore had very serious consequences for small farmers, because their own private holdings were not large enough to provide enough food.<sup>763</sup> Many farmers found the yield of their new private plots of land insufficient to provide for a family, and decided to sell their land and move to the cities in search of wage labour. In this way a combination of population growth and loss of common rights caused a growth of the landless population, and thereby a decline in the living standards of many people.<sup>764</sup>

There are considerable similarities, but also important differences between the English and other early modern common lands and the Roman *ager publicus*. In early modern Europe the open fields were usually the property of a lord, who rented out the land to his tenants. In Roman Italy the functions of the lord were performed by the cities, which usually owned land; this was both arable land, which could be rented by the inhabitants of the city, and pasture, open to all inhabitants. The English commons can best be compared to the Roman *ager compascuus*, which was used as pasture land by a specific group. It would be logical in the case of population growth if cities became more strict in who was admitted to the public lands;<sup>765</sup> it might be expected that they were more adamant in restricting access to the inhabitants of their own city alone, and restricting access to citizens only. From the *Sententia Minuciorum* it appears that people not belonging to the Genuates or the Langenses were forbidden to use the public land belonging to these two communities (see ch 3.5). The *Lex Coloniae Genetivae* likewise specifies that access to 'whatever rivers, streams, fountains, pools, ponds or marshes there are within the land, which shall have been divided among the colonists of the colony' were only accessible to 'those who shall hold or shall possess that land', apparently including *incolae*, but not those who did not live in the colony's territory.<sup>766</sup>

In early modern Europe there was no such thing as arable *ager publicus* belonging to the state, the Roman *ager occupatorius*. There were wastelands, such

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<sup>763</sup> Allen (1992, 287); Neeson (1993, 159-69); Mingay (1997, 93, 119).

<sup>764</sup> Yelling (1977, 100, 227); Dahlman (1980, 182); Allen (1992, 99, 287); Neeson (1993, 249); Mingay (1997, 127, 136).

<sup>765</sup> Frank (1962, 59).

<sup>766</sup> *Lex Coloniae Genetivae* 79: *Qui fluvi rivi fontes lacus atque stagna paludes sunt in agro, qui colon(is) h[ui]usc(e) colon(iae) divisus erit, ad eos rivos fontes lacus aquasque stagna paludes itus actus aquae haustus iis item esto, qui eum agrum habebunt possidebunt.* For the inclusion of *incolae*, see Liebenam (1900, 15).

as mountain ranges and swamps, which were not claimed by any village, but these were not suitable for agriculture. In this they differed from the Roman *ager publicus*, which was, in part at least, suitable for agriculture. The Roman *ager occupatorius* differed from the early modern examples also in another important aspect: whereas modern common lands were usually not inhabited, but only used for pasture, this was not the case with the Roman public land. *Ager occupatorius* was usually not empty, but was in many cases used by the people from whom it had been confiscated. Its distribution was therefore a solution for the growing Roman population, but was dangerous for the allies, some of whom lost an important part of their lands. In many ways the *ager compascuus* was more similar to early modern common lands; this was public pasture land that could be used by all citizens of a certain community, and access to which was limited to the inhabitants of that one community only. However, this kind of land was not privatized during the Republic.

Notwithstanding the differences between these types of land, then, the most important parallel between the early modern common lands and Roman *ager publicus* was the increasing privatization in situations of growing pressure on the land. It was in the third century BC and again in the Gracchan period that the public status of land came to be recognized as unsatisfactory, and that a great deal of land was distributed as private property. In this way developments in the second century were very similar to those in many early modern societies: pressure on the land led directly to the privatization of the public land. The privatization of public land was not the result of the 'greed of the rich', as the sources would have it, but was a logical conclusion of the increased demands placed on scarce resources. However, it is clear that we should distinguish between *ager occupatorius* and other forms of public land.

#### 4.4.2. Alternative survival strategies for small peasant farmers<sup>767</sup>

Apart from the gradual privatization of the *ager publicus*, the pressure on the land had other consequences which became apparent in the second century. Even if the accumulation of public land by the elite was not dangerous for most small farmers, they still had to cope with serious problems. Population growth and the accumulation of (private) land led to a shortage of land for many farmers in central Italy. Under such conditions small farmers could employ various other strategies to ensure a sufficient income.

The first would be working the existing arable land more intensively.<sup>768</sup> However, most methods of raising production, such as technical innovations, were inaccessible to small farmers because of the cost.<sup>769</sup> The only realistic method available to small farmers was to increase the amount of work done on

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<sup>767</sup> See for this subject also Erdkamp (2005, 79-95); De Ligt (2006b, 6-15).

<sup>768</sup> Yelling (1977, 144); Grigg (1980, 22); Mingay (1997, 143); Turner, Hyden & Kates (1993, 14).

<sup>769</sup> Allen (1992, 86-7, 212-8).

the land; however, this would raise production only to a certain level, and could not increase production sufficiently if the population continued to grow.<sup>770</sup>

Another possibility would be to increase the amount of land used for agriculture.<sup>771</sup> In fact, there are many indications that in the second century reclamations of land took place: in 164 BC 'the Pomptine marshes were drained by consul Cornelius Cethegus, to whom this task had been assigned, and converted into arable land'.<sup>772</sup> Archaeological research shows that from the late third century onwards, and especially in the second, more land became to be used for settlement and agriculture than in earlier periods.<sup>773</sup> However, at the end of the second century, there was probably not much 'marginal' land left available for reclamation, at least in central Italy.

It can be expected that when a population grows, landholdings will become more and more fragmented – at least when there is partible inheritance, as in Roman society – since more people need a piece of land.<sup>774</sup> References to fragmentation of land, for example people owning 'one half of a field' are

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<sup>770</sup> Le Roy Ladurie (1976, 236); Brenner (1976, 13-4); Grigg (1980, 36); Turner, Hyden & Kates (1993, 19). For the ancient world, see Erdkamp (1999, 562); Frier (2001, 159).

<sup>771</sup> This occurred in many early modern societies having to deal with population increase, e.g. the Netherlands in the sixteenth century: Grigg (1980, 149-50). England in the sixteenth century: Yelling (1977, 184); Clay (1984, 71). France in the sixteenth century: Le Roy Ladurie (1976, 55-6); Grigg (1980, 27, 107). England in the eighteenth and nineteenth century: Clark & Haswell (1967, 110); Grigg (1980, 176); Mingay (1997, 23, 143). Ireland and Scandinavia in the eighteenth century: Grigg (1980, 212, 216). Flanders: De Moor (2002, 123-5). Germany in the seventeenth century: Brakensiek (1991, 21). Goldstone (1991, 394) sees similar developments in Asia.

<sup>772</sup> Liv. *Per.* 46.15, see Tibiletti (1950, 233). However, Cass. Dio 45.9.1 refers to the distribution of the Pomptine marshes by Antony in 44 BC 'since these had already been filled in and were capable of cultivation'; it is not clear to which reclamation this refers. Cato *Agr.* 139-41 describes the rituals involved in clearing new fields; see also Pall. 1.6 and 6.3 and Lucr. 5.1440-1.

<sup>773</sup> For example, in the 290s the Lacus Velinus in Sabinum had been drained, Cic. *Att.* 4.5.5. See Cambi (2002, 142) for Cosa, see also Attolini et al. (1991, 144). For Campania see Arthur (1991a, 41), for Samnium see Tagliamonte (1996, 36). For drainage of swamps in Cisalpine Gaul see Strab. 5.1.11 and White (1970, 170); Gabba (1985b, 188); Harris (2007, 518); Scheidel (2007, 65); De Ligt (forthcoming a). However, even in the first century there were still many swamps in the area, as attested by the account of the battle of Mutina in 43 BC, see App. *BC* 3.66; Strab. 5.1.5, and Corti (2004, 83). See Witcher (2005, 135) in general on deforestation in the *suburbium*. Evans (1980, 34) assumes the same happened in Italy in the first century AD; Frier (2001, 156) points to similar developments in Egypt in the first centuries AD. See Garnsey (1988a, 46).

<sup>774</sup> Shanin (1972, 23); Brenner (1976, 24 and 1985, 290, 303); Le Roy Ladurie (1976, 5); Grigg (1980, 142, 194); Clay (1984, 66); Gallant (1991, 41-3); Goldstone (1991, 73, 381); Kerridge (1992, 114-5). For the ancient world see Garnsey (1988a, 49); Evans (1991, 105); Erdkamp (1999, 560). De'Spagnolis (1982, 358-60) sees such fragmentation already in Latium in the second century. Colonization of new land could prevent fragmentation of parents' estates, see Foraboschi (1992, 102). Erdkamp (2005, 73) points out that fragmentation of landholdings is an important method to spread risks; when the crop on one plots is destroyed, the others will still produce. This is expressed, for example, in Plin. *Ep.* 3.19. However, in that case the landowner can still possess a large aggregate amount of land, as we have seen (ch. 4.3.1). On the other hand, in some cases it is better to have a larger single plot, D.31.54.

abundant in the Digests<sup>775</sup> and in the Table of Veleia.<sup>776</sup> For the second century BC there is no conclusive evidence of fragmentation, but it is likely that the process of accumulation of private land was preceded by a process of fragmentation of the land owned by small farmers. When the population grew during the second century, at first the land became more and more fragmented, since the existing resources had to be shared among an increasing number of people. This led to increasing underemployment for many small farmers.<sup>777</sup> When this process continued for some time, many farmers found their holdings insufficient, and decided to sell them. Many of them will actually have welcomed this possibility, because high demand for land in the *suburbium* may have ensured that even a small plot would fetch a reasonable price,<sup>778</sup> and the city of Rome seemed to offer better chances for many small farmers living on the edge of subsistence. In this way, the rich would have been able to accumulate arable land in the vicinity of Rome.

Those farmers who lost all or most of their land could try to support themselves by wage labour, even though this was difficult.<sup>779</sup> It is widely attested that temporary labour of free men was very important for the workings of large estates. Cato depended very much on free labour, mostly for seasonal work such as harvesting, but many other tasks could be rented out as well.<sup>780</sup> This work was regulated by middlemen, who organised groups of labourers to work on the lands of those who needed extra hands: 'sufficient gatherers and pickers must be provided: if they are not, any supplied or hired by the owner will be deducted. (...) He (the contractor) is to provide fifty hard workers.'<sup>781</sup> This shows that the

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<sup>775</sup> D.18.1.79, 30.8.pr, 31.77.25-8, 31.86.1, 31.88.6, 31.89.4, 32.29.4, 32.93.5, 32.94, 33.2.26.1, 35.1.56, 39.6.20, 41.4.7.1.

<sup>776</sup> Tab. Vel. 1.19, 1.23, 1.25, 1.28-9, and *passim*.

<sup>777</sup> This appears, for example, from Plin. *HN* 18.7.38: 'Good farming is essential, but superlative farming spells ruin, except when the farmer runs the farm with his own family or with persons whom he is in any case bound to maintain.' See Pucci (1985, 16); Erdkamp (1999 and 2005, 84); Jehne (2006, 79); Van Dooren (2008, 174).

<sup>778</sup> Boren (1968, 21); Badian (1972b, 683); Rawson (1976, 95-6); De'Spagnolis (1982, 359); Morley (1996, 80). Toynbee (1965b, 165) assumes land was cheap because of the decline of the small farmers; however, it is not clear how the 'decline of the small farmer' would lead to a lower land price. Kolendo (1993, 185) assumes that only debts would drive the poor to sell their land. Clavel-Lévêque (1983, 23) assumes that the land of the 'ruined peasants' remained uncultivated after they had abandoned it, but this is very unlikely.

<sup>779</sup> Wage labour was most likely seasonal, and it is unlikely that one season of work could sustain a man throughout the whole year, see de Ligt (2006b, 7-8); Erdkamp (forthcoming a).

<sup>780</sup> Cato *Agr.* 14-6, 21.5, 22.3, 135-7, 144; Plin. *HN* 14.3.10; Var. *R.* 1.17.2-3. Var. *R.* 1.16.4 states: 'For this reason farmers in such circumstances prefer to have in the neighbourhood men whose services they can call upon under a yearly contract – physicians, fullers, and other artisans – rather than have such men of their own on the farm; for sometimes the death of one artisan wipes out the profit of a farm.'

<sup>781</sup> Cato *Agr.* 144.3. See for the contracting out of various jobs also 1.3, 2.6, 4.4, 13.1, 14-6, 21.5, 136-7, 144.1 and 145.1. The emperor Vespasian's great-grandfather apparently was a contractor for seasonal labourers who travelled between Umbria and Sabinum, Suet. *Vesp.* 1.4. See White (1970,



management of such workers could be a profitable business, suggesting that most likely it was widespread in the Republic. It also shows that small farms simply could not disappear completely as a result of the accumulation of land by the rich; large farmers needed the labour of free peasants to work their land (see ch. 4.3.4).

Cities also offered many employment opportunities, especially during the first half of the second century. This period saw a large increase in the construction of monumental and/or utilitarian public buildings, not only in Rome, but also in many other cities, and this could provide labour for a great number of workers.<sup>782</sup> On the other hand, job opportunities declined in the later second century, at least in the city of Rome itself. It seems that after 140 there was a considerable decline in the amount of public works being executed in Rome, which would lead to a shortage of work for the city population.<sup>783</sup> There were of course many other possibilities for wage labour in the city, for example harbour work as porters, foodsellors et cetera, but construction seems to have been the

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349); Ghinatti (1977a, 154); Hopkins (1978, 9); Gabba (1979b, 35); Garnsey (1979, 10; 1980, 36; 1988a, 44); Pekáry (1979, 80); Stockton (1979, 19); Evans (1980, 135); Finley (1980, 149); Kolendo (1980, 194); Skydsgaard (1980, 66-9); Rathbone (1981, 15); De Neeve (1984, 31); Pucci (1985, 19); Spurr (1986, 135-43); Dyson (1992, 35); Scheidel (1994b, 163); Marcone (1997, 135); Erdkamp (1999, 557 and 2005, 81-7); Lo Cascio (2001, 221). Heftner (2006, 38) suggests that small farmers suffered from competition from such travelling groups of labourers, but since these groups consisted of free men as well, it is more likely that many small farmers considered joining such groups an easy way to secure labour. Dumont (1987, 68) argues that temporary agricultural workers were also slaves, who were rented out by their masters, contra: Scheidel (1994, 172-6). Morel (2007, 505) states that the presence of a large number of slaves on agricultural estates 'destabilized the free labor market', but since slavery on cash crop estates was probably already important in the third century, its (possible) increase in the second century did not take away possibilities of labour from free men, who had always been employed only as seasonal labourers. See for the attraction of moving to Rome Gabba (1989a, 217); Nicolet (1994, 619).

<sup>782</sup> In Rome e.g. the Emporium, *horrea*, the Macellum, and the Porticus Aemilia, see Liv. 40.51.3-9. See also D.19.2.30.3 for free labour in building. See Coarelli (1976, 23-4); Brunt (1980); Castagnoli (1980); Rickman (1980, 46-7); Giardina (1981, 103); Morel (2007, 505). Other places saw an increase in public works as well, e.g. Ostia, Cosa, Pisaurum, and Sinuessa, see Liv. 41.27.5-12 and Coarelli (1989, 40). Dyson (1992, 51) argues that moving to Rome was unattractive because there was not much work, but this is clearly wrong. Bernstein (1969, 12-3) argues that those employed in such work were usually slaves, which would mean less work for free labourers. There were indeed slave owners who rented their slaves out for work, see e.g. Plaut. *Vid.* 25-8. Schneider (1977, 26) suggest that many small farmers became *publicani*, and thereby rich, but this is impossible.

<sup>783</sup> Last (1932, 7); Boren (1958, 896 and 1968, 41-2); Gabba (1976, 317); Stockton (1979, 18); Shochat (1980, 67); Jehne (2006, 80). Coarelli (1977, 7-18) argues that the gaps in activity between 138-132 and 132-125 were too short to cause much unrest, but if they were combined with rising prices, six years of decreasing job opportunities could cause serious problems for many people dependent on wage labour. The fact that shortages in labour opportunities were not equally divided over the years does not mean that they would have the same impact each time; if earlier in the second century more people still owned their own land or could acquire new land, then the absence of wage labour would be less of a problem. See for the idea that the problems of 140-125 were not serious Bernstein (1969, 3); Garnsey (1988a, 195).

most important sector, and a significant decline in this sector would have had serious consequences for wage labourers. The fact that Gaius Gracchus introduced the first regular sale of grain at a reduced price to Roman citizens may show that many of them at this time found it difficult to make ends meet.<sup>784</sup>

Another obvious possibility for wage labour was military service. Contrary to the traditional idea, the prolonged absence of small farmers in the army was not a cause of the decline of the peasant farmer. In fact, military service formed an essential way to gain extra income for many families with adult sons.<sup>785</sup> However, although wars in the early second century brought in booty and riches (see ch. 4.3.5), and many soldiers received land in colonies after their term, as the century progressed wars became less profitable. Especially in the Spanish wars the chance of profit was small and the chance of dying great. References to evasion of service, desertion and lack of morale abound for the later second century.<sup>786</sup>

A fifth possibility would be to work someone else's land as a tenant. The importance of tenancy in the second century has often been disregarded, since there are hardly any direct references to its presence.<sup>787</sup> Some, however, have argued that tenancy became increasingly important in the second century; it is possible, for example, that when colonization stopped in the 170s, tenancy

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<sup>784</sup> Liv. *Per.* 60.7; Cic. *Sest.* 25.55; Schol. Bob. *Sest.* 55, 103.

<sup>785</sup> Earl (1963, 41); Rathbone (1981, 19); De Neeve (1984, 39); Von Ungern-Sternberg (1988, 170); Flach (1990, 37); Dyson (1992, 53); Perelli (1993, 90); Horvath (1994, 91); Erdkamp (1998, 261-5); Rosenstein (2004, 80-93); Williamson (2005, 161); Jehne (2006, 78); De Ligt (2006b, 7-8); Morley (2006, 37). Brunt (1988, 77), Kolendo (1990, 184), and Gabba (1990a, 695) think military service only became important as a profession after the Marian reform, but there is no reason why it should not have been so earlier.

<sup>786</sup> See Polyb. 35.4.4-5 and Liv. *Per.* 48.17 for officers shirking their duties, for soldiers see App. *Hisp.* 49; Lucil. 15.509-10. Desertion is mentioned in Liv. *Per.* 55.2; App. *Hisp.* 73, 79, *Pun.* 130-1; Front. *Strat.* 4.1.20. Lack of morale in the Spanish army is recorded in App. *Hisp.* 84; Plu. *Apophth.* *Scip. Min.* 16 (*Mor.* 201C). Some reports of protests against service date from earlier in the second century (Liv. 30.43.13, 34.56.9-11, 39.38.6-12, 43.14.2-15.1), but the fact that, despite the lack of Livy for the later second century, the number of references to evasion of service in the later second century outnumbers those from the beginning points at a greater importance of this phenomenon later on. See Scullard (1959, 15); Toynbee (1965b, 92-9); Brunt (1971, 34); Nagle (1976, 489); Schneider (1977, 64); Shochat (1980, 58); Evans (1988); Perelli (1993, 29); Horvath (1994, 91); Rosenstein (2004, 53-4); De Ligt (2004, 743-4). Erdkamp (2006, 48) argues that increased urbanization in the later second century created alternative sources of income, and that for middle class farmers military service had become a burden instead of an opportunity, since the rate of underemployment was less than in the early second century. It may be, however, that urbanization increased because military service became less popular. Moreover, in this case the declining opportunities for wage labour in the period before 133 must still have constituted a problem for the urban population.

<sup>787</sup> Kromayer (1914, 169); White (1970, 404-5); Hopkins (1978, 23); Foxhall (1990, 108); Dyson (1992, 132); Scheidel (1994); Rosafio (1993, 16); Marcone (1997, 144); Ikeguchi (1999-2000, 2-5). Burgers (1998, 292) argues that large farms usually did not have any land available that could be rented out, but there is no reason why this should be so.

became more important.<sup>788</sup> Legal instruments concerning tenancy were created in the period shortly before 100 BC, which points at its growing importance in the preceding period.<sup>789</sup> However, if land became increasingly scarce in this period, there may not have been enough land for all small farmers to rent a piece of land.

We can see, therefore, that although there were many possibilities for employment for those who did not own their own land, in period shortly before the Gracchi such opportunities seem to have become increasingly unsatisfactory. At the same time the population continued to grow and the amount of land available did not increase, which led to a decline in living standards for many small farmers and landless citizens.<sup>790</sup>

##### 5. Conclusion: Regional variation in the use of *ager publicus*

We have seen that a combination of population growth and increased competition for land among those producing for the market could lead to serious problems for the small farmers living in central Italy. Whereas in the first half of the century most people in Italy had been reasonably well off, this situation changed around the middle of the century. The situation became untenable shortly before the Gracchan period: on the one hand the growth of the city of Rome had continued unabated; furthermore, there had been no new colonies for almost forty years, thus increasing the number of people sharing the scarce resources of central Italy. This likely led to the fragmentation of the land belonging to small farmers, while in the second half of the century alternative sources of income became increasingly insufficient for the population to support itself. The sources describe a large urban and rural proletariat, and though the extent of the proletarianization of the Roman free citizen has often been exaggerated in modern literature,<sup>791</sup> there is some truth in the picture painted in the sources.

In the later second century, therefore, many Roman citizens experienced a decline in their economic and social wellbeing. However, I have argued that this

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<sup>788</sup> Tenancy seems to be recorded in Ter. *Phorm.* 361-2, 663-4, *Ad.* 950. The presence of tenancy in the second century is supported by Toynbee (1965b, 176); Brunt (1971, 353); Nicolet (1967, 93); Boren (1968, 47); Bernstein (1969, 69 and 1978, 92); Nicolet (1977, 113), who wrongly thinks there are *partiarii* in Cato; Crawford (1978, 103); Stockton (1979, 15); Garnsey (1980, 40); De Neeve (1984, 74-80); Bringmann (1985, 22); Celuzza & Regoli (1985, 52); Chouquer et al. (1987, 373); Dyson (1992, 43); Perelli (1993, 26); Bradley (1994, 74); Lomas (1996, 139); Finley (1998, 149); Van Dooren (2008, 193). Rosenstein (2004, 181) remains critical about the importance of tenancy in the second century.

<sup>789</sup> De Neeve (1981, 29-33); De Ligt (2000, 382-8; 2006b, 8-12).

<sup>790</sup> Perelli (1993, 90) argues that it was mainly a problem of perception, caused by economic growth: what at first had seemed sufficient, now was no longer enough; however, in fact many citizens faced real problems of subsistence. See Garnsey (1999b, 20) and Jongman (2007, 607-15) for living standards in the early Roman Empire, which seem to have been high, even though this was a period of unprecedented population density in Italy. However, Scheidel (2007, 61) is more critical of possibilities to establish living standards.

<sup>791</sup> E. g. Tibiletti (1949, 36); Toynbee (1965b, 177-9); Pekáry (1979, 80).

phenomenon was limited to a small part of Italy, namely the old Ager Romanus in central Italy, where the presence of a quickly expanding market made sure that land was in high demand. It is very well possible that in this area the demand for land among the elite, and that this led to increasing accumulation of the land in the hands of people engaged in commercial agriculture. The social problems identified by the Gracchi were real, but they were limited to central Italy, where already in the middle second century demand for land was larger than the amount available.<sup>792</sup> Contrary to what is stated in some of the sources and in many modern publications, however, the land accumulated was not *ager publicus*, but mainly the private land of small farmers. The eagerness of those interested in commercial agriculture to acquire land in central Italy had enabled many poor peasants to sell their small plots of land at favourable prices and move to the city. This development has often been termed 'the decline of the small farmer', and although it is by no means the case that all small farmers disappeared or experienced difficulties, the number of those who did increased, leading to the proletarianization of a considerable number of Roman citizens. Therefore the real problem was and remained lack of access to land, and this could not be solved unless some way was found to supply all Romans and Italians with land or adequate alternative sources of income. In short, we may say that *ager publicus* was not the *cause* of the problems of small farmers in the second century, but that its distribution was seen as an – at least temporary – *solution* to these problems.

Faced with the evidence of a declining census figure and a growth of the (urban and rural) proletariat, the Gracchi understandably drew the conclusion that many people were unable to make a living for themselves. However, they misunderstood the exact causes of this problem. The Gracchi, perhaps influenced by agitation over *ager publicus* in the early Republic, thought the proletarianization of the small farmer was caused by the poor being driven off the public land by the rich. Moreover, the solution of the problem was sought in the distribution of *ager publicus*, which may have been an additional reason for the importance of this kind of land in the analysis of the problem: to make its distribution more attractive, *ager publicus* had to be presented as central to the cause of the problems. The idea in the sources that *ager publicus* was the *cause* of the problems may have been introduced mainly by the Gracchan rhetoric, which presented the situation of the second century in this light.<sup>793</sup> The Gracchi also claimed that the lack of land had caused the population to decline, an idea that was inspired by the declining census figures. This analysis of the problem led the

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<sup>792</sup> Several scholars have argued that Italy reached its carrying capacity in the first century AD, e.g. Lo Cascio (1999a, 123), Frier (2001, 142), Morley (2001, 59), and Witcher (2006, 116), but for central Italy the strain may have begun to show already in the mid-second century BC, as suggested by Lo Cascio (2004, 141-2); however, he is talking about Italy in general and not the central area.

<sup>793</sup> Gabba (1977, 270).

Gracchi to look for possibilities to stop the proletarianization of the small farmer. The solution they proposed was logical, considering their assumption that the occupation of the public land by the rich was the source of the problem: *ager publicus* should be distributed to the poor, who should be given secure rights of tenure on their own plot of land, in order to prevent the rich from taking it away from them. Thus the economic and social problems of the later second century led directly to the privatization of *ager publicus*, a process to which we shall turn in the next chapter.

## **5. The Gracchi and the privatization of *ager publicus***

### **1. Introduction**

In the previous chapter we have seen that some small farmers in the later second century faced serious problems of subsistence. The Roman state was slow in taking action to alleviate these problems. In about 140 BC a first attempt to relieve the troubles of the small farmers was made by G. Laelius. Unfortunately, the nature of his activities is not mentioned; we may surmise that they had something to do with land distribution, since they incurred the anger of the 'powerful'.<sup>794</sup> However, it was not until the tribuneship of Tiberius Gracchus in 133 that a significant attempt was made to improve the position of the impoverished citizens. His proposal constituted a radical new solution to the problem: the distribution to the poor of *ager publicus* possessed above the legal limit.

The period of the Gracchi was of paramount importance for the history of the Republic, not only with respect to the configurations of landholding, but for society in general: the period of the Gracchi was considered by many contemporaries to have been the first time that violence was used against political adversaries.<sup>795</sup> Both Tiberius and Gaius Gracchus lost their lives at the hands of their opponents, without serious consequences for those responsible for their deaths. From now on violence was considered a normal weapon against political enemies, as would become clear in the course of the first century.

For our purpose the Gracchan land reforms are the most important. To begin with, the reforms of 133 caused a revolution in the system of landholding and were the beginning of the end for the arable *ager publicus*. The Gracchi chose to privatize, or at least to create security of tenure on, much of the former public land. Furthermore, the distribution of *ager publicus* previously held by the allies constituted a crucial revision in the relationship between Rome and her allies, and struggles over the possession of this land would form one of the main causes of the Social War. The *ager publicus* had for many years been regarded as a sort of *beneficium* to the allies, who had been allowed to continue to work the land that been confiscated from them (see ch. 2.5.2). But with the increasing pressure placed on land in general, and on *ager publicus* in particular, the Romans now called for the land that was theirs by law. This of course harmed the interests of

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<sup>794</sup> Plu. TG 8.5: 'An attempt was therefore made to rectify this evil by Gaius Laelius, the comrade of Scipio; but the men of influence opposed his measures, and he, fearing the disturbance which might ensue, desisted.' The 'men of influence' (δυνατοί) are not necessarily the same as the rich possessors, since there may also have been Senators and other influential men who did not possess much *ager publicus*, but opposed Laelius all the same, for example because they feared the influence he would gain by giving land to many people.

<sup>795</sup> App. BC 1.2: 'No sword was ever brought into the assembly, and no Roman was ever killed by a Roman, until Tiberius Gracchus, while holding the office of tribune and in the act of proposing legislation, became the first man to die in civil unrest.' See DH 2.11.3.

the allies, who lost the land they had previously held. But it was also dangerous for the Romans themselves: since the allies now had nothing more to lose, they were more inclined to rebel against Roman rule, as they indeed eventually did.

In this chapter I will investigate the Gracchan agrarian laws and their consequences. I will show how the measures presented by the Gracchi evolved logically from the situation described in chapter 4, and how the Gracchan period radically transformed the possession of arable *ager publicus*, leading to its eventual disappearance. This privatization therefore can be considered a direct consequence of the social and economic problems of the poor Roman citizens. However, the Gracchan solution eventually proved insufficient to solve these problems, and discussions over public land continued into the first century.

Because many issues concerning the Gracchan land reforms are still hotly debated, it is necessary first to review what exactly happened during and after the Gracchan land reforms. In my view, many of the issues under debate can be satisfactorily resolved by looking at evidence other than the literary sources. Paramount among this is the *Lex agraria* of 111 BC, which gives very detailed regulations on *ager publicus*. I will investigate who exactly benefited and suffered from the land reforms, and what legal position was granted to the Gracchan settlers and those holding *ager publicus* before 133, the *veteres possessores*. I will also examine what happened to the Gracchan laws after the deaths of the Gracchi and what role was played by the post-Gracchan legislation in the ongoing process of privatization. Finally, I will discuss the role played by new controversies concerning arable *ager publicus* in the outbreak of the Social War, and trace its eventual disappearance in the first century. I will argue that the period 133-111 BC was crucial in the transformation of arable *ager publicus* into private land: even if *ager publicus* still existed after 111, the Gracchan period formed a clear dividing line in the history of public land.

### 2.1. The Gracchan land reforms: introduction

When Tiberius Gracchus was elected *tribunus plebis*, the situation in the city of Rome and the surrounding countryside had been deteriorating for some time. Whereas service in the army had been profitable for many men in the first half of the century, this had now changed; as less booty was brought in from the wars, the army became an increasingly unattractive choice, and this had forced many young men to look for other means to support themselves.

Some, who still had small plots of land, supplemented their income with seasonal wage labour on the estates of the rich. Others moved to the cities to find work, which in the early second century may have been able to provide a reasonable income. However, we have seen (ch. 4.4.2) that in the period between 140 and 133 few public works had been executed in Rome, and that those depending on wage labour for their support may therefore have had fewer opportunities to gain an income in this period. It is also likely, though impossible to prove, that grain prices were high at this time because of the slave rebellion in

Sicily from 137-133 BC, which hindered the transport of grain to Rome.<sup>796</sup> The combination of population growth and a continuing decline in the willingness to serve in the army would have caused more and more people to seek their livelihoods in Rome, but in the period shortly before Tiberius Gracchus' tribunate the possibilities for these people to support themselves seem to have been smaller than in the decade before.

It was not only the urban poor who were in trouble at this time. Not all landless farmers came to the cities; there were also many who chose to remain in the countryside and tried to make a living in other ways. However, we have seen how the large number of people remaining in the countryside, combined with the absence of colonization and the increased demand for land needed for commercial agriculture, may have caused an oversupply of labour in the country, which made it difficult for the rural poor to support themselves. A situation in which both the rural and the urban poor were having problems of subsistence would be an ideal opportunity for a social reformer to gain support.

The exact timing of the reforms depended on the personality of Tiberius Gracchus himself, who was willing to risk both his reputation and eventually his life in order to reach his goals. Whether he was really motivated by the misery of the poor, or was only looking for a possibility to make a name for himself, especially after the damage his reputation had suffered in the Numantia affair,<sup>797</sup> is not immediately relevant to our discussion.

At first Tiberius Gracchus found support mainly among the rural poor, who would be greatly helped by land distributions: 'Another large group [other than rich possessors of public land], composed of people from the colonists, or from states enjoying equal political rights (ἰσοπολίτισιν), or who had in some other way a share in this land, and had similar reasons for being afraid, came to Rome and gave their support to one side or the other.'<sup>798</sup> It is to be noted that not all rural dwellers came to Rome to support Tiberius; some actually came to oppose him. Still, it is likely that the rural poor were more interested in Tiberius' reform plans than the urban plebs. His first law aimed only at land distribution, which may have been of little interest to the urban plebs, for whom the law did not propose any specific measures. It was the rural poor, who had only recently lost access to land and now tried to make do on small private plots, maybe supplemented by wage labour or by tenancy, who welcomed new land of their own.

When he attempted to be re-elected, Tiberius still counted mainly on the support of the rural poor, but this policy failed: he 'summoned the country people to come to vote; but they were busy with the harvest, and so under

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<sup>796</sup> Boren (1958, 897-8); Badian (1972b, 679).

<sup>797</sup> See for this Cass. Dio 24.83.2; Oros. 5.8.3; Vell. 2.2.1; Cic. *Har. Resp.* 20.43, *Brut.* 27.103-4; Flor. 2.3.14.2-3. See for the role of this affair in Tiberius' motivation Fraccaro (1914, 44-54); Earl (1963, 67); Bernstein (1978, 69); Bleicken (1988, 271-4).

<sup>798</sup> App. *BC* 1.10, see also Diod. Sic. 34/35.5.1. See Riecken (1911, 103); Brunt (1962, 72); Boren (1968, 89); Bernstein (1969, 49-58 and 1978, 69); Nicolet (1967, 203 and 1977, 127).



pressure from the short time still remaining before the day fixed for the election he resorted to the city population'.<sup>799</sup> However, this was not enough to secure his election for a second term as tribune. Since the support of the rural plebs had turned out to be insufficient to secure Tiberius' re-election, Gaius Gracchus from the beginning gave much less attention to the land problem; according to Appian, he won his second tribunate by promising distributions of grain at a reduced price,<sup>800</sup> a measure clearly aimed at gaining the support of the city population instead of the rural poor.

It appears, then, that the situation of the rural poor by 133 had deteriorated enough to make them come to Rome to support at least Tiberius' first proposal for an agrarian law. Considering the problems they had to face, especially fragmentation of landholdings and a shortage of work in the countryside, it is not surprising that many farmers without land or with plots of insufficient size were eager to acquire new lands with which they could support a family.

## 2.2. The aims of the Gracchan land reform

The reform of Tiberius Gracchus, then, was mainly supposed to benefit the rural poor. Apparently he considered the problems that needed to be solved as predominantly rural, and not so much urban. To understand the relation between the problems threatening the Roman farmer and the solution proposed by the Gracchi, we must find out how Tiberius Gracchus saw the situation of Italy in his time. What problems did he consider the most pressing, and what solutions did he propose?

To answer this question the accounts of Appian and Plutarch prove to be especially useful. As we have seen (ch. 1.2), it has often been argued that they are unreliable as sources, since they are influenced by 'Gracchan propaganda' and therefore do not present an objective picture of the second-century situation. However, the statements in these works give a good picture of how the Gracchi themselves presented the situation.

Plutarch describes the problem as follows:

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<sup>799</sup> App. BC 1.14; Plu. TG 16.1-2. It is noteworthy that one of Tiberius' proposals was to reduce the length of military service; clearly the heavy demands made of soldiers were considered a problem (cf. ch. 4.4.2). Heftner (2006, 55) argues that it is unlikely that the farmers did not want to come to Rome to support Tiberius, since the long-term advantages of the law were more important than the current harvest. However, it is extremely unlikely that farmers would neglect the harvest in order to vote for a law which was not certain to give them any tangible advantages. Havas (1984, 36), Whittaker (1989, 9), and Ikeguchi (1999-2000, 30) assume these people were city dwellers who had gone out to the countryside to work on the land, but this is not necessarily the case: in the first election it is stated explicitly that many country dwellers came to the city to vote, and there is no reason why the same group should not be meant now. Last (1932, 9) argues that they were the inhabitants of Italian cities, who were also suffering from slumps in labour opportunities and rising prices. However, it is more likely that they were rural Roman citizens who were hoping for distributions of land.

<sup>800</sup> App. BC 1.21. See ch. 4.4.2.

The poor, who had been ejected from their land, no longer showed themselves eager for military service, and neglected the bringing up of children, so that soon all Italy was conscious of a dearth of freemen, and was filled with gangs of foreign slaves, by whose aid the rich cultivated their estates, from which they had driven away the free citizens.<sup>801</sup>

Appian likewise explains that

for these reasons the powerful were becoming extremely rich, and the number of slaves in the country was reaching large proportions, while the Italian people were suffering from depopulation and a shortage of men, worn down as they were by poverty and taxes and military service. And if they had any respite from these tribulations, they had no employment, because the land was owned by the rich who used slave farm workers instead of free men.<sup>802</sup>

Notwithstanding the differences between these two texts, in both cases the problem can be summarized as follows: the poor were driven off the (public) land by the rich, who cultivated their large estates with slaves, so that the poor had no opportunities for wage labour. The people were reluctant to have children they could not feed, which led to a decline of the number of free citizens, a decline in the number of available soldiers, and general misery among the poor.

Plutarch quotes from a famous pamphlet written by Gaius Gracchus, who wrote that

as Tiberius was passing through Etruria on his way to Numantia, and observed the dearth of inhabitants in the country, and that those who tilled its soil or tended its flocks there were barbarian slaves, he then first conceived the public policy which was the cause of countless ills to the two brothers.<sup>803</sup>

He also quotes a speech of Tiberius:

The wild beasts that roam over Italy have every one of them a cave or lair to lurk in; but the men who fight and die for Italy enjoy the common air and

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<sup>801</sup> Plu. TG 8.4: ἐξωσθέντες οἱ πένητες οὔτε ταῖς στρατείαις ἔτι προθύμους παρῆχον ἑαυτοὺς, ἡμέλουν τε παίδων ἀνατροφῆς, ὥς ταχὺ τὴν Ἰταλίαν ἄπασαν ὀλιγανδρίας ἐλευθέρων αἰσθέσθαι, δεσμοτηρίων δὲ βαρβαρικῶν ἐμπεπλησθαι, δι' ὧν ἐγεώργουν οἱ πλούσιοι τὰ χωρία, τοὺς πολίτας ἐξελάσαντες.

<sup>802</sup> App. BC 1.7: ἀπὸ δὲ τούτων οἱ μὲν δυνατοὶ πάνπαν ἐπλούτουν, καὶ τὸ τῶν θεραπόντων γένος ἀνὰ τὴν χώραν ἐπλήθυε, τοὺς δ' Ἰταλιώτας ὀλιγότης καὶ δυσανδρία κατελάμβανε, τρυχομένους πενία τε καὶ ἐσφοραῖς καὶ στρατείαις. εἰ δὲ καὶ σχολάσειαν ἀπὸ τούτων, ἐπὶ ἀργίας διετίθεντο, τῆς γῆς ὑπὸ τῶν πλουσίων ἐχομένης καὶ γεωργοῖς χρωμένων θεραπείουσιν ἀντὶ ἐλευθέρων.

<sup>803</sup> Plu. TG 8.7.

light, indeed, but nothing else; houseless and homeless they wander about with their wives and children. (...) They fight and die to support others in wealth and luxury, and though they are styled masters of the world, they have not a single clod of earth that is their own.<sup>804</sup>

It appears therefore that the Gracchi identified a lack of access to land as the main problem: the poor had no land to call their own, since it was all occupied by the rich, who worked it with slaves. It would make sense to conclude that this situation could be remedied by supplying the poor with a plot of land of their own, which was what Tiberius attempted to do. This would in turn raise the number of soldiers available for the army: by making sure the poor were again eager to raise children, the number of soldiers would eventually rise as well.<sup>805</sup>

Some scholars maintain that there was no real shortage of manpower, and that therefore the purpose of the Gracchi was not so much to raise the number of soldiers, as to make sure the citizen population was able to reproduce itself.<sup>806</sup> Appian and Plutarch consistently state that one of the most serious consequences of the land shortage was the inability of the free population to raise children. Besides possible ideological reasons to promote a continuously growing population (see ch. 4.2), the main reason for concern about the declining population seems to have been the fact that this led to a decline in the number of soldiers. Appian starts out by explaining that the state feared a shortage of soldiers, even if it sounds as if this problem occurred only among the allies (1.8): 'Under these circumstances the Roman people became concerned that they might no longer have a ready supply of allies from Italy.' After the failure of the Gracchan reform Appian states that the rent introduced by Spurius Thorius 'did nothing to increase the population', and 'the people had been deprived of absolutely everything. For this reason the number of both citizens and soldiers diminished still more' (1.27).

It is not strange that the Gracchi would have thought that the number of free men, and therefore the number of those who could perform military service, was declining. We have already seen that in the early second century the census figures may have been used as a policy making tool: as long as the population was low, land distributions were carried out to enable the population to grow; when it had reached a satisfactory number distributions were terminated. When we look at the census figures for the mid-second century, we can see that they had been going down slightly for about 30 years, until in the census of 136/5 the

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<sup>804</sup> Plu. TG 9.4.

<sup>805</sup> Fortlage (1971-2, 174); Badian (1972b, 682); Gabba (1956, 42; 1974, 129; 1977, 270; 1979b, 64; 1985b, 190); Molthagen (1973, 444); Rossi (1980, 55); Wulff Alonso (1986, 744); Càssola (1988, 8); Lintott (1992, 44); Gargola (1995, 148 and forthcoming); Laffi (1999, 267); Rosenstein (2004, 165).

<sup>806</sup> Kontchalovsky (1926, 184); Shochat (1980); Rich (1983, 303 and 2007, 162); Bringmann (1985, 25); Perelli (1993, 79-82). Tibiletti (1948, 194) argues against a demographic goal to the Gracchan land reform.

number of citizens was lower by 25,000 than at its height in 164/3. The Roman state had no other method than the census to ascertain the size of the population, and faced with the declining census returns the leading men could not but conclude that the number of adult men was shrinking.<sup>807</sup> That this led to a decline in the number of recruits was, in the eyes of the state, made clear by the difficulties of finding soldiers for the Spanish wars.

The sources indicate that the problems of diminishing willingness to serve and avoidance of the draft were known in the second century, but apparently nobody at the time connected this problem with underregistration in the census. Tiberius Gracchus could not have not known that the census figures were unreliable and that the population was in fact increasing, since he did not know that the number for 125/4 would show an increase of almost 75,000 compared to the pre-Gracchan figure. Gaius Gracchus, on the other hand, was familiar with this figure, and consequently did not make land distribution the central theme of his laws. It had become clear that the Roman citizen population was in fact able to reproduce itself even when confronted with economic difficulties, and it was therefore less necessary to distribute land in order to stimulate them to have children.

The fact that the population was not in fact shrinking does not mean that the problems described by Appian and Plutarch were not real: there were many areas where small farmers were experiencing difficulties because of increased pressure on the land. Coastal Etruria, through which Tiberius Gracchus travelled on his way to Numantia, was one of these regions. Here many cash crop estates were located, partly staffed with slaves, and observing these he may well have drawn the conclusion that the free population was declining because of the competition from large estates.<sup>808</sup> However, it is unclear how far Tiberius' knowledge of rural Italy stretched. In Latium and Campania, areas with which he would have been familiar, the number of large estates was similarly increasing, but it is unlikely that he knew that the situation in other regions was different.<sup>809</sup> He may therefore have concluded that the situation in the whole peninsula was the same as in central Italy.

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<sup>807</sup> Brunt (1971, 77); Rossi (1980, 59); Von Ungern-Sternberg (1988, 173); De Ligt (2006a, 603). This theory of course assumes that the census figures represent adult men capable of bearing arms. If the figure represented another part of the population, for example all people who were *sui iuris* (see ch. 4 n. 191), the census figures cannot be used as evidence for the military goal of the Gracchan reforms, since in that case the census figures did not bear any direct relation to the size of the army (although a general decrease of population may still have caused concerns over the available number of soldiers).

<sup>808</sup> Nagle (1976, 488-9); De Neeve (1984, 73); Von Ungern-Sternberg (1988, 174); De Ligt (2006a, 603). Dyson (1978, 260) and Ikeguchi (1999-2000, 17) point out that even in the Gracchan period there were still many small farms in the territory of Cosa; however, this was one of the areas in which cash crop estates were most widespread, and they may have had a significant impact on the small farmers in this region.

<sup>809</sup> Nagle (1976, 489); Morley (2001, 60).

As we have seen, most of the large estates were established on private land, not on *ager publicus* (see ch. 3.6). However, the occupation of *ager publicus* by the rich had been a familiar topic during most of the Republican period. Already in the early Republic the struggle for access to land between patricians and plebeians had been presented as a struggle for *ager publicus*, and it may be that the Gracchi phrased their views in terms that were familiar to their audiences. Inveighing against the accumulation of private land by the rich would not have the desired effect, since the state had no means of taking away private land from the rich. In the eyes of the Gracchi therefore the only reasonable solution for the problem of access to land would be to provide the poor with land. Since only *ager publicus* could be distributed by the state, if the Gracchi wanted to alleviate the problems of the poor, they would therefore have to make land available that was – at least in their representation of events – occupied by the elite.

Another important task of the Gracchan commission was to sort out competing claims to the land, and to determine which land was public land which private. Because of the various kinds of legal status that land could have, it was often not clear to whom it belonged, as is attested by Appian:

For when land of a different category which bordered on public land had been sold or distributed to the allies, in order to establish its dimensions the whole lot had to be investigated, and how it had been sold or distributed. Not all owners had kept their contracts of sale or titles of allotment, and such as were actually discovered were inconclusive. (...) Even in the beginning the division had never been done with any great accuracy, as this was territory seized by war. The proclamation that anyone who wished could work unallocated land encouraged many to cultivate what lay next to their own property and blur the distinction between the two, and the passage of time put everything on a fresh basis.<sup>810</sup>

To be able to carry out the land distributions, the Gracchi therefore needed to investigate who held land and under which title, and catalogue all possessions. This would tell them which lands were available for distribution and allow them to give secure titles of possession to the *veteres possessores*. However, this was not the main goal of their reforms, as some have argued,<sup>811</sup> but only the means to an end.

Others believe that the goal of the Gracchi was actually to turn public into private land.<sup>812</sup> In the case of the plots assigned to small settlers, the distributed land was indeed privatized (see below). However, the land that remained with

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<sup>810</sup> App. BC 1.18.

<sup>811</sup> Burdese (1952, 90); Hinrichs (1974, 58); Moatti (1992, 73 and 1993, 86); Laffi (1999, 266).

<sup>812</sup> Hermon (1976, 186 and 1982, 27); Laffi (1999, 265).

the *veteres possessores* was not turned into private land, and this shows that the privatization of land was not a goal in itself, but only the means to an end.

Some believe that the *Lex Sempronia* should be considered a *lex sumptuaria*, which aimed at limiting competition within the elite.<sup>813</sup> In this way it would fit into a series of such laws that had been passed earlier in the second century. This may be an additional advantage of the law, but there is nothing in the sources to suggest that Tiberius Gracchus had this in mind when proposing it. The law indeed succeeded in uniting the majority of the nobility, but against Tiberius, and this can hardly have been what he had intended.

In short, the goal of Tiberius can be described as restoring the small independent farmer, who had suffered from expulsion from the land because of the occupation of land by the rich. The restoration of the class of small farmers would lead to an increase of the number of potential recruits for the army, and eventually to a general increase of the population of Italy, which, according to the census figures, had been declining for the last thirty years.

### 2.3. The distribution of land by the *Lex Sempronia agraria*

The basic facts of the agrarian reform launched by Tiberius Gracchus are clear enough: he proposed a law that limited the possession of *ager publicus* to a maximum of 500 *iugera* and an additional amount for the children of the existing possessors, the *veteres possessores*. All *ager publicus* over and above the limit was to be returned to the state, which would distribute it to the poor. A three-man commission, the *triumviri agris iudicandis adsignandis*, was installed to carry out the law.<sup>814</sup> However, once we get beyond the mere basics, almost every element of the Gracchan land reform is hotly debated.

A first important point of debate has been which limit exactly was set on the possession of *ager publicus*. Appian states that 'no individual should hold more than 500 *iugera*, but [Tiberius Gracchus] modified its previous provisions (of the older agrarian law) by adding that children of occupiers could have half this amount',<sup>815</sup> but the Epitome of Livy and *De viris illustribus* state that the maximum amount was 1000 *iugera*.<sup>816</sup> This has led many scholars to assume that the amount was 500 *iugera* for the main occupant and 250 for each of a maximum

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<sup>813</sup> Bringmann (1986, 62); Schubert (1996, 120); Gargola (1997, 566).

<sup>814</sup> Liv. Per. 58.2 mentions the creation of the agrarian commission only in a second law 'to judge which land was owned by the state and which by private individuals;' this is believed by Linke (2006, 32). It would be strange, however, if the Tiberius had not from the beginning realized that he would need the authority to sort out the possessions of *ager publicus* that had become confused over time; it seems more likely that the law from the beginning included provisions for its execution.

<sup>815</sup> App. BC 1.9: ἀνεκαίνιζε τὸν νόμον μηδένα τῶν πεντακοσίων πλέθρων πλέον ἔχειν. παισὶ δ' αὐτῶν ὑπὲρ τὸν παλαιὸν νόμον προσετίθει τὰ ἡμίσεα τούτων.

<sup>816</sup> Liv. Per. 58.1; Vir. ill. 64.

of two children, since that would make a total of 1,000.<sup>817</sup> However, it is not at all an obvious conclusion that the law would only make grants of land to two children only; Appian does not speak of any limit to the number of children. It is very well possible that the Epitome of Livy and *De viris illustribus*, which are both late sources, have become corrupted in transmission, since the numerals for 500 and 1000 (D and CD) are very similar. Moreover, neither of them shows awareness of a distinction between the land granted to the main holder and that given to his children, which in itself sheds doubt on their reliability. One of the objectives of the Gracchan reform was to stimulate population growth, and this makes it difficult to explain why he would have limited the number of children for whom land could be reserved. It is likely that concerns about the decline of the number of children were not limited to the lower classes alone, which appears also from in view of Metellus' speech *De prole augenda* (see ch. 4.3.5), which was aimed at the elite. The grant of security of possession to those holding large tracts of *ager publicus* would benefit population growth more if it was extended to all children instead of only two.<sup>818</sup>

It is important to remember that Tiberius Gracchus wanted to present his law as a repetition of an earlier law. In this way, his regulations would seem less of an innovation than they would otherwise have been; he could point to earlier laws and claim he was only upholding the *mos maiorum*.<sup>819</sup> However, he would

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<sup>817</sup> Beginning with Niebuhr (1844, 411), although he himself doubts this, and proposes as an alternative that only 250 additional *iugera* were allowed, not 250 per child (n. 12), a theory also held by Huschke (1835, 18) and Rudorff (1852, 313). The 500 plus two times 250 *iugera* theory is still almost universally believed: it is held by Soltau (1895, 627); Saumagne (1927, 52); Marzullo (1937, 34); Burdese (1952, 78); Tibiletti (1955, 32); Scullard (1959, 27); Hinrichs (1966, 259); Boren (1968, 49); Dilke (1971, 182); Johannsen (1971, 205); Sirago (1971, 78 and 1995, 110); Muschietti (1972, 238); Molthagen (1973, 423); Garnsey (1976, 100); Hermon (1976, 182); De Martino (1980, 113); Rossi (1980, 51); Kuziščin (1984, 52); Bringmann (1985, 9); Flach (1990, 38 and 1994, 290); Gabba (1990b, 674); Bleicken (1992, 64); Perelli (1993, 75); Lomas (1996, 54); Marcone (1997, 146); Finley (1999, 101); Howarth (1999, 290 n. 24); Koba (1999, 269); David (2000, 129); Rathbone (2003, 161); Heftner (2006, 47); Jehne (2006, 81); Pobjoy (2006, 55); Sacchi (2006, 250). Last (1932, 23), Christ (1984, 124), and Crawford (1996, 155) are undecided. Frank (1962, 97) seems to think that the 500 plus two times 250 *iugera* rule applied to *ager occupatorius* before the Gracchan period as well. Zancan (1934, 4) states that the maximum was either 500 or 1,000 *iugera*. Nicolet (1977, 131) doubts the maximum of 1,000, but proposes no alternative. Others assume that the limit was simply 1,000 *iugera*, whether someone had children or not: Kromayer (1914, 156); Schneider (1977, 84-5); Uggeri (2001, 35). Schneider supports his argument with the thesis that if all children were allowed to hold 250 *iugera*, the holders of land were allowed to keep almost all of their land. However, this grossly overestimates the average number of children in the Roman family. Badian (1972b, 702-3) suggests that security of tenure was only given on the first 500 *iugera*. Vallat (1995, 53) states without evidence that the maximum in the law of Tiberius was 500 *iugera* plus 100 for each child, which was raised by Gaius to 250 per child.

<sup>818</sup> See ch. 3.5. See Earl (1963, 17); Badian (1972b, 702); Rich (forthcoming).

<sup>819</sup> Vell. 2.6.3, although confusing Tiberius and Gaius Gracchus, explicitly states that the Gracchan law 'limit[ed] the holdings of each citizen to five hundred *iugera*, as had once been provided by the Licinian law.' See De Ligt (2004, 725); Gargola (forthcoming).

hardly have been able to do that if the limit he presented was twice that of the earlier law. It would make more sense if he had introduced the same limit that had been in force before, and presented the extra amount as a bonus compensation, which was reasonable in view of the protests raised by possessors who had held *ager publicus* for decades. Tiberius' law was actually very generous compared to the earlier one, since his limit was 500 *iugera* plus 250 for every child, and granted, moreover, security of tenure on this land, which had not been given by the earlier law *de modo agrorum*. It seems therefore more logical to assume that the limit was 500 *iugera* for the possessor and 250 for each child, no matter how many children someone had, and no matter whether they were boys or girls.<sup>820</sup>

In contrast to the *Lex Licinia*, it is quite clear that the *Lex Sempronia* concerned public land only. The *Lex agraria* of 111 constantly refers to 'whatever public land of the Roman people there was in the land of Italy in the consulship of P. Mucius and L. Calpurnius', and in line 2 refers to the *ager publicus* that each man 'took or kept [for himself], provided that its size be not greater than what [it was lawful] for one man to take [or keep] for himself according to statute or plebiscite...' This clearly refers to the law of Tiberius Gracchus and the maximum he introduced for holdings of *ager publicus*. Moreover, although Appian does not explicitly say that the law referred to public land, he does say that the *Lex Licinia* was about public land, and that Tiberius repeated the measures of the *Lex Licinia*.<sup>821</sup> Plutarch says that after the death of Tiberius Gracchus 'the Senate, trying to conciliate the people now that matters had gone too far, no longer opposed the distribution of the public land',<sup>822</sup> and went forward with the distributions. We can therefore safely say that the *Lex Sempronia* only pertained to *ager publicus*, and not to land in general.

The excess *ager publicus* was to be taken away and distributed to the poor. It is not known how much land each settler received; however, often the amount of 30 *iugera* is suggested. This is based entirely on a passage in the *Lex agraria*: in line 13-14 it is stipulated that '[--- if anyone after the proposal of this statute for the purpose of agriculture] shall possess or have not more than 30 *iugera* of land in that land (the *ager publicus*), that land is to be private'.<sup>823</sup> Although it may be surmised that a plot of this size was considered to be a reasonable maximum for a small farmer, there is nothing at all to suggest that this was also the amount

<sup>820</sup> As is believed by Earl (1963, 18); Galsterer (1976, 173); Crawford (1978, 109); Frayn (1979, 82); Stockton (1979, 41); Richardson (1980, 1); Càssola (1988, 15 n. 52); Chouquer & Favory (1991, 127); Horvath (1994, 107); Lintott (1994, 62); David (1997, 144); De Ligt (2001a, 122); Russo (2002, 176); Linke (2006, 24).

<sup>821</sup> App. BC 1.9. Appian states that Tiberius repeated the old law, which in his view dealt only with public land (see ch. 3.2.3).

<sup>822</sup> Plu. TG 21.1: οὔτε πρὸς τὴν διανομὴν ἔτι τῆς χώρας ἡναντιοῦντο.

<sup>823</sup> *Lex agraria* l. 13-14: [---*sei quis post hanc legem rogatam agri colendi cau]sa in eum agrum agri iugera non amplius XXX possedebit habebitve, <i>s ager privatus esto.*



distributed by the Gracchi, as many scholars assume.<sup>824</sup> A plot of 30 *iugera* seems rather large compared to the amounts received by the colonists in earlier Roman colonies, where the amount never exceeded 10 *iugera*. The colonists in second-century Roman colonies were proletarians, just as the beneficiaries of the Gracchan reform, and it seems therefore unlikely that the Gracchan settlers received such generous allotments. If each settler received 30 *iugera*, only a relatively small number of people can have profited from the Gracchan scheme, and this is unlikely to have been the intention of the Gracchi.

An important question is whether the land distributed by the commission remained *ager publicus* or became private land. Sale of the distributed land was forbidden by the law of 133;<sup>825</sup> the plots distributed by Gaius Gracchus were, moreover, burdened with a *vectigal*: 'With Gaius, because he distributed public land among the poor for which every man of them was required to pay a rental into the public treasury, they [the Senate] were angry, alleging that he was seeking thereby to win favour with the multitude; but Livius [Drusus] met with their approval when he proposed to relieve the tenants even from this rental.'<sup>826</sup> It is not stated that the allotments distributed by Tiberius were also burdened with a *vectigal*, but this may well have been the case. The *Lex agraria* speaks of *ager privatus vectigalisque* in Roman Africa, especially in the Gracchan colony of Iunonia. It is possible that the same arrangement had been made for the land the Gracchi distributed in Italy: this, according to De Ligt, 'points to the conclusion that we are dealing here with a general policy which may go back as far as the

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<sup>824</sup> Stephenson (1891, 41); Riecken (1911, 145); Fraccaro (1914, 128); Carcopino (1929, 10); Scullard (1959, 27); Boren (1968, 82); Sirago (1971, 78); Badian (1972b, 704); Galsterer (1976, 173); Hermon (1976, 184); Richardson (1980, 1); Christ (1984, 124); De Neeve (1984, 106); Bleicken (1992, 64); Belayche (1994, 271); Vivenza (1994, 38); David (2000, 130); Heftner (2006, 48). See discussion in Crawford (1996, 161). Last (1932, 23), Nicolet (1967, 105 and 1977, 131), Von Ungern-Sternberg (1988, 176), Compatangelo (1989, 173); Gabba (1990b, 674), and Perelli (1990, 242 and 1993, 92) doubt the figure, but do not give an alternative. Uggeri (2001, 35) sees a possibility of either 30 or 50 *iugera*. Muschietti (1972, 239) suggests any size between 7 and 30 *iugera*, Schneider (1977, 85) between 10 and 30, and Linke (2006, 24) between 20 and 30. Fraccaro (1914, 128), Earl (1963, 19), De Martino (1980, 115), and Russo (2002, 187) think that 30 may have been the maximum size of the plots, and that many were probably smaller. Toynbee (1965b, 565) and De Martino (1984, 47-8) suggest that the allotments were probably not larger than 10 *iugera* on average. Jones (1980, 93), followed by Rathbone (forthcoming) estimates the size of Gracchan allotments in Luceria to have been between 84 and 92 *iugera*, but this seems unlikely; such a large amount was not necessary for the subsistence of a family, and it is likely that the Gracchi would have preferred to give as many small farmers as possible a plot of land. It may be that plots of this size visible in the landscape were destined for *veteres possessores*.

<sup>825</sup> App. BC 1.10: 'They would be unable to buy land from those who received allotments, since Gracchus had foreseen this and was proposing to forbid sale.' See Molthagen (1973, 425); Lintott (1992, 44); De Ligt (2001a, 122).

<sup>826</sup> Plu. CG 9.2.

*Lex Sempronia agraria* of 133 BC'.<sup>827</sup> If this is correct, the creation of the *ager privatus vectigalisque*, private land burdened with a *vectigal*, occurred already in 133.<sup>828</sup>

The fact that sale of the assignments was forbidden and that they may have been burdened with a *vectigal* has often been seen as evidence that the land did not become the private property of the settlers. After all, if the recipients did not have full powers of ownership over the land, including the right to sell it, the land cannot be considered private property *ex iure Quiritium*. Support for the thesis that the land remained public seems to be found in the *Lex agraria* of 111. It declares in line 3 that various kinds of land are to be private, among them the land that 'a IIIvir according to statute or plebiscite granted or assigned (...) to any Roman citizen'. Many scholars have assumed that until 111 the land had not been fully private, and therefore not been entered in the census.<sup>829</sup> Since the census only counted the private property of the citizens, this means that if the allotments were not counted, the census qualification of someone who had received land would not rise above the limit of the fifth class. The possessors of a Gracchan allotment would in that case not have been *assidui* until 111, and therefore not liable for military service.<sup>830</sup>

However, this presents a problem: in that case, the Gracchan allotments would not serve the main goal of the Gracchan reform, namely to increase the

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<sup>827</sup> De Ligt (2007a, 89-94, quote on p. 94); cf. his view in (2001a, 128-31), which differs from the one expressed later. Konrad (2006, 171) and Muschiatti (1972, 216) think that Gaius Gracchus introduced a *vectigal* on the land that had already been distributed by Tiberius.

<sup>828</sup> Saumagne (1927, 76); Zancan (1934, 90-3); Kaser (1942, 10); Burdese (1952, 84-5); Boren (1956-7, 32 and 1968, 50); Panebianco (1963-4, 18); Johannsen (1971, 210-1); Molthagen (1973, 451); Hermon (1976, 184); Bleicken (1992, 64); Perelli (1993, 75); Mouritsen (1998, 92); Russo (2002, 184); Uggeri (2001, 35); Rathbone (2003, 165). Some think the Gracchan settlements did not become private until 111, e.g. Bernstein (1969, 33-4); Muschiatti (1972, 249); Richardson (1980, 5); Lintott (1992, 245). Triebel (1980, 206) is undecided. Crawford (1996, 171) thinks this category of land was not created until 111, and then only for African land. Kaser (1942, 9) also doubts that *ager privatus vectigalisque* existed outside Africa. He assumes (p. 7) that *ager privatus vectigalisque* was created by public sale of land, e.g. in the form of *ager quaestorius*. However, in that case the land was not private but public, and so we do not have any evidence of the existence of *ager privatus vectigalisque* apart from the land created by the Gracchan commission. See for the creation of this kind of land in Africa De Ligt (2001b, 204).

<sup>829</sup> Fraccaro (1947, 262); Toynbee (1965a, 468); Bernstein (1969, 33-4); Sirago (1971, 99); Richardson (1980, 5); Shochat (1980, 87); Triebel (1980, 206); Rich (1983, 300); Lintott (1992, 212). Sacchi (2006) seems to be in two minds about the issue: on p. 360 he states that a *vectigal* could also be imposed on private land, but on p. 457 he sees the presence of a *vectigal* on land in Africa as a sign that the land was public. Boren (1968, 47) thinks the land did not become private, but since the census qualification was so low, the Gracchan settlers still had enough to qualify as *assidui*; however, if they did not have any private land, it is unlikely they would have sufficient property to be *assidui*.

<sup>830</sup> It is likely that even before 133 proletarians sometimes served in the army, see ch. 4 n. 183. However, the ongoing devaluation of the census qualification shows that it was in fact of some importance; if the limit had been totally disregarded, there would have been no need to lower it.

number of soldiers, which is very unlikely. Some have tried to solve this apparent contradiction by suggesting that holdings of public land were also inscribed in the census.<sup>831</sup> However, this would be illogical;<sup>832</sup> registration in the census practically meant the acknowledgement of the private status of the land, as is indicated by the *Lex agraria* of 111, where it is stated in line 8 that the privatized land is to be inscribed in the census just as other private land. Similarly, Cicero specifies registration in the census as a precondition of private ownership: 'Are those estates capable of being returned in the census, are they in your formal possession or not, do they admit of legal right, can they be entered as a surety at the treasury or with the censor?' <sup>833</sup> The same went, for example, for citizenship: citizenship was not conferred until a new citizen was assigned to a *tribus* and counted in the census. It is possible that the censors also recorded holdings of public land, but since these, at least in theory, were liable to confiscation by the state, it is unlikely that holdings of public land could qualify someone as an *assiduus*.

Therefore, to make sure that the holders of the Gracchan allotments qualified for military service, they must have counted as private property and been recorded in the census.<sup>834</sup> This hypothesis is in line with the *Lex agraria*: some kinds of land, which at first sight seem to be declared private by *Lex agraria*, appear to have been so already before 111: in line 19 land is mentioned that '[according to statute or plebiscite] or according to this statute *has been* or *shall have been* made private'. Apparently land existed which had already been privatized before 111, and here we may think of the Gracchan allotments. Line 3 may then be a confirmation of already existing rights on the land.

The imposition of a *vectigal* does not contradict this theory. In fact, it would make sense if the Gracchan allotments became private on the condition that a *vectigal* on them was paid, in other words, that they became *ager privatus vectigalisque*. As long as the *vectigal* was paid, the land counted as private property and was included in the census. The only restriction was that the land could not be sold; this was done to protect the settlers against the rich, who may have wanted to occupy their land. Already in the early Republic the occupation

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<sup>831</sup> Boren (1968, 80). Shochat (1980, 36) suggests that not the land itself, but the income gained by working *ager publicus* was counted in the census. Zancan (1931-2, 78) proposed that occupation of *ager publicus* counted as *privata possessio* and was therefore counted in the census, but this is nonsense, see Bozza (1939, 43).

<sup>832</sup> Kontchalovsky (1926, 170); Bozza (1939, 78).

<sup>833</sup> Cic. Flac. 32.80: *Illud quaero sintne ista praedia censui censendo, habeant ius civile, sint necne sint Mancipi, subsignam apud aerarium aut apud censorem possint?* Schol. Bob. Flac. 80 (Stangl p. 106) explains: *Praedia autem quae iure legitimo non habentur neque apud aerarium subsignari neque apud censorem possunt.* Festus 50 L: *Censui censendo agri proprie appellatur, qui et emi et venire iure civili possunt.* Since buying and selling are generally considered the privileges of ownership (but cf. the *ager privatus vectigalisque*), it seems that land had to be fully private in order to be counted in the census.

<sup>834</sup> Earl (1963, 37); Badian (1972b, 673); Bernstein (1978, 29); Rathbone (2003, 165).

of land by the rich had been a problem, since the poor did not have enough power to counter this development. Privatization of public land – or at least the creation of security of tenure – was therefore considered the only logical solution.

It may be expected that not all Gracchan settlers were successful; if former small farmers were set up with new land, this did not automatically solve the problems that had caused them to become proletarians in the first place. If they could not earn sufficient income from their allotments, they would most likely abandon them. If the holdings had been alienable by sale, the settlers could sell the land to whomever they liked. In this way, more land would become available for large farmers, from whom it had been taken in the first place. Making the land inalienable and subject to a *vectigal* would prevent this from happening. In this case, when the settler stopped working the land or was unable to pay the *vectigal*, it reverted back to the state,<sup>835</sup> which could then assign it to another settler. In this way the state retained control over the land even after it had been alienated to the settlers. When the state was unable to retake control immediately when a settler stopped paying the *vectigal*, the inalienability of the land made sure that the holders would still qualify for military service. Even if the land was not worked, its value would still be enough to qualify its owner for military service.<sup>836</sup>

If the land was simply abandoned by the settler and occupied by a rich man, the occupier would not have a secure title to the land, as he would have had when he would have been able to buy the land from the small farmer. This was a strong disincentive to occupy the land and invest in it (see ch. 3.3.1), especially now that *ager publicus* had recently actually been taken away by the state. Only when the land was taken back by the state and granted to a new settler did the first recipient forfeit the right of ownership; in this way, the number of settlers would never fall below the number that was given land by the *Lex Sempronia*. In this way the state maintained control over its former public land, and the risk of the land ending up in the hands of the rich was reduced. All this would mean that the allotments, even if they were inalienable and subject to a *vectigal*, had become the private property of the settlers, and therefore were counted in the census. Since the property qualification of an *assiduus* was quite low in the Gracchan period (see ch. 4 n. 183 and 5.2.5), a grant of even a small plot of land as private property would turn the settlers into *assidui*, thus making them eligible for military service.

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<sup>835</sup> De Ligt (2001a, 130); Rathbone (2003, 165). Contra: De Martino (1956, 571) and Jehne (2006, 81), who think that *ager privatus vectigalisque* could not be taken back by the state if the *vectigal* was not paid.

<sup>836</sup> Badian (1972b, 673); Schneider (1977, 79-80). However, for the sake of clarity, the state would have preferred to take the land away as soon as possible; moreover, if the settler did not work his land, he would not have a yield that he could sell, and therefore no money to buy his own military equipment (or at least those parts of it that he was expected to pay for himself).

While the land assigned to the Gracchan settlers became private, the *veteres possessores*, those who had held *ager publicus* before 133, did not obtain full property rights over the land they held.<sup>837</sup> Instead, they were granted security of tenure on a maximum of 500 *iugera* (with the additional amount for children), a situation best defined as *possessio perpetua*.<sup>838</sup> A *vectigal* was not required from them until 118 BC, when the holdings were turned into *ager privatus vectigalisque* (see ch. 5.3.1);<sup>839</sup> this is attested, moreover, by Gracchan *cippi* showing land assigned to *veteres possessores concessus immunis*, meaning ‘free from *vectigal*’ (see ch. 5.2.5). Some scholars think that those who possessed less than 500 *iugera* did not receive a secure title,<sup>840</sup> but it would be very strange if those who possessed the maximum of 500 *iugera* received a secure title to the land, and those who possessed less did not. The *Lex agraria*, moreover, declares all land private ‘provided that its size be not greater than what [it was lawful] for one man to take [or keep] for himself according to statute or plebiscite’.<sup>841</sup> This means that all holdings of land within the limit of 500 *iugera* were recognized as private in 111, and therefore most likely that secure rights granted by Tiberius also applied to holdings smaller than 500 *iugera*.

It is unclear whether Tiberius’ law also included regulations on the maximum amount of animals to be grazed on public land and on the number of free labourers to be employed, as Appian describes for the pre-Gracchan law. It is assumed by many scholars that the Gracchan law included such regulations as well,<sup>842</sup> but there is nothing in the existing sources that would indicate that this was part of the Gracchan legislation.

It was clear from the start that the law would be opposed by those possessing more than 500 *iugera* of *ager publicus*. The Gracchi did something which had

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<sup>837</sup> Meister (1974, 95). Contra: Johannsen (1971, 65), Flach (1974, 277-8), Christ (1984, 125), Bringmann (2002, 207), and Linke (2006, 25), who think the land of the *veteres possessores* already became private in 133.

<sup>838</sup> De Ligt (2001a, 127).

<sup>839</sup> Contra: Zancan (1934, 94-5), Earl (1963, 35), Boren (1968, 49), Vivenza (1994, 38), and Sacchi (2006, 303), who think that the *veteres possessores* had to pay a *vectigal* from 133 onwards.

<sup>840</sup> Stockton (1979, 41).

<sup>841</sup> *Lex agraria* l. 2. See De Ligt (2001a, 127).

<sup>842</sup> Bauman (1979, 396) and Tipps (1988-9, 335) assume the Gracchi included regulations on the number of animals; contra: Clavel-Lévêque (1983, 28). Compatangelo (1989, 83) states that after the Gracchan law only *veteres possessores* were allowed to have 1,800 *iugera* of grazing land, but the regulations on cattle were never expressed in land surface. Tibiletti (1948, 204) thinks pastures were included in the 500 *iugera*, so that extra land for cattle was not allowed, but this would make the amount of land to be held after 133 very small. Flach (1990, 44) says that Tiberius abolished the grazing rights for 100 large and 500 small beasts, and that he thereby robbed the great stockbreeders of 1800 *iugera*. However, if the maximum was simply abolished by the law, then the stockbreeders had the right to graze as many animals as they wanted, since public pastures were not private property. Rich (1983, 305) suggests that the large number of slave rebellions in the second century encouraged the Gracchi to reduce the number of slaves, but does not state what measures they introduced to this effect.

never been done before: they actually took away the land that was occupied above the limit and distributed it in small parcels to the poor. In earlier times those possessing land above the limit of 500 *iugera* were punished only with a fine, while their actual holdings remained undisturbed; in practice even the fine was seldom collected, leading to universal disregard of the law. Tiberius Gracchus was the first who actually proposed to take the excess land away from the rich and give it to the poor. Therefore, according to Cicero, 'the nobles strove against it, because they saw that discord was excited by it; and because, as the object of it was to deprive the wealthy men of their ancient possessions, they thought that by it the republic was being deprived of its defenders'.<sup>843</sup> This more than anything else was the revolutionary part of Tiberius' legislation; *leges de modo agrorum* had been issued before, but never had *ager publicus* actually been taken away from its possessors and distributed to the poor.

During the second century most holders of *ager publicus* had assumed that their land would not be taken away, and had invested considerable sums of money in it. When Tiberius Gracchus proposed his law they

gathered in groups, deploring their situation and supporting their case against the poor by pointing to the work they had put in over many years, their planting, their building. Some had bought land from their neighbours – were they to lose the money as well as the land? Some had family tombs on the land or said that holdings had been treated as fully owned and divided up on inheritance. Others claimed that their wives' dowries had been invested in such lands, or that it had been given to their daughters as dowry, and moneylenders could show loans made on this security. In short, there was a babel of protest and lamentation.<sup>844</sup>

Florus also demonstrates the injustice of the measure, for 'how could the common people be restored to the land without dispossessing those who were in occupation of it, and who were themselves a part of the people and held estates bequeathed to them by their forefathers under the quasi-legal title of prescriptive right?' <sup>845</sup>

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<sup>843</sup> Cic. *Sest.* 48.103. See also Cic. *Agr.* 2.5.10; Aug. *Civ. D.* 3.24.

<sup>844</sup> App. *BC* 1.10. Perelli (1993, 101) thinks the holders had not invested because they knew the land was not theirs, but this is clearly wrong.

<sup>845</sup> Flor. 2.3.13.7: *Et reduci plebs in agros unde poterat sine possidentium eversione, qui ipsi pars populi erant, et tum relictas sibi a maioribus sedes aetate quasi iure possidebant?* Taking away land which had been possessed for a long time, even without a legal title, was considered unfair also by Agennius Urbicus 32.14-6: 'If the occasion of a legal transfer of property has already been forgotten, legal procedure normally intervenes and prevents surveyors from introducing disputes of this type, and does not permit them to disrupt the settled peace of such a lengthy possession.' However, whereas during the Empire ancient possessions were apparently recognized, the Gracchi only partly acknowledged such possessions.

In all effects, the possessors of *ager publicus* during the second century had used the land as if it was their private property: they had invested money in it, they had sold it, bequeathed it, given it as dowries or made loans with the land as pledge. At the time of the Gracchi the land that was confiscated after the Second Punic War had been public for seventy years, and some *ager publicus* had even been confiscated long before that. Clearly most people had not expected to be dispossessed after such a long time, and had invested anyway. Tiberius Gracchus acknowledged the injustice of the situation, and according to Plutarch first ordered the holders to 'abandon their unjust acquisitions upon being paid the value'.<sup>846</sup> If this compensation was made at market value, the possessors would at least get back the value of their investments, since the state would in effect buy back its own lands. However, Plutarch states that Tiberius later withdrew the compensation, leaving only the secure tenure of 500 *iugera* of land, plus the additional amount for children.<sup>847</sup> For those possessing more than this amount, this would indeed mean a serious loss of assets, and one that was, moreover, totally unexpected. Therefore, although the state theoretically had the right to take away *ager publicus* from its possessors, the proposal of Gracchus to actually do this caused far more protest than would be expected when looking at the terms of the law.

In the forefront of the opposition, therefore, were the large landholders, who stood to lose the most from the law. It is impossible to establish how many rich men possessed *ager publicus* and where; as we have seen, the size of many estates was still small in the second century, and most of the estates in the pre-Hannibalic *Ager Romanus* consisted of private land, but it is possible that many people possessed considerable amounts of *ager publicus* in other areas. The maximum of 500 *iugera* of both public and private land had been a reasonable limit to the possession of land in the fourth century, but it was certainly completely out of date at the time of the Gracchi. It is usually assumed that many people possessed far more land in 133, so that the protests against the Gracchan law were fierce. However, only two large possessors are known to us by name: Octavius, the tribune who most fiercely opposed Tiberius' law, and Scipio Nasica, who was responsible for his death.<sup>848</sup>

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<sup>846</sup> Plu. TG 9.2.

<sup>847</sup> Plu. TG 10.3.

<sup>848</sup> Plu. TG 10.5, 13.3. Kuziščín (1984, 58) wrongly states that no one holding more than 500 *iugera* is known to us. It is usually assumed that many people held more than 500 *iugera*: Earl (1963, 44); Gabba (1979a, 160); De Martino (1980, 113); Von Ungern-Sternberg (1988, 172); Cornell (1989b, 329 and 1995, 328); Finley (1999, 101); Heftner (2006, 49). Triebel (1980, 185) thinks that because estates were usually small most people did not have more than 500 *iugera*, but the elite usually owned several estates, which in combination could amount to more than the limit. Perelli (1993, 243) argues that *villae* were situated mainly in the hills, while the Gracchan centuriations are mainly in the plains, and they therefore did not take much land away from the rich, but this makes no sense.

However, resistance against him did not come to a head until Tiberius attempted to use the bequest of the Pergamene king Attalus to finance the distributions. It is not certain for what purpose he wanted to use this money: Plutarch states that it 'should be given to the citizens who received a parcel of the public land, to aid them in stocking and tilling their farms',<sup>849</sup> while Livy's epitomizer says that 'when there turned out to be less land than he could divide without incurring the wrath of the plebeians – Gracchus had made them so greedy that they hoped for a large amount – he announced that he would promote a law to divide the money that had been bequeathed by king Attalus among those who would, according to his first law, have been given land'.<sup>850</sup> This argument sounds rather strange; Tiberius could hardly have been aware of the shortage of *ager publicus* so quickly, since determining which land was public and distributing it would prove to be a very time-consuming task. Furthermore, Gracchus could find better purposes for his money; stocking the new farms of the settlers would be a more logical purpose,<sup>851</sup> or paying the commission's expenses, since according to Plutarch, they received only nine obols a day.<sup>852</sup> In any case, Tiberius was now meddling with things that were traditionally the task of the Senate, namely matters of finance and international politics. The Senators feared that by handing out money to the people he would gain far too much influence, and fiercely opposed this plan, even to the point of accusing him of royal aspirations.<sup>853</sup> It was therefore not his agrarian law, but his subsequent actions that caused the most resistance.

Although Tiberius was killed during his tribunate, the land commission continued to function: '[The Senate] punished with death tribune of the plebs Tiberius Gracchus, who had dared to promulgate an agrarian law. The same Senate commendably voted that land be divided individually among the people by a Board of Three according to Gracchus' law, removing at the same time both the cause of a very serious internal conflict and its instigator.'<sup>854</sup> All Gracchan boundary stones known to us date from after 133; most of the *cippi* that have

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<sup>849</sup> Plu. *TG* 14.1.

<sup>850</sup> Liv. *Per.* 58.3. Oros. 5.8.4 and Flor. 2.3.15.2 also state the money was to be distributed to the people. Earl (1963, 94); Gargola (1995, 152), and Rosenstein (2004, 165) suggest there was not much *ager publicus* left, and that Tiberius therefore proposed to distribute money as well as land. However, even if this was the case, Tiberius could not have known this when he proposed his law.

<sup>851</sup> Riecken (1911, 145); Boren (1961, 362-3 and 1968, 60); Hopkins (1978, 63). Another possibility would be giving the settlers enough food or money to survive until the first harvest, see Rossi (1980, 66).

<sup>852</sup> Plu. *TG* 13.3. Crawford (1974, 624) argues this was equal to three *asses*, while the Loeb translation gives nine sesterces. In any case, the amount was ridiculously low.

<sup>853</sup> Plu. *TG* 14.2; Sall. *Iug.* 31.4; Cic. *Lael.* 12.41, *Mil.* 27.72, *Rep.* 6.8, *Off.* 2.12.43, 2.23.80, *Phil.* 8.4.13; Macrob. *Sat.* 3.14.6, *Comm.* 1.4.2; Val. Max. 6.3.1b-1d. See Earl (1963, 46, 93); Boren (1961, 362-4); Badian (1972b, 713-5); Bernstein (1978, 200); Bleicken (1988, 281-2).

<sup>854</sup> Val. Max. 7.2.6b.



been found throughout Italy carry the names of Gaius Gracchus, Appius Claudius Pulcher, and Publius Licinius Crassus, who formed the triumviral commission from the death of Tiberius in 133 until the deaths of Crassus in 131 and Appius in 130. Tiberius himself was therefore not involved in most of the distribution activity carried out under his law.<sup>855</sup>

However, the Senate still opposed the law, and therefore tried to limit the powers of the agrarian commission as soon as it could. The occasion arose when in 129 the Italian allies complained that lands were taken from them. It is likely that the commission had first concentrated its activities on the *ager publicus* held by Roman citizens, but in 129 it realized that more land was needed.<sup>856</sup> As we have seen, many Italians had held *ager publicus* by occupation for a long time, and had invested much time and money in their holdings. It had been assumed by them that, as long as they were loyal to the Romans, they would be allowed to retain their land. However, now that the Roman population was growing, the Romans needed the land for themselves, and legally they had every right to take it from the Italian possessors. Even if Italian *veteres possessores* were allowed to retain 500 *iugera* (for which see ch. 5.2.4), the loss of the excess land was an unexpected blow to them. The Italians could therefore argue with some justice that it was unfair to take away land from people who had held it for so long.

The Italians, moreover, had an additional reason for protest, because the measurements made by the land commission were done very quickly, and not always very accurately.<sup>857</sup> In 129, according to Appian,

all this then, and the haste with which judgments were given on these disputes, was more than the Italians could bear, and they chose Cornelius Scipio [Aemilianus], who had sacked Carthage, to be spokesman for their grievances. (...) He examined its problems in detail and proposed that the legal actions should be heard not by the land commissioners, since they were regarded as prejudiced by the litigants, but by others. He carried this point all the better because it seemed to be a fair one, and the consul Tuditanus was appointed to hear the cases. However, after making a start on the task and realizing how difficult it was, Tuditanus led a campaign against the Illyrians and made this an excuse for not giving judgement; on the other hand the land

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<sup>855</sup> Nine stones mention C. Gracchus, Ap. Claudius Pulcher, and P. Licinius Crassus, which means they date from 133-0 BC; five, mainly from Apulia, mention C. Gracchus, M. Fulvius Flaccus, and C. Papirius Carbo, and therefore date from 123-2. See Campbell (2000, 452-3).

<sup>856</sup> Badian (1972b, 730-1); Stockton (1979, 92); Mouritsen (1998, 144-5).

<sup>857</sup> App. BC 1.18. Mouritsen (1998, 149) argues that 'unlike the Roman holdings in Southern Italy, the (Italian) holders will often have owned private land adjoining the public domains, gradually blurring the borderline'. It is not clear, however, why Romans would have been able to acquire large contiguous domains, while Italians would not. As we have seen (ch. 4.3.6) the Italians often held a larger proportion of their land as *ager publicus* than the Romans.

commissioners were inactive, since nobody came before them to obtain judicial decisions.<sup>858</sup>

Until 129 the Gracchan commission had functioned quite well. It could judge which land was *ager publicus* and which was not, and it had the power to take occupied *ager publicus* away from the possessors if they held more than the limited amount. After 129, however, Scipio's legal trick made it impossible for the commission to continue its work. Only a law of the people could deprive it of its power to distribute land,<sup>859</sup> and in fact the commission still had powers to distribute *ager publicus* about which there was no conflict. However, since most of undisputed *ager publicus* had already been distributed by 129, there was no more land that could easily be used. Therefore the commission was now dependent on the consuls as the legal authority to assign them the land they could use, but since the consuls did not perform their task, the commission did not have any means of acquiring new lands.<sup>860</sup> The lack of Gracchan *cippi* dating from after 129 suggests that the commission was unable to carry out any distributions after that date.<sup>861</sup>

This also means that Gaius Gracchus did not need to propose a totally new law if he wanted to continue the work of his brother. He could simply give the jurisdiction over *ager publicus* back to the commission to make it fully functional again.<sup>862</sup> Unfortunately, the sources are rather vague as to the agrarian activities of Gaius. Plutarch only says that 'of the laws which he proposed by way of gratifying the people and overthrowing the Senate, one was agrarian, and divided the public land among the poor citizens'.<sup>863</sup> Livy's epitomizer says only that he proposed 'a land bill like that of his brother'.<sup>864</sup> His recorded agrarian activity is quite limited: Appian and Plutarch describe in some detail the (ultimately failed) foundation of a colony in Carthage;<sup>865</sup> Plutarch states that 'he also introduced bills for sending out colonies'.<sup>866</sup> *De viris illustribus* names these

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<sup>858</sup> App. BC 1.19. See Cic. *Lael.* 3.12; Schol. Bob. *Mil.* 16 (p. 118 Stangl).

<sup>859</sup> Pani (1976-7, 135-6); Bauman (1979, 405-8).

<sup>860</sup> Stockton (1979, 93); Shochat (1980, 4).

<sup>861</sup> Some have argued that the commission did not stop its activities after 129, e.g. Muschiatti (1972, 244); Bauman (1979, 408); Shochat (1980, 41). However, there is no source that indicates they were still active after this date. The statements in Cass. Dio 24.84.2 that after death of Scipio in 129 'the land commissioners ravaged at will practically all Italy' seems not to be based in fact. Cf. Liv. *Per.* 59.19.

<sup>862</sup> Stephenson (1891, 46); Molthagen (1973, 449).

<sup>863</sup> Plu. CG 5.1; 6.3; 9.2.

<sup>864</sup> Liv. *Per.* 60.8. See Oros. 5.12.5; Vell. 2.6.2; Flor. 2.3.15.2. Gabba (1990d, 685) argues that Gaius introduced a new law instead of repeating Tiberius'.

<sup>865</sup> App. BC 1.24; Plu. CG 10.2-11.2; Vell. 2.7.7-8. Even though the colony failed, it seems as if land was distributed here, see App. *Pun.* 20.136; Obs. 33. Fronto *Ad Marc.* 2.1 states: *Iam Gracchus locabat Asiam et Karthaginem viritim dividebat*. A boundary stone, which may be Gracchan, was found here (see ch. 5.3.2).

<sup>866</sup> Plu. CG 6.3, App. BC 1.23.

colonies as Capua and Tarentum, to which Velleius adds Scolacium Minervium.<sup>867</sup> The foundation of a colony in Capua is debated (ch. 2.2.5); the other two places can safely be assumed to have been colonies. Other towns often considered Gracchan ‘colonies’, based on the *Liber Coloniarum*, should not be regarded as such.<sup>868</sup> For the foundation of colonies a separate law would be required,<sup>869</sup> but for viritane distributions Gaius could simply revive his brother’s law. Some Gracchan *cippi* dating to the period 123-2 (see note 62) show that Gaius Gracchus indeed succeeded in distributing land, especially in Apulia.

It is certain that Gaius not only reintroduced his brother’s law, but also promulgated a law containing new regulations. The *Lex agraria* of 111 constantly refers to ‘that land, whose division was excluded or forbidden according to the statute or plebiscite which C. Sempronius, son of Tiberius, tribune of the plebs, proposed’.<sup>870</sup> Apparently Gaius at least issued a law that stated which kinds of *ager publicus* were not to be distributed. This would have been a sensible measure, since the arguments up until then had mostly focused on which lands were to be distributed and which were not.<sup>871</sup> In view of the problems that had occurred when taking the land away from the allies, Gaius may have decided to leave the disputed *ager publicus* alone and that founding colonies was a more sensible measure. Even then, the number of colonies founded in Italy was small; in fact, Gaius was the first to establish a colony outside of Italy.<sup>872</sup> Gaius apparently was the first to realize that the amount of land in Italy was insufficient to provide for all inhabitants of the peninsula. There simply was not enough land, or at least not enough that could be used for distributions. From the time of Caesar onwards, the foundation of colonies outside of Italy became standard policy (see ch. 5.4.3).

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<sup>867</sup> Vell. 1.15.4; *Vir. ill.* 65; Plin. *HN* 3.10.95. See Laffi (1966, 110); Salmon (1969, 119); Gabba (1990b, 685); Gargola (1995, 164-5).

<sup>868</sup> See Roselaar (forthcoming a). Many, e.g. Sherwin-White (1973, 89), Nicolet (1977, 134), Brunt (1971, 358), Chouquer & Favory (1991, 127), and Accardo (2000, 29), fail to make a distinction between viritane distribution and colonization. It is by no means the case, however, that all places mentioned in the *Liber* were colonies.

<sup>869</sup> The *Lex Rubria*, for example, was passed in order to make possible the colony in Carthage. Hermon (1982, 262) assumes that Gaius could also establish colonies through the (revived) law of Tiberius, but this seems unlikely.

<sup>870</sup> *Lex agraria* passim: *extra eum agrum, qui ager ex lege plebeive scito, quod C. Sempronius Ti. f. tr. pl. rogavit...* See Stockton (1979, 131); Mouritsen (1998, 143-4).

<sup>871</sup> We may think of *ager censorius* (especially the *Ager Campanus*), *ager quaestorius*, if any still existed, *ager in trientabulis*, land assigned to colonies and other towns, and *ager scripturarius*, see Crawford (1996, 157).

<sup>872</sup> Molthagen (1973, 454); Stockton (1979, 51). Hermon (1982, 262) states that many colonies in the provinces were founded between 123 and 118, but this is wrong. She assumes that the colonies proposed by Drusus were actually founded, but there is no evidence for this. In 118 the colony of Narbo Martius was the next colony after Iunonia that was located outside of Italy, see Eutrop. 4.23; Cic. *Brut.* 43.160.

From the above we can conclude that the Gracchan land distributions were an important step in the process of privatization of *ager publicus*.<sup>873</sup> The land distributed to the poor became their private property immediately after distribution, but with an ingenious legal construction that allowed the state to retain some measure of control over this land. The *veteres possessores* did not receive full property, but were granted security of tenure over a considerable piece of their holdings of *ager publicus*, thus rewarding their efforts in exploiting this land and stimulating further investments in the land. In the course of the assignments after 133 the amount of land to be distributed proved insufficient, since to take away the land from the Italian allies would cause serious damage to their interests. This led Gaius Gracchus to explore new possibilities of land distribution; he returned to the time-honoured method of establishing colonies, but was also the first to found a colony outside of Italy. This would in time prove to be the only adequate method of finding enough land for the continuously growing population of the Italian peninsula.

#### 2.4. The Gracchan land distributions and the Italians

In the introduction to his Civil Wars Appian gives a general picture of the economic and social problems of Italy in the second century. What has puzzled many scholars in this description is the role attributed to a group called 'Italians', or in the original Greek, Ἰταλιῶται. The most natural understanding of this term would be 'Italian allies', the people living in peninsular Italy without possessing Roman or Latin citizenship. As the text stands, the problems of small farmers described by Appian seem to have been present all over Italy: *ager publicus* confiscated in the wars could be worked against payment of a part of the harvest, and according to Appian 'They (the Romans) did this to increase the numbers of the people of Italy (τοῦ Ἰταλικοῦ γένους), whom they considered exceptionally tough, so that they would have their kin to fight alongside them' (BC 1.7). However, the rich took possession of the undistributed land, occupied the plots of the small farmers, and established large estates. Appian then states: 'The Italian people were suffering from depopulation and a shortage of men, worn down as they were by poverty and taxes and military service' (1.7). Further on Appian again emphasizes the Italian side of the Gracchan scheme: Tiberius held speeches 'about the people of Italy, saying that they were excellent fighters and related to the Romans by blood, but declining slowly into poverty and depopulation and had not even the hope of a remedy' (1.9). He believed that 'nothing better or more splendid could possibly happen to Italy' (Ἰταλίας) (1.11) than his plan, and when his attempts were blocked by his fellow tribune Octavius, Tiberius begged him 'not to throw into chaos a project that was morally right and of the greatest utility to all Italy' (1.12). He was escorted home

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<sup>873</sup> Schubert (1996, 96).

from the assembly by the crowd, 'as though he were the founding father, not of one city, or of one clan, but of all the peoples of Italy' (1.13).

Plutarch mentions Italy only twice; in describing the problems Italy faced, he states that 'all Italy was conscious of a dearth of freemen, and was filled with foreign slaves, by whose aid the rich cultivated their estates, from which they had driven away the free citizens' (8.3). Tiberius inveighed against this situation in a speech, in which he argued that 'the men who fight and die for Italy enjoy the common air and light, but nothing else' (9.5). From these sources it appears that the actions of Tiberius Gracchus were aimed not only at the Roman citizens, but also, and even especially, at the Italians.

Some have therefore argued that Tiberius wanted to give land to the allies. This is based on a statement in Velleius, who says that Tiberius wanted to give the allies citizenship, and since it is often assumed that by law only Roman citizens could receive land, this must mean that he also wanted to give them land.<sup>874</sup> On the other hand, Velleius is unreliable in many respects, and it may be that he misunderstood his source, for example by confusing Tiberius and Gaius. If Tiberius proposed to give the allies citizenship, this clearly did not materialize, since in the following years repeated proposals for giving the allies citizenship were made.

In fact, the Italians do not seem to have profited in any direct way from the Gracchan reform: the assignments of land that took place as a result of the Gracchan reforms benefited only Roman citizens, while Italians did not receive land. The strongest argument for this is the fact that the *Lex agraria* only mentions land distributed to citizens: '[whatever land or piece of land] a *IIIvir* according to statute or plebiscite granted or assigned from that land or piece of land to any Roman citizen by lot'.<sup>875</sup> Contrary to the opinion held by some, therefore, the

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<sup>874</sup> Vell. 2.2.2-3: *Mucio Scaevola L. Calpurnio consulibus abhinc annos centum sexaginta duos descivit a bonis, pollicitusque toti Italiae civitatem, simul etiam promulgatis agrariis legibus*. See Boren (1968, 77); Flach (1974, 270); Hands (1976, 176-80); Richardson (1980, 3-8); Shochat (1980, 88); Lomas (1996, 71). Richardson places much trust in Velleius, because he is the earliest source we possess; however, his work was still written a century later than the period he is writing about, and he is moreover notorious for his inaccuracy. It has been argued that Appian says that the Italians were also given land, e.g. Stephenson (1891, 41); Göhler (1939, 73-5); Panebianco (1963-4, 20); Stockton (1979, 42); Keaveney (1987, 49); Gabba (1989a, 240 and 1990b, 675); Bleicken (1990, 111); Patterson (2006, 204). Brunt (1971, 88) is inconclusive. However, Appian never actually says that the Italians received land from the Gracchi; he does so only in the case of the *Lex Appuleia* in 100 (BC 1.29: 'As the law gave the larger share to the Italian allies the city people were not pleased with it.'). Marzullo (1937, 34-5) and Uggeri (2001, 56) argue the author of the *Elogium Pollae* gave land to Italians, but there is no evidence for this.

<sup>875</sup> *Lex agraria* l. 2-3: *quem agrum locum] quoieique de eo agro loco ex lege plebeive scito IIIvir sortito ceivi Romano dedit adsignavit*. Again in l. 15-16: *eius ag//r//i IIIvir a(g)ris d(and)is a(ds)ignandis ex lege plebeive scito sortito quoi ceivi Roma[no quod dedit adsignavit]*. Mouritsen (1998, 16) calls this evidence 'inconclusive'. Shochat (1970, 30-3) argues that the specification *sortito* implies that there was also other land, distributed by other methods, and that this may have been allotted to Italians as well; in l. 31 of the *Lex agraria*, for example, colonies are mentioned in which Italians may have been

Italians are never actually mentioned as recipients of land from the Gracchan commission.<sup>876</sup>

Moreover, even in Appian's account the Ἰταλιῶται soon disappear from the picture as possible beneficiaries of the scheme. They are presented from chapter 1.19 onwards only as victims of the Gracchan distributions: when the Gracchan land commission started its work, it were the Italians who launched the fiercest protests. After Scipio had blocked the distributions there was 'a proposal that all the allies, who were making the most vocal opposition over the land, should be enrolled as Roman citizens, so that out of gratitude for the greater favour they would no longer quarrel about the land. The Italians gladly accepted this, preferring the citizenship to their estates' (1.21). After the beginning of Appian's account, therefore, the Italians disappear as (apparent) beneficiaries of the Gracchan scheme, but are instead presented as its most important victims.

Furthermore, those supporting Tiberius Gracchus are never the Italians, but the Roman people (δῆμος), and more specifically the rural plebs, as we have seen. Appian never states explicitly that the allies supported him; it may be that there were Italians among those Appian indicates as 'the poor' and 'the people',<sup>877</sup> but this is not made explicit. It seems therefore as if Gracchus' greatest support came from the Roman citizen plebs, especially the rural plebs, whereas the allies were opposed to him.

The prominence of the Italians in the introduction of Appian's text, however, and the fact that the allies did not receive land from the Gracchan land commission, has led some scholars to look for an alternative interpretation of the term Ἰταλιῶται. It has been suggested that this term at least in some cases should not be translated as 'Italian allies', but as *plebs rustica*, in other words, Roman citizens living outside the city of Rome. This alternative was first put forward by Kontchalovsky.<sup>878</sup> Bleicken developed this theory in greater detail. He points out that the words *Italia* and Italians had various meanings during the third and second centuries: politically, *Italia* designated the Ager Romanus, as opposed to the city of Rome. Ἰταλιῶται, on the other hand, could also be used to indicate the combined group of Romans and Italians living outside of Italy. The Roman

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included. However, there is no reference to other distributions of land, and it seems that *sortito* was simply the standard way of distributing land among settlers.

<sup>876</sup> The majority of scholars therefore believe that the Italians did not receive land in the Gracchan land reforms: Beloch (1880, 219); Carcopino (1929, 6); Zancan (1934, 86); Badian (1958, 171 and 1972b, 701); Salmon (1962, 109; 1967, 323; 1969, 114); Earl (1963, 20); Molthagen (1973, 430); Nicolet (1977, 131); Bernstein (1978, 138); Sordi (1978, 302); Bringmann (1985, 27); Wulff Alonso (1986, 744-5 and 1991, 196); Kukofka (1990, 52); Lintott (1992, 44 and 1994, 64); Perelli (1993, 91); Lomas (1996, 54); Linke (2006, 44); Van Dooren (2008, 287); Mouritsen (forthcoming).

<sup>877</sup> Shochat (1970, 44). It is more likely that these people were Roman citizens: Badian (1958, 170-1); Wulff Alonso (1986, 503); Bleicken (1990, 108).

<sup>878</sup> Kontchalovsky (1926, 173): 'Les Italiens sont ici les Romains cultivateurs vivant en dehors de la ville, sur toute l'étendue de la péninsule, c'est-à-dire la plèbe rurale romaine.' See Gelzer (1929a, 299); Nagle (1970, 376); Brunt (1971, 76 n. 1); Galsterer (1976, 37-40).

citizens and their Italian allies presented themselves to the outside world as *Italici*, or in Greek Ἰταλικοί.<sup>879</sup> To the outside world both Roman citizens and others living on the Italian peninsula fell under the heading ‘Italians’, which in the second century led to the development of the idea of Italy as a geographic unit and its people as a homogenous group. Bleicken argues that the use of *Italici* and Ἰταλιώται to represent *only* the Italian allies, as distinct from their Roman neighbours, seems to have developed only shortly before the Social War. When after the Social War there was no longer any legal difference between Italians and Romans the two terms practically became synonyms. Appian lived in the second century AD, in which time the previous connotations of the term were easily misunderstood. Bleicken argues that Appian used the term Ἰταλιώται in the same way it was used in his own day, namely as a synonym for Roman citizens living in Italy.<sup>880</sup>

However, in my view this is extremely unlikely. It is clear that Appian knew that the word Ἰταλιώται could mean ‘Italian allies’, and this becomes clear in his discussion of the struggle for citizenship for the Italian allies. When talking about Flaccus’ proposal of 125 to give the Italians citizenship, the word Appian uses is Ἰταλιώται: it was proposed that ‘the Italians gladly accepted this’ (the citizenship) (1.21). In the period of the Social War there was a clear distinction between the two groups, and Appian consistently indicates the rebels with Ἰταλιώται to distinguish them from the Romans. From chapter 1.21 onwards, where it is first proposed to give the Italians citizenship, it is unmistakably clear that the Ἰταλιώται are the Italian allies. It is indeed likely that, if the word had had any other meaning before the first century BC, Appian was unaware of this, but I argue that he was very much aware of its meaning ‘Italian allies’ and that he used it accordingly throughout his account. In this case the word would mean ‘Italian allies’ at all occurrences,<sup>881</sup> and it is unlikely that it would have been employed to mean *plebs rustica* at some points.

Some have tried to salvage the hypothetical meaning *plebs rustica* by arguing that Appian’s use of the term shifts throughout the text, sometimes indicating the Italian allies and at other times the *plebs rustica*,<sup>882</sup> but in fact the meaning ‘Italian allies’ for Ἰταλιώται makes perfect sense in all cases. For the Roman plebs Appian uses other words, usually δῆμος. When he wants to make a distinction between the city and the rural plebs, as in 1.14, he uses τοὺς ἐκ τῶν ἀγρῶν for the *plebs rustica* and τὸν ἐν τῷ ἄστει δῆμον for the urban plebs. It seems, then, as if the word *Italia* refers to the whole peninsula – at least the southern part, since in 1.36 Appian says ‘the Etruscans and Umbrians shared the same fears as the [other?]’

<sup>879</sup> See Bleicken (1990, 113-7) with literature; see also Toynbee (1965b, 366-9).

<sup>880</sup> Bleicken (1990, 117-20). See also Mouritsen (1998, 45-58) and Sacchi (2006, 72-9) on the meaning of the term (*terra*) *Italia*.

<sup>881</sup> Thus Göhler (1939, 76-82); Cuff (1967, 181); Shochat (1970, 40-1); Badian (1970-1, 403-4); Wulff Alonso (1986, 735); Kukofka (1990, 55-6).

<sup>882</sup> Galsterer (1976, 37-40).

Italians'.<sup>883</sup> There is therefore no other option but to conclude that Appian uses the word Ἰταλιῶται to indicate the Italian allies throughout.

It is indeed likely that this should be the preferred translation. There are no compelling arguments in the text itself that would make this interpretation impossible. In all instances a translation of Ἰταλιῶται with Italian allies makes perfect sense. In the introduction the limit on the possession of *ager publicus* and the levy of a tax on its use are stated to be for the benefit of the Italian race 'so that they would have their kin as allies' (συνμάχοι). Later on, the Italian race is stated to be 'related to the Romans by blood'. Both references make it clear that the Italians were considered a clearly separate group from the Romans. They were not 'related by blood', they were of the *same* blood. Similarly, the *plebs rustica* were not συνμάχοι, but fought together with their urban compatriots in the same legions. Furthermore, a practical distinction between Roman citizens living in the city and those outside it would be difficult to make: it is likely that that was much migration between Rome and the Ager Romanus, not only for such purposes as voting and the *dilectus*, but also in the form of temporary or permanent labour migration.<sup>884</sup> As the Roman citizens of the city and the countryside could not be distinguished, why would there be a term to distinguish them other than *plebs rustica*, which makes perfect sense? Appian often translates Latin technical terms into Greek, but Ἰταλιῶται would be a strange translation of *plebs rustica*. However, it would be perfectly acceptable for 'Italian allies'.

This brings us back to the problem of Tiberius Gracchus' plans for the Italians. The assumption that Ἰταλιῶται means 'Italian allies' seems irreconcilable with a source that presents Tiberius Gracchus as favoring the interests of the allies, because there is no recorded benefit that the Italians received from the Gracchan land reforms; if he had wanted to help them, he should also have given them a share in his distributions of land. Why, then, does Appian present him as favouring the 'people of Italy'? It is clear that they did not receive land

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<sup>883</sup> Cuff (1967, 182) assumes that the Italians in this passage are those who started the Social War, which the Etrurians and Umbrians joined only later. Cass. Dio 68.4.1 seems to use the term Ἰταλιῶται to indicate the inhabitants of Magna Graecia, and the term Ἰταλοὶ for native Italians, but there is no evidence for this meaning in Appian. Strangely, Zosimus HN 2.15 in the fifth century AD still makes a distinction between Romans, Italians, and Etruscans, but the context does not make clear what the exact difference is. In *Hann.* 8 Appian states 'The Apennines extend from the centre of the Alpine range to the sea. The country on the right-hand side of the Apennines is Italy proper. The other side, extending to the Adriatic, is now called Italy also, just as Etruria is now called Italy, but is inhabited by people of Greek descent, along the Adriatic shore, the remainder being occupied by Gauls, the same people who at an early period attacked and burned Rome. When Camillus drove them out and pursued them to the Apennines, it is my opinion that they crossed over these mountains and made a settlement near the Adriatic instead of their former abode. Hence this part of the country is still called Gallic Italy.' Apparently he did not consider Etruria to be part of Italy proper, and this may be the explanation for his distinction between Etruria and Umbria and the 'real' Italians.

<sup>884</sup> See Erdkamp (forthcoming a).



distributions from the Gracchan commission, and that those among them who held *ager publicus* stood to lose much when this land was distributed to the Roman poor. How can the evidence from the *Lex agraria* and the statements from Appian be reconciled? This question has long puzzled scholars, leading to such interpretations as that Tiberius wanted to distribute land to the allies, but never got around to it,<sup>885</sup> or that he was inspired by the situation in the whole of Italy, but planned to give land only to the Romans.<sup>886</sup> Another option would be that Appian's source was more pro-Italian than the sources used by other authors, and that this influenced the way he portrayed them,<sup>887</sup> or that Appian used a different source for his introduction than for the later parts of his account. However, Appian most likely used the same source as Plutarch, who puts much less emphasis on the Italians (see ch. 1.2). The whole discussion has led to a stalemate in which scholars have chosen either the idea of only Roman citizens receiving land, while others think that both Romans and Italians obtained land from the Gracchi.

In my view, however, there is a possible solution to this impasse. Even if the Italians did not receive land as new Gracchan settlers, they were in fact treated quite generously by the Gracchi. An important question in this respect is whether the Italian *veteres possessores* – the Italians holding Roman *ager publicus* – were also allowed to keep a maximum of 500 *iugera* of *ager publicus*, just as the Romans. At first sight this would seem unlikely, since Italians did not have any formal rights of access to *ager publicus* (see ch. 2.5.2). On the other hand, the *Lex agraria* is quite generous when it comes to the rights of Latin and Italian allies. In lines 20-3 it describes how an ally, if he had to hand over his holdings of *ager publicus* so that a colony could be founded there, would receive other tracts of *ager publicus*, which would then become his private property: '[Whichever] Roman citizen or ally or member of the Latin name (...) [granted] public [land] or a piece of land of the Roman people from his possession (...) whatever land or [piece of land ?he shall have received?] in return (...) that land is to be private'.<sup>888</sup> Moreover, in lines 16-18, talking of the rights of the *veteres possessores*, the law does not mention Roman citizens specifically, although the law does so in the previous line when talking about the land assigned by the Gracchan land commission. It is likely that the *ager publicus* previously held by the allies and not exchanged for other land had also become private by the *Lex agraria*; this is

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<sup>885</sup> Shochat (1970, 42-4); Bernstein (1978, 145-59); Stockton (1979, 45-6). Contra: Kukofka (1990, 58).

<sup>886</sup> Flach (1974, 269). Mouritsen (1998, 15-21) seems unduly negative as to the value of Appian's statements about the Italians, by arguing that his mentioning of them served only as a literary device.

<sup>887</sup> Kukofka (1990, 60). See Bleicken (1990, 109-11) for a discussion of various possible sources.

<sup>888</sup> *Lex agraria* l. 21-3: *qui in eo agro loc[o] c[iv]is Romanus sociumve nominisve Latini (...) agrum locum publicum populi Romanei de sua possessione vetus possessor prove vetere posseso[re] dedit --- quo in agro loco oppidum coloniave ex lege plebeive scito constitueretur decueretur conlocaretur (...) is ager privatus esto, que[m] Illvir (...) pro eo agro loco, qu[o] coloniam deduxit ita ut ei s[up]ra s[criptum] est, agrum locum aedificium dedit reddidit adsignavit.*

moreover supported by the fact that line 2 – which, however, is very fragmentary – declares that any occupations within the limit held by *unus homo* were to be private.<sup>889</sup> This term is remarkably vague as to who exactly were allowed to keep their land, while in other cases the *Lex agraria* is very specific, e.g. in the case of the Gracchan assignations mentioned in line 3 Roman citizens are expressly mentioned. It may be therefore that allies were also included in the regulations of line 2. Since the law of 111 in this respect confirmed the Gracchan law, it is likely that the law of 133 also granted security of tenure to Italian holders of *ager publicus*. It is therefore likely that the Italian *veteres possessores* were also granted secure tenure of a maximum of 500 *iugera* (maybe plus 250 for each of their children).<sup>890</sup> Thus, the Italians in fact gained much from the Gracchan land reforms: security of tenure and, by 111, even full property of up to 500 *iugera* of former Roman *ager publicus*.

The only problem with this theory is that there appears to have been no real legal basis for giving land to non-citizens. Land was a *res Mancipi*, and therefore could only be legally transferred to people with the *ius commercii*. If Italian allies did not have this right, it would be difficult to see how they could receive *ager publicus* in full ownership. However, we have seen that it is likely that many Italians already possessed this right in the second century (see ch. 2.5.2). If they did not possess this right, the problem could be solved by giving them the Roman citizenship, but this did not occur until after the Social War, when most of the land had already been privatized. In specific cases it was possible to grant public land to allies as well, as happened after the Second Punic War. However, since *ager publicus* was the property of the Roman citizens, this required a law that was ratified by the popular assembly. When in the early second century land was abundant and there were many assignations to citizens as well, such a law could easily have been passed, but it is not to be expected that Roman citizens in 133 would vote for a law that would assign some of the already scarce land to the allies.

However, in 133 the land granted to the Italians was not in fact alienated: they were granted security of tenure, but the land still counted as *ager publicus* of the Roman state. A law by the people was therefore not necessary to grant the Italians citizenship to make this possible, nor was having the *ius commercii* required for receiving land in 133 BC. In 118 the situation was different, since by the second post-Gracchan law the land was actually privatized to the possessors (see ch. 5.3.1). We know, however, that the *Lex Thoria*, which arranged this, was

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<sup>889</sup> In the *Lex agraria* l. 59-60 *homines* are mentioned as colonists in Carthage, and it does not seem necessary that they were citizens, since according to App. BC 1.24 Italians were also included in this colony ('they started to recruit the 6,000 from all over Italy').

<sup>890</sup> Johannsen (1971, 200); Molthagen (1973, 429); Flach (1990, 51). Contra: Riecken (1911, 172); Richardson (1980, 9-10); Lintott (1992, 44); Mouritsen (1998, 145-8); Jehne (2006, 93). Carcopino (1929, 5) states that the Italians had to give up their *private* holdings above the limit of 500 *iugera*, plus *all* their *ager publicus*, but this was certainly not the case.

passed by the assembly of the Roman people, and by this law it was therefore possible to fully alienate land to those not possessing the *ius commercii*. In fact, therefore, the Italians did not suffer as much from the Gracchan reform as is often supposed, and it may be that Appian had this in mind when emphasizing the importance of Tiberius' activities for the whole of Italy.

Even if the Italians were treated generously by the *Lex Sempronia*, Appian also records that it was especially the Italian allies who complained about the Gracchan land distributions. This is not strange if we look at the location of the distributions made by the Gracchi: most of them took place in the south of Italy. This was the area where after the Second Punic War a great amount of *ager publicus* had become available. We have seen that in many allied territories a large part of the land had been declared *ager publicus*, and that this was often the best land held by the allied community. In some areas there must have been hardly any land available apart from the Roman *ager publicus*. It is to be expected, therefore, that the Italians on average held a larger percentage of their holdings as public land than the Romans did, who were concentrated mainly in the old Ager Romanus where most of the land was private (see ch. 4.3.6). Many Italians had simply continued to use the land that was officially confiscated; by now, this situation had lasted seventy years, and the Italians expected to be able to keep the land as long as they did not rebel against Roman overlordship. It may even be that they were allowed by treaty to keep this land for as long as the Romans did not need it, and that they felt that this gave them some permanent right to the land (see ch. 2.5.2). Furthermore, although we do not know much about the patterns of landholding in pre-Roman times, it may be that rich Italians, upon the change of the status of the land into *ager publicus*, had begun to occupy land that had previously been held by the poor, by the process I have sketched in chapter 4. We have seen (ch. 4.3.6) that some cash crop estates in southern Italy were owned by local elites. In this case the Italian rich had ample reason to be anxious that they might lose the land on which they had established their estates.

For these reasons the Italians were understandably angry when the Gracchi wanted to take the land away from them. Probably those actually complaining in Rome were the rich occupiers, since they were to lose the land held above the limit of 500 *iugera*. Many small farmers may have been in danger as well, since Appian records that the measuring of the land was often done hastily and incorrectly. If, as he states, 'the passage of time put everything on a fresh basis' (BC 1.18), then even some private land held by the allies may have been in danger of confiscation and distribution to Roman settlers.<sup>891</sup> Even if the dispossessed allies received other land in return, as is suggested by the *Lex agraria* (ch. 5.3.3), this may not have been land of equal quality: according to Appian 'others [were transferred] from cultivated land to land that was uncultivated or marshy or liable to flooding' (BC 1.18). Even if the allied

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<sup>891</sup> Toynbee (1965b, 548-50).

sufferings were not quite so large as has been assumed in previous scholarship, they still had some reason to complain against the Gracchi.

A secondary explanation for the prominence of the Italians in Appian's account may be the dependence of its introduction on a source favourable to the Gracchi. It may be that Gaius Gracchus, knowing in hindsight the problems that had arisen when the commission had wanted to take away *ager publicus* from the allies, tried to represent Tiberius' intentions as aimed at the benefit of Italy in general, instead of at the Roman citizens only. This was indeed possible, since the Italians had profited in many ways from the *Lex Sempronia* of Tiberius. It is likely, therefore, that Appian, whose source was clearly pro-Gracchan, took his information mainly from the works of Gaius Gracchus, who had much to gain by presenting his brother's scheme as beneficial to as many people as possible.<sup>892</sup>

We may conclude that the Italian allies were not treated much less favourably than the Roman *veteres possessores* by the *Lex Sempronia*. However, its terms, though equal to both groups in theory, may have had more severe consequences for the allies, who were more dependent on *ager publicus* than Romans. Again, we can see that the Gracchan period brought with it important changes in the status of the land held by the allies, much of which was privatized to its allied possessors.

## 2.5. Conclusion: the result of the Gracchan land reforms

I have argued that the goal of the Gracchi was to increase the number of soldiers by restoring the small farmers to the land and encouraging them to have children. However, there is some difference of opinion as to the results of the Gracchan reform. There are many who believe that the Gracchan divisions did not have much success, in that they did not succeed in distributing land to a large number of small farmers. Some suppose that the Gracchi were unable to distribute much land, because there was hardly any *ager publicus* available,<sup>893</sup> while others point out that much *ager publicus* was left after the Gracchan reforms and the Gracchi therefore cannot have been very successful.<sup>894</sup> However, since the goal of the Gracchi was not primarily to change *ager publicus* into private land, this is not an adequate indication of their success. Others simply assume that much of the distributed land quickly returned to the hands of the rich and that the reforms failed in restoring the class of small farmers.<sup>895</sup>

In my view the results of the Gracchan reforms were quite impressive.<sup>896</sup> If we only look at the sheer size of the centuriations made by them, we can see that the Gracchan commissioners achieved a great deal within a very short time. They

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<sup>892</sup> Badian (1958, 173); Pobjoy (2006, 66).

<sup>893</sup> Kromayer (1914, 158); Stockton (1979, 80); Sirago (1995, 310).

<sup>894</sup> Burdese (1952, 98).

<sup>895</sup> Giardina (1981, 91); Guzzo (1981, 117); Lintott (1992, 49); Small & Buck (1994, 31); Accardo (2000, 41-5).

<sup>896</sup> Thus also Bleicken (1992, 65); Rathbone (2003, 159).

measured land in Picenum, Campania, Lucania, and Apulia, all areas where Gracchan boundary stones have been found. There are many centuriation grids visible in these areas; unfortunately, as we have seen, it is difficult to ascribe them to specific periods. If we add up the size of the most likely Gracchan centuriations, we arrive at a territory of 387 km<sup>2</sup> or 154,800 *iugera*.<sup>897</sup> If we add some large centuriations in southern Italy that have been ascribed by some to Gracchan activity,<sup>898</sup> we arrive at the much larger figure of 3,268 km<sup>2</sup> or 1,307,200 *iugera* (Figure 7). Moreover, some traces of centuriation may have disappeared, since Gracchan boundary stones have also been found in locations, for example in Picenum, where no centuriations are visible. If we assume that each settler received 10 *iugera*, the lower estimate of visible centuriations would accommodate 15,480 settlers, the higher 130,720. The latter number, however, seems too large, since it is not likely that the Gracchi could have carried out so much work in a few years, or that there would be so many people looking for land. The Gracchi also distributed land that was less suited for agriculture, for example in the valley of the Fortore and near Salapia and Sipontum,<sup>899</sup> but it is unlikely that their actions would provide all poor citizens with sufficient land. Gaius Gracchus furthermore established colonies, which accommodated additional settlers, although their number was limited.

We must remember, however, that not all the centuriated land was meant for Gracchan settlers: *veteres possessores* often retained their previous holdings, while the land around them was granted to new settlers, while other *veteres possessores* received new land in exchange for their previous holdings. Such grants may well have been located within the visible centuriations. Some of the Gracchan *cippi* found at Rocca San Felice in Lucania mention the letters FVP or FP VET, short for *fundus veteris possessoris*, or FPVCI, which is understood to mean *fundus possessori veteri concessus immunis*.<sup>900</sup> Therefore the size of the centuriations does not give any indication of the actual number of settlers. I estimate the total number of new settlers who profited from the Gracchan distributions at somewhere between 15,000 and 50,000, although it was probably closer to the lower figure.<sup>901</sup>

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<sup>897</sup> The centuriations are those pictured in Barrington's Atlas to the Greek and Roman world. I have measured the size of the territory covered by the centuriations as they are pictured in the atlas. Perelli (1993, 96) states that the surface of the Gracchan centuriations and the places mentioned in the Liber Coloniarius is 600,000 *iugera*, but there is no evidence for this.

<sup>898</sup> E. g. Compatangelo (1989, 231).

<sup>899</sup> Sallares (2002, 266); however, Gracchan land distributions in Sipontum and Salapia are not attested with certainty.

<sup>900</sup> Warmington (1940, 168-73). See Nagle (1973, 374); Nicolet (1977, 126).

<sup>901</sup> Flach (1990, 41) assumes there were about 10-15,000 Gracchan settlers; De Martino (1984, 47) assumes there were over 10,00 settlers, Schubert (1996, 121) estimates their number at 14-22,000. Unfortunately, it is not clear what these estimates are based on. Molthagen (1973, 446), followed by Triebel (1980, 186), argues that the census of 131/0 showed 900 people more than the previous one, and that, if Gracchan activity had continued in this pace, the total number of Gracchan settlers would be about 3000 (compensating for the continued decline of population which he

The Gracchan land distributions are often linked to the census figure of 125/4 BC. Since this showed an increase of 75,913 people compared to the previous census, the Gracchi are thought to have distributed land to the same number of people.<sup>902</sup> That this rise occurred only in 125/4 and not in the previous census of 131/0 may be explained by the fact that it took a few years before the poor actually received land from the Gracchi; the status of the land had to be clarified before it could be measured and assigned.<sup>903</sup> However, this theory assumes that only *assidui* were counted in the census, for only in that case a rise in the number of landowners would cause an increase of the census figure. We have already seen, however (ch. 4.3.5) that all adult male citizens were counted, at least in theory.

Others have sought the explanation of this increase in the greater willingness of proletarians to register themselves. This theory would fit the previously suggested theory of increased underregistration: as the century progressed, a larger proportion of the target population had not been counted, as is shown by the stagnation of the census figures over time. Now these people, who had not been counted for a while, suddenly reappeared (see ch. 4.3.5). This can be explained by two developments: either they were more willing to register, or the censors took more effort to register them. It may be that in this case both factors

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presupposes). This, however, assumes that only *assidui* were counted in the census, which is certainly incorrect. Garnsey (1976, 100) assumes there were only 400 settlers, the difference between the censuses of 125/4 and 115/4. Chouquer et al. (1987, 382) assume that Gracchi distributed between 270,000 and 310,000 *iugera* in the Ager Campanus, but as we have seen, this area was most likely not distributed by them at all (ch. 2.2.5). Bringmann (1985, 23-4) has estimated that of the 16,000 km<sup>2</sup> of *ager publicus* that was available after the Second Punic War, about half was arable. 5,000 km<sup>2</sup> had been privatized before 133; another 4,500 km<sup>2</sup> could not be alienated from its previous possessors, because it fell within the limit of 500 *iugera*. Since most of the privatized land was arable, the greater part of the land still public was not suitable for agriculture. He estimates the Gracchi had only 1,500 km<sup>2</sup> at their disposal, which would only suffice for a maximum of 15,000 colonists, if each received 10 *iugera* of land. There is no evidence that supports the figures proposed by Bringmann, but his estimate of 15,000 settlers is plausible.

<sup>902</sup> Scullard (1959, 28); Frank (1962, 131); Earl (1963, 26); Schneider (1977, 79); Hopkins (1978, 64 n 88); Bauman (1979, 408); Clavel-Lévêque (1983, 36); Finley (1999, 101); David (2000, 132). Shochat (1980, 37) points to the census of 168, which was higher after the land distributions of 173, and suggests that the same happened in the Gracchan period. Shatzman (1975, 14-5), although aware of the arguments against this theory, still argues that land was distributed to 76,000 people. Kromayer (1914, 158) already thought it unlikely that 76,000 people received land. Carcopino (1929, 11-2) suggests that the rise in the census may be attributed to the inclusion of a large number of freed slaves, but there is no evidence for this. Sirago (1971, 99) points out that if the plots were not inscribed in the census, as is believed by many scholars, then the rise in the census figure can only be explained by the inclusion of freed slaves or Italians.

<sup>903</sup> Boren (1968, 75); Brunt (1971, 79). Muschiatti (1972, 244) suggests that in 125 the Gracchan commission regained its juridical powers, and that it therefore continued its activities in this year, but there is no reason to believe that this was the case. Shochat (1980, 142) suggests that the distributed land itself was not counted in census, but its proceeds were, and that therefore the recipients had acquired enough wealth to be counted as *assidui* only after a few years of saving. It seems unlikely, however, that small farmers would be able to save much money.

were at work: on the one hand, proletarians were more eager to register, hoping to get land from the Gracchi. On the other hand, the censors were likely to count more people: proletarians were usually counted less carefully than other groups, since their importance for the state was limited, and they were therefore underrepresented in the census. Some proletarians (but certainly not 76,000) had been turned into *assidui* by the Gracchan reforms, and they were therefore counted more carefully. The censors also may have felt that it was necessary to make an accurate list of Rome's manpower, to ascertain whether the shortage of soldiers was actually as serious as it seemed to be. If this turned out not to be the case, the Senate might be able to use this as an argument against further distributions of land.

However, in this case it is strange that the census figure rose only in 125/4 and not in the previous census of 131/0. If people were eager to register themselves in the hope of obtaining land, why did they not do so in 131 instead of in 125, when the Gracchan commission had not been active for four years? It is possible that an explanation may lie in the fact that the majority of the land distributions carried out by the commission had taken place between 131 and 129. It may be that in 131 many people were not yet convinced that the Gracchan law would provide them with land. When this indeed turned out to be the case, many people registered themselves in 125, hoping that the distributions would be taken up again in the near future.<sup>904</sup>

There were reasons why the people may have believed that the distributions of land, which had stopped four years previously, would begin again in 125. In theory distributions could still take place after 129, if only the consuls would assign the necessary land to the commission. Appian suggests that even after 129, people were still hoping for land distributions, but 'those who were in possession of the land put off its distribution on various pretexts for a long time'. It may be that in 125 the proletarians were hoping to get land if Flaccus' proposal to give the allies citizenship would succeed, since it was thought that the grant of citizenship would make the allies more willing to give up their holdings of *ager publicus* and therefore more land would become available. This expectation may have induced them to register. When Flaccus' attempt failed, Appian explains, 'the populace, who had clung for so long to the hope of land, were in despair. Being in this frame of mind, they welcomed the candidature for the tribunate of one of the land commissioners, Gaius Gracchus'.<sup>905</sup>

However, a rise of 76,000 seems too large to explain by greater willingness to register alone; there were disincentives to registering as well, such as being liable

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<sup>904</sup> Frank (1962, 131); Toynbee (1965a, 470); Bernstein (1969, 41); Crawford (1978, 100); Wulff Alonso (1991, 245); Lo Cascio (1999a, 234).

<sup>905</sup> App. BC 1.21. Vanderspoel (1985, 103-4) suggests that in 125 and 124 Gaius Gracchus was already campaigning for his tribunate, and that many people registered in order to be able to vote for him. Triebel (1980, 195-7) argues that Fulvius Flaccus distributed land taken from the Salluvii in this period, and thereby turned many proletarians into *assidui*.

for military service. An additional explanation of the sudden rise has therefore been sought in the lowering of the census qualification: Gabba suggested that around 129 the qualification for the fifth class was lowered, so that more people became *assidui* and therefore were included. From the 4,000 *asses* given in Polybius,<sup>906</sup> the threshold would have been reduced to 1,500 *asses*, the amount given by Cicero, Gellius, and Nonius.<sup>907</sup> Even if the census in theory counted all citizens, a lowering of the census qualifications may have increased the group of people to be counted, since the censors were probably less attentive in counting proletarians than *assidui*. The lowering of the qualification for the fifth class by turning more men into *assidui* may therefore have caused a rise in the census figure. Unfortunately, no lowering of the census qualification is recorded in this period, and this theory must remain hypothetical. As none of the three explanations brought forward – proletarians being turned into *assidui* by the Gracchan distributions, the same happening because of the lowering of the census qualification, and greater willingness to register – is in itself sufficient to explain a rise of the census figure by 76,000, it is likely that a combination of these three factors was responsible for this increase; however, it is impossible to reconstruct the relative importance of each of these factors.

If we take into account the difficulties the Gracchan commission encountered while surveying *ager publicus*, we cannot but conclude that their achievements were indeed impressive. As Appian describes, it was very difficult for the Gracchi to get reliable information about the status of land: indeed, if most of the land available to the Gracchi had been *ager publicus* since the Second Punic War, most people (Italians and Romans) would simply have occupied it and worked it as if it was their own land, as we have seen. After seventy years, the difference between public and private land would then have become very hard to discern. The problems for the Gracchan commission naturally increased after 129, when their judicial powers were taken away. After that, there was not much they could do, and in practice the commission must have ceased to function. To have

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<sup>906</sup> Polyb. 6.19.2 gives 400 drachmas, the equivalent of 4,000 *asses*.

<sup>907</sup> Cic. *Rep.* 2.22.40; Gell. *NA* 16.10.10-3; Non. 228 L. See Gabba (1949, transl. 1976, 5-8); Earl (1963, 32); Brunt (1971, 77 and 1988, 253); Molthagen (1973, 443-5); Schneider (1977, 15, 89); Bernstein (1978, 75); Frayn (1979, 78-9); Rossi (1980, 233); Shochat (1980, 42); Triebel (1980, 213); De Neeve (1984, 242 n 134); Bringmann (1985, 28); Flach (1990, 41); Erdkamp (2006, 46); De Ligt (2006b, 17-8 and 2007b, 125-7). Contra: Riecken (1911, 130); Rich (1983, 308-16); Lo Cascio (1988, 281-2); Perelli (1993, 94). Crawford (1978, 101) assumes the qualification was already lowered before the retarriffing of the *as* to 16 in a *denarius* in ca. 140. Gellius gives a different valuation for the *capite censi*, who supposedly were rated at 375 *asses*; this has led some to assume that a decrease of the qualification from 1,500 to 375 took place, e.g. Stephenson (1891, 44); Kontchalovsky (1926, 184), Nicolet (1967, 105); Scheidel (2006b, 49). This theory, however, may safely be discarded, since the figure 375 is most likely to be explained by a calculation error from 1,500 *asses* to sesterces, see Gargola (1989, 233-4); Rathbone (1993a, 142-4 and forthcoming). See for an alternative explanation of the 1,500 *asses* in Cicero and Gellius Northwood (forthcoming), who argues that the 1,500 figure was an antiquarian recalculation of Livy's figure of 11,000 sextantal *asses* into libral *asses*, carried out in order to reconstruct the earliest census figures.



distributed land to some 15,000 people in the space of only four years is an impressive achievement, and the land commissioners can hardly be expected to have done more than this.

### 3. The post-Gracchan legislation

Appian describes briefly what happened to the *Lex Sempronia agraria* after the death of Gaius Gracchus:

Not long afterwards a law was passed permitting holders of the land, over which they were quarrelling, to sell it (for this too had actually been forbidden by the elder Gracchus), and immediately the rich started to buy from the poor or find pretexts to evict them by force. The situation continued to deteriorate for the poor, until Spurius Thorius (ms: Borius), as tribune, brought in a law which put an end to the process of allotting the land, and made it the property of its current holders, who were to pay a rent for it to the people, this money to be used for public distributions. This was indeed some consolation to the poor, thanks to the distributions, but it did nothing to increase the population. And once the Gracchan law, an admirable law which would have been of the greatest service had it been possible to enforce it, had been undermined by these tricks, another tribune very soon abolished the rents, and the people had been deprived of absolutely everything. For this reason the numbers of both citizens and soldiers diminished still more, as did the returns from the public land, and the distributions, and legislation <...> the court hearings coming to a standstill about fifteen years after Gracchus passed his law.<sup>908</sup>

The lack of detail in this statement has led to a variety of reconstructions of the post-Gracchan legislation. How much of the Gracchan measures remained in force? Fortunately, one post-Gracchan law, the *Lex agraria* of 111 BC, has been preserved, and this may be used to reconstruct the fate of *ager publicus* after the Gracchan reform.

#### 3.1. The three post-Gracchan laws in Appian

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<sup>908</sup> App. BC 1.27: νόμος τε οὐ πολὺ ὕστερον ἐκυρώθη τὴν γῆν, ὑπὲρ ἧς διεφέροντο, ἐξεῖναι πιπράσκειν τοῖς ἔχουσιν· ἀπείρητο γὰρ ἐκ Γράκχου τοῦ προτέρου καὶ τόδε· καὶ εὐθύς οἱ πλούσιοι παρὰ τῶν πενήτων ἔωνοῦντο, ἢ ταῖσδε ταῖς προφάσεσιν ἐβιάζοντο. καὶ περιῆν ἐς χεῖρον ἔτι τοῖς πένησι, μέχρι Σπούριος Θόριος δημαρχῶν εἰσηγήσατο νόμον, τὴν μὲν γῆν μηκέτι διανέμειν, ἀλλ' εἶναι τῶν ἐχόντων, καὶ φόρους ὑπὲρ αὐτῆς τῷ δήμῳ κατατίθεσθαι καὶ τάδε τὰ χρήματα χωρεῖν ἐς διανομὰς. ὅπερ ἦν μὲν τις τοῖς πένησι παρηγορία διὰ τὰς διανομὰς, ὄφελος δ' οὐδὲν ἐς πολυπληθίαν. ἅπαξ δὲ τοῖς σοφίσμασι τοῖσδε τοῦ Γρακχείου νόμου παραλυθέντος, ἀρίστου καὶ ὠφελιμωτάτου, εἰ ἐδύνατοπραχθῆναι, γενομένου, καὶ τοὺς φόρους οὐ πολὺ ὕστερον διέλυσε δήμαρχος ἕτερος, καὶ ὁ δῆμος ἀθρόως ἐξεπεπτώκει. ὅθεν ἐσπάνιζον ἔτι μᾶλλον ὁμοῦ πολιτῶν τε καὶ στρατιωτῶν καὶ γῆς προσόδου καὶ διανομῶν καὶ νόμων, πεντεκαίδεκα μάλιστα ἔτεσιν ἀπὸ τῆς Γράκχου νομοθεσίας... ἐπὶ δίκαις ἐν ἀργίᾳ γεγονότες. The insertion of a lacuna in this translation is doubtful, see below.

The first law that Appian mentions ‘permitt[ed] holders of the land, over which they were quarrelling, to sell it (for this too had actually been forbidden by the elder Gracchus)’. This simple sentence brings up a variety of questions: When was this law passed? Who were the holders? Which were the lands that now were permitted to be sold? What exactly had been forbidden by the law of Tiberius?

It is usually thought that this refers to the land that had been distributed to the Gracchan settlers: Appian had stated earlier that Tiberius had forbidden this to be sold, and this was now allowed.<sup>909</sup> This would seem logical in connection with the next sentence: when the poor were allowed to sell their allotments, many sold them to the rich, and so the poor lost the lands they had received. However, in my view this not what was intended. The wording ‘this too (καὶ τὸδε) had actually been forbidden by the elder Gracchus’ suggests that what Appian says here is something he has not said before. If he were referring back to the ban on selling the allotments, he could simply have said something like ‘as the elder Gracchus had forbidden’. It would therefore seem that the ban on sales mentioned hereafter is different from the aforementioned ban on the sale of the Gracchan allotments.<sup>910</sup> Moreover, Appian says that it was allowed to sell the lands ‘about which they had quarrelled’. This is a strange way to describe the Gracchan allotments: there may have been quarrels about them before they were distributed, but once they were allotted, they belonged to the persons to whom they were granted. The quarrels that Appian has mentioned so far – and his wording suggests that he refers to something that has been mentioned before – mainly concerned *ager publicus*, of which the status was debated and over which much litigation had been carried out.

Moreover, the *Lex agraria* strongly suggests that sales of land made by Gracchan settlers before 111 were not acknowledged:

[Whatever] of that land a IIIvir for the granting and assigning of land [granted or assigned] by lot to any Roman citizen according to statute or plebiscite, [whatever of that land neither he ---] has or shall have alienated nor his heir has or shall have alienated [nor the person to whom it has or shall have passed by inheritance, (...) the person having jurisdiction] is to decree so as to grant possession in favour of the person or his heir, to whom that land

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<sup>909</sup> Burdese (1952, 89); Panebianco (1963-4, 19); Molthagen (1973, 456); Develin (1979, 48); Stockton (1979, 202); De Martino (1980, 115); Rossi (1980, 155); Flach (1990, 57); Gabba (1990b, 688); Perelli (1993, 229); Lintott (1994, 62); Gargola (1997, 567); Uggeri (2001, 59); Bringmann (2002, 226); Sacchi (2006, 31-2, 281). This is also the translation chosen in most editions; e.g. Veh (1989): ‘Sofort begannen die Reichen, die Landlose der Armen aufzukaufen;’ Combes-Dounous (1993): ‘On fit une loi pour autoriser les assignataires à vendre leur propre lot.’

<sup>910</sup> De Ligt (2001a, 139 n. 65).

has been granted or assigned by lot, whatever of that land shall not have been alienated as is written down above.<sup>911</sup>

Line 17 mentions the *veteres possessores* or ‘whoever has bought from any of them’, and grants possession to both these groups; apparently *veteres possessores* were allowed to sell their land even before 111.<sup>912</sup> That the law does not mention sale explicitly in the case of the new settlers suggests that they had not been allowed to alienate their lands by sale, but that alienations by other methods, e.g. by grants as a dowry or gift, were acknowledged, but not by sale. If this is correct, and before 111 it had not been allowed for Gracchan settlers to sell their land, it is impossible that the first post-Gracchan law applied to them.<sup>913</sup>

In my view, therefore, it is far more likely that the first post-Gracchan law applied to the *veteres possessores*.<sup>914</sup> This would fit far better with what Appian has told us so far: one of the problems the Gracchi encountered when trying to distribute *ager publicus* was that the land had been treated as private property by its possessors, who had bought, sold and bequeathed the land as if it was their own, so that it had become unclear which land was private and which public. It makes perfect sense therefore that Tiberius Gracchus had forbidden the sale of *ager publicus* by its holders, to make sure that such problems were avoided in the future. The Gracchan commission would measure the land and record which *ager publicus* was held by the *veteres possessores*, and to avoid future confusion between public and private land it had been forbidden to sell the land they held at the moment of this registration. In this way the land can very well have been equal to ‘the land over which they were quarrelling’, since many lawsuits sprang up concerning the status of the land held by the *veteres possessores*. By the first post-Gracchan law the *veteres possessores* were allowed again to sell the *ager publicus* they held, which was in effect a return to the situation before 133, when the selling of *ager publicus* was very common. This permission to sell the land did not necessarily mean that it now became private land; this probably happened only by the second post-Gracchan law. Appian may have had the Gracchan settlers in mind when writing his account, but notwithstanding the modern translations the Greek simply says ‘immediately the rich began to buy from the poor’ (καὶ εὐθὺς οἱ πλούσιοι παρὰ τῶν πενήτων ἐωνοῦντο), without reference to any specific type of land. It may well have been the case that rich *veteres possessores*,

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<sup>911</sup> *Lex agraria* l. 15-16: *eius agri illi* *agris* *d(andis)* *adsignandis* *ex lege plebeiae scito sortito quoi ceivi Roma* [no quod dedit adsignavit, quod eius agri neque is --- abalienavit abalienavit neque heres eius abalienavit abalienavit neque is quoi hereditati obvenit obvenit (...)] *is de ea re ius deicito d[ec]retumque ut ei possessionem secundum eum heredemve eius det, quoi sorti is ager datus adsignatusve fuerit, quod eius agri non abalienatum erit ita ut ei s(upra) scriptum est.*

<sup>912</sup> Bleicken (1992, 67) states that *ager publicus* could not be sold at all before 111, but this was apparently not the case.

<sup>913</sup> Lintott (1992, 48); Sacchi (2006, 31-2).

<sup>914</sup> Muschietti (1972, 240); Lintott (1992, 45); De Ligt (2001a, 139-42); Sacchi (2006, 302).

holding less than 500 *iugera* and therefore allowed to acquire more, began to buy holdings of *ager publicus* held by poor *veteres possessores*.

There has been some confusion between the first post-Gracchan law mentioned in Appian, allowing 'the land' to be sold, and the law mentioned in Plu. CG 9.2, by which Drusus removed the rents placed on the land distributed by Gaius Gracchus. There is no immediate connection between these two laws, and it is therefore more prudent to treat them as two different laws. It is possible that the *vectigalia* abolished by Drusus were not only those set on land distributed by Gaius Gracchus, but also those on the assignments made by the land commission between 133 and 129.<sup>915</sup> In that case, one of the limitations on the private property of the Gracchan allotments had already been abolished during Gaius Gracchus' lifetime, or shortly afterwards. There is, however, no reason to assume that the two laws involved the same land or the same group of people.<sup>916</sup> The law mentioned by Appian probably targeted the *veteres possessores*, while the one mentioned by Plutarch concerned the holders of Gracchan allotments.

The meaning of the second law – to be dated around 118/9, as we shall see below – seems to be clearer: there were to be no more distributions of *ager publicus*, and those who still held public land were to pay a rent on it, which would benefit the poor. It is likely that this made the land private; the Greek text says 'to belong to the holders' (εἶναι τῶν ἐχόντων).<sup>917</sup> The phrase *esse* plus genitive in Latin usually indicates property rights, and it is likely that Appian simply translated this phrase from his Latin source.<sup>918</sup>

There has been much discussion as to who exactly were to pay a *vectigal* from now on. Some assume that it was the Gracchan settlers,<sup>919</sup> but this is unlikely, since in my view their land had already become private and been burdened with a *vectigal* in 133. I think that this law again applied to the *veteres possessores*, both those holding land within the limit of 500 *iugera* and those still occupying land above the limit.<sup>920</sup> Apparently, the obligation to pay a *vectigal* was now extended

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<sup>915</sup> Burdese (1952, 89 n 50); Boren (1956-7, 32); Muschietti (1972, 248); Molthagen (1973, 451); Lintott (1992, 47); De Ligt (2001a, 123); Sacchi (2006, 6).

<sup>916</sup> As assumed by Boren (1968, 113); Perelli (1993, 229).

<sup>917</sup> Stephenson (1891, 47); Uggeri (2001, 59). Contra: Hardy (1925, 186-8); De Ligt (2001a, 126-7). Flach (1974, 277) thinks the *Lex Thoria* granted security of tenure on new occupations up until 30 *iugera*, which are mentioned in the *Lex agraria*, but there is no evidence that these two statements should be connected.

<sup>918</sup> Saumagne (1927, 78) suggests it was a translation of *privatus esto*. Hardy (1925, 188), Last (1932, 25), Flach (1990, 51), and Lintott (1994, 87) assume the land of the *veteres possessores* did not become public until 111.

<sup>919</sup> Rossi (1980, 155).

<sup>920</sup> Last (1932, 18); Johannsen (1971, 72); Muschietti (1972, 240); Stockton (1979, 203); De Ligt (2001a, 141-2). See Gabba (1956, 63 n. 2); he assumes, however, that all land above the limit was turned into *ager scripturarius* and therefore automatically taxed, but this was certainly not the case. Burdese (1952, 87-9) thinks only those occupying land above the limit were to pay a *vectigal*. D'Arms (1935, 240 n 53) and Douglas (1956, 391-2) argue that it would be strange if this tax

to the *veteres possessores* as well, and their land therefore also became *ager privatus vectigalisque*. By the third post-Gracchan law this newly introduced *vectigal* was abolished; this would practically take away any limitations on the holdings of formerly public land. As we shall see, there are good reasons to equate this third post-Gracchan law with the epigraphic *Lex agraria* of 111 BC.

In short, the three post-Gracchan laws were a further step in the privatization process, especially with respect to the land held by the *veteres possessores*. The first law allowed them to sell the land they held; the second completely ended the distributions of public land and laid down that the land should become the private property of those who held it, against payment of a rent. The third law, if it is to be equated with the *Lex agraria*, abolished this *vectigal*. In this way *veteres possessores* had acquired within a period of 22 years full ownership over a plot not larger than 500 *iugera* (or more if they had children).

### 3.2. The three laws of Appian and the *Lex agraria* of 111

The relationship between the three laws of Appian and the *Lex agraria* of 111, which is preserved on a bronze inscription of which several pieces have been found, is one of the most complicated problems in the history of the *ager publicus*. Can this epigraphic law be identified with any of the laws mentioned by Appian? And if so, is the epigraphic law the first, second, or third of the laws that Appian mentions? Each of these theories has found its supporters, and some have even argued for other possibilities.

The question is complicated by two further pieces of evidence: Appian ends his discussion of the three post-Gracchan laws with the statement that ‘the people were reduced to idleness about fifteen years after Gracchus passed his law’. The sentence as it stands does not make much sense, which has led some scholars to assume a lacuna and suggest that not the people, but the activities of the Gracchan land commission and the lawsuits carried out before it came to a standstill.<sup>921</sup> It is problematic to fit a fifteen-year period into the time span comprising the activities of the Gracchi and the three laws of Appian. It is, moreover, unclear to which of the Gracchi he refers; if he means Tiberius, the fifteen years would range roughly from 133 to 119/8;<sup>922</sup> if Gaius, then from 123 to

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applied to the *veteres possessores*, since they would not accept having to pay a tax after being free of tax from 133 to 118. However, if they had never paid tax before (since taxes on *ager occupatorius* were most likely not paid before 133), they may have expected to be able to evade this tax from 118 as well. Moreover, it were not the *veteres possessores* who voted for the law, but the people. Stephenson (1891, 47) states the rent was one tenth of the produce, but there is no evidence for this.

<sup>921</sup> Gabba (1956, 66-7); Meister (1974, 88); Carter (1996, 357); Gargola (1997, 573).

<sup>922</sup> Maschke (1906, 89); Hardy (1925, 188); D’Arms (1935, 239); Carcopino (1967, 163, 258); Johannsen (1971, 86-91); Molthagen (1973, 457); Flach (1974, 279); Meister (1974, 90); Develin (1979, 49-50); Stockton (1979, 204); Gargola (1997, 561); De Ligt (2001a, 133).

109/8 BC.<sup>923</sup> How, then, should the three post-Gracchan laws and the *Lex agraria* be related to the fifteen-year period? It seems at first sight that Appian means to say that the end of the Gracchan program coincided with the third of the laws, so if we can establish the length of the fifteen-year period, we can say something about the date of the third post-Gracchan law. This might allow us to say something about the identity of the epigraphic law. However, on closer examination it is not at all clear that Appian considered the third post-Gracchan law the end of the fifteen-year period (see below).

Another problem arises from Cicero reference to a *Lex Thoria*, about which he says: *Spurius Thorius satis valuit in populari genere dicendi, agrum publicum vitiosa et inutili lege vectigali* (ms: *vectigale*) *levavit*.<sup>924</sup> This passage could have given us valuable information about the (presumed) second post-Gracchan law, if only its meaning had been clear. As it stands, the passage unfortunately can be translated in a number of different ways, which has led to endless debate among scholars about the identity of Thorius (or Borius), the contents of the *Lex Thoria* and its relationship with the *Lex agraria*. Because it is important to determine exactly how *ager publicus* was privatized by the Gracchan and post-Gracchan laws, it is unfortunately necessary to go into this debate in some detail, in order to reconstruct the events of this crucial period.

Many scholars believe that the law of 111 was the third of the laws mentioned by Appian, which abolished the rents on *ager publicus*.<sup>925</sup> As there are several strong arguments that point in this direction, I think that this is indeed the most likely possibility. The most important clue is that the *Lex agraria* seems to abolish rents on the land that had been made private by that law:

Whatever of that land according to statute or plebiscite] or according to this statute has been or shall have been made private, for that land, piece of land or building or for *scriptura* on livestock, which is grazed on that land, after the *vectigalia* shall have been settled, which [shall be those to have been settled next] after [the proposal] of this statute, [no one is to act to the effect that anyone] should pay or be obliged to pay [the people or] a *publicanus* money, *scriptura* or *vectigal*, nor is anyone [to act to the effect that --] or to the effect that anything be given to or exacted by the people or a *publicanus* on that account, nor is anyone <to be> obliged to pay anything to the people or a *publicanus* after the *vectigalia* shall be settled,

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<sup>923</sup> Carcopino (1929, 13); Gabba (1956, 65 and 1974, 138); Mattingly (1971, 288); Rossi (1980, 155); Triebel (1980, 208); North (1992, 78); Crawford (1996, 57-60); Sacchi (2006, 18).

<sup>924</sup> Cic. *Brut.* 36.136.

<sup>925</sup> This was first suggested by Mommsen (CIL I<sup>2</sup>, p. 77), and is accepted by Zancan (1934, 66); Burdese (1952, 98); Gabba (1956, 7 and 1990b, 688); Mattingly (1971, 284); Muschietti (1972, 249); Molthagen (1973, 457); Flach (1974, 276-7 and 1990, 54-6); Meister (1974, 92); Nicolet (1977, 134); Stockton (1979, 204); Rossi (1980, 156); Wulff Alonso (1991, 264); De Ligt (2001a, 134); Bringmann (2002, 226). Discussion of this theory in Johannsen (1971, 63-6).

which shall be those to have been settled next after the proposal of this statute, on account of those [lands, pieces of land or buildings or on account of scripture on livestock, which] shall be grazed [on those lands].<sup>926</sup>

These rents may be identified with those exacted from the Gracchan settlers and those that were, according to Appian, imposed on the *ager publicus* held by the *veteres possessores* by the second post-Gracchan law, and abolished by the third. However, the passage in the *Lex agraria* is mutilated, and this has led some scholars to suggest that these lines do not abolish, but actually *impose* a *vectigal*.<sup>927</sup>

This would mean that the last post-Gracchan law was passed in 111, and many scholars have considered this a problem: Appian seems to consider the third post-Gracchan law to be the final end of the Gracchan reform,<sup>928</sup> but if this law is to be identified with the *Lex agraria* of 111 it is impossible to fit in the fifteen-year period. If the fifteen-year period referred to runs from 133 to 119, the *Lex agraria* of 111 cannot have been one of the three laws; if the period runs from 123, then 111 cannot be fitted into a fifteen-year period. This problem has led to various alternative reconstructions, to which we will return later. In my view, however, it is clear that Appian considers the second law he mentions, which he calls the *Lex Thoria* (transmitted as *Boria* in the manuscripts), to be the end of the Gracchan reform attempts: ‘by these devices the law of Gracchus was once for all frustrated’. That the rent introduced by this second law was later abolished by another law appears to be only an afterthought. The important point of the passage is that the distribution of land was stopped by the *Lex Thoria*, and as a result of this ‘the plebeians lost everything’. It is therefore very well possible that Appian considered the *Lex Thoria* to be the end of the Gracchan distributions, and dated the fifteen-year period accordingly.

We therefore need to establish the date of the *Lex Thoria* to determine whether this can have been passed fifteen years after Tiberius Gracchus. That the fifteen-year period started from 133 is clear from Appian, who always takes the agrarian law of Tiberius Gracchus as the starting point for his account; in fact, this is the only agrarian law he mentions. Consequently, he calls Tiberius ‘the lawgiver’

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<sup>926</sup> *Lex agraria* l. 19-20: *quod eius agri ex lege plebeive sci]to exve h(ac) l(ege) privatum factum est eritve, pro eo agro loco aedificio proque scriptura pecoris, quod in //e//o agro pascitur, postquam vectigalia constiterint, quae post h(anc) l(egem) [rog(atam) primum constiterint, nei quis facito quo quis populo aut p]ublicano pecunia<m> scripturam vec<l>igalve det dareve debeat neve quis f[acito quo] --- quove quid ob eam rem populo aut publicano detur exsigaturve, neve quis quid postea quam [vect]igalia consistent, qua post h(anc) l(egem) rog(atam) primum constiterint, ob eos ag[ros locos aedificia obve scripturam pecoris, quod in eis ag]reis pascetur, populo aut publicano dare debeat.*

<sup>927</sup> Especially Saumagne (1927, 59-61), but see Levi (1929, 46-7); Johannsen (1971, 252-4); Crawford (1996, 164). Sacchi (2006, 299) chooses the easy, but in my view unnecessary, way out by stating it is impossible to establish whether l. 19-20 abolished or imposed a *vectigal*.

<sup>928</sup> D’Arms (1935, 244-5); Douglas (1956, 390); Develin (1979, 50).

(νομοθέτης), especially to distinguish him from his brother.<sup>929</sup> In the crucial chapter 1.27 he refers twice to the Tiberius' law, the first time adding that it was 'the law of the elder Gracchus'. The next two times Appian simply says 'the law of Gracchus', without doubt referring to Tiberius. If in these two cases he meant a law of Gaius Gracchus, he ought to have made this explicit to avoid confusion. But since he does not, 'the law of Gracchus' must mean the agrarian law of Tiberius. This conclusion is corroborated by the fact that he never actually mentions an agrarian law by Gaius; apart from his activities in founding colonies Appian does not say much about Gaius' agrarian policy. Therefore, fifteen years after 'the law' means fifteen years after 133, and this should be the dating of the much-discussed fifteen-year period. This would mean that the land distributions ended in 119/8 BC, which would then be the date of the *Lex Thoria*. This is generally accepted by those who assume the *Lex Thoria* was the second post-Gracchan law.<sup>930</sup> This is in fact very well possible; if the first post-Gracchan law was passed immediately after the death of Gaius Gracchus, in 121, then the *Lex Thoria*, which ended the land distributions, can very well have been passed a few years later.

There are other indications that the land distributions had ended by 119/118. After the deaths of Gaius Gracchus and Fulvius Flaccus in 121 no new members were elected for the land commission.<sup>931</sup> It could continue to function with only one member; however, in 119 the only remaining member, Carbo, was summoned to court and committed suicide.<sup>932</sup> Therefore, all the evidence points

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<sup>929</sup> App. BC 1.13: 'The first men elected to carry out the distribution were Gracchus himself, ὁ νομοθέτης, his brother of the same name, and the proposer's father-in-law Appius Claudius.' 1.21: 'Gaius Gracchus, the younger brother τοῦ νομοθέτου'. See Maschke (1906, 89); D'Arms (1935, 244); Johanssen (1971, 85); Molthagen (1973, 457); Meister (1974, 89); Develin (1979, 49); Gargola (1997, 561-2).

<sup>930</sup> Gabba (1956, 72) and Gruen (1968, 102), however, date the *Lex Thoria* to about 113/2 instead of the more widely accepted 119/8.

<sup>931</sup> An inscription found in Carthage (CIL 1.2 696 = ILS 475) records a triumvirate of Carbo, L. Calpurnius Bestia and Ser. Sulpicius Galba, who apparently distributed land here. It is possible that they were chosen as replacements for Gaius Gracchus and Flaccus, see Develin (1979, 49), but the inscription is heavily damaged and the reconstruction doubtful. It is therefore not certain that new commissioners were elected after 121. See Molthagen (1973, 437); Gargola (1995, 239 n. 29).

<sup>932</sup> Cic. Brut. 27.103, 43.159. The commissioners had been sacrosanct when they were in function, as is attested by the *Lex repetundarum* l. 8-9: 'A trial shall not take place concerning these men, while they shall hold a magistracy or *imperium*'; it specifically mentions 'Illviri for the granting and assigning of land' as holders of magistracies. The commission therefore must have stopped functioning to make it possible for Carbo to be indicted, see Johanssen (1971, 91). From the sources it appears, however, that Tiberius was adamant to be re-elected, because he feared for his personal safety: 'As soon as Gracchus should become a private citizen he would be sorry that he had done despite to the sacred and inviolable office of tribune' (App. BC 1.13, see Oros. 5.8.4). This would suggest that his sacrosanctity depended on his position as a tribune and not as a land commissioner. It is possible that Appian had forgotten about the sacrosanct status of the land commissioners. It would therefore make sense if the commission simply stopped functioning after the deaths of Gaius and Flaccus, and that Carbo had somehow also lost his protected status



to a fifteen-year period running from 133 to 119/8, when the activities of the Gracchan commission were ended both by the *Lex Thoria* and by the death of its last remaining member. There is no need to assume that the *Lex agraria* of 111 should fit into this period in order to be the third of the laws.<sup>933</sup>

At this point we must consider the evidence of Cicero, who refers to the *Lex Thoria* in a rather ambiguous way. Grammatically, a number of different translations are possible for the crucial sentence *ager publicum vitiosa et inutili lege vectigali levavit*; those often supported are 'Thorius freed the *ager publicus* from a flawed and useless law by means of (imposing) a *vectigal*', 'Thorius freed the *ager publicus* from a *vectigal* by means of (imposing) a flawed and useless law', and 'Thorius freed the *ager publicus* from a flawed and useless law about a *vectigal*'. There has been much discussion about which was the 'flawed and useless' law that Cicero meant, and about which *vectigal* was abolished or imposed by the *Lex Thoria*. In my view, the most likely translation would be 'Thorius freed the *ager publicus* from a flawed and useless law by means of (imposing) a *vectigal*'. This, first of all, has the advantage of being in agreement with Appian, who also says that Thorius imposed a *vectigal* on the land, and with the *Lex agraria*, which abolishes this *vectigal*.<sup>934</sup>

If this translation is correct, the flawed and useless law mentioned by Cicero would be the *Lex Sempronia*. This would agree very well with Cicero's ideas about the Gracchi and the *ager publicus*. Cicero was very critical about the Gracchi: he saw them as demagogues, whose actions had brought down the Republic. Cicero was not at all a friend of the people, and therefore did not support land distributions. He may well have called the *Lex Sempronia* useless, since it only repeated a law that already existed, and flawed, because it injured the possessions of rich landholders and because it had been passed against usual legal procedure. A law that ended the land distributions would indeed, in Cicero's eyes, free the *ager publicus* from the Gracchan law. It would therefore make sense if the 'flawed and useless law' was the *Lex Sempronia*.<sup>935</sup> At first sight,

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before he was indicted. See Carcopino (1967, 258-9); Sirago (1971, 88); Molthagen (1973, 456); Develin (1979, 49); Gargola (1997, 574).

<sup>933</sup> Johannsen (1971, 88-91); Molthagen (1973, 457); Meister (1974, 89-90).

<sup>934</sup> Mattingly (1971, 287) chooses to translate Cicero's passage as 'who reduced the stock of *ager publicus* by a flawed and unhelpful revenue bill', because Thorius by the second law turned *ager publicus* into *ager privatus vectigalisque*, but this seems rather far-fetched translation of *levavit*. We must remember that the meaning as intended by Cicero would have been expected to be understood by his audience, and in this case this does not seem likely.

<sup>935</sup> Burdese (1952, 98) argues that Cicero called the second post-Gracchan law 'flawed and useless', because it ended the land distributions to the people. However, Cicero was not a friend of the people, and I do not think that he would have objected against a law that ended the distributions of land. D'Arms (1935, 236) argues that even if the law had been passed against normal procedure, it had still been carried out for years after the death of Tiberius. Moreover, the resulting rise in the census figures shows that the actions of the Gracchi had not been *inutilis*, but had in fact achieved a great deal. In my view, however, Cicero would not hesitate to call a law useless if it did not agree with his own political goals. Johannsen (1971, 64) argues that when this

then, a reconstruction in which the *Lex Thoria* was the second post-Gracchan law, passed in 119/8, and the *Lex agraria* of 111 is identical to the third law of Appian, seems to be the most likely, since it is in keeping with the ancient sources.

Nevertheless, many scholars have proposed alternative theories. Rathbone, for example, thinks the *Lex agraria* was the same as the *first* of Appian's laws. His main argument for this thesis is that the law of 111 does not refer to 'any legal amendment to the Gracchan laws prior to this one'; in other words, the *Lex agraria* does not mention any laws passed between 123 and 111. He argues moreover that 'the general spirit of the *Lex* of 111 was to develop, not frustrate, the Gracchan scheme', and points out that most of the measures introduced by the Gracchi were confirmed by the *Lex agraria*. Rathbone therefore suggests that after the *Lex agraria* of 111 two further agrarian laws were passed; a second post-Gracchan law is dated by him to *ca.* 109, and in this law 'by imposing a rent on *ager publicus* still unallocated after the Gracchan scheme, (...) Thorius legitimised existing occupation and made the land unavailable for distribution'. The *vectigalia* collected by this law were, according to Rathbone, used for the distributions of grain instituted by Gaius Gracchus. He argues that by a third post-Gracchan law, which he dates to 107/6, holdings of *ager publicus* were fully privatized by 'an extension to the law of 111.' The flawed and useless law would then be the second law, which was flawed since the rich were taxed to pay for the grain distributions, and useless because it was soon abolished.<sup>936</sup>

Although this reconstruction is ingenious, it is not convincing. First of all, although the law of 111 indeed develops the Gracchan scheme, this does not imply that there were no laws relating to agrarian issues before 111. In fact, the *Lex agraria* refers many times to earlier laws, not by name, but by saying 'whatever happened according to statute or plebiscite'. In line 19 it refers specifically to land that 'according to statute or plebiscite or according to this statute has been or shall have been made private', which must mean that there had been laws that privatized land between 133 and 111. Any pre-111 laws can easily have been covered by this general phrase. It is, moreover, entirely possible that in 111 a law was issued that cleared up the remaining confusion, while retaining useful elements from the Gracchan law; this is indeed generally assumed to have been the purpose of the *Lex agraria*.<sup>937</sup> Furthermore, Rathbone assumes that the Gracchan allotments were privatized by the third law, which he

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translation is correct, the *Lex Thoria* would have set a *vectigal* on the *ager publicus*, and that Cicero would never have approved of this. However, Cicero knew this *vectigal* had been abolished soon after, namely by the law of 111, and it may be that for him the abolition of the Gracchan distributions by the *Lex Thoria* was more important than the *vectigal* it imposed, which turned out to be short-lived.

<sup>936</sup> Rathbone (2003, 164-6).

<sup>937</sup> D'Arms (1935, 240); Hinrichs (1966, 298); Johannsen (1971, 283); Gargola (1997, 573). Koba (1999, 279) states that the law 'perpetuava lo stato di confusione', but in fact it attempted to clear up confusion.

dates to 107/6 BC, but it is expressly stated in the law of 111 that the Gracchan allotments are to be private from then on – if they had not already been so from 133 onwards, as I believe. It seems very strange to discard the law explicitly attesting the privatization of the Gracchan allotments, namely the *Lex agraria*, in favour of some unattested law supposedly passed after 111. Nor is there any evidence for the existence of the other law postulated by Rathbone.<sup>938</sup>

Another theory, which has found more supporters, is that the third law of Appian was identical with the *Lex Thoria*, and that *both* were the same as the law of 111.<sup>939</sup> Obviously, in this case Appian must have made a mistake in calling the *Lex Thoria* the second law. Again it is noted that the *Lex agraria* never mentions the *Lex Thoria*, and that therefore the *Lex Thoria* cannot have been passed before the *Lex agraria*.<sup>940</sup> Since the *Lex Thoria* was not superseded by a later law, it must therefore have been the last of the laws. The main argument in favour of this theory is that in Cicero's *De oratore*, which has a fictional date of 91 BC, the *Lex Thoria* is mentioned as still being in force:

When there was a debate in the Senate about the lands in public ownership and the *Lex Thoria*, and Lucullus was being attacked by members who asserted that his herd was being grazed on the lands in question, [he] said 'No, that herd does not belong to Lucullus; you are making a mistake' – this sounded as if he was speaking in Lucullus' defence – 'my own view is that it is a herd that's got free – it grazes freely where it pleases.'<sup>941</sup>

According to the supporters of this theory this must mean that the debate was held under the regulations for judicial procedures of the *Lex Thoria*, and the *Lex Thoria* must therefore have been the last of the laws passed. In this case, the *Lex Sempronia* would again have been the flawed and useless law, because it limited the number of animals that could be pastured on *ager publicus*. The *Lex agraria*, and therefore also the *Lex Thoria*, would have abolished this maximum.<sup>942</sup>

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<sup>938</sup> Christ (1984, 145) suggests there was a law in 109 that provided for the measurement of all *ager publicus*; apparently he is thinking of the *Lex Mamilia* (see below).

<sup>939</sup> Rudorff (1852, 313); Stephenson (1891, 48); Maschke (1906, 86); Zancan (1934, 58); Kaser (1942, 16-7); Douglas (1956, 385); Badian (1964, 241 and 1970-1, 399); Johannsen (1971, 69-78); Lomas (1996, 55); Uggeri (2001, 59).

<sup>940</sup> Johannsen (1971, 70).

<sup>941</sup> Cic. Or. 2.70.284: *Cum ageretur de agris publicis et de lege Thoria et peteretur Lucullus ab eis, qui a pecore eius depasci agros publicos dicerent, 'non est' inquit 'Luculli pecus illud; erratis'; - defendere Lucillum videbatur - 'ego liberum puto esse: qua libet pascitur'*. For the identity of Lucullus see West (1928, 252), who identifies him with the poet Lucilius, followed by Rathbone (2003, 163 n. 58); while David (1997, 90) thinks he is L. Licinius Lucullus.

<sup>942</sup> Johannsen (1971, 78). Douglas (1956, 385-6) argues that the translation of Cicero would be 'Thorius freed the *ager publicus* from a *vectigal* by imposing a flawed and useless law'. The *veteres possessores* were then freed from a *vectigal* by the *Lex Thoria*, and this would accord with l. 19-20 of the *Lex agraria*, in which *vectigalia* were abolished. The flawed and useless law would then have been the unnamed second post-Gracchan law, which was unpopular both with the *populares* for

However, if all this were true, the *Lex Thoria* as described by Appian would have the opposite effect of that which it would have in Cicero's *Brutus*, namely to abolish instead of impose a *vectigal*. To make possible the reconstruction described above, either the contents of the *Lex agraria* or the translation of the *Brutus* would need to be adjusted,<sup>943</sup> and it seems unnecessary to do so when the text as it stands makes perfect sense. Even more importantly, there is no record of a maximum set on the number of animals by the *Lex Sempronia*. It is true that the *Lex agraria* stipulates that ten large and (possibly) fifty small animals could be grazed on *ager publicus* free of charge, but larger numbers could be grazed against payment of *scriptura*.<sup>944</sup> A real maximum therefore did not exist after 111, and we do not know whether such a maximum had ever been stipulated by a Gracchan law (see ch. 5.2.3).

Furthermore, the argument that the debate in the Senate was held under the regulations in the *Lex Thoria* and not those of the *Lex agraria* makes no sense; first of all, if the *Lex agraria* and the *Lex Thoria* were identical, the argument that the debate must have been held under the *Lex Thoria* and not under the *Lex agraria* is not valid. This would only be possible if the *Lex Thoria* had been passed *after* the *Lex agraria*, and had replaced the regulations made in 111. In any case, new laws did not necessarily supersede older ones, unless they expressly changed older regulations, so certain provisions of the *Lex Thoria* may still have been in force even after the passage of a later law. For example, the *Lex Sempronia agraria* was not completely abrogated until three laws had passed concerning it, and even then many of its elements were retained; therefore the *Lex Thoria* need not have been abolished by the *Lex agraria*.<sup>945</sup> Even if the *Lex Thoria* had been passed in 118, there may still have been discussions about it in the Senate at a later date. In fact, it is not even sure that the debate mentioned by Cicero took place after 111; it may have been held before the law of 111 was passed. As for the difference in procedure, the debate mentioned in the Cicero did not concern a lawsuit, but simply a debate about policy. The *Lex agraria* stipulates the details of lawsuits about *ager publicus*, but a debate about cattle could of course take place in the Senate at any time.<sup>946</sup>

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ending the land distributions, and with the *optimates* for imposing a *vectigal*. Badian (1964, 240) argues that the *Lex Thoria* wanted to set a *vectigal* on grazing land held above the limit; however, there was no limit on such land, only on the number of animals to be grazed.

<sup>943</sup> D'Arms (1935, 244-5) argues that Cicero's passage should be translated as 'Thorius freed the *ager publicus* from a *vectigal* by means of (imposing) a flawed and useless law', and thus that the *Lex Thoria* abolished instead of imposed a *vectigal*. This would make it impossible to identify the *Lex Thoria* with the second post-Gracchan law as Appian describes it.

<sup>944</sup> *Lex agraria* l. 14-5.

<sup>945</sup> Meister (1974, 94-6).

<sup>946</sup> Douglas (1956, 385). D'Arms (1935, 243-4) maintains that the *Lex agraria* and the *Lex Thoria* were not the same, because the procedure in *De Or.* 2.70.284 differs from that prescribed in the *Lex agraria*; however, even if he is right that the two laws were not the same, the difference in procedure is irrelevant.

Finally, from *De Oratore* it appears that the *Lex Thoria* did somehow mention pasture rights, but we are not sure in what way. Appian does not mention pastures at all in connection with the *Lex Sempronia* or the *Lex Thoria*. It therefore seems wrong to base an argument mainly on pasture rights, when the contents of the relevant laws are so badly understood. In any case, from *De Oratore* it is not at all clear what the issue under debate was; it may not even have been about the maximum number of animals to be grazed. This theory, therefore, suffers from so many weaknesses that it cannot be accepted.

Another popular theory, recently supported by Crawford and Sacchi, assumes that the *Lex Thoria* was identical to the *Lex agraria*, and that *both* were identical to the *second* post-Gracchan law.<sup>947</sup> There are several advantages to this theory: like the previous theory, it would explain why the *Lex Thoria* is not mentioned in the *Lex agraria*. Moreover, it would allow the fifteen-year period to run from 123 to 108. This is necessary for those who argue that the Gracchan commission did not become inactive until the third post-Gracchan law. Many scholars who support this theory have argued that if the fifteen-year period runs from 133, the three post-Gracchan laws must have been passed between 121 and 119/8. In their view this period is too short to allow the passage of all three laws mentioned by Appian.<sup>948</sup> They have therefore argued in favour of a fifteen-year period running from Gaius Gracchus in 123 to 109/8. If one considers it impossible that Appian would have said that the period from 123 to 111 lasted fifteen years,<sup>949</sup> then a third law must have followed in 109/8; this third law is sometimes identified with the *Lex Mamilia*, which supposedly abolished *vectigalia* on all private lands.<sup>950</sup>

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<sup>947</sup> Saumagne (1927, 76); Badian (1962, 213); De Martino (1980, 116); Triebel (1988, 207-8); North (1992, 80); Crawford (1996, 57-60); Lomas (1996, 55); Mouritsen (1998, 144); Sacchi (2006, 26-7, 31-2). Discussion of this theory in Johannsen (1971, 66-8) and Meister (1974, 93).

<sup>948</sup> If one assumes that three years were sufficient to pass three laws, there appears another problem, because in that case the *Lex agraria* cannot have been one of the three, see D'Arms (1935, 245) and Develin (1979, 50).

<sup>949</sup> Gabba (1956, 74); Badian (1962, 212-3); Mattingly (1971, 288), and Rossi (1980, 155) consider the possibility that Appian found the period 123-111 roughly equal to fifteen years. Gabba (1956, 65-6) points out a passage in Sall. *Iug.* 31.2, where G. Memmius says in 111: 'how during the past fifteen years you (the plebs) have been the sport of a few men's insolence' (*his annis quindecim quam luditio fueritis superbia paucorum*). Gabba suggests that the fifteen years in Sallust correspond to those in Appian, and should therefore be counted from Gaius Gracchus in 123. However, the period 123-111 does not last exactly fifteen years. Mattingly (1971, 288-9) suggests that the speech of Memmius was held not in 111, but in 109 before the *Quaestio Mamilia*, and thus a period of 123-109 is possible. However, the *Quaestio Mamilia* is mentioned in Sall. *Iug.* 40.1 as dealing with those who had acted against the common interest during the Iugurthine War; (see also Cic. *Brut.* 34.128), but this apparently had nothing to do with the *Lex Mamilia*. Paul (1984, 98) suggests that the number fifteen (XV) has become distorted, and that it should be 20 (XX) or 22 (XXII), and therefore refers to Tiberius Gracchus. However, XV may also be confused with XII, in which case it would be possible that the period refers to Gaius Gracchus' activities twelve years before 111.

<sup>950</sup> Fabricius (1924-5); Gelzer (1925, 100-4 and 1929b, 658-60); Douglas (1956, 389); Carcopino (1967, 239); De Martino (1973, 27-9); Triebel (1980, 208-9); Sacchi (2006, 30). Cic. *Leg.* 1.21.55 says

However, there are many problems with this theory as well. First of all, some have identified the *Lex Mamilia* with the fragments of a law preserved as the *Lex Mamilia Roscia Peducaea Alliena Fabia*.<sup>951</sup> However, the surviving parts of the *Lex Mamilia Roscia* deal mostly with lands in colonies, especially their boundaries, and do not say anything about *vectigalia*. There is no reason to date this law to 109/8 or to identify it with the third post-Gracchan law.<sup>952</sup> Moreover, this reconstruction would mean either that the *Lex agraria* imposed a *vectigal* on *ager publicus*, since this was also done by the *Lex Thoria*, but this is unlikely, since the *Lex agraria* actually removes the *vectigal* from the public land; alternatively, the contents of the *Lex Thoria* must have been misrepresented by Appian.

Furthermore, we have already noted that Appian seems to have regarded the second post-Gracchan law to have been the end of the land distributions. There is therefore no need to assume that all three laws mentioned by him were passed within the period 121-119 BC. It is very well possible that only the first two laws were passed in these years, and the last, the *Lex agraria*, some years later. Furthermore, we have seen that in Appian's account, it is always Tiberius Gracchus who is indicated as 'the lawgiver', and that it is therefore very unlikely that the fifteen-year period is calculated from Gaius. Finally, it is quite unclear what the content of a post-111 law should have been. The *Lex agraria* is acknowledged by most scholars to have been a definitive law, covering a wide range of issues concerning *ager publicus*. As we have seen, there is no record of another law concerning land after 111. All this makes it very difficult to accept this theory.

Others have for various reasons maintained that the *Lex Thoria* and/or the *Lex agraria* cannot be identified with any of the three laws mentioned by Appian. D'Arms for example has pointed out the difficulties with the date of Thorius' active period as it appears from the *Brutus*. The place of Thorius in the *Brutus* would suggest that he was active considerably later than the Gracchi; the orators are discussed in roughly chronological order and Thorius is surrounded by men known to have been active in the period 112-104 BC. He argues that it is therefore unlikely that the *Lex Thoria* was passed in 118.<sup>953</sup> He points out, moreover, that if the first two laws were passed in 121 and 118 and the third in 111, the amount of time passed between 118 and 111 would be too long to allow Appian's use of the words οὐ πολὺ ὕστερον ('a little later the rent itself was abolished'). From this he

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'in fixing the boundaries we shall follow the prescripts of the Twelve Tables, which require three arbiters, instead of the *Lex Mamilia*, which calls for only one', and so, does not mention *vectigalia* either. Triebel (1980, 223) thinks the *Lex Mamilia* gave security of possession on land which had been occupied since 145, which is the date she accepts for the *Lex Licinia*, but this does not make sense.

<sup>951</sup> Published in Crawford (1996, 763-7) and Campbell (2000, 216).

<sup>952</sup> See already Hardy (1925, 186-90), who argues decisively against the thesis of Fabricius and identifies this law as a *Lex Iulia agraria*. This is supported by Crawford (1989, 182-9); Bispham (2008, 233-7).

<sup>953</sup> D'Arms (1935, 241-2); Douglas (1956, 377-81); Sumner (1973, 90-1); Develin (1979, 51).

infers that the third law must have been passed some considerable time before 111.<sup>954</sup> These objections have led to various alternative dates for the *Lex Thoria* and the third law of Appian: D'Arms thinks the third law of Appian was passed in 118, and that the *Lex agraria* was a fourth law, not to be identified with any of Appian's laws; the *Lex Thoria*, according to him, was issued after the *Lex agraria* and dealt only with pasture rights.<sup>955</sup> Develin notes that the manuscript of Appian has Borius instead of Thorius, and that Appian does not refer to pasture rights in connection with the law which he calls the *Lex Boria*. He therefore assumes that the *Lex Boria* of Appian was not the same as the *Lex Thoria* mentioned by Cicero, and argues instead for a Furius as the instigator of Appian's second law, while the *Lex Thoria* was issued at some later date, and dealt only with grazing rights and not with *ager publicus*.<sup>956</sup>

In my view, none of these arguments is conclusive. It has been pointed out that the chronological order of the orators in Cicero is by no means as clear as some have claimed, and it is therefore possible that Thorius was active in 119/8.<sup>957</sup> Regarding the idea that Appian's words 'not much later' cannot refer to an event occurring seven years later, I think that this is not exceptional. Appian often skips considerable periods of time in a few words; for example, after describing the post-Gracchan laws he says 'at this same time the consul Scipio (or Caepio) pulled down the theatre which Lucius Cassius had begun (...). As censor, Quintus Caecilius Metellus tried to demote Glaucia, a senator, and Appuleius Saturninus'.<sup>958</sup> It is not exactly certain when the theatre that Appian refers to was demolished; if it was in the consulship of Scipio in 111, this would fit nicely with the date of the third post-Gracchan law, but the consulship of Caepio in 106 is also possible.<sup>959</sup> In any case, Metellus was censor in 102, which is

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<sup>954</sup> D'Arms (1935, 235); Develin (1979, 50, 53).

<sup>955</sup> D'Arms (1935, 245).

<sup>956</sup> Develin (1979, 53-5). Other theories have been brought forward: Gargola (1997, 559) argues that the *Lex agraria* cannot be one of the three laws, since he believes that the abolition of the *vectigalia* in the *Lex agraria* was valid only for lands that had been made private by the law itself, and not to land previously privatized. However, the *Lex agraria* also abolishes rents on lands already privatized earlier. Granet (1989, 146) argues that it was logical that on private land no *vectigalia* were to be paid, and that no law was necessary to emphasize this. Therefore he thinks that the *Lex agraria* cannot be one of the three laws of Appian. However, there were many other things which needed clarification, and the *Lex agraria* in many respects repeated earlier legislation. Willcock (1982) emends Cicero's *levavit* to *locavit*, so that the sentence would read: 'Thorius let out the public land for a rent by means of a flawed and useless law'. This would accord with the second law as described by Appian, since Thorius apparently put a *vectigal* on the public land. However, if the land became private by this law, the phrase *locavit* is hardly appropriate.

<sup>957</sup> Badian (1964, 241-2 n. 11).

<sup>958</sup> App. BC 1.28. See Develin (1979, 50). It is not the case, as Meister (1974, 91) assumes, that Appian meant this to have happened in 111 exactly.

<sup>959</sup> See the Appendix n. 99. North (1992) argues that the theatre was destroyed in 107/6, during the consulship of Caepio. D'Arms (1935, 236 n. 31) accepts without argument the date in the 150s,

either nine or four years later than the destruction of the theatre, and certainly not 'at the same time'. Again, after discussing the attempts at reform by Saturninus, Appian says 'this was the state of affairs when the so-called Social War broke out...' <sup>960</sup> Here he skips the whole period from 100 to 91 BC, and makes it sound as if the Social War started immediately after Saturninus. I think therefore that it would be unwise to attribute much weight to the rather vague words 'not much later'.

In my view the reconstruction in which the *Lex Thoria* is the second post-Gracchan law and the *Lex agraria* the third makes most sense. The problems with this reconstruction are the easiest to overcome, and it does not require any significant emendations of the sources, both literary and epigraphic. All other possibilities raise difficulties that can be solved only with the help of secondary assumptions which cannot be verified.

### 3.3. The *Lex agraria* of 111

The *Lex agraria* of 111 is undoubtedly one of the most important documents for the legal and agrarian history of the Roman Republic. Despite its fragmentary state it gives a wealth of information about the status of public and private land at the end of the second century. However, despite its importance, there are many misconceptions surrounding this law.

The *Lex agraria*'s main purpose was to lay down clear regulations concerning *ager publicus* in Italy and Africa, and maybe Corinth. After the upheavals of the Gracchan period and the post-Gracchan laws, it was designed as a definite law that would be in force for some time, and would create a clear basis from which lawmakers could work. It begins by declaring certain categories of land, some – but not all – of which had been public up until then, to be private. These categories were 1. the land held by the *veteres possessores* within the limit of possession which had been laid down by Tiberius Gracchus, the size of which is unfortunately not specified in the preserved part of the law; 2. the allotments distributed by the Gracchi; 3. land which is called *redditus*; this was probably *ager publicus* which had been exchanged with people who possessed *ager publicus* that was necessary for the Gracchan distributions; 4. lands in towns or cities that had been distributed by the Gracchan commission.

All this was declared fully private:

There is to be [sale of that land,<sup>961</sup> piece of land or building] just as there is of the other private pieces of land, lands or buildings, and the censor, whoever

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and uses this passage as proof for Appian's unreliability. This, however, seems very flimsy evidence.

<sup>960</sup> App. BC 1.33-4.

<sup>961</sup> The word [...]o in the first sentence is often reconstructed as *possessio*. However, it may actually rather be [*venditi*]o than [*possesi*]o, since it would be strange to grant *possessio* of private land. In the rest of the law *possessio* is used as a substantive next to *locus*, *agrum*, and *aedificium*, as



he shall be, is to see that that land, piece of land or building which [has been or shall have been made private according to this statute be entered in the census, and concerning that land, piece of land] or building, the person, whose [land, piece of land or building it shall be---] is; nor is anyone to act to the effect that [the person,] whose land, piece of land, building or possession it is or shall be appropriate for it [to be] according to statute or plebiscite, [should not use, exploit, have or possess] that land, [piece of land, building or possession,] nor is anyone [to raise] that matter in the Senate [---nor is anyone in the Senate] or a *iudicium* to speak or deliver his opinion to the effect that any of those persons, whose land, piece of land, building or possession it is [or shall be] appropriate for it to be according to statute or plebiscite, [should not have or possess that land, piece of land, building or possession,] or to the effect that possession [should be removed] against his will [or in the case of death against the will of his heirs---].<sup>962</sup>

All powers that a person could have over his private property were granted to the possessors of this land, which now became their private land. It is likely that some of it had already been private before 111, for example the Gracchan assignments and probably also the land of the *veteres possessores*.<sup>963</sup>

In line 17 people called *pro vetere possessore* occur, who are apparently equal in rights to normal *veteres possessores*. It is likely that these were people who had in some way acquired *ager publicus* through the activities of the Gracchan commission, for example by exchanging their holdings of *ager publicus* for new ones. Since they had not held this land since a long time, and could not therefore

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if it were a right that had now become private. The possibility of sale was an important right that one could have over private land, and it would be sensible if the law made this right explicit, just as the other conditions applying to private property (inclusion in the census, protection of property in the court of law, and the right to bequeath property to heirs) were stated in detail. In fact, Mommsen, in his edition in the CIL, had already restored *emptio venditio*, but this suggestion was overtaken by Rudorff's *possessio*, see Saumagne (1927, 73). Crawford's (1996, 158) statement that *venditio* would be 'pointless, since it would follow anyway from the land's being private' makes no sense, since this also goes for the other elements of full property rights that are mentioned. There is no reason why the law would not enumerate them all.

<sup>962</sup> *Lex agraria* l. 7-11: *venditio ita, uti ceterorum locorum agrorum aedificiorum privatorum est, esto censorque, quicquidque erit, factum uti is ager locus aedificium quei ex hac lege privatus factus est erit in censum referatur, deque eo agro loco aedificio eum quicumque is ager locus aedificium erit [---] est; neve quis facit quo, quousque eum agrum locum aedificium possessionem ex lege plebeie scit esse oportet oportebitque, eum agrum locum aedificium possessionem is minus oportet fruatur habeat possideatque neve quis de ea re ad senatum refert [---] neve quis in senatu iudicio sententiam deicit neve fert, quo quis eorum, quousque eum agrum locum aedificium possessionem ex lege plebeie scito esse oportet oportebitque, eum agrum locum aedificium possessionem minus habeat possideatque, quousque possessio invito mortuo eo heredibus eius invito auferatur...*

<sup>963</sup> Crawford (1996, 153). Kaser (1942, 15) and Burdese (1952, 80) think that all categories of land mentioned here had already been private before 111, while Hinrichs (1966, 264 and 1974, 187) thinks both the Gracchan assignments and the land of the *veteres possessores* were not privatized until 111.

be called *vetus possessor*, they were granted the same rights on the land as the real *veteres possessores*, and were therefore treated as equal to those.<sup>964</sup> Although they remains of line 1-2 do not mention them, it is likely that their land was privatized as well.

When public land had been taken away from its current possessors and assigned to colonists, other public land was assigned in return for the land that was taken away. This land was now to become private:

[In whatever land or piece of land a IIIvir for the granting and assigning of land] constituted, founded or settled the town or colony in question according to statute or plebiscite, whatever land or [piece of land he shall have received] in return for the land or piece of land in question from the land or pieces of land which were the public property of the Roman people (...) that land is to be private, which [a IIIvir for the granting and assigning of land] granted, restored or assigned, whether land, piece of land or building, [just as it is written down above, in return for that land or piece of land, where] he founded a colony.<sup>965</sup>

This probably only applied to land within the limit of 500 *iugera*, in order to ensure that people holding land within the limit were now able to claim the whole amount they had held as *veteres possessores* as private land. When private land which was taken and used for distributions, public land was converted into private land in exchange, and this was now also declared private:

[Concerning that land or piece of land, which land or piece of land any magistrate] has converted [from public into private], in return for which land or piece of land he has converted as much land or (as large a) piece of land from private into public, [that land or piece of land] is to be private to its owners, just as (land or a piece of land) is private to anyone with the fullest rights.<sup>966</sup>

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<sup>964</sup> Lintott (1992, 219); Crawford (1996, 154); Sacchi (2006, 99). Johannsen (1971, 201) takes these to be people who could not prove their rights to the *ager publicus*, but since an official right to *ager publicus* did not exist, it is difficult to imagine what kind of rights we should understand this to be.

<sup>965</sup> L. 22-3: [quo in agro loco IIIvir a(gris) d(andis) a(dsignandis) i]d oppidum coloniamve ex lege plebeive sc(ito) constituit deduxitve conlocavitve, quem agrum [locum]ve pro eo agro loc<o>ve de eo agro loco (...) is ager privatus esto, que[m] IIIvir a(gris) d(andis) a(dsignandis) ita ut ei s(upra) s(criptum) est pro eo agro loco, qu[o] coloniam deduxit ita ut ei s(upra) s(criptum) est, agrum locum aedificium dedit reddidit adsignavit.

<sup>966</sup> L. 27: [de eo agro loco, quem agrum locum quis mag(istratus) ex publico in privatum c]ommutavit, quo pro agro loco ex privato in publicum tantum modum agri loci commutav[it, is age locus do]mneis privatus ita, uti quoi optuma lege privatus est, esto.

There has been some debate as to the exact legal nature of the land that was privatized by the *Lex agraria*. Sacchi points out that in line 27-8 the land is declared 'private to anyone with the fullest rights' (*uti quoi optuma lege privatus est*). He argues that the *dominium ex iure Quiritium* was not fully developed until the mid-first century BC, and that *optimo iure* must therefore mean something like 'according to current regulations'.<sup>967</sup> Saumagne argued that the Gracchan assignments privatized in 111 became *privata possessio*, a form of possession between *possessio* of public land and *dominium ex iure Quiritium*.<sup>968</sup> However, there is no real proof for the existence of such a category of land.<sup>969</sup> Even if the concept of *dominium ex iure Quiritium* had not fully developed in the late second century, the powers granted by the *Lex agraria* over the land declared private seem to incorporate all elements of *dominium*: the owner could now sell and bequeath the land, uphold its ownership against all other claimants, and the land was to be entered in the census, which would assure its status as private status. It may be that the phrase *optumo lege* in line 27 aimed to describe the rights stated in line 7-10; someone who had the land as 'private with the fullest rights' would have the rights mentioned in these lines, and the provision in line 27 wished to grant these same rights to the people who received land in exchange for private land they had given up.<sup>970</sup> It was thus made explicit that the exchanged land had exactly the same status as all other land that was fully private.

It was moreover allowed to take 30 *iugera* of land for agricultural purposes, which would then become private: '[--- If anyone after the proposal of this statute for the purpose of agriculture] shall possess or have not more than 30 *iugera* of land in that land, that land is to be private.'<sup>971</sup> This line presents somewhat of a problem: in line 2 the land of the *veteres possessores* had already been declared private, so anyone who possessed 500 *iugera* or less had been granted private ownership of his land. Who then are these people receiving ownership? The most logical option would be that this referred to people who did not possess any *ager publicus* before 111, and so did not have the status of *vetus possessor*.<sup>972</sup> If someone

<sup>967</sup> Sacchi (2006, 348-66). From Cic. Agr. 3.2.9-3.10 it becomes quite clear what the definition of *optimo iure* is: free from all burdens such as mortgages, taxes, servitudes, etc.

<sup>968</sup> Saumagne (1927, 73); Zancan (1934, 69). They argue, however, that the *lex agraria* does not abolish the *vectigalia* in l. 19-20, but imposes them. See for this theory also De Martino (1973, 20-1). Kaser (1942, 3) and Johannsen (1971, 228) deny any existence of half-private forms of tenure.

<sup>969</sup> Cic. *Cluent.* 59.161 says that 'Habitus' bailiffs defended their master's property and right of occupancy' (*privata possessio*). This, however, refers to pasture land, not arable, and it is unclear what exactly these rights entailed.

<sup>970</sup> Hinrichs (1966, 258 n 13) also assumes the land in l. 7-10 had the same legal status as the land mentioned in l. 27.

<sup>971</sup> L. 13-4: [*e]xtraque eum agrum, quem vetus possessor ex lege plebeive [scito--- [---sei quis post hanc legem rogatam agri colendi cau]sa in eum agrum agri iugra non amplius XXX possidebit habebitve, <i>s ager privatus esto*. Flach (1974, 277) assumes that the *Lex Thoria* had guaranteed the possession of 30 *iugera* of land, but there is no evidence whatsoever for this.

<sup>972</sup> Zancan (1934, 70), Lintott (1992, 52), and Sacchi (2006, 250) think anyone was allowed to take an extra 30 *iugera*, even if he already held some land. Hinrichs (1966, 270) is unclear on the issue.

acquired public land by *occupatio* afterwards, he would not have rights to *ager publicus* by the law of 111. In order to provide for people who acquired *ager publicus* only after 111, it was stipulated that such occupations, provided they be no larger than 30 *iugera*, would become private. It does not therefore refer to people who had already been granted private ownership of *ager publicus* to a maximum of 500 *iugera*; they could not simply add another 30 to their already existing possessions. It may be argued that this is illogical because it would entail an 'open-ended' regulation, in the sense that there would be changes in the status of land even after the passage of the *Lex agraria*. However, the stipulation is quite clear: once someone had occupied more than 30 *iugera* of land, he could not occupy more. In this way the law also provided for new occupations of the remaining *ager occupatorius*, which had by no means all been privatized.

Certainly not all or even most of the *ager publicus* had been privatized by 111, as is sometimes assumed;<sup>973</sup> there were still large pieces of public land, both arable and pasture. The law goes on to enumerate a variety of types of land that remained public: 1. The land of the *viasii vicanei*, who were appointed to take care of roads;<sup>974</sup> 2. The land that was 'contracted out [according to] a decree [of the Senate] on 20 September, together with the land which is beyond the Curio'.<sup>975</sup> It is not clear exactly what land was meant by this line or where the Curio was located; Crawford takes it to be part of an exception clause, which exempted certain public lands from distribution.<sup>976</sup> 3. Private land that had been converted

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Flach (1990, 58) thinks that occupiers of land above the limit which had not been confiscated could continue to occupy this, but did not have to pay rent on the first 30 *iugera* of such land. Johannsen (1971, 241) thinks this applies to people who had between 133 and 111 taken occupation of no more than 30 *iugera*, but in my view such people were already included in the group mentioned in line 1, who had taken land within the limit and therefore had received private ownership. If this stipulation was also valid for people who already owned private land, they could simply take another 30, which would then become private, then take another 30, which would, etc. It is therefore more likely that only those who did not possess any land at all could take 30 *iugera*, or, conceivably, those who in 111 owned less than 30 *iugera* could take an amount which would give them a total of 30.

<sup>973</sup> E.g. Fraccaro (1914, 75); Rosafio (1993, 167); Schubert (1996, 90). Williamson (2005, 170) assumes that all individual holdings of *ager publicus* were now privatized, but even this was not the case.

<sup>974</sup> L. 12-3. Johannsen (1971, 235-6) argues that the land became private if it was assigned to them by the Gracchan commission; she assumes, however, based on the *Elogium Pollae*, that there was also land assigned to *viasii vicanei* by the Senate, which remained public. Zancan (1934, 70) and Flach (1990, 58) think the land of the *viasii vicanei* became private. See discussion in Panebianco (1963-4, 16). That the land remained public is clear from the phrase *uti frui habere possidere*, which according to Kaser (1942, 22) indicated 'Besitz als tatsächliche Herrschaft, und weiter, zur vollen Ausübung dieser Herrschaft, den tatsächlichen Gebrauch und die tatsächliche Nutzung'; it was not used for full property.

<sup>975</sup> L. 20: *ex s(enatus)] c(onsulto) a(nte) d(iem) <(undecimam)> k(alendas) Octobris oina quom agro, quei trans Curione est, locaverunt...*

<sup>976</sup> Crawford (1996, 164). Hinrichs (1966, 275 n 58) assumes that it was a mountain or river located in the territory of Tarentum or Scolacium, but he does not explain why this should be the case.

into public land was to remain public just as all other public land before 133 had been.<sup>977</sup> 4. Land that was 'leased in the censorship [of L. Caecilius and Cn. Dom]itius (115-114 BC) with the censors, whoever they shall be appointed hereafter, they are to see that [whoever of them] shall wish may have it leased *pro patrito* for as much, and that they register security in property'.<sup>978</sup> This probably referred to land that was on long-term lease, and could also be inherited;<sup>979</sup> the censors were to make sure that this land was again leased out to those whose family had already possessed it, and were to secure the possession of this land. We may think of the *Ager Campanus* especially. 5. The law also refers to the *ager in trientabulis*, which apparently still existed, and was to remain with the current possessors (see ch. 3.3.2).<sup>980</sup>

Another important category of public land was pastures, which probably constituted the largest share of the remaining *ager publicus*. In lines 23-5 it is stipulated 'nor is that land to be shared pasture-land (*ager compascuus*), nor is anyone in that land to have fenced off or enclose land, to the effect that it may [not] be possible for [whoever] may wish to pasture.'<sup>981</sup> It was allowed to graze 10 large animals and a certain number of small animals (maybe 50) without paying *scriptura*.<sup>982</sup> This does not mean that it was not allowed to graze more than that number, but for the animals exceeding the limit a payment was required. For animals that were in transit on the *calles* to and from the summer pastures payment was not required.<sup>983</sup> It was thus expressly stipulated that public pastures were not to be enclosed, and that they should be open to anyone wanting to graze his animals.

Latins and allies were treated quite generously by the *Lex agraria*, as we have seen. Although they technically did not have any rights to *ager publicus*, they could receive land in private ownership in various cases. The already cited

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<sup>977</sup> L. 27-8.

<sup>978</sup> L. 28: *Quei ager publicus populei Romanei in terra Italia P. Mucio L. Calpurnio co(n)s(ulibus) fuit, quanti quid pro patrito L. Caecilio Cn. Dom]itio cens(oribus) redemptum habe[a]t, censoribus, queiquomque posthac facteis erunt, ei faciunt [ut]ei [quei eorum] volent, tantidem pro patrito redemptum habeant, p(raedia) supsignent.*

<sup>979</sup> Hinrichs (1966, 304-5); Johannsen (1971, 270); Sacchi (2006, 368).

<sup>980</sup> L. 31-2: *Quei in trientabule[is est, quod eius agri --- ob]venit obeveneritve, quibus ante h(anc) l(egem) rog(atam) agrum locum con]ductum habere frui possidere defendere licuit (...) id, utei quicquid quoieique ante h(anc) l(egem) r(ogatam) licuit, ita ei habere [frui possidere defendere post h(anc) l(egem) rog(atam) liceto].*

<sup>981</sup> L. 25: *Neive is ager compascuus esto, neive quis in eo agrum o<q>upatum habeto neive defendito quo mi[nus quei v]elit compascere liceat.* Although the *Lex agraria* never mentions the term *ager scripturarius*, it is clear that the land referred to here belonged to this category. Corbier (1991, 163) thinks this refers only to land belonging to neighbouring farms, but the point of this clause is that public pasture lands were *not* allowed to be limited to specific people.

<sup>982</sup> L. 14-5. Kron (forthcoming) sets the number at 100 small animals, without explanation.

<sup>983</sup> L. 26. Badian (1962, 212 and 1964, 240) argues that l. 25 imposed a *vectigal* on pasture land above the limit, but in fact it establishes a *scriptura* on the *number* of animals above the limit, not on the land itself.

stipulation that a *vetus possessor*, who granted land from his possessions so that a colony could be founded on it, and who then in return received land that would become private, applied to '[whichever] Roman [citizen] or ally or member of the Latin name, from whom [they are accustomed to demand troops in the land of Italy] according to the list of the *togati*'.<sup>984</sup> This means that any Latin or ally who had to give up *ager publicus* because it was needed for a colony, received land in return, which then became his private property. It was therefore possible for Latins and allies to receive private rights on *ager publicus*, just like Roman citizens could.

Moreover, the law declares:

[---Whatever according to this statute,] just as it is written down above, in the lands which are in Italy, which [were] the public property of the Roman people in the consulship of P. Mucius and L. Calpurnius (133 BC), it shall be lawful for a Roman [citizen] to do, it is likewise to be lawful for a Latin and a foreigner to do without personal liability, for whom it was lawful [to do it in the consulship of M. Livius and L. Calpurnius (112 BC) [in those lands which are written down above, according to statute] or plebiscite or treaty.<sup>985</sup>

The law then specifies in line 29-31 that Latins and *peregrini* were protected by law if their rights as outlined in this stipulation were infringed upon. It is not immediately clear what the things were that were 'lawful for a Roman [citizen] to do' which were now also granted to Latins and *peregrini*. It is to be noted that in line 21 the law mentions *socii nominisve Latini*, specified as being those subject to the *formula togatorum*, while in line 29 instead of *socii* the word *peregrini* is used. It may be that the term *peregrini* incorporated both Italian allies and non-Italians who had rights to *ager publicus* in 112.<sup>986</sup> Furthermore, line 29 specifically refers to 'statutes, plebiscites or treaties' which would have given these groups access to *ager publicus* before the passage of the law of 111. This line therefore does not give *all* Latins, allies and strangers the same rights as Romans to *ager publicus*, but most likely only confirmed the rights of those people who before the passage of this law already had rights to it, whether by earlier laws or by treaties.<sup>987</sup> It

<sup>984</sup> L. 21: *qui in eo agro loc[o] ceivis] Romanus sociumve nominisve Latini, quibus ex formula togatorum [milites in terra Italia inperare solent...* In l. 12-3 the *viasii vicanei* are mentioned; many roads along which they could have received land ran through allied territory, and therefore many of the *viasii vicanei* must have been allies. They were thus also granted a holding of *ager publicus*, although in their case the land was to remain public.

<sup>985</sup> L. 29: [--- *quod ex h(ac) l(ege), i]ta uto s(upra) s(criptum) est, in agreis qu[ei in Ita]llia sunt, qui P. Mucio L. Calpurnio co(n)s(ulibus) publiceis populi Ro[manei fuerunt, c(eivei)] Romano facere licebit, item Latino peregrinoque, quibus M. Livio L. Calpurnio [co(n)s(ulibus) in eis agrees quie s(upra) s(criptei) sunt id facere ex lege pleb[is]ve sc(ito) exve <f>oedere licuit, sed <f>raude sua <f>acere liceto.*

<sup>986</sup> The word *peregrini* included *socii*; in the Tarentum fragment l. 12-9 (Crawford (1996, 214)) the *praetor peregrinus* is given jurisdiction over the *socii nominisve Latini*.

<sup>987</sup> Sacchi (2006, 113).

therefore only confirms earlier treaties or personal grants concerning public land. Non-Italians may have been given access to *ager publicus* as a reward or personal favour, but the number of people having such rights does not have to have been large (see ch. 2.5.2).

It is clear that the *Lex agraria* was another big step toward the privatization of *ager publicus*. Various kinds of land that had been exchanged during the distribution of land now became private. Not only Roman citizens, but allies as well could profit from these regulations. *Ager publicus* had not completely disappeared, but the land still left over was mostly pasture land or land that had been assigned to specific people (e.g. through long-term leases, or to the *viasii vicanei*) and could not therefore be distributed. It had never been the goal of the Gracchi to privatize all *ager publicus*; although it was recognized that an increase of control over the land held would be welcomed by many people, especially in the light of the economic developments of the second century, it was not their intention to privatize all *ager publicus*. However, by the laws passed after 123 a large amount of former public land was eventually privatized, and the *Lex agraria* was a decisive step in this process. It is clear as well that the drafters of this law had tried to provide for any situation concerning landholding that might possibly arise. All holders of (former) *ager publicus* were covered by the law: the Gracchan settlers, the *veteres possessores*, the Italians holding *ager publicus*, and those who did not yet hold *ager publicus*, but were to acquire this in the future.

#### 4. *Ager publicus* after 111

After the *Lex agraria* *ager publicus* remained the subject of much discussion. Despite the comprehensive nature of the law it did not take long before new attempts at land distribution were made. A large amount of land had been privatized by the Gracchan and post-Gracchan laws, and had thereby been made unavailable for distribution. However, since the population continued to grow, a large number of people demanding land remained. This was especially the case after the admittance by Marius of proletarians into the army; these men expected to be provided for when they were discharged, and the granting of land to veterans became standard practice in the first century. However, the amount of *ager occupatorius* which could be made available for distribution had become too small after the Gracchan period, and land had to be found in other ways.

##### 4.1. Occupation after 111

The nature of the remaining *ager publicus* has often been discussed. Some have argued that pasture lands (*ager scripturarius*) were the only kind of public land left over after the Gracchan period.<sup>988</sup> This is, however, not the case: various

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<sup>988</sup> Zancan (1934, 53); Gabba (1956, 63 n 2); Brunt (1971, 318, 372); De Martino (1973, 23); Nicolet (1977, 136); Pasquinucci (1979, 104); Granet (1989, 141-5); Wulff Alonso (1991, 265); Vivenza (1994, 40).

categories of arable *ager publicus* still remained. Some kinds, like *ager in trientabulis*, *ager patritus*, and the land of the *viasii vicanei*, were effectively under the control of the possessors, but others, like the remaining *ager occupatorius*, were still control of the Roman people and were, at least in theory, open to all citizens. It is sometimes argued that after 111 *occupatio* of arable land was forbidden, and that therefore, in effect, *ager occupatorius* no longer existed.<sup>989</sup> Support for this thesis is sought in line 25 of the *Lex agraria*, which says 'nor is anyone in that land to fence off or to enclose land'. However, this refers only to public pasture lands, not to all *ager publicus*, since it continues 'to the effect that it may [not] be possible for [whoever] may wish to pasture'.<sup>990</sup> In view of line 13-4 it is likely that the limit for new occupations was effectively lowered from 500 to 30 *iugera*: existing holdings of less than 500 *iugera* were privatized, while those who possessed no land at all were allowed to occupy 30 *iugera*, which was then also privatized. Occupation of *ager publicus*, therefore, was still possible after 111.<sup>991</sup> The law does not say anything explicit about *veteres possessores* whose land had not been confiscated by the Gracchan commission, whether Romans or Italians; however, it is likely that holders of such land could simply continue in their possession.

It is likely that there were indeed many holders of *ager publicus* who still possessed the land they had held before the Gracchan activities. There were areas in Italy where the Gracchi had not been active at all, such as Etruria and Umbria. Apparently those who continued their occupation of *ager publicus* had not been attacked with more severity now than before the Gracchan era, and many old occupiers therefore simply retained their possessions.<sup>992</sup> It may be that by law such occupations had become illegal, since the Gracchan commission had not officially acknowledged them; however, even if this was the case, the state had not taken away such occupations from their current holders. It is unlikely that the Roman state had been able to distribute all *ager occupatorius* that had been available in 133 BC; after the death of Gaius Gracchus, no further attempts at

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<sup>989</sup> Kaser (1942, 30); Muschietti (1972, 249); Rosafio (1993, 167); Crawford (1996, 161, 165); Sacchi (2006, 274). Contra : Triebel (1980, 208).

<sup>990</sup> L. 25: *neive quis in eo agro agrum o<q>upatum habeto neive defendito quo mi[nus quei v]elit compascere liceat*. See Johannsen (1971, 263-4).

<sup>991</sup> It may be that there is a time limit included in l. 13-14, which would mean that occupations had to be given up before a certain date, see Triebel (1980, 205-8), who cites Cic. *Off.* 2.21.73 and *Att.* 1.19.4 as proof, but this is not conclusive. In fact, these lines are too fragmentary to allow us to conclude that occupation of *ager publicus* was no longer possible after 111, and it is likely that this was still allowed, see Johannsen (1971, 195); Flach (1990, 58); Lintott (1992, 52); Crawford (1996, 160-1); Howarth (1999, 298-300); Drummond (2000, 140); Sacchi (2006, 250). See also ch. 5.3.3. Granet (1989, 141) states that new occupations were allowed only for arable land, with a maximum of seven hectares, and five for *veteres possessores*, but it is unclear how he comes by these amounts. Triebel (1980, 205) is therefore wrong when she states that the *Lex agraria* did not mention future occupation.

<sup>992</sup> Kaser (1942, 11); Hinrichs (1966, 257); Flach (1974, 273, 281); Van Dooren (2008, 325).



land distribution had succeeded, and the land still held by *veteres possessores* whose holdings had not been officially acknowledged had not been taken away from them.

That *occupatio* of *ager publicus* still continued is clear from Appian's account of the Social War. In 91 there were protests from Italians against the distribution plans of M. Livius Drusus, which would affect 'the land belonging to the Roman state which was still unallocated, and which they were farming either clandestinely or after forcible seizure'.<sup>993</sup> Appian makes it seem as if the Italians were illegally occupying *ager publicus*, which may in fact have been the case according to law. However, the Italians had occupied this *ager publicus* since the Second Punic War at the latest, and had therefore ample reason to be angry over Drusus' plans.

Another possible explanation for this passage would be that all remaining *ager occupatorius* had been turned into pasture land. In this case, the people who 'either clandestinely or after forcible seizure' had illegally occupied pasture land and turned it into *ager compascuus*, or into privately worked arable land.<sup>994</sup> However, I do not believe this explanation likely: it would not make much sense if the state forced people to turn perfectly fertile arable land into *ager scripturarius*, just in order to be able to collect a rent from it. It is more likely that those still holding *ager publicus* were allies who had simply continued to work *ager occupatorius* they had always held, because during the Gracchan and post-Gracchan period no one had taken it away from them. Alternatively, it may be that all holdings of *ager publicus* by law had to have been confirmed by the Gracchan land commission, but that this had never happened, since the Gracchi had not been active in Etruria and Umbria. This would mean that holders of *ager publicus* in these areas now held their land illegally, since they had not received an official conformation. In this case they would have continued to occupy the land they had held before, but were now afraid it would be taken away because of its unofficial status.

Shortly after 111 several new attempts at distributing land occurred. Not all of these are equally well known; in 104, for example, Philippus proposed an agrarian law, with the argument, recorded by Cicero, that 'there were in the state not two thousand people who owned any property'. Cicero firmly denounces this attempt, stating that 'that speech deserves unqualified condemnation, for it favoured an equal distribution of property; and what more ruinous policy than that could be conceived?' Apparently Philippus wanted to distribute land to the poor in order to diminish the number of large estates, which still existed in great numbers (see ch. 2.1.1).<sup>995</sup> The only land that could be distributed was *ager*

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<sup>993</sup> App. BC 1.36: ὡς τῆς δημοσίας Ῥωμαίων γῆς, ἣν ἀνέμητον οὖσαν ἔτι οἱ μὲν ἐκ βίας, οἱ δὲ λαμβάνοντες ἐγεώργουν, αὐτίκα σφῶν ἀφαιρεθσομένης, καὶ πολλὰ καὶ περὶ τῆς ἰδίας ἐνοχλησόμενοι.

<sup>994</sup> Flach (1990, 67).

<sup>995</sup> De Martino (1973, 30).

*occupatorius*, which apparently still existed. In any case, his law came to nothing,<sup>996</sup> and the possessors could simply retain their holdings.

#### 4.2. The Social War

The Gracchan activities and their aftermath were not only important for Roman citizens, but, as we have seen, also affected many landholders among the allies. In fact, the Gracchan land distributions played an important role in the growing dissatisfaction of the allies. After the Second Punic War their lives had at first continued much as they had before, except that the land they worked had now been turned into *ager publicus*, technically belonging to the Romans, but in fact remaining untouched. The *Lex Sempronia* had treated them quite generously: they were granted security of tenure on holdings up to 500 *iugera*, which was privatized in 111, and by the *Lex agraria* they also received private ownership of land that had been exchanged for land used in the distributions. Moreover, previous treaties granting them rights to *ager publicus* were observed. Still, those possessing more than 500 *iugera* had lost the excess. As we have seen, in some areas of Italy large tracts of land had been turned into public land, and those living there had no other option but to work *ager publicus* (see ch. 4.3.6). The allied rich, therefore, who had owned more than 500 *iugera* of private land before the Second Punic War, lost the land they considered to be rightfully theirs. Moreover, Appian explains that the measurements taken by the Gracchan commission were not always carried out correctly, and that the private property of the allies was sometimes endangered. Thus their loyal behaviour during the second century had earned them nothing, or at least it had not ensured the complete enjoyment of the land they had always considered their own: the land they had worked for so long as a *beneficium* from the Romans was taken away after all. Legally, the rich allies did not lose much more than the rich Roman occupiers of *ager publicus*, but since a higher proportion of their holdings consisted of such land, they may have felt that they were punished again, although they had been loyal.

In 125 it was proposed for the first time to give the allies citizenship, in the hope that they would be more willing to give up their land when they would receive citizenship.<sup>997</sup> In fact, this is a rather strange idea, since Roman citizenship did not offer any tangible (economic) benefits that would compensate for the loss of the land. It may be, however, that the allies hoped that the acquisition of Roman citizenship would protect them against discrimination such as they had felt in the Gracchan period, and that they therefore became more open to the idea of receiving citizenship. Of course, the benefits of receiving citizenship were not the same for poor and for rich Italians; both groups would

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<sup>996</sup> Cic. *Off.* 2.21.73. See Rossi (1980, 224).

<sup>997</sup> App. *BC* 1.21. See for the relation between the Italians, their *ager publicus*, and the citizenship question Badian (1970-1, 385-6) and Van Dooren (2008, 278-333).

profit by no longer having to pay *tributum*, and Italian traders would see their contracts ensured by Roman law.<sup>998</sup> The advantage of being able to vote was most likely only useful for the rich, since the poor would not be able to cast a vote in Rome. Having more rights to land most likely was only an issue for the rich, since everyone possessing less than 500 *iugera* of *ager publicus* had already been granted private ownership.

In 91 the tribune M. Livius Drusus brought forward a new proposal to distribute *ager publicus*, and at the same time to give the allies citizenship:

‘At the request of the Italians he promised to put forward once again legislation on the subject of citizenship, because this was what they most wanted, and they thought that by this single thing they would immediately become masters instead of subjects. With this in mind, he won over the people and wooed them in advance with many colonial settlements in Italy and Sicily, which had been authorized some time previously but never set up.’<sup>999</sup>

However, some Italians were not ready to give up their lands:

‘Even the Italians, in whose interests chiefly Drusus was carrying out these schemes, were apprehensive about the colonial law, because they expected that the land belonging to the Roman state which was still unallocated, and which was farmed either clandestinely or after forcible seizure, would at once be taken away from them, and that trouble might even occur over their own land. The Etruscans and the Umbrians, who shared the same fears as the Italians, were brought – it seems by the consuls – into the city, ostensibly to complain, but in reality to destroy Drusus, and they openly opposed the law.’<sup>1000</sup>

We have seen that there was still *ager publicus* in Italy that was occupied by Italian allies with no more right than the right of *occupatio*. Some of the Italians had wanted citizenship in exchange for land, but now ‘the Italians (...) considered it intolerable for those who were politically active on their behalf to

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<sup>998</sup> Van Dooren (2008, 176-84).

<sup>999</sup> App. BC 1.35. See Liv. Per. 71.1; Flor. 2.3.17.6; Vir. Ill. 66; Vell. 2.14.1; Sen. Brev. 6.1-2. See Salmon (1962, 109-117); Bernstein (1978, 233); Gabba (1986b, 205); Mouritsen (1998, 142-3).

<sup>1000</sup> App. BC 1.36. Drusus’ fate is recorded on an inscription (ILS 49): *M. Livius M. f. C. n. Drusus pontifex tr. mil. Xvir stlit. iudic. tr. pl. Xvir a.d.a. lege sua et eodem anno Vvir a.d.a. lege Saufe[i]a in magistrate occisus est*. Apparently, the Etruscans especially were possessors of *ager publicus*, see Salmon (1962, 117); Gabba (1986b, 205); Bancalari Molina (1987, 431). Galsterer (2006, 296 n. 11) argues that the land held by the allies and in danger of distribution could not be *ager publicus*, because the allies would forget that they were working public land. If they considered the land their private property, the grant of citizenship in exchange for it would be an empty reward. However, this seems too far-fetched.

be treated in this way any longer, and as they saw no other method of realizing their hopes of gaining Roman citizenship, decided to secede from the Romans forthwith and make war on them to the best of their ability'.<sup>1001</sup> The Italians realized that they would not gain anything from the Romans, and that diplomacy would not help to improve their situation. Since they did not have anything to lose, they were willing to try and gain their independence through war. While during the second century the possession of *ager publicus* had made them reluctant to disagree with the Romans, they now realized that even their loyalty would not protect them against the eventual confiscation of the land by the Romans. They thus did not have much to lose in a conflict with Rome, and therefore felt less inclined to maintain friendly relations.

It has been suggested by some that those peoples taking the forefront in the Social War were those living in the areas where the Gracchi had been most active.<sup>1002</sup> Unfortunately, the comparison does not work out: the groups named as the initiators of the war are the Piceni, Marsi, and Paeligni, while other groups that joined it were the Vestini, Marrucini, Frentani, Samnites, Lucani, some Oscan peoples from Campania, the Apulians, and the Latin colony of Venusia.<sup>1003</sup> It is true that the Apulians and the Lucani had lost much *ager publicus* during the Gracchan period, but most of the other peoples mentioned had not. However, it would seem that the Etrurians and Umbrians, who apparently still held *ager publicus* and so did have something to lose, were the most reluctant to join the war. They joined only relatively late, and quickly accepted citizenship.<sup>1004</sup> Even though the geographical locations of the Gracchan distributions and the Social War insurgents do not match completely, it may be assumed that the loss of *ager publicus* by Italian allies was one of the causes of the Social War, since it deprived the Romans of an important instrument with which it had previously ensured the allies' loyalty.

#### 4.3. Land in first-century politics

Land continued to play an important role in first-century politics. Marius was the first to admit large numbers of proletarians into his army, and his soldiers, more

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<sup>1001</sup> App. BC 1.38. See Gabba (1994b, 112). The importance of *ager publicus* in the outbreak of the Social War is often underestimated; Hantos (1983) does not mention public land at all in connection with the allies.

<sup>1002</sup> Carcopino (1929, 14). Contra: Nicolet (1977, 292); Van Dooren (2008, 227).

<sup>1003</sup> Liv. Per. 72.1; Flor. 2.3.18.5; Eutrop. 5.3.1; App. BC 1.39; Oros. 5.18.8. See Gabba (1994b, 115).

<sup>1004</sup> App. BC 1.49; Liv. Per. 74.5 reports Etruscan and Umbrian war activities not before 89. See Keaveney (1987, 89-90); Van Dooren (2008, 22 n. 21). Harris (1971, 215-29) largely ignores the *ager publicus* as a factor in the Etruscan attitude towards the Social War. For *ager publicus* as a factor in the outbreak of the Social War, see Van Dooren (2008, 226-7, 326-7): the Italians were happy to accept citizenship in exchange for land, but the distribution of the *ager publicus* they held had started before the law about citizenship had been passed. After Drusus' death they feared the law would come to nothing, and they would have lost their land without reward. Cf. Mouritsen (1998, 148-51), who largely reaches the same conclusion.

than those of previous generals, depended on their leader to provide for them after their discharge. The proletarians who joined the army often came from the country and joined hoping to receive land after service. Land would be a welcome gift, since it would enable a veteran to make a living for himself, while a simple gift of money would soon be spent. To keep their soldiers satisfied the generals had to promise them land, and to secure their ongoing support after discharge, they actually had to find this land. However, so much *ager publicus* had already been privatized in the second century that it became increasingly hard to find land for the huge numbers of soldiers that were enlisted in the first century. Florus for example exclaims: 'What land could the Roman people give them (the Cimbri) when they were on the eve of a struggle amongst themselves about agrarian legislation?' <sup>1005</sup> Marius already used land in the provinces (Africa and Corsica), instead of in Italy, for distributions to his soldiers.<sup>1006</sup> He refrained from confiscating land in Italy, and also left the remaining *ager publicus* in Italy untouched.

Some argue that the greatest transformation of land from public to private did not occur until the Sullan period.<sup>1007</sup> It is true that the largest shift in landholding patterns occurred after the Sullan period, since at this time it had been possible for many people to acquire large tracts of land. However, the Gracchan era was clearly more important in respect of the change from public to private; certainly by 111 a great amount of land had already been privatized. During Sulla's reign therefore the remaining amount of *ager publicus* proved to be insufficient for his purposes. In order to make sure that all Italy would support his regime, Sulla settled his veterans in every corner of the peninsula: 'With the same object in view for Italy, he allotted to the twenty-three legions that had fought for him a large quantity of land belonging to the towns, some of which had never been distributed for cultivation and some of which was taken from them as penalty.' <sup>1008</sup> In App. BC 1.104 the number of soldiers receiving land is specified as being 120,000.<sup>1009</sup> Sulla was on the one hand trying to punish those communities that had supported his enemies, but on the other hand wanted to have a power base in the whole of Italy, and therefore also used land in towns that had not opposed him. It is therefore likely that he would use any land he was able to get his hands on, including all *ager occupatorius* still in existence. A

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<sup>1005</sup> Flor. 1.3.3.3: *Sed quas daret terras populus Romanus agrariis legibus inter se dimicaturus?*

<sup>1006</sup> App. BC 1.29; Plu. Mar. 29.1; Liv. Per. 69.1; Vir. Ill. 73. Plin. HN 3.6.80 mentions the colonies Mariana by Marius and Aléria by Sulla, both on Corsica. See Salmon (1969, 192 n 244); Rossi (1980, 226); Flach (1990, 62); Lintott (1992, 55-6 and 1994, 99); Gabba (1994b, 110).

<sup>1007</sup> Lintott (1992, 57-8).

<sup>1008</sup> App. BC 1.100. Incidentally, the land 'belonging to the towns' seems to indicate some form of *ager fruendus datus*, public land belonging to the state but assigned to individual towns (see ch. 3.5). However, Appian does not give more detailed information about the status of the distributed land.

<sup>1009</sup> Schneider (1977, 127) estimates the actual number at 70-120,000; Hinrichs (1974, 67) accepts 120,000.

large part of the remaining arable *ager publicus* was thus privatized in the Sullan era.<sup>1010</sup>

In 77 there was a rebellion by Lepidus, supported by poor people from whom Sulla had taken land; he thus did not only take it from the rich, but also from small farmers. Part of the land was apparently taken from the Italians, since 'in an attempt to win additional support, Lepidus promised to give the Italians back the land which Sulla had taken away from them'.<sup>1011</sup> It may be that this was especially *ager publicus* which they had been afraid to lose in 91, but for so many soldiers confiscations of land belonging to cities or private individuals had also been necessary. Indeed Sulla often simply declared lands to be *ager publicus*, in other words confiscated them, like the territories of Arretium and Volaterrae.<sup>1012</sup> There were, however, certain categories of *ager publicus* that he did not touch, like the *ager in trientabulis* and land on long-term lease, such as the Ager Campanus.

Most of the land distributed by Sulla was turned into the private property of those who received it, although there was also land that was confiscated by him but not officially distributed; this was occupied by the so-called *Sullani possessores*. These were soldiers who had received land from Sulla, but for some reason had an insecure title, and people who lived on land that was confiscated by Sulla, but had never been actually distributed.<sup>1013</sup> The Sullan period had important consequences for the pattern of landholding, since his confiscations of land from political enemies caused a great increase in the number and size of large estates. We have already seen that the greatest increase in *villae* and also in urbanization in Italy occurred after the 80s BC, and it is likely that this has something to do with the confiscations made by Sulla (see ch. 4.3.1). Many men now had the opportunity to accumulate land at prices much lower than the actual value, and this enabled them to establish large contiguous estates.

Yet even after this period there was still some *ager publicus* left. It is impossible to say how much *ager publicus* there still was; Cicero in 60 proposed to exclude from Flavius's law 'such land as was public in the consulship of P. Mucius and L. Calpurnius' (133). It is remarkable that Cicero chose 133 as the starting date of his proposal; apparently he felt that this would best protect the interests of the current holders, since he disapproved of any action taken by the Gracchi or later distributors. Cicero preferred to buy land instead of distributing

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<sup>1010</sup> Brunt (1971, 305). Contra: Keppie (1983, 39); Dyson (1992, 78).

<sup>1011</sup> App. BC 1.107; Gran. Lic. 36.37-8, Sall. Hist. 1.65-9. See Brunt (1971, 448).

<sup>1012</sup> Cic. Fam. 13.4.1, 13.5.2, Dom. 30.79, Cat. 2.9.20, Agr. 3.1.3; Plu. Sul. 31, 33; App. BC 1.96; Cass. Dio 41.11.2; Sall. Cat. 36.1; Gran. Lic. 36.35-6; Liv. Per. 89.4, 89.17; Flor. 2.3.21.27; Plin. HN 14.8.62. See Salmon (1969, 192 n 244); Hinrichs (1974, 67); Keaveney (1982, 182); Salmon (1982, 131); Keppie (1983, 52); Brunt (1988, 79).

<sup>1013</sup> Especially the inhabitants of Volaterrae and Arretium were insecure of their possessions, since their land had been confiscated by Sulla but never distributed, see Cic. Fam. 13.4.1; Att. 1.19.4. See Mommsen (1883, 165); Hinrichs (1974, 71); Harvey (1975, 35); Drummond (2000, esp. 134-41).

public land, since in that way the interests of his party, consisting of rich landholders (*hominum locupletium*) would be best served.<sup>1014</sup>

We may assume that apart from the public pasture lands, the only significant tract of arable *ager publicus* now left was the Ager Campanus, which had been exempted from all distributions until now. The amount of available land, however, proved hopelessly insufficient for the great numbers of people requiring land in the first century. Pompey and Lucullus, who had promised their veterans land after the eastern campaigns, were therefore unable to make good their promise.<sup>1015</sup> Several politicians in the first century promised distributions of land: Titius,<sup>1016</sup> Plotius,<sup>1017</sup> Flavius,<sup>1018</sup> Rullus,<sup>1019</sup> and Catilina,<sup>1020</sup> but all these attempts came to nothing.

The generals of the later first century therefore had to find other methods of satisfying their veterans. Caesar finally privatized all remaining arable *ager publicus*: first the Ager Campanus, which was distributed to 20,000 people in 59 BC.<sup>1021</sup> He apparently also auctioned off all other kinds of arable *ager publicus* still in existence, bought land for distribution, and distributed his own private land.<sup>1022</sup> It is possible that some of this consisted of *ager in trientabulis*, which had been mentioned in the *Lex agraria* of 111 as still being public. This may be concluded from Cicero's reference to Caesar measuring land for distribution in the district of Veii and Capena; it is possible that this was land that had been sold

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<sup>1014</sup> Cic. *Att.* 1.19.4.

<sup>1015</sup> Cass. Dio 27.49.2, 38.5.1. Cic. *Att.* 2.15.4 seems to indicate that both Atticus and Terentia possessed public land: 'She has no idea that you are supporting the common cause of all the owners of public land. However, you do pay something to the *publicani*, while she refuses to do so' (*nescit omnino te communem causam defendere eorum, qui agros publicos possideant; sed tamen tu aliquid publicanis pendis, haec etiam id recusat*). This may refer to public pasture lands, however. According to Serv. *Georg.* 4.127 Pompey distributed land, perhaps *ager publicus*, in Calabria to the pirates he had defeated.

<sup>1016</sup> Cic. *Or.* 2.11.48; Cass. Dio 27.25.4; Val. Max. 8.1.damn.3; Obs. 46. See Keppie (1983, 59); Flach (1990, 65).

<sup>1017</sup> Cic. *Att.* 1.18.6. See Brunt (1962, 79 and 1988, 241).

<sup>1018</sup> Cic. *Att.* 1.18.6, 1.19.4. See Flach (1990, 76).

<sup>1019</sup> Cic. *Agr.* passim; Plin. *HN* 8.78.210.

<sup>1020</sup> Sall. *Cat.* 16.4; Cic. *Cat.* 2.9.20; Cass. Dio 27.30.2.

<sup>1021</sup> The number 20,000 is reported in Suet. *Iul.* 20.3; Vell. 2.44.4. Cic. *Att.* 2.16.1 states that the Ager Campanus could only accommodate 5,000 settlers. See for this distribution also Cic. *Att.* 8.10.4, 11.20.3, *Fam.* 8.10.4, *Q.* 2.1.1, 2.5.1, 2.6.2, 2.8, *Sest.* 4.9, *Agr.* 1.6.18; App. *BC* 2.10; Plu. *Cat. Mi.* 33.1; Plin. *HN* 7.52.176; Var. *R.* 1.2.10; Cass. Dio 38.7.3. See Levi (1922, 58); Salmon (1969, 132); Brunt (1971, 315); Carsana (2001, 260); Minieri (2002, 259); Oliveira (2002, 274, 280-2). Stephenson (1891, 57) states the beneficiaries all received 30 *iugera*, but the sources clearly state 10 or 12 *iugera*.

<sup>1022</sup> App. *BC* 2.94; Cass. Dio 38.1.2, 42.54.1, 43.47.4. Suet. *Iul.* 38.1 emphasizes that Caesar placed his veterans where there was land available, so that current holders did not have to give it up. In Cic. *Agr.* 2.2.4-5 it becomes clear that most of the public property which Rullus wanted to put up for sale was located in the provinces, and not in Italy; however, from 2.18.48 it appears that there was also some in Italy, and that a list of this existed. See Hinrichs (1974, 62-3); Keppie (1983, 49); Carsana (2001, 260).

in 200 BC. On the other hand, Cicero's words *hoc non longe abest a Tusculano; nihil tamen timeo* make it seem as if this was land that had been private property, not public, and I do not think we can use this passage as evidence for the continued existence of *ager publicus* in this region (see ch. 2.2.2). Caesar thus privatized all remaining arable *ager publicus*,<sup>1023</sup> but this was not enough by far to accommodate all groups clamouring for land distributions. This led Cicero to the despairing exclamation: 'One point I cannot make out, how a scheme can possibly be devised for providing enough land without exciting opposition.'<sup>1024</sup> Indeed, some of the veterans were settled on inferior land, which was not very suitable for agriculture.<sup>1025</sup> It has been estimated that between the age of Sulla and 25 BC about 250,000 individuals received land in Italy, out of a total population of 1 to 1.5 million adult males (according to the 'low count'),<sup>1026</sup> and the remaining amount of *ager publicus* was clearly insufficient to accommodate such large numbers.

While Caesar had tried to leave existing landholders undisturbed, the triumvirs were not so scrupulous: they resorted to large-scale confiscations of land.<sup>1027</sup> Augustus later reverted to the purchase of land, but also chose to give veterans money instead of land.<sup>1028</sup> However, with the continuous population growth of the second and first centuries, there was simply not enough land to accommodate everyone. New locations had to be found to accommodate all demands made on the land in the first century BC. Colonization of new territories in such situations is often the most practical solution; in the Early Modern period the exploitation of colonies and the emigration to these colonies, especially northern America, provided new room for the growing population of

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<sup>1023</sup> Cass. Dio 43.47.4. See Mommsen (1883, 169); Sacchi (2006, 7).

<sup>1024</sup> Cic. Att. 2.15.1: *Illud tamen explicare non possum quidnam inveniri possit nullo recusante ad facultatem agrariam*. See Salmon (1969, 129); Flach (1974, 289); Lintott (1992, 57); Oliveira (2002, 285).

<sup>1025</sup> Cic. Phil. 13.15.31. For later complaints see Tac. Ann. 1.17. Brunt (1965, 83); Keaveney (1982, 184); Dyson (1992, 85).

<sup>1026</sup> App. BC 5.5; Cass. Dio 42.55.2; Strab. 4.6.6-9; 6.1.6. See Kromayer (1914, 159); Salmon (1969, 132-4); Dilke (1971, 183); Schneider (1977, 127); Hopkins (1978, 66-7); Keppie (1983, ix and 127); Brunt (1988, 79-81); Lo Cascio (2004, 143); Scheidel (2006, 223).

<sup>1027</sup> Cic. Phil. 2.17.43; App. BC 2.120, 3.22, 4.3, 4.13, 4.31, 5.12-3; Plu. Brut. 46.2, Ant. 16.4, 55.2; Suet. Aug. 13.3, 46; Cass. Dio 38.1.4, 48.6.3, 49.14.5; Vell. 2.46.2; Prop. 4.1b.121-30; Hor. Epist. 2.2.47-53, Sat. 2.2.133-4; Verg. Ecl. 1.70-1; Probus 7; Servius 22; Vir. Ill. 19; Liv. Per. 125.4; Florus 2.4.5.1. See Flach (1974, 294); Nicolet (1977, 140-1); Schneider (1977, 163); Salmon (1982, 139); Chouquer & Favory (1991, 129-35); Gargola (1995, 177-8); David (1997, 165-7); Scheidel (2004, 11). During the war between Octavian and Antony it was at some time proposed to 'sell the property that belongs to the state, and I [Agrippa] observe that this has become vast on account of the wars': Dio 52.28.3. It is possible, however, that this referred to state land in the provinces. The same goes for Dio 48.7.2, where L. Antonius points out there was still *ager publicus* left.

<sup>1028</sup> RG 15-6; Suet. Aug. 46; App. BC 3.23; Cass. Dio 49.14.5. See Salmon (1969, 138); Keppie (1983, 40); Campbell (2000, iv).



European countries.<sup>1029</sup> Of course, the long-term ecological and economic effects for the colonized regions can be devastating, but this does not seem to have been the case in the Roman empire. As long as the total population of the conquered territories did not reach carrying capacity, the provinces formed a welcome outlet for the growing population of Italy itself. Gaius Gracchus had already tried to establish colonies in the provinces, but Caesar was the first politician to do this on a large scale, and this policy was continued by Augustus and later emperors. This constituted a large drain on the Italian population and mitigated the effects of population growth in the Italian peninsula itself. This policy was continued by later emperors, who distributed land almost exclusively in the provinces.

The first century was therefore the period which saw the eventual disappearance of all arable *ager publicus*. There were some distributions of land in Italy by later emperors as well, but these were on a small scale, never involving more than adding a few settlers to cities whose population had declined.<sup>1030</sup> In some earlier distributions *subseciva* were still left over, and these were eventually privatized by Vespasian and Domitian: 'Parcels of land which were left unoccupied here and there after the assignment of lands to the veterans he granted to their former holders as by right of possession.'<sup>1031</sup>

The only considerable amount of *ager publicus* now in existence were the public pasture lands of the *ager scripturarius*, which continued to exist for a long time. Moreover, many cities still owned land that was public; Vespasian, for example, restored the *ager publicus* of the town of Canusium, which had been occupied by shepherds.<sup>1032</sup> Such land, however, was not the same as arable *ager publicus populi Romani*, which by now had truly disappeared.

## 5. Conclusion

In this chapter we have seen the importance of the Gracchan period for the disappearance of the arable *ager publicus*. The Gracchi were the first to act on the notion that public land was not a suitable system of landholding for Italy in their period, a country with a growing population and a growing competition for land – even though they themselves did not recognize population growth as one of the causes of the increasing poverty of the small farmer. Instead of giving the poor access to public land, they chose to provide small farmers with private ownership of land. At the same time the efforts of the *veteres possessores* were acknowledged by granting security of tenure on a maximum of 500 *iugera* of land, thereby encouraging them to invest in land they could now call their own.

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<sup>1029</sup> Wrigley (2006, 470).

<sup>1030</sup> Tac. *Ann.* 13.31, 14.27; Plin. *HN* 14.8.62; Suet. *Ner.* 4. Keppie (1984) gives an exhaustive survey of land distributions in Italy in the first century AD.

<sup>1031</sup> Suet. *Dom.* 9.3; *Commentum* 56.23-5; 98.22-6.

<sup>1032</sup> AE 1945, 85 = 1959, 267. See Grelle (1981, 213).

It was not until the *Lex Thoria* of 118 that the lands of the *veteres possessores* became fully private, but in effect they had already become so by the law of 133.

The Gracchan reform had a serious impact on the relations between the Romans and their Italian allies. During the second century the allies had continued to hold the land that they had always held, but instead of holding it in private ownership they now held it without legal title: they could only keep it as long as the Romans did not need it. When this had gone on for some time, the allies assumed that they would be able to keep the land as long as they did not rebel against the Romans, and in this way *ager publicus* served as a tool to ensure the allies' loyalty. However, the economic situation in Italy did not leave the Romans any choice but to actually use all the land they owned, and the Gracchi now took the land away even though the allies had never disobeyed the Romans. This showed them that their loyal behaviour had earned them nothing.

Even after the passage of the *Lex agraria* in 111 BC there was still a considerable amount of arable *ager publicus* left, occupation of which was still allowed, and some of which was still held by allies without any legal rights. However, those allies who had lost some of their *ager publicus* were disappointed by the way they had been treated by the Romans. They recognized that their loyalty had not ensured the continued possession of their lands, and therefore were willing to fight for their independence. In this way the problems of possession of public land were a direct cause of the Social War. A more direct cause of the war was the threat to take land away, which arose from Drusus' proposal in 91.

Most of the remaining *ager occupatorius* was finally privatized by Sulla, and the other arable *ager publicus*, consisting of the *ager censorius* in Campania and perhaps *ager in trientabulis* in Latium and southern Etruria, by Caesar. However, the amount of *ager publicus* still left in Italy was not enough to provide all the veterans in the first century with land, and an increasing number of them was settled in the provinces, or were granted money instead of land. The Italian population had finally become too large to be accommodated in Italy itself: demand for land had outstripped the available resources, and it was therefore necessary to provide new outlets in the provinces for the surplus population.



## Chapter 6: Conclusion

Although it has long been acknowledged that *ager publicus* played an important role in the history of the Republic, it has never been realized exactly how large this role was. Furthermore, the relation between *ager publicus* and wider developments in Roman society has not always been adequately understood. Older research focused mainly on the legal status of public land, and relatively little attention has been given to questions concerning the importance of this type of land for economic, social, and political developments in Republican Italy. Notwithstanding the importance of studies such as those by Bozza, Zancan, and Burdese, they do not tell us anything about why *ager publicus* throughout the Republic appears to have a central issue in discussions on the fate of the Roman citizen. Those studies that do discuss *ager publicus* in a wider context often prove to be defective, since for ancient historians it is often difficult to make sense of the complicated legal issues connected to the various types of public land. I have therefore focused on the role played by *ager publicus* in Roman economy and society, especially during the second century BC, without losing sight of the legal conditions pertaining to this kind of land.

One of the factors hindering the exact appreciation of the role of *ager publicus* has been the lack of even a rough estimate of the amount of land belonging to this category. Its presence has been taken for granted by most historians; however, if we want to be able to say anything with certainty about its importance in the Republic, a more detailed calculation of how much land fell into this category would be very welcome. Various older studies, especially those of Beloch and Afzelius, tried to make estimates on the amount of land controlled by the Romans, but *ager publicus* does not appear as a separate category in these works. Moreover, the assumptions on which these scholars base their estimates prove to be seriously flawed, especially their idea that the whole of Italy was assigned to the jurisdiction of one town or other legal body. Unfortunately, the information in our sources is insufficient to allow an exact reconstruction of the amount and location of *ager publicus* in existence. However, this book has tried to give a clearer view of the location and amount of *ager publicus* by making a list of the conquests undertaken by the Romans, with an estimate of how much land was privatized and how much remained in the hands of the state. Often we are only able to conclude that *ager publicus* existed because of references to later distributions of land in the area, which could only take place on public land. At this point, I do not see how these problems can be overcome; if new source material would be discovered – we may think, for example, of more Gracchan *cippi* – it may be possible to arrive at a more detailed analysis of the location of *ager publicus*. However, it is unlikely that we will ever be able to fully reconstruct the ‘map of the *ager publicus*’ for the Roman Republic.

Even though we are unable to arrive at exact estimates of the amount and location of *ager publicus*, it is certain that the Romans while conquering Italy acquired large tracts of territory. Contrary to the recent hypothesis brought forward by Rathbone, we can conclude that a large amount of the confiscated *ager publicus* was not privatized immediately after its conquest, but sometimes remained in the hands of the state for very long periods of time. This was not only the case after the Second Punic War, for which period the presence of large tracts of *ager publicus* has generally been accepted, but already in the fourth and third centuries. However, it can be established with reasonable certainty that most of the public land in central Italy – Latium, Etruria, Campania, and Sabinum – was privatized shortly after the Second Punic War at the latest, and that therefore most *ager publicus* was located in the Italian periphery – Lucania, Bruttium, Apulia, Calabria, Picenum, and Cisalpine Gaul.

Much of the *ager publicus* therefore was situated in areas where the majority of the population was of allied instead of Roman or Latin status. Although this has been recognized by previous writers, the consequences of this situation have not been thought through towards their logical conclusions. I have argued that *ager publicus*, which remained theoretically in the hands of the state for a very long time, was in fact often occupied by the people from whom it had been confiscated. It was by no means the case that all public land was occupied by the Roman elite; in light of the small market in the fourth and third centuries we may assume that only land located relatively close to Rome was in demand among those producing for the central market. For poor farmers only public land in the vicinity of their own private plots was useful, and since most Roman citizens lived on the pre-Hannibalic *Ager Romanus* in central Italy, much of the confiscated land will not have been accessible to them. This means that much public land outside central Italy will not have been occupied by Romans at all, but simply remained in the hands of the local population.

The presence of the allies on *ager publicus* must be connected to new reconstructions of the mid-Republican colonial landscape: instead of viewing colonies as large-scale, well-organized enterprises, which exerted a large influence over the surrounding countryside, as is done by Brown, Gargola, and Lomas, it is now time for a new reconstruction of the pre-Hannibalic colonial landscape. Colonies may in fact rather have been simple garrison outposts of Roman citizens, which occupied only such land as they could work, without much geographic or cultural influence over the surrounding territory and its inhabitants. Unfortunately, the exact role of local groups in Roman colonies is still very poorly known, since the source material for the fourth and third centuries is extremely scanty in this respect. Further research into this topic would be extremely welcome; if we combine literary, archeological, and technical sources, – e.g. the works of the *Agrimensores* and the *Lex agraria* – we may be able to say more on the fate of the original inhabitants of the land confiscated by the Romans.

For the second century the sources explicitly tell us that much *ager publicus* remained in the hands of local inhabitants, at least in southern Italy. It may be that the Romans considered *ager publicus* an instrument in regulating the relations between the Romans and their allies. Public land was assigned to allies as a reward for loyalty in numerous cases, at least after the Second Punic War. Other allies were allowed to retain use of any *ager publicus* that was not immediately used for distributions to Roman citizens, although this was most likely not regulated by treaty. Although it has sometimes been argued that the Roman state 'forgot' that its *ager publicus* was held by the allies, I argue that this was done deliberately. In this way a situation was created in which the allied population lived on Roman sufferance: their livelihood now depended on being permitted to work *ager publicus* in their region, which they had previously owned. As long as the Italian population remained loyal, they could be reasonably sure that the land would not be taken away from them. Thus, the presence of *ager publicus* served as a constant reminder of the presence of Roman state, and prevented the allies from rising against Roman overlordship.

Already in the pre-Hannibalic period the occupation of *ager publicus* had become problematic for various reasons. Even in the late third century Rome may have had as many as 200,000 inhabitants, who formed a considerable market for agricultural products, mainly grain, but also wine, oil, and textiles. At this time most of these goods were still produced in Italy itself, and more specifically in central Italy. With the exception of wool, which could be produced in the more peripheral regions of the peninsula, transport costs of most foodstuffs were so high that their production far from Rome would not be profitable – except in the vicinity of other towns that served as markets. Those wishing to produce for the central Italian market are therefore likely to have wanted to acquire land in the vicinity of Rome. Much of the land in this area was private, and could therefore simply be bought, but other land still was public. However, investing in public land could be dangerous: the only kind of public land existing before the early third century was *ager occupatorius*, which could be taken away by the state when it was needed for distribution. Occupation of public land was an unsatisfactory method of possession for those wishing to profit from the increasing opportunities for market agriculture; one would think twice before investing if the basic requirement, land, was not held with a secure title. However, the growing opportunities for commercial production are likely to have led to a larger demand of security on holdings of public land. A limit on the possession of land had been set by the *Lex Licinia* in 367 BC; contrary to the view held by the majority of scholars, I argue, with Rich, that this concerned both private and public land, and that a limit of 500 *iugera* is therefore possible for the fourth century. However, this limit was universally neglected by both state and occupiers alike, and any rents that may have been due in theory were not collected.

To satisfy this demand for land with a secure title in the third century the state created new forms of possession for *ager publicus*. The first of these was *ager quaestorius*, probably created in the early third century. This provided a secure title on land sold by the quaestors, and could probably be taken back by the state only at the initiative of the buyer. In the Second Punic War it was joined by *ager in trientabulis* and *ager censorius*. All these forms of possession granted increased security of tenure to the holder of the land. *Ager quaestorius* and *ager in trientabulis* ended up especially in the hands of the elite; as they were all located – as far as we know – in the vicinity of Rome, they must have been very attractive for commercial producers. This creation of new forms of tenure shows the remarkable flexibility the Roman state could exercise in the administration of public land: the system of possession was adjusted when economic or social circumstances made this necessary. The amount of land assigned to these three categories, however, was small, and it was all located in the vicinity of Rome. This means that most *ager publicus* in other regions could still be occupied freely; the allies who possessed this land were in most cases not affected by the creation of these new forms of tenure, since the land they worked remained *ager occupatorius*.

In the second century favourable economic circumstances in the beginning of the century had stimulated rapid growth of the Roman citizen population, which led to a growth of the demand for land in central Italy, where most of the citizens still lived. At first excessive pressure on the land was prevented by the removal of the surplus population from central Italy to colonies in the north and south. However, after the 170s distributions of land ceased, while the population continued to grow. Earlier scholars, such as Toynbee, Brunt, and Hopkins – followed by many scholars even today – maintained, influenced by the ancient sources, that *ager publicus* was gradually occupied by the Roman elite, creating large slave-staffed estates. This was supposed to have excluded small Roman farmers from the land, leading to the decline of the citizen population and general misery among the landless proletarians. Beloch and Brunt among others have argued, that this led to an absolute decline in the number of the Roman citizen population. However, it is now generally accepted by such scholars as De Ligt and Lo Cascio that the second century was a century of population growth, although the precise rate of this growth remains hotly debated – I argue that the so-called ‘low count’ is more probable than the ‘high count’. It was this population increase that caused problems for small farmers.

The location of *ager publicus* creates difficulties for the traditional interpretation that the small farmers suffered from the accumulation of public land by the elite. Most land in central Italy had been privatized by the early second century at the latest. The *ager publicus* still present in central Italy had been assigned to individual holders by the creation of secure forms of tenure in the third and second centuries, and therefore the only available *ager publicus* still free for occupation was located in northern and southern Italy. Since it is

generally accepted that the social problems of the second century were the most severe in central Italy, a re-examination of the role of *ager publicus* in these developments has been the most important purpose of this study. In this area there was little public land left; the main problem was that in this region there was simply not enough land to accommodate both a growing population and an increasing demand for land by those wishing to profit from the growing market. It is to be expected that many small farmers suffered from increasing fragmentation of their private holdings, making it harder to support a family on them. However, as land in central Italy was in high demand, a small plot could fetch a reasonable price, which made it attractive to sell the land and move to Rome, where the booming economy provided many opportunities for wage labour. Therefore, it was the private land of small farmers that was accumulated by the rich, and not public land.

In the beginning of the century the migration of people to the city of Rome did not create problems; there were many job opportunities, especially in construction, but in other branches of the economy as well. Small and landless farmers who had remained in the countryside could make a living by working as wage labourers or tenants on large estates. For many young men the army was the main source of work, and indeed the early-second century wars brought in large profits even for simple soldiers. However, as the century progressed living by wage labour became increasingly difficult. The wars fought later in the century were not as attractive as the earlier ones; instead, they were slow, dangerous, and unrewarding. This led to increasing reluctance to join the army, and thereby to a large number of men remaining in Italy who would normally have left. On the other hand, there are indications that the economic situation in the city of Rome from about 140 onwards became more difficult: problems with the food supply may have led to higher prices, while there seems to have been a slack in the number of new public buildings and therefore in opportunities for wage labour. At the same time, the population continued to grow, while no colonization schemes were executed that could relieve central Italy of its excess population. In short, in the second half of the second century a large number of people were looking for work at exactly the time when this was difficult to find. It was the lack of land in the heart of Italy that was responsible for the problems described in the literary sources: increasing proletarianization of the small farmer and a corresponding growth of the rural and urban proletariat. This led to underregistration in the census, thus created the image of a declining population, while in fact the problems were caused by population growth. This situation, however, may not have been recognized by the politicians of the time; as the census figures for this period show a steady decline, they may actually have believed that the population was declining. The occupation of public land by the elite had been a well-known theme in politics from the early Republic onward, and it is therefore not surprising that this was brought forward again to explain the problems occurring in the later second century.



This was a situation in which a reformer such as Tiberius Gracchus could easily gain support. It is extremely hard to reconstruct exactly the reasons that motivated him to propose his agrarian bill – most likely, they were a mix of genuine concern about the perceived shortage of citizens and soldiers and the growth of large slave-staffed estates, and personal feelings of revenge or ambition. To alleviate the problems of the small farmer Tiberius naturally looked to the undistributed *ager publicus* located in the periphery of the peninsula. Even though it is hard to maintain that *ager publicus* was the *cause* of the problems of the second century, its distribution was naturally seen as the *solution* to these problems. As in many early modern states the privatization of public land occurred in a situation of population growth: those having access to the public land wanted to safeguard their rights by distributing public land as private property, thus excluding those without rights of access from their means of subsistence.

Tiberius proposed to distribute the public land to those citizens who did not have the means of supporting themselves. However, Tiberius was not just playing on the emotions of his audience to further his goals. In fact, his proposal was quite sophisticated: to prevent the beneficiaries of this land of losing it again immediately, he made the land private, but inalienable and burdened with a *vectigal*. In this way the Roman state could reclaim the land in the case of failure by the recipient. The *veteres possessores* received security of tenure over a maximum of 500 *iugera* of public land, with an added ‘bonus’ (as compared to the older law on possession of public land) of 250 *iugera* for each child.

However, the land to be distributed was not empty; most of it was in the hands of the Italian allies. They may have forgotten that they were in fact working Roman public land, and the proposal to take the away land from them therefore came as an unpleasant surprise. Some Italians had held their land since before the Second Punic War, and they had not been disloyal to the Romans all this time. They naturally felt they had rights to this land, even though in legal terms it was the property of the Romans. Tiberius was therefore forced to recognize the rights of the Italian *veteres possessores*, who also received security of tenure on land within the legal maximum. The post-Gracchan laws gradually completely privatized the land granted to the *veteres possessores*, and took away any limitations still present on both their land and that of the Gracchan settlers. The period 133-111 therefore saw the privatization of a large part of the arable *ager publicus* in Italy. We have seen that the privatization of public land was directly related to the demographic and economic developments of Roman society: increased demand for land in the third century had already led to the creation of various new forms of tenure on the public land in the vicinity of Rome, while in the second century the continued pressure on the land caused by population growth led to the full privatization of *ager publicus* in the periphery of Italy.

However, even now there was still some *ager publicus* left. The most important category of public land was now *ager scripturarius*, public pasture lands. These were not implicated in any privatization schemes, and remained an important source of revenues for the state even in the imperial period. Some arable land, however, was also still public: the *Lex agraria* of 111, the third and last of the post-Gracchan laws as mentioned by Appian, set out in detail the regulations concerning the remaining public land. Some of this land appears still to have been *ager occupatorius*, of which new occupations of 30 *iugera* or less were allowed. The remaining *ager occupatorius* was to play an important role in the relation between the Romans and their allies in the period leading up to the Social War. Although the allies had been granted private ownership of some of the land they had held before the Gracchan reform, many of them had sustained significant losses. It is likely that many Italian elites held a relatively higher percentage of their land as *ager publicus*, since in many areas so much land had been turned into public land of the Romans that not much else was available. This also meant that some of them had lost more land in the Gracchan reform than most Roman citizens had. The allies felt treated unfairly, and moreover now realized that even if they were loyal to the Romans they might still lose their land. This made them less reluctant to revolt against Rome, and this may have been one of the reasons behind the Social War. Anxiety over *ager publicus* still in their hands was, moreover, one of the immediate causes of the war.

The remaining *ager occupatorius* was privatized during the period of Sulla, when much land was needed for distributions to veteran soldiers. After this period we never hear of it again. The only public land still available was the *ager censorius* in Campania, which was eventually privatized in 59 BC, together with any other public land which may still have existed. Thus, in a period of less than one hundred years, an end had been made to an institution that had been of fundamental importance throughout the Republic, from its earliest expansion in Latium to its development into an empire spanning the Mediterranean.



## Appendix: The amount of *ager publicus* in the Roman Republic

In this Appendix I attempt at giving a systematic overview of the additions of land as *ager publicus* to the Roman territory in Italy. For each addition the date, place, and circumstances are given. I then indicate how much land was privatized by colonization or virgatio distribution within five years. Five years this seems a reasonable period in which the task of distributing land could be carried out, if it was started immediately after the conquest. If the privatization took place more than five years after conquest, the state must have waited before starting the distribution of land. References to the later presence of *ager publicus* are indicated, as well as to later privatizations of land.

As indicated (ch. 2.3.1) most of the actual figures in this Appendix are speculative, and should not be taken at face value. This Appendix only serves to give an indication of the location and amount of *ager publicus* existing in various periods of Republican history, which is necessary if we want to make any valid statement about the role of public land in Roman society. Measurements of territories in modern Italy were made using Google Earth Pro, which allows very accurate measurements of surfaces; however, as it is often not clear which land exactly belonged to ancient territories, these figures as well serve only as an indication.

The discussion starts with the conquest of Veii in 396 BC; as we have seen, the events in the regal and early Republican period are extremely difficult to reconstruct. It is only in the fourth century that the information in our sources becomes more reliable.

### 1. Year: 396

Place: Veii

Circumstances: After several earlier wars Veii was finally defeated in 396. Its population was sold as slaves, except for those loyal to Rome (but cf. ch. 2.5).<sup>1033</sup>

Amount confiscated: Apparently the whole territory of the city was confiscated. Estimates for the size of this area vary; Beloch estimates its size at 562 km<sup>2</sup>; Afzelius at 610 km<sup>2</sup>.<sup>1034</sup> An amount of about 600 km<sup>2</sup> (240,000 *iugera*) must be in the right order of magnitude.

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<sup>1033</sup> Liv. 5.21-22.

<sup>1034</sup> Beloch (1926, 620); Bozza (1939, 166); Afzelius (1942, 68); Cornell (1989c, 295 and 1995a, 329). Burdese (1985, 48) follows (without motivation) Frank's (1959, 23) estimation that the territory of Veii measured 300,000 *iugera* (750 km<sup>2</sup>), and that of this amount two thirds was taken, amounting to 200,000 *iugera*, of which 100,000 were left over as *ager publicus*. Hantos (1983, 35) states that Veii's territory measured 688 km<sup>2</sup>. Cornell (1995, 329) estimates that two thirds of Veii's territory were taken and that this amounted to 112-150,000 *iugera*. De Martino (1980, 26-7) estimates that one half to two thirds were taken, which means 122-163,000 *iugera*. Hermon (2001, 118) states that

Amount privatized within five years: Each citizen received seven *iugera* in 393; in 390 faithful Veientanes also received land. Four new *tribus* were established to accommodate these settlers.<sup>1035</sup>

Amount of *ager publicus* left: It is generally accepted that some of the Veientane territory remained *ager publicus*. However, scholars do not agree on the amount of this land.<sup>1036</sup>

Amount privatized later: In 383 the colonies Sutrium and Nepet were founded.<sup>1037</sup> Afzelius states that their total size was 330 km<sup>2</sup>,<sup>1038</sup> but this seems too high.

In 340 the leaders of Velitrae were displaced into the territory that had belonged to Veii,<sup>1039</sup> and in 329 the same happened to the leaders of Privernum.<sup>1040</sup>

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270,000 *iugera* in Veii became *ager publicus*. About the land taken from Capena there is no information in the sources.

<sup>1035</sup> Liv. 5.30.8, 6.4.4-5; Diod. Sic. 14.102.3-4. See Liverani (1984, 36). The size of the allotments in the Ager Veientanus differs in the sources: Liv. 5.30.8 says it was seven *iugera*, Diod. 14.102.3 says that it was 'four *plethra*, but according to other accounts, twenty-eight'. According to Kolendo (1980, 42) the *plethrum* was often used as an equivalent of the *iugerum*, while in fact a *plethrum* measured 0.38 *iugera*. It may be that by some authors the *plethrum* was used as one quarter of a *iugerum*, and that this has led to a multiplication of seven by four, leading to 28 *iugera*. In any case, it would be more likely for the number in Livy, a Roman source, to be correct. Hermon (1994a, 502) states that 5,000 people are recorded to have received land in Liv. 5.4.5, but thinks the actual number of people was much lower. However, Livy does not record a number at all. De Martino (1980, 26-7) estimates the number of recipients at 4,400 people, who each received seven *iugera*.

<sup>1036</sup> Burdese (1985, 49) and Doveve (2001, 449) estimate the amount of *ager publicus* left over at 100,000 *iugera*; Bozza (1939, 166) sets it at 200,000 *iugera*. Oakley (1997, 657) calculates that the Ager Veientanus measured only 38,500 *iugera*, of which 17,000 would be distributed if 2,500 people each received a seven-*iugera* plot, but the number of recipients may have been higher. Some, e.g. Liverani (1984, 39), think that there was not much *ager publicus* left, since most of the original inhabitants were allowed to keep their land. However, even though the statement that the inhabitants were largely sold as slaves is probably exaggerated, it is attested that only those who had been faithful received land. Nevertheless, a territory of 600 km<sup>2</sup> or 240,000 *iugera* would allow for 34,285 plots of seven *iugera* each. If all Roman citizens and their wives and children received a plot, which is suggested in Livy, plus some of the former inhabitants of Veii, the amount of *ager publicus* left over here cannot have been very large. It is unlikely that it would have been as large as 200,000 *iugera*, which would have been the greater part of the land. Some tens of thousands of *iugera* is very well possible, however. De Martino (1980, 26-7) estimates that 77,000 *iugera* were left as *ager publicus*, while Hermon (2001, 118) states that only 27,000 *iugera* remained public.

<sup>1037</sup> Nepet: Liv. 6.21.4; Sutrium: Diod. Sic. 14.98.5. Vell. 1.14.2 mentions the foundation of Sutrium in 383 and Nepet in 373. Oakley (1997, 571) concludes that, since Velleius is often unreliable, there is no secure evidence for the date of Sutrium. Beloch (1926, 306-7) argues that the territory of these two colonies had belonged to Falerii, and that this was confiscated in the war from 357-1 (Liv. 7.22.4, 7.38.1). However, if the colonies were really founded at the dates recorded in the sources, then the land must have belonged to Veii or Capena.

<sup>1038</sup> Afzelius (1942, 190).

<sup>1039</sup> Liv. 8.14.5-6.

In 210 the unfaithful Campanians were deported to the territory of Veii, Sutrium and Nepes.<sup>1041</sup>

Possibly some of the *ager in trientabulis* was located here.

Sources: Liv. 5.21-22, 5.30.8, 6.4.4-5, 6.21.4, 8.14.5-6, 8.20.9, 26.34.7-10; Diod. Sic. 14.98.5, 14.102.3-4; Vell. 1.14.2.

2. Year: 387/358

Place: Ager Pomptinus

Circumstances: The Ager Pomptinus fell into Roman hands after a war with the Volsci. However, the territory was not secured after a further war with the Hernici in 358.<sup>1042</sup>

Amount confiscated: Apparently the whole Ager Pomptinus was confiscated. Its size is difficult to establish; Beloch sets the size of the *tribus* Pomptina and Publilia at 392 km<sup>2</sup>.<sup>1043</sup>

Amount privatized within five years: In 383 a commission was appointed to settle people on the land. However, it is unclear whether this actually happened at this date.<sup>1044</sup>

Amount of *ager publicus* left: It may be that some *ager publicus* was left over after the establishment of the *tribus*, but it is impossible to calculate its size.<sup>1045</sup>

Amount privatized later: There are no references to later *ager publicus* in the area. Possibly some of the *ager in trientabulis* was located here.

Sources: Liv. 6.5.1-5, 6.6.1, 6.21.4, 7.15.12.

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<sup>1040</sup> Liv. 8.20.9.

<sup>1041</sup> Liv. 26.34.7-10. See ch. 2.3.3.

<sup>1042</sup> Liv. 6.5.1-5, 7.15.9.

<sup>1043</sup> Beloch (1926, 620); Afzelius (1942, 95). The amount of land drained in modern times (located between Cisterna, Circeii and Sezze) measures about 680 km<sup>2</sup> (272,000 *iugera*), but it is likely that much of this land was unsuitable for agriculture in Antiquity. Bozza (1939, 166) thinks the *tribus* Pomptina and Publilia measured only 40,000 *iugera* (100 km<sup>2</sup>), which would allow for 5,714 settlers with seven *iugera*. This is more likely than Beloch's high estimate.

<sup>1044</sup> Liv. 6.21.4 mentions the distribution in 383, but only in 358 were two new *tribus* created, the Publilia and the Pomptina, Liv. 7.15.12. This has led many people to believe that the Ager Pomptinus was not privatized until 358, e.g. Stephenson (1891, 20); Beloch (1926, 357-8); Alföldi (1963, 374), Toynbee (1965a, 375); Cornell (1989b, 317). The main reason to question the early date is that the area was not secured before 358, since in that year there was another war with the Hernici. It was probably only after this war that the territory for the *tribus* Publilia was confiscated, Stephenson (1891, 20); Ross Taylor (1960, 52); Humbert (1978, 152, 162); Cornell (1989b, 320). Moreover, a census was conducted in 363: if land had been distributed before that, a *tribus* should have been created then and not in 358, see Beloch (1926, 358). However, as we have seen (ch. 2.3.11), *tribus* could only be established in pairs, and it may be that the Ager Pomptinus had already been distributed in 383. Some Roman citizens had already settled on the Ager Pomptinus in 386, probably on their own initiative (Liv. 6.6.4).

<sup>1045</sup> Ross Taylor (1960, 50) thinks much of the Ager Pomptinus remained undistributed, but since much of it was probably not suitable for agriculture, this does not mean that a great amount of land was available for occupation.

3. Year: 340

Place: Privernum

Circumstances: Privernum had attacked the Roman colonies Setia and Norba. The town was captured, but returned to the Privernates.<sup>1046</sup>

Amount confiscated: Privernum lost two thirds of its territory; Beloch estimates the former Ager Privernas at 477 km<sup>2</sup>, Afzelius at 340 km<sup>2</sup>,<sup>1047</sup> but an amount of 200 km<sup>2</sup> would be more likely. Two thirds of this would be about 135 km<sup>2</sup>.

Amount privatized within five years: In 338 Roman citizens received  $2\frac{3}{4}$  *iugera* each. The *tribus* Oufentina was established for these citizens in 318.<sup>1048</sup>

Amount of *ager publicus* left: At least 140 km<sup>2</sup>.

Amount privatized later: In 329 the colony Terracina was founded (see item 9).

Sources: Liv. 7.42.8, 8.1.1-3, 8.11.14.

4. Year: 338

Place: Latium

Circumstances: After the Latin War some land was confiscated from the towns that were granted full citizenship.<sup>1049</sup>

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<sup>1046</sup> Liv. 7.42.8, 8.1.1-3. Beloch (1926, 390) thinks the account of 340 is a duplicate of events in 329, since a triumph over Privernum is only recorded in the *Fasti triumphales* for 329 and the *tribus* Oufentina was not created until 318, while between 341 and 329 one or two censuses had taken place: Afzelius (1942, 140). Humbert (1978, 171) does not doubt the historicity of the account. Toynbee (1965a, 134-5) favours 340, but does not exclude the possibility of 329. Salmon (1967, 198 n. 7) and Cornell (1989a, 362) believe the episode happened only in 340 and was duplicated in the record for 329.

<sup>1047</sup> Beloch (1926, 620); Afzelius (1942, 140). It is likely that the Ufens valley belonged to Privernum, but some of the mountains around it, which rise to over 1,000 metres, will not have been considered part of its territory. The surface of the Ufens valley and the valley around Terracina measure no more than 200 km<sup>2</sup>, and this seems a more realistic estimate of Privernum's territory

<sup>1048</sup> Liv. 8.11.14: *Bina in Latino iugera ita ut dodrante ex Privernati complerent data*. Livy's words are a bit unclear, since it seems to imply that people received two *iugera* in Latin plus  $\frac{3}{4}$  of a *iugerum* in Privernian territory, thus De Martino (1980, 37 n. 27); Hantos (1983, 30); Frederiksen (1984, 202 n. 102); Marcone (1997, 117). Castagnoli et al. (1985, 38, 48) are in two minds on the issue. However, it would be impractical to have two *iugera* in Latium and  $\frac{3}{4}$  somewhere else. It is therefore more likely that those settled in Latin territory received two *iugera* and those in Privernian  $2\frac{3}{4}$ . Hantos (1983, 59) assumes that the average *tribus* contained about 5,000 men; if indeed the *tribus* Oufentina contained 5,000 settlers, then the distributed territory would be only 13,750 *iugera*.

<sup>1049</sup> This is not stated explicitly in the sources, but the size of the towns Lavinium, Lanuvium, Aricia, Tusculum, Pedum, Nomentum, and Labicum is calculated as 530 km<sup>2</sup> by Beloch (1926, 620), which is the same amount that Afzelius (1942, 153) allows for these same cities plus the *tribus* Maecia and Scaptia. Apparently he assumes that some land had been taken from the incorporated towns, but it is not clear how much land he ascribes to these two *tribus* proper. Livy states that the inhabitants of the towns who now received citizenship were inscribed in the two new *tribus*. However, the *tribus* must have had some actual territory, and this is located by Beloch and Afzelius to the south of Aricia and Velitrae; see also Cornell (1989a, 362). Livy also states that

Amount confiscated: Some land was confiscated, but it is unclear how much.  
 Amount privatized within five years: Two *iugera* each were distributed to Roman citizens; a new colony was founded at Antium.<sup>1050</sup>  
 Amount of *ager publicus* left: Some *ager publicus* may have been left.  
 Amount privatized later: Possibly some of the *ager in trientabulis* was located here.  
 Sources: Liv. 8.11.14, 8.14.2-11.

## 5. Year: 338

Place: Campania

Circumstances: After the Latin War some land was confiscated from the Campanians.

Amount confiscated: The Ager Falernus was confiscated in its entirety. Its territory is estimated by Afzelius at 225 km<sup>2</sup> and by Beloch at 198 km<sup>2</sup>.<sup>1051</sup> An amount of 200 km<sup>2</sup> or thereabouts is probably correct.

Amount privatized within five years: Three *iugera* each were distributed to individual Roman citizens. The *tribus* Falerna was established for these citizens.<sup>1052</sup>

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some land was distributed to Roman citizens in Latium, and since there is no other location where this could have taken place, it is likely that some old Roman citizens were settled in these two new *tribus* as well. However, since membership of the new *tribus* was filled mostly by new citizens, the state did not need to give land to a great number of existing citizens to arrive at a number of people that was reasonable to make up a *tribus*, and so the amount of land distributed in these *tribus* may have been smaller than in those that were made up exclusively of existing citizens. Some of the *priscae Latinae coloniae* (Signia, Norba, Setia, Ardea and Circeii) retained their status of Latin colonies, while the others were turned into *municipia* and received Roman citizenship; it is possible that these new citizens were also inscribed in the two new *tribus*. See Toynbee (1965a, 135); Humbert (1978, 172, 190). If each *tribus* contained 5,000 people and only half of them were original Romans, then only 10,000 *iugera* may have been distributed; the amount may very well have been less.

<sup>1050</sup> Liv. 8.11.14, 8.14.8. See Stephenson (1891, 28); Hantos (1983, 30-1). It is not clear how much land was involved in this distribution; since the distributed amount per person was so small, relatively many people could have received land here (see below).

<sup>1051</sup> Beloch (1926, 620); Afzelius (1942, 153). The territory between the Volturnus river, Francolise, Mons Massicus, Agnena, and the sea measures some 190 km<sup>2</sup> (80,000 *iugera*).

<sup>1052</sup> Liv. 8.11.13-4: *Latinus ager Privernati addito agro et Falernus, qui populi Campani fuerat, usque ad Volturnum flumen plebi Romanae dividitur. (...) Terna in Falerno quadrantibus etiam pro longinquitate adiectis*. The text of Livy has caused some misunderstanding: some have assumed that the settlers in the Ager Falernus received  $3\frac{1}{4}$  *iugera* of land, e.g. De Martino (1980, 37 n. 27); Arthur (1991a, 35); Marcone (1997, 117). However, Livy's text (*terna in Falerno*) clearly means that each man received three *iugera*. The one-quarter that was 'added' refers then to the fact that the settlers in the Ager Falernus received one quarter more than those in the territory of Privernum; see Vallat (1983a, 192). Some believe that the Ager Falernus was not distributed until 318, because the *tribus* Falerna was created in that year, e.g. Vallat (1983a, 195), but it often happened that a *tribus* was not established until several decades after the distribution of the land (see ch. 2.3.11).

It is unclear how many people received an allotment. The census of 323 BC apparently stated that Rome at this time had about 150,000 citizens, but this number is far too high. If the *tribus* Falerna



Amount of *ager publicus* left: No *ager publicus* was left in this area.

Amount privatized later: None.

Sources: Liv. 8.11.13-4.

6. Year: 338

Place: Velitrae

Circumstances: Velitrae had joined the rebellion in the Latin War. The land of its Senators was confiscated and they were deported to the other side of the Tiber.<sup>1053</sup>

Amount confiscated: Some land was confiscated for distribution.

Amount privatized within five years: Colonists were sent to the land previously owned by the Senators. This can only have been a relatively small area.<sup>1054</sup> It is possible that these colonists were inscribed in the *tribus* Maecia and Scaptia, which were located immediately to the south of Velitrae.

Amount of *ager publicus* left: There are no later references to *ager publicus* in this area.

Amount privatized later: Possibly some of the *ager in trientabulis* was located here.

Sources: Liv. 8.14.5-7.

7. Year: 338

Place: Tibur and Praeneste

Circumstances: Tibur and Praeneste remained *civitates foederatae*, but had to give up some land, because they had earlier been allied with the Gauls.<sup>1055</sup>

Amount confiscated: Some land was confiscated, but we have no indication of how much.

Amount privatized within five years: None.

Amount of *ager publicus* left: There must have been some *ager publicus* left, since there are no references to distributions of land here.

Amount privatized later: Possibly some of the *ager in trientabulis* was located here.

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consisted of only 5,000 people, the distributed area cannot have been larger than 10,000 *iugera*; if Romans who remained in their old *tribus* also received land, it may have been higher. There are no references to distributions of land in the area later, and the whole Ager Falernus therefore seems to have been distributed.

<sup>1053</sup> Liv. 8.14.5-7.

<sup>1054</sup> If we estimate that there were 50 Senators, and that each owned 50 *iugera* of land, only 2,500 *iugera* may have been confiscated. This was apparently all distributed, since Livy says: 'Colonists were sent on to the land they had possessed, and their numbers made Velitrae look as populous as formerly.'

<sup>1055</sup> Liv. 8.14.9. Beloch (1926, 380) does not believe the confiscation of land from these towns, since there are no records of later assignments of land; however, it is very well possible that the land remained public: Oakley (1998, 567). If we assume, as for Velitrae, that each town lost 2,500 *iugera*, a total of 5,000 *iugera* can have been made public.

Sources: Liv. 8.14.9.

8. Year: 334

Place: Samnium

Circumstances: The Aurunci and Sidicini were defeated and fled to Cales. The city was besieged and captured with the help of an escaped Roman prisoner.<sup>1056</sup>

Amount confiscated: Some land was taken from the Sidicini; Afzelius estimates their territory at 440 km<sup>2</sup>.

Amount privatized within five years: The colony Cales was founded in 334 with 2500 colonists. Its territory is estimated by Afzelius at 100 km<sup>2</sup>, which means that the Sidicini would have lost about 22% of their territory.<sup>1057</sup>

Amount of *ager publicus* left: It is possible that some *ager publicus* was left here.

Amount privatized later: In 183 additional colonists were sent to Cales.<sup>1058</sup>

Sources: Liv. 8.15.1-6, 8.16.13-4; ILS 45; Vell 1.14.3.

9. Year: 329

Place: Privernum

Circumstances: Privernum attacked the Roman colonies of Setia, Norba, and Cora. The city was besieged and the walls destroyed. Its senators were deported to the other side of the Tiber.<sup>1059</sup>

Amount confiscated: The land for the colony Terracina was confiscated (but cf. item 3).

Amount privatized within five years: The colony Terracina was established with 300 colonists, who each received two *iugera*. Afzelius estimates its size at 140 km<sup>2</sup>,<sup>1060</sup> but this is too much.

Amount of *ager publicus* left: There are no references to later *ager publicus* in this area.

Amount privatized later: None.

Sources: Liv. 8.19.3-8.21.11; *Fasti Triumphales* 329/8; Vell. 1.14.4.

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<sup>1056</sup> Liv. 8.15.1-6.

<sup>1057</sup> Liv. 8.16.13-4; Vell 1.14.3. Beloch (1926, 536); Afzelius (1942, 157). If all 100 km<sup>2</sup> (40,000 *iugera*) were distributed to the settlers and there were 2,500 of them (which is not attested) it would mean that each received 16 *iugera* of land. This is assumed by Vallat (1981b, 82), but in fact there is no evidence for this. If they received only ten *iugera* each, 25,000 *iugera* would have been distributed; if some additional land was given out as common land, then 100 km<sup>2</sup> may be possible, but as we have seen, this was not necessarily the case.

<sup>1058</sup> ILS 45. It may be, however, that this they were settled on land that had been abandoned by the previous colonists.

<sup>1059</sup> Liv. 8.20.9; *Fasti Triumphales* 329/8.

<sup>1060</sup> Liv. 8.21.11; Vell. 1.14.4. Afzelius (1942, 191). However, the 300 colonists would only receive 600 *iugera* (1.5 km<sup>2</sup>) of land. The valley in which Terracina is located measures only 20 km<sup>2</sup> (8,000 *iugera*), which would allow them a more than sufficient amount of land to support themselves (Photo 12).

10. Year: 328

Place: Volsci

Circumstances: Land had been taken from the Volsci; it is not clear when (maybe in 329, when they submitted themselves to Roman rule in exchange for protection against the Samnites).<sup>1061</sup>

Amount confiscated: Some land was confiscated for colonization.

Amount privatized within five years: In 328 a colony was founded in Fregellae.<sup>1062</sup> Afzelius estimates its territory at 305 km<sup>2</sup>, but thus certainly too high. About half of this may be more likely.<sup>1063</sup>

Amount of *ager publicus* left: There are no references to later *ager publicus* in this area.

Amount privatized later: None.

Sources: Liv. 8.22.2; App. *Samn.* 4.4-5.

11. Year: 315

Place: Samnium

Circumstances: In the Second Samnite War land was confiscated from the Caudini.<sup>1064</sup>

Amount confiscated: Some land was confiscated to establish a colony.

Amount privatized within five years: The Latin colony Saticula was founded in 312. Afzelius estimates its size at 195 km<sup>2</sup>, but this most likely too large.<sup>1065</sup>

Amount of *ager publicus* left: There are no later references to *ager publicus* in this area.<sup>1066</sup>

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<sup>1061</sup> Beloch (1926, 380).

<sup>1062</sup> Liv. 8.22.2; App. *Samn.* 4.5. Beloch (1926, 395, 408) thinks the colony Fregellae cannot have been founded until 313, at the same time as the other colonies in the Liris valley. In 313 the town was again conquered by the Romans and the leading citizens executed, see Diod. Sic. 19.103.3; Liv. 9.24.13, who, however, connects this story with Sora. Oakley (2005a, 292) believes that Sora was not colonized until 303, but that the 'colonists' killed may have been a Roman garrison. Beloch argues that therefore it cannot have been a colony until then; however, it is possible that the Samnite population had continued to live in the town, even though Roman colonists were also sent there.

<sup>1063</sup> Beloch (1926, 529-30); Afzelius (1942, 157); Coarelli (1989, plate LIV). It may, however, be that not all the mountainous terrain that Afzelius includes in his estimation formed part of the colony's territory, in which case the territory would have been much smaller. The valley between modern Pico, Colfelice, Pofi, Castro dei Volsci, and Pastena measures about 160 km<sup>2</sup>. If there were 4,000 colonists who each received ten *iugera*, the necessary amount was 40,000 *iugera* (100 km<sup>2</sup>).

<sup>1064</sup> Liv. 9.22.11.

<sup>1065</sup> Vell. 1.14.4; Festus 458 L. Beloch (1962, 541); Afzelius (1942, 17). The fertile valley in which Saticula is located, between Moiano, Melizzano, Castel Campagnano, Limatola, and Bagnoli, measures about 100 km<sup>2</sup>. If there were 2,500 colonists who received ten *iugera* each, 25,000 *iugera* (62.5 km<sup>2</sup>) may have been distributed.

<sup>1066</sup> Grelle (1994, 255-6) argues that the land in Celenza Valfortore on which the later Gracchan distributions took place was confiscated at this time, but there is no evidence for this. He keeps

Amount privatized later: None.

Sources: Liv. 9.22.11; Vell. 1.14.4; Festus 458 L.

12. Year: 314

Place: Apulia

Circumstances: The Roman garrison at Luceria was betrayed and murdered by the Samnites. The inhabitants of Luceria and the Samnites were all killed and a colony was sent to Luceria.<sup>1067</sup>

Amount confiscated: Apart from the land confiscated for the colony Luceria, it is unlikely that much other land was taken, since Roman control over the area was still precarious, and Luceria was only an outpost to keep an eye on the Samnites.

Amount privatized within five years: The colony Luceria was founded with 2,500 colonists.<sup>1068</sup>

Amount of *ager publicus* left: There are no later references to *ager publicus* in this area, but it is possible that some was left over after the establishment of the colony.

Amount privatized later: None.

Sources: Liv. 9.26.1-5; Diod. Sic. 19.72.8; Polyb. 3.88.5; Vell. 1.14.4.

13. Year: 314

Place: Campania

Circumstances: The Aurunci had subjected themselves to Roman rule in the Latin War, but in the Second Samnite War they joined the Samnites. Beloch assumes that all their land was confiscated, and estimates the size of their territory at 693 km<sup>2</sup>.<sup>1069</sup>

Amount confiscated: Land was confiscated for several colonies.

Amount privatized within five years: The Latin colonies Interamna and Suessa were founded in 313 and 312 respectively; Beloch estimates Interamna at 195 and Suessa at 271 km<sup>2</sup>; Afzelius sets the combined territory size at 445

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open the possibility, however, that the area around Celenza was part of the Ager Taurasinus, which was confiscated after the Third Samnite War.

<sup>1067</sup> Liv. 9.26.1-5; Polyb. 3.88.5.

<sup>1068</sup> Diod. Sic. 19.72.8; Vell. 1.14.4. Beloch (1926, 549) assumes that the territory 'im Westen reichte es ohne Zweifel bis an den Kamm der Berge, die Apulien von Samnium trennen'. Afzelius (1942, 170) therefore estimates its territory at 790 km<sup>2</sup>. However, it is very unlikely that the colony Luceria would have had such a large territory at the time of its foundation, and especially that the steep mountains bordering on Samnite territory would be part of the colony. Its territory is therefore likely to have been much smaller in the mid-Republican period. 2,500 Colonists would need only 25,000 *iugera* (62.5 km<sup>2</sup>), if each received ten *iugera*.

<sup>1069</sup> Liv. 9.25.9; Diod. Sic. 18.90.2. Beloch (1926, 620); Afzelius (1942, 152-3). There is, however, no need to assume that all Auruncan territory was confiscated.

km<sup>2</sup>.<sup>1070</sup> However, they may have been much smaller. A colony was settled on the Pontian islands in 313, which cannot have been larger than 10 km<sup>2</sup>.<sup>1071</sup>

Amount of *ager publicus* left: Some land was left for the later colonies Minturnae and Sinuessa.

Amount privatized later: The Roman colonies Minturnae and Sinuessa were founded in 295, possibly with 300 colonists each who received two *iugera*. Beloch estimates Minturnae at 120 km<sup>2</sup> and Sinuessa at 107 km<sup>2</sup>, but this seems far too large.<sup>1072</sup>

Sources: Liv. 9.25.1, 9.28.7-8, 10.21.7-10; Vell. 1.14.4, 1.14.6; Diod. Sic. 18.90.2, 19.101.3, 19.105.3; Cic. *Phil.* 13.8.18; DH 1.9.2; CIL 1<sup>2</sup>.1578, 9.5074.

#### 14. Year: 306

Place: Volsci

Circumstances: Roman colonists in Sora had been killed by the Volsci. It was retaken in 306 (however, cf. note 30).<sup>1073</sup>

Amount confiscated: Some land was confiscated to establish a colony.

Amount privatized within five years: The Latin colony Sora was founded in 303 with 4000 colonists. Afzelius estimates its size at 230 km<sup>2</sup>,<sup>1074</sup> but it was most likely smaller.

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<sup>1070</sup> Liv. 9.28.7-8; Vell. 1.14.4; Diod. Sic. 19.105.3; Cic. *Phil.* 13.8.18; CIL 9.5074. Beloch (1926, 620); Afzelius (1942, 170). Again, it is unlikely that the mountainous terrain which these authors include in the territory of the colonies, especially that to the south of Interamna and the east of Suessa, was included at the time of the foundation, so that a size of 300-350 km<sup>2</sup> for the two colonies is more likely. See for the territory of Suessa also Arthur (1982, 178). The valley between modern Roccamonfina, M. Pecorano, Cellole, and the Liris measures only 85 km<sup>2</sup>, and the territory between the Liris, Vallemario, and S. Giorgio is of the same size. Wightman & Hayes (1995a, 36) state that if each settler received six *iugera*, 24,000 would have been needed, but that at least five times as much land had been confiscated. However, there is no evidence for this. Interamna had 4,000 colonists; if we assume the same for Suessa and assume that they received ten *iugera* each, then 80,000 *iugera* (200 km<sup>2</sup>) would have been distributed.

<sup>1071</sup> Diod. Sic. 19.101.3.

<sup>1072</sup> Liv. 10.21.7-10; DH 1.9.2; Vell. 1.14.6; CIL 1<sup>2</sup>.1578. Beloch (1926, 620); Afzelius (1942, 191). The colonists would, again, need only 1.5 km<sup>2</sup> per colony. The centuriation found between Minturnae, Sinuessa, and Suessa measures 110 km<sup>2</sup> in total, and does not include the Mons Massicus and the area between the Massicus and the Volturnus river. It is possible that this area was not included in the territories of the colonies. The centuriation visible here was probably created after the third century, but smaller and most likely older grids have also been found here: Chouquer et al. (1987, 169-80). See also Coarelli (1989, 249). The valley between modern Scauri, Ausonia, the Liris, Cellole, M. Massicus, Mondragone, and the Volturnus river measures about 150 km<sup>2</sup>. If we assume that the territory of each colony was the same size as that of Terracina, then about 16,000 *iugera* (40 km<sup>2</sup>) may have been distributed.

<sup>1073</sup> Liv. 9.23.1-2; 9.24, 9.44.16. Beloch (1926, 410); Afzelius (1942, 167).

<sup>1074</sup> Liv. 10.1.1-2; Vell. 1.14.5. Beloch (1926, 527-8); Afzelius (1942, 170). It is, however, likely that the very high mountains (up to 1,900 m) around the plain in which Sora is situated were not considered part of the territory. The valley between Sora, Campoli, and Isola del Liri measures only about 70 km<sup>2</sup> (Photo 13). If the 4,000 colonists each received 10 *iugera*, at least 100 km<sup>2</sup> were

Amount of *ager publicus* left: There are no references to later *ager publicus* in this area, but it is possible that much of the mountainous terrain remained public.

Amount privatized later: None.

Sources: Liv. 9.23.1-2, 9.24, 9.44.16, 10.1.1-2; Vell. 1.14.5.

15. Year: 306

Place: Frusino

Circumstances: Frusino was accused of having exhorted the Hernici to revolt. Those responsible were executed.<sup>1075</sup>

Amount confiscated: Frusino had to give up one third of its territory. The Hernici themselves lost the land around Anagnia.<sup>1076</sup> Beloch estimates the size of Frusino at 190 km<sup>2</sup>, one third of which would have been 63 km<sup>2</sup>.<sup>1077</sup>

Amount privatized within five years: The *tribus* Teretina was founded in 299 on land having belonged to Frusino.<sup>1078</sup>

Amount of *ager publicus* left: There are no references to later *ager publicus* in this area.

Amount privatized later: None.

Sources: Liv. 10.1.3, 10.9.14; Diod. Sic. 20.80.4; Festus 262 L.

15A. Year: 305

Place: Samnium

Circumstances: Diodorus records the confiscation of land from the Paeligni.<sup>1079</sup>

Amount confiscated: An unknown amount of land was taken.

Amount privatized within five years: None.

Amount of *ager publicus* left: There are no references to later *ager publicus* in this area.

Amount privatized later: None.

Sources: Diod. Sic. 20.90.3.

16. Year: 304

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needed to provide them with land; the amount distributed may therefore have been smaller, or they may have been settled farther away from Sora or on the lower hills.

<sup>1075</sup> Liv. 10.1.3.

<sup>1076</sup> Beloch (1926, 417); Afzelius (1942, 169), based on the fact that Festus mentions a *praefectura* Anagnia. However, it is unclear whether the land became *ager publicus*, or that the Anagnians were given the *civitas sine suffragio* and governed in a *praefectura*. See Humbert (1978, 214).

<sup>1077</sup> Beloch (1926, 620). Afzelius (1942, 455) calculates the size of Arpinum and Frusino together at 455 km<sup>2</sup>; this would allow about 200 km<sup>2</sup> for Frusino. One third of this would be about 60 km<sup>2</sup> (24,000 *iugera*).

<sup>1078</sup> Liv. 10.9.14; Diod. Sic. 20.80.4; Festus 262 L. Beloch (1926, 417, 422); Ross Taylor (1960, 58). 24,000 *iugera* would allow for only 3,428 seven-*iugera* plots.

<sup>1079</sup> Diod. Sic. 20.90.3. Oakley (1998, 396) doubts this statement.

Place: Sabinum

Circumstances: Livy records the grant of citizenship to Trebula.

Amount confiscated: According to Beloch the land where Forum Novum was established later was confiscated in this year. He estimates the size of this territory at 1,015 km<sup>2</sup>.<sup>1080</sup>

Amount privatize within five years: None.

Amount of *ager publicus* left: There are no references to later *ager publicus* in this area.

Amount privatized later: Forum Novum was founded at some unknown date.

Sources: Liv. 10.1.2.

#### 17. Year: 304

Place: Aequi

Circumstances: The Aequi were offered either Roman citizenship or war, and chose war. 31 Towns were captured and most of them destroyed. All of the land is believed to have become *ager publicus*, and this is estimated at 1,445 km<sup>2</sup>.<sup>1081</sup>

Amount confiscated: Some the land was confiscated for the colonies and the *tribus* Aniensis.

Amount privatized within five years: The Latin colony Alba was founded in 303 with 6,000 colonists and Carseoli in 298 with 4,000 colonists.<sup>1082</sup>

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<sup>1080</sup> Beloch (1926, 424-5, 597) argues that the Trebula indicated by Livy is Trebula Mutuesca, and that this was defeated in a war recorded in the *Fasti triumphales* as *de Samnitibus*. He argues that this victory was accompanied by the confiscation of land on which Forum Novum was founded. However, there is no information as to when Forum Novum was founded or even whether it was a settlement of Roman citizens or of native inhabitants. The size of its territory is impossible to estimate, but 1,015 km<sup>2</sup> is surely far too large.

<sup>1081</sup> Liv. 9.45.5-18, Beloch (1926, 620) states that the territory of the Aequi in the Anio valley measured 507 km<sup>2</sup>, while Afzelius (1942, 178) states that this measured 740 km<sup>2</sup>, which leaves 233 km<sup>2</sup> for the *tribus* Aniensis.

<sup>1082</sup> Liv. 10.1.1; Vell. 1.14.5. In Liv. 10.3.2 Carseoli is called a colony in the territory of the Marsi and reported to have been founded in 302, while in 10.13.1 it is mentioned as being founded the territory of the Aequiculi in 298. Salmon (1967, 256 n. 2) thinks the colony may have been voted in 302 but not established until 298. However, Beloch (1926, 422-3, 410), Afzelius (1942, 165), and Humbert (1978, 218) point out that there is no reliable record of war against the Marsi, Paeligni, Frentani, and Marrucini at any time in the Republic (as is stated by App. BC 1.46, but cf. Diod. Sic. 20.90.3), and so no land can have been taken from any of these peoples. In any case, Carseoli is located in the territory of the Aequi, not that of the Marsi. Oakley (2005b, 69) thinks 298 more likely; the testimony of Velleius is too unreliable to be of much value.

The colonies Alba and Carseoli together measured 705 km<sup>2</sup>, according to Afzelius (1942, 178). However, it seems very unlikely that all the mountains (up to 1,700 m) in the area were considered part of the territory of the colonies. It is more likely that only the flat valleys near Alba and Carseoli were part of the territories, and therefore that the size of the colonies was much smaller. The valley to the south of Alba (Photo 14) measures about 150 km<sup>2</sup> (60,000 *iugera*), which is the size that would have been necessary if 6,000 colonists each received 10 *iugera*. The

The *tribus* Aniensis was founded in 299 for Roman citizens.<sup>1083</sup>

Amount of *ager publicus* left: There are no references to later *ager publicus* in this area, but some of the mountainous terrain may have remained *ager publicus*.

Amount privatized later: None.

Sources: Liv. 9.45.5-18, 10.1.1, 10.3.2, 10.9.14, 10.13.1; Vell. 1.14.5.

18. Year: 299

Place: Umbria

Circumstances: Nequinum was besieged and, after a long siege, captured by treason.

Amount confiscated: Some land was confiscated to establish a colony.<sup>1084</sup>

Amount privatized within five years: The colony Narnia was founded in 299. Afzelius estimates its size at 185 km<sup>2</sup>, but this seems too much.<sup>1085</sup>

Amount of *ager publicus* left: Unknown.

Amount privatized later: In 199 Narnia received 1,000 new colonists.<sup>1086</sup> It may be, however, that they replaced previous colonists who had died, so that there was no additional *ager publicus* available here.

Sisani assumes land was distributed here in 200.<sup>1087</sup>

Sources: Liv. 10.10.1-5, 32.2.6; *Fasti triumphales* 299/8.

19. Year: 295

Place: Umbria

Circumstances: The Umbrians were defeated in war.<sup>1088</sup>

Amount confiscated: Apparently some land was confiscated around the towns Fulginiae, Plestia, Nuceria and Tadinum.<sup>1089</sup>

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centuriation in this valley measures only about 80 km<sup>2</sup>. Chouquer & Favory (1991, 104) assume 35,000 *iugera* were distributed in Alba, but this means only six *iugera* per person, which seems too little. In Carseoli the 4,000 colonists would have needed 100 km<sup>2</sup> (40,000 *iugera*), however, it is located in a narrow valley (Photo 15), measuring only about 40 km<sup>2</sup>, where there hardly seems room for such a large number of people.

<sup>1083</sup> Liv. 10.9.14. Beloch (1926, 422), Afzelius (1942, 174), and Ross Taylor (1960, 56) locate it to the southwest of Carseoli, in the Anio valley. If there were 5,000 settlers with ten *iugera* each, 50,000 *iugera* (125 km<sup>2</sup>) would have been necessary. Many of the mountains on the sides of the Anio valley were not suitable for agriculture, and they may have remained *ager publicus*.

<sup>1084</sup> Liv. 10.10.1-5; *Fasti triumphales* 299/8.

<sup>1085</sup> Liv. 10.10.5. Beloch (1926, 426); Afzelius (1942, 181). If there were 4,000 settlers who received 10 *iugera* each, 40,000 *iugera* (100 km<sup>2</sup>) would have been needed.

<sup>1086</sup> Liv. 32.2.6.

<sup>1087</sup> He assumes that part of the veterans of Scipio were settled here, and not only in Samnium and Apulia, Sisani (2007, 136-9, 218-9). His arguments, however, are not convincing.

<sup>1088</sup> Liv. 10.30.5.

<sup>1089</sup> Beloch (1926, 443, 604); Afzelius (1942, 177). Beloch cites Cic. *Var. fr.* 4 as proof that Fulginiae was a *praefectura* and argues that Plestia's *octoviri* show that it was a *praefectura*; for the other cities



Amount privatized within five years: It may be that some land was distributed in virgane assignments, but there is no secure evidence for this.<sup>1090</sup>

Amount of *ager publicus* left: Some land was left for later colonization.

Amount privatized later: The colony Spoletium was founded in 241. Its territory is estimated by Beloch at 265 km<sup>2</sup>, and by Afzelius at 430 km<sup>2</sup>, but both seem too much.<sup>1091</sup>

Sources: Liv. 10.30.5, *Per.* 20.2; Cic. *Balb.* 21.48; Vell. 1.14.8.

## 20. Year: 291

Place: Apulia

Circumstances: Venusia, a Samnite town in Apulia, was captured by storm during the Third Samnite War.

Amount confiscated: Some land was confiscated to establish a colony.<sup>1092</sup>

Amount privatized within five years: In 291 the colony Venusia was founded. Its territory is estimated by Afzelius at 800 km<sup>2</sup>, but this seems too large.<sup>1093</sup>

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this is not attested. However, land could also be administered in *praefecturae* if the land was not confiscated; therefore, there is no real evidence that all these places became *ager publicus*.

<sup>1090</sup> Bradley (2000, 193-5) thinks that about 40,000 people (12,500 men) received virgane allotments in Umbria in the third century, which would mean 87,500 *iugera* if each received seven; see also Nagle (1973, 371); Sisani (2007, 230). Because of these distributions 'the amount of unassigned *ager publicus* is likely to have been considerably less here than in the south, where there were probably substantial punitive confiscations after the Hannibalic War. A large proportion of the land annexed from Umbrian communities during the conquest must have been used for the colonial distributions of the third century': Bradley (2000, 195). He is right that the amount of *ager publicus* here cannot be compared in scale to that in Southern Italy. However, the number of attested colonies in both Etruria and Umbria is small; virgane divisions are more difficult to point out, and none are securely proven. Bradley also supposes that the number of virgane distributions was so great that there must have been Umbrians among them, because otherwise so many Romans would have been settled that none were left in Rome. However, all in all there is very little evidence for virgane divisions in Umbria. It would be more likely that many Umbrians were simply left on the lands they had always possessed and only a small amount was distributed to settlers. Bradley (2000, 129-38) also thinks Interamna Nahars was a Latin colony, followed by Van Dooren (2008, 117), but there is no evidence for this.

<sup>1091</sup> Liv. *Per.* 20.2; Cic. *Balb.* 21.48; Vell. 1.14.8. Beloch (1926, 620); Afzelius (1942, 181). These amounts seem too large; even if the colony had 6,000 colonists who each received ten *iugera*, the necessary amount of land would be only 150 km<sup>2</sup> (60,000 *iugera*). Sisani (2007, 93) assumes the territory was large, but does not give an amount.

<sup>1092</sup> Fronda (2006, 401) argues that the Apulians had already lost land when they were first defeated by the Romans in 318/7, but there is no evidence for this. See Cornell (1989a, 380).

<sup>1093</sup> Vell. 1.14.6; Hor. *Sat.* 2.1.35. Beloch (1926, 544); Afzelius (1942, 181). The number of colonists in this colony has caused much debate: DH 17/18.5.2 mentions the extremely high number of 20,000. Most scholars believe this is an error of transmission and that the actual number was lower. It is very well possible that the numeral for 2,000 has become corrupt in transmission. 2,000 Was represented by MM; 20,000 by MM with a line above. However the text of Dionysius says διςμυρίων and does not use numerals, so the corruption must already have occurred in Dionysius' Latin source. The city could accommodate only 2,000 people inside its walls; on the other hand, it is not necessary that all colonists lived in the city. Others put the number of

Amount of *ager publicus* left: There are no references to later *ager publicus* in this area.

Amount privatized later: In 200 Venusia received new colonists.<sup>1094</sup>

Sources: DH 17/18.4.5; Vell. 1.14.6; Liv. 31.49.6; Hor. *Sat.* 2.1.35.

## 21. Year: 290

Place: Sabinum

Circumstances: Sabinum was conquered in war.<sup>1095</sup>

Amount confiscated: Some land was confiscated for a virgane distribution.<sup>1096</sup>

Amount privatized within five years: The soldiers of Dentatus received seven *iugera* each.<sup>1097</sup> Some land was sold as *ager quaestorius*. In 241 the *tribus* Quirina was established.<sup>1098</sup>

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colonists at 6,000, because this was more often the case when colonies were founded in hostile territory farther away from Rome, see Salmon (1967, 277 and 1969, 60-1). However, the only other recorded case in which 6,000 colonists were sent out was Alba Fucens, which is hardly comparable in location with Venusia. Some suppose that the number was actually 20,000, but that this was reached by including the local inhabitants in the number of colonists as well, either as *adtributi* or as official colonists. This would be supported by the fact that many previous settlements disappeared after the foundation of the colony; see Galsterer (1976, 55); Compatangelo (1989, 49); Lomas (1993, 118); Curti (1995, 210); Torelli (1999a, 94); Torelli (2002, 72). This is, however, unparalleled in the history of Roman colonization; usually the number of colonists includes only the Roman citizens sent out, even if *adtributi* were also admitted in the colony. It would be unwise to accept this solution for Venusia without further evidence, see Tagliente et al. (1991, 93-4). Even if there actually were 20,000 colonists and they received ten *iugera* each, only 200,000 *iugera* (400 km<sup>2</sup>) would have been necessary.

<sup>1094</sup> Liv. 31.49.6. Some assume they were settled on land taken after the Second Punic War, but this is not necessary; it may have been land that was taken already in the third century, but had not yet been distributed. If the number of colonists had declined during the war, new colonists may simply have been settled on the land left open by the departed ones. It is possible that some of the Venesian colonists were soldiers of Scipio, since these are mentioned as receiving land in Apulia and Samnium in this period: Grelle (1981, 195); Volpe (1990, 219); Wild (1995, 305).

<sup>1095</sup> Liv. *Per.* 11.6.

<sup>1096</sup> Flor. 1.1.15.3; Oros. 3.22.11. Some of the Sabines received the full citizenship, others the *civitas sine suffragio*. Beloch estimates the size of Sabinum, plus the Vestinian territory of Aveia and Peltuinum, at 3,659 km<sup>2</sup> (of which 640 belonged to the Vestini, the rest to the Sabines), Afzelius estimates it at 3,965 km<sup>2</sup>: Beloch (1926, 429, 598); Afzelius (1942, 178-81); Humbert (1978, 222-6). Cornell (1989a, 403 and 1995, 380) assumes 20-30,000 colonists were settled by Dentatus on the land of the Sabines and Praetuttii, but there is no evidence for this. If this is correct, and they received ten *iugera* each, the distributed land may have been 300,000 *iugera* (750 km<sup>2</sup>), but this seems too much; about half of this may be more likely.

<sup>1097</sup> Colum. *R.* 1.pr.14; Plu. *Apophth. M'*. *Curii* 1; Front. *Strat.* 4.3.12; Cass. Dio 8.37.1; Plin. *HN* 18.4.18; *Vir. ill.* 33.

<sup>1098</sup> Liv. *Per.* 19.15. Apart from the soldiers of Dentatus it is not clear if and how many other Roman citizens were settled in Sabinum. The territory of the *tribus* Quirina was large, but many of its citizens would have been native Sabines: Hermon (2001, 187-9, 196), contra: Ross Taylor (1960, 66). Humbert (1978, 234-6) thinks that Cic. *Agr.* 2.25.66 shows that there was much *ager publicus* in Sabinum, but in fact Cicero says 'going out at the other gate there is the Capenate, and Faliscan, and Sabine territory. (...) You have money enough to be able not only to buy all these

Amount of *ager publicus* left: There are no references to later *ager publicus* in this area, but some of the mountainous terrain may have remained *ager publicus*.

Amount privatized later: Some of the *ager in trientabulis* may have been located here.

Sources: Liv. *Per.* 11.6, 19.15; Cass. Dio 8.37.1; Flor. 1.1.15.3; Vir. ill. 33; Colum. R. 1.pr.14; Front. *Strat.* 4.3.12; Plin. HN 18.4.18; Plu. *Apophth. M'*. Curii 1; Oros. 3.22.11.

## 22. Year: 290

Place: Praetuttii

Circumstances: The Praetuttii were conquered in war.

Amount confiscated: Some land was confiscated to establish a colony.<sup>1099</sup>

Amount privatized within five years: The colony Hadria was founded in 286. Afzelius estimates its territory at 380 km<sup>2</sup>,<sup>1100</sup> but this seems too large.

Amount of *ager publicus* left: There are no references to later *ager publicus* in this area, but some of the mountainous terrain may have remained *ager publicus*.

Amount privatized later: None.

Sources: Liv. *Per.* 11.7.

## 23. Year: 290

Place: Samnium

Circumstances: Third Samnite War.

Amount confiscated: There is much confusion about which parts of the Samnite territory were confiscated. Some land in western Samnium

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lands and others like them', and the land therefore clearly was not public. Toynbee (1965a, 382) thinks the Sabines in the highlands could keep their land, because most of the new settlers were accommodated on the land that reclaimed from the Lacus Velinus. However, apart from the Lacus Velinus there were other lowlands available. See Brunt (1969, 123); Coccia & Mattingly (1992, 238); Sallares (2002, 76).

<sup>1099</sup> Most of the Praetuttii received the Roman citizenship. Beloch estimates the Praetuttian territory at 1089 km<sup>2</sup>, Afzelius at 1,770 km<sup>2</sup>: Beloch (1926, 620); Afzelius (1942, 181). However, the area included by Afzelius is occupied mainly by the Gran Sasso d'Italia, a mountain range more than 3,000 metres high, and it is unlikely that any people had a secure claim on this land.

<sup>1100</sup> Liv. *Per.* 11.7. Beloch (1926, 556); Afzelius (1942, 181). See also Azzena (1987, 101-3). This would mean that according to Afzelius the Praetuttii had lost 22% of their land; according to Beloch 35%. However, it is likely that some of the mountains to the south of Hadria were not considered part of the colony's territory, in which case this may have been much smaller. If the boundaries were the rivers Vomano and Piomba, then the territory would be 200 km<sup>2</sup>. If there were 4,000 colonists who received 10 *iugera* each, the territory would be only 40,000 *iugera* (100 km<sup>2</sup>).

apparently became *ager publicus*, but it is unclear when this happened.<sup>1101</sup> The Ager Taurasinus was also confiscated after the Third Samnite War.<sup>1102</sup>

Amount privatized within five years: None.

Amount of *ager publicus* left: Some land was left for a virgane distribution

Amount privatized later: In 200 some land was distributed to soldiers of Scipio.<sup>1103</sup>

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<sup>1101</sup> Cic. *Planc.* 8.19 mentions a *praefectura* Atina, which suggests that the land had become *ager publicus* and/or the Samnites had become *cives sine suffragio*. Toynbee (1965b, 120 n. 2), Salmon (1967, 277-8, 288-90 and 1982, 59), and Nagle (1973, 374) think the confiscated communities were Casinum, Atina, Cominium, and Rufrae, and that they were already confiscated after the Third Samnite War. Venafrum and Aquilonia were still autonomous after the Third Samnite War, but were made into *praefecturae* after the Pyrrhic war, together with Allifae. On the other hand, Beloch (1926, 472), Afzelius (1942, 188), Staveley (1989, 423), and Tagliamonte (1996, 148) think that after the Pyrrhic War Atina, Casinum, Venafrum, Allifae, and Aufidena became *praefecturae*, and do not name the other communities mentioned by Salmon. Wightman (1995, 27) states that after the Third Samnite War Atina, Venafrum, and Casinum were made into *praefecturae*. Humbert (1978, 245) assumes this area was not confiscated until the Samnite rebellion in 268. In any case, it is not clear whether these lands became *ager publicus*, or that the inhabitants were granted *civitas sine suffragio* and left on their lands (Humbert chooses the last option). Corbier (1991, 153) and Lomas (1996, 2) assume that the amount of land taken as *ager publicus* after the Third Samnite War was more than one third of the Samnite territory, but this based only on the idea that one third was a 'standard amount', which cannot be proved. Gabba (1969, 217-8) states that much *ager publicus* was taken in Samnium, but does not quantify this.

<sup>1102</sup> It is not completely certain that the Ager Taurasinus was confiscated in this period, but this is usually assumed based on the inscription on the sarcophagus of L. Cornelius Scipio Barbatus: *Taurasia Cisauna Samnio cepit* (ILS 1), see Salmon (1967, 289); Grelle (1994, 255); Tagliamonte (1996, 147); Pareti (1997, 359). Ferone (2005, 116-20) argues that the 'Lucania' mentioned in the inscription was in the territory of the Hirpini, bordering on the Ager Taurasinus, not the whole of Lucania. Toynbee (1965b, 119) and Brunt (1971, 281) assume the Ager Taurasinus was taken only after the Second Punic War. Beloch (1926, 590-1) and Torelli (2002, 130) on the other hand think the Ager Taurasinus was confiscated in 298, but that it was not completely secured until after the Second Punic War. They suppose that if the Romans had been able to use this land earlier, they would have done so. However, it often occurred that land remained *ager publicus* for a long time after its confiscation without being used. Especially this land, which was not very attractive to Roman settlers, would not have been the first used for colonization. Moreover, in the years before the confiscation of the Ager Taurasinus Rome had established many colonies, and it may be that there were not enough settlers to be found for another colony.

<sup>1103</sup> We do not know how many people profited from this distribution scheme; it is usually put at 40,000, e.g. Lomas (1993, 87); Scheidel (2004, 10); Williamson (2005, 163); Sisani (2007, 137 n. 49). However, this is based on the total number of soldiers in Scipio's army, not all of whom were Roman citizens, and so would not all have received land. The veterans received two *iugera* per year of service, which would mean that in theory they could receive as much as 36 *iugera*, if they had served during the entire war. Some of them may indeed have served this long, since part of Scipio's army consisted of the *legiones Cannenses*, which had been levied in 218-16. But this group made up only a small proportion of the army, so it is probable that the average allotment measured about ten *iugera*. Still, if 20,000 soldiers received ten *iugera* each, this amounted to 200,000 *iugera*, or 500 km<sup>2</sup>, see Frederiksen (1970-1, 348); Nagle (1973, 374); Wild (1995, 302). Scalais (1930-2, 205), Brunt (1971, 292), Schneider (1977, 58), and Bringmann (1986, 56) put the number at 30-40,000 soldiers, who each received ten to twelve *iugera*, which would mean 750 to

In 180 the Ager Taurasinus was distributed to 40,000 Ligures, with a further supplement of 7,000 in 173.<sup>1104</sup>

Sources: Cic. *Planc.* 8.19; CIL 10.5193-4; Liv. 40.38.3-8, 40.41.3-4.

#### 24. Year: 283

Place: Picenum

Circumstances: The Senones had killed Roman emissaries. According to the sources, they were completely wiped out and all their land confiscated.<sup>1105</sup>

Amount confiscated: The whole of the Ager Gallicus was confiscated as *ager publicus*. Its size is estimated by Beloch and Afzelius at 2,580 km<sup>2</sup>.<sup>1106</sup> This order of magnitude is most likely correct.

Amount privatized within five years: The colony Sena Gallica was founded in the 280s. Beloch and Afzelius do not make any estimates for its size, but it is unlikely to have been very large.<sup>1107</sup>

Amount of *ager publicus* left: After the foundation of Sena about 2,500 km<sup>2</sup> was left.

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1,200 km<sup>2</sup>, but this seems too much. Toynbee (1965b, 240 n. 7) claims two million *iugera* (5,000 km<sup>2</sup>) were divided to Scipio's veterans in Apulia. This huge number is extremely unlikely, since it would mean 40,000 50-*iugera* plots.

<sup>1104</sup> Liv. 40.38.3-8, 40.41.3-4. It is likely that the 40,000 people included women and children: Toynbee (1965b, 279); Salmon (1967, 310); Pasquinucci (1985, 20); Tagliamonte (1996, 152); and Rosenstein (2004, 166). If there were 40,000 men with additional women and children, the total number would be over 100,000, which is unlikely. Kolendo (1993, 184) and Sirago (1995, 114), however, believe that the total number was 300,000 people, but this is certainly far too much. Still, if the 47,000 people formed some 15,000 families, which each received ten *iugera*, the total amount distributed was at least 150,000 *iugera*, or 375 km<sup>2</sup>.

<sup>1105</sup> Polyb. 2.19.9-12; DH 19.13.1; App. *Gall.* 11, *Samn.* 6.1; Oros. 3.22.13-4. Even if the Senones were not all ejected from their lands, that does not mean that their land cannot have been made *ager publicus*; in fact it happened very often that land was made *ager publicus* without the previous inhabitants being driven off. For the fate of the Senones see ch. 2 note 215.

<sup>1106</sup> Liv. *Per.* 11.7. Beloch (1926, 621); Afzelius (1942, 190). The territory between the Aesis river and Ariminum measures some 2,500 km<sup>2</sup>.

<sup>1107</sup> If there were 300 colonists who received two *iugera* each, then 1.5 km<sup>2</sup> would have been needed. It is possible that, as I have assumed for Terracina, the territory measured 20 km<sup>2</sup> (8,000 *iugera*). There has been some discussion as to the location of the colony Castrum Novum, which Livy *Per.* 11.7 records for the 280s, but Vell. 1.14.8 for 264. Beloch (1926, 429, 452), Bozza (1939, 63), Ross Taylor (1960, 59), Harris (1991, 264), Luni (1995, 483), Hermon (2001, 229), and Antonelli (2003, 76) assume the colony Castrum Novum to be the city with the same name in Picenum. A foundation on the coast of Etruria in the First Punic War, on the other hand, fits in nicely with the other maritime colonies founded here in this period, see Salmon (1963, 21-3); Toynbee (1965a, 131); Harris (1971, 148); Sirago (1971, 14 n. 26); Sherwin-White (1973, 76 n. 5); Mansuelli (1988, 33). Van Dooren (2008, 107, 114, 221) seems to assume both towns to have been colonies. However, since Velleius is notoriously unreliable when it comes to dates, it is likely that Livy is right about the foundation of the colony in the 280s. In that case it would be more likely that the colony was indeed established in Picenum. Guidobaldi (1995, 215) states that the archaeological information suggests that the city was founded in the early third century. Its territory may have measured about 20 km<sup>2</sup>, like we assumed for other Roman colonies.

Amount privatized later: The colony Ariminum was founded in 268. Its territory is estimated by Afzelius at 650 km<sup>2</sup>,<sup>1108</sup> but this seems too large. After this distribution about 2000 km<sup>2</sup> of *ager publicus* was still available.

In 232 the Ager Gallicus was distributed in a virgane distribution.<sup>1109</sup>

In 184 the colony Pisaurum was established, with probably 2,000 colonists who received ten *iugera* of land each. This would involve at least 50 km<sup>2</sup> (20,000 *iugera*).<sup>1110</sup>

In Fanum Fortunae a Gracchan *cippus* has been found, and the name of Forum Sempronii also suggests Gracchan activity.

Sources: Polyb. 2.19.9-12, 2.21.7-8; DH 19.13.1; Zonar. 8.18; Oros. 3.22.13-4; Eutrop. 2.10, 2.16; App. Gall. 11, Samn. 6.1; Liv. 39.44.10, Per. 11.7, 15.5; Val. Max. 5.4.5; Vell. 1.14.7-8; Cic. Brut. 14.57, Sen. 4.11, Inv. 2.17.52, Acad. Pr. 5.13; Cato fr. 43 (in Var. R. 1.2.7).

## 25. Year: 281

Place: Etruria

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<sup>1108</sup> Liv. Per. 15.5; Vell. 1.14.7; Eutrop. 2.16; Zonar. 8.18. Afzelius (1942, 190). If the colony received 6,000 colonists who each received ten *iugera*, 60,000 *iugera* (150 km<sup>2</sup>) would be needed. There is no reason to assume that the colony would receive a further 500 km<sup>2</sup> as common land. There has been much debate on the territory of Ariminum; Foraboschi (1992, 77) states that the Augustan territory was located between the Rubicon and Conca rivers, and that this was probably also the case for the earlier colony. The earliest centuriation as described by Chouquer (1981, 861) measures about 110 km<sup>2</sup>. See also Ewins (1952, 54).

<sup>1109</sup> Val. Max. 5.4.5; Polyb. 2.21.7-8; Cic. Brut. 14.57, Sen. 4.11, Inv. 2.52, Acad. Pr. 5.13; Cato fr. 43 (in Var. R. 1.2.7). There has been much discussion as to which land exactly was meant. Polybius calls it 'Picenum, the land from which they had ejected the Senones when they conquered them', which seems to refer to the Ager Gallicus alone. Valerius Maximus also mentions only the Ager Gallicus. Cato calls it 'the land lying this side of Ariminum and beyond the district of Picenum, which was allotted to colonists, is called the Roman ager Gallicus' (*Ager Gallicus Romanus vocatur, qui virgim cis Ariminum datus est ultra agrum Picentium*). Notwithstanding Cicero's use of the words *Ager Gallicus et Picenus* in Brut. 14.57 it is therefore more likely that Flaminius distributed only the Ager Gallicus. Apparently Cicero misunderstood his source (that he knew the difference between the Ager Gallicus and Picenum is clear from Cat. 2.12.26 and Sull. 19.53); since Polybius and Cato are the older sources, we should trust them: Frank (1911, 373); Beloch (1926, 476); Hinrichs (1974, 6); Gabba (1979a, 161 n. 3); Bandelli (1988, 7 and 1997, 194); Hermon (1989a, 276 and 2001, 234); Staveley (1989, 432); Flach (1990, 29); Peruzzi (1990, 17); Grassi (1991, 28); Delplace (1993, 25-6); Oebel (1993, 31-2); David (1997, 18); Antonelli (2003, 85). Some, however, assume that both the Ager Gallicus and Picenum were distributed: Valvo (1977, 200); Crawford (1978, 59); Humbert (1978, 237); Triebel (1980, 65); Luni (1995, 485); Marcone (1997, 142); Broadhead (2000, 154); Sisani (2007, 133). Develin (1976, 641-2) thinks that in 232 only Picenum was distributed, and the Ager Gallicus later. It is unfortunately not certain where and how much land was distributed, except that we know that the land around Pisaurum and Fanum Fortunae was not involved. This would indicate that Flaminius' distribution was located mostly in the south of the Ager Gallicus. Hermon (2001, 233) identifies the distributed area, without evidence, as the area north of Sena. Bandelli (1999b, 194) estimates the number of people receiving land at 20-30,000 (including women and children), but does not give evidence.

<sup>1110</sup> Liv. 39.44.10.

Circumstances: The southern Etruscan cities were defeated in war.<sup>1111</sup>

Amount confiscated: Considerable amounts of land were taken from these cities.<sup>1112</sup>

Amount privatized within five years: None.

Amount of *ager publicus* left: A large amount of *ager publicus* remained in southern Etruria.

Amount privatized later: The colony Cosa was founded in 273. Its territory is estimated by Afzelius at 330 km<sup>2</sup>,<sup>1113</sup> which seems only a bit too large. The colonies Alsium, Pyrgi, and Fregenae were founded during the First Punic War on the territory that previously had belonged to Caere.<sup>1114</sup>

Statonia seems to have been distributed as a viriata settlement some time during the third century.<sup>1115</sup>

In 210 disloyal Campanians were deported to southern Etruria.<sup>1116</sup>

In 200 the *ager in trientibus* included Etruria south of Graviscae.

In 197 Cosa received extra colonists.<sup>1117</sup>

The colonies Saturnia, with possibly 2,000 colonists who received 10 *iugera* each was founded in 183.<sup>1118</sup>

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<sup>1111</sup> Liv. Per. 12.4; *Fasti triumphales* 281/0; Flor. 1.1.21.

<sup>1112</sup> Caere is often assumed to have lost all its land, which Afzelius (1942, 190) estimates at 840 km<sup>2</sup> and Beloch (1926, 620) at 640 km<sup>2</sup>. However, Cass. Dio 10.33 states that it lost only half of its land, see Oakley (1998, 396). Telamon and Volsinii are also assumed to have lost all their land, estimated by Afzelius at 1,240 km<sup>2</sup>,<sup>1112</sup> Tarquinii lost half of its land, estimated by Afzelius at 640 km<sup>2</sup> and by Beloch (1926, 620) at 663 km<sup>2</sup>. Vulci lost 440 km<sup>2</sup>, according to Afzelius, which would be about one third of its total territory. The total amount would be 2,960 km<sup>2</sup> or 1,184,000 *iugera*.

<sup>1113</sup> Vell. 1.14.7. Afzelius (1942, 190). Dyson (1978, 255) improbably estimates it at 5-600 km<sup>2</sup>. Celuzza (2002, 121) estimates its territory at 550 km<sup>2</sup>, which is 25% of Vulci's former territory. However, even if all the mountainous terrain in the area, as well as M. Argentario, are included in the territory, its size does not seem to be larger than about 250 km<sup>2</sup>. Celuzza & Regoli (1985, 49) assume there were 4,000 colonists, who received either eight or sixteen *iugera* each; Brown (1980, 16) assumes there were 2,500 colonists. If we accept that there were 4,000, and that they received eight *iugera*, the distributed amount would be 32,000 *iugera* (80 km<sup>2</sup>).

<sup>1114</sup> Fregenae: Liv. Per. 19.5; Vell. 1.14.8; Alsium: Vell. 1.14.8. The foundation of Pyrgi is not mentioned in any source, but Liv. 36.3.6 mentions it as an existing colony and it is generally assumed to have been established in the First Punic War.

<sup>1115</sup> Statonia was administrated as a *praefectura* (Vitruv. 2.7.3), but it is not known if and when the land here was distributed. Beloch (1926, 455), Afzelius (1942, 117), and Toynbee (1965a, 131) assume that it became *ager publicus* and was distributed to Roman citizens, but this is not securely attested. It may be that local inhabitants were granted citizenship and that the area therefore became a *praefectura*. Salmon (1963, 21) maintains that land had already been confiscated from Caere in 353, when it had rebelled (Liv. 7.20.1-8) against the treaty that been concluded earlier (Liv. 5.50.3); however, no confiscations of land are attested, and the Caeritans seem to have been treated friendly in this case.

<sup>1116</sup> Liv. 26.34.10.

<sup>1117</sup> Liv. 33.24.8-9.

<sup>1118</sup> Liv. 39.55.5. Harris (1971, 156 n. 7) states that plots in Saturnia measured 50 *iugera*, but there is no evidence for this. Ten *iugera* each for 2,000 colonists would mean 20,000 *iugera* were distributed. See for its territory Fentress & Jacques (2002, 124-6).

Graviscæ, with possibly 2,000 colonists who received 5 *iugera* each was founded in 181; its territory measured about 100 km<sup>2</sup> according to Afzelius.<sup>1119</sup> Heba was possibly founded as a colony in the second century.<sup>1120</sup>

Sources: Liv. 26.34.10, 33.24.8-9, 36.3.6, 39.55.5, 40.29.1, *Per.* 12.4, 19.5; *Fasti triumphales* 281/0; Oros. 4.5.3; Flor. 1.1.21; Vell. 1.14.7-8, 1.15.2; Cass. Dio 10.33; ILS 45.

26. Year: 273

Place: Lucania

Circumstances: Pyrrhic War

Amount confiscated: Some land was confiscated on the coast of Lucania for colonization and virgane distribution.<sup>1121</sup>

Amount privatized within five years: The colony Paestum was founded in 273; its territory measured 540 km<sup>2</sup> according to Afzelius.<sup>1122</sup>

Amount of *ager publicus* left: Some *ager publicus* was still available.

Amount privatized later: In 268 the Ager Picentinus was distributed, which measured 1,000 km<sup>2</sup> according to Afzelius, but this seems too large.<sup>1123</sup>

Sources: Strab. 5.4.13; Plin. *HN* 3.5.70; Liv. *Per.* 14.8; Vell. 1.14.7.

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<sup>1119</sup> Liv. 40.29.1; Vell. 1.15.2; ILS 45. Afzelius (1942, 190), however, even this may be too large. If Heba had the same number of settlers as Graviscæ, these two colonies would require 20,000 *iugera* in total. Gracchan activity in this part of Etruria is unlikely, see Campbell (2000, 407-9); Roselaar (forthcoming a); contra: Harris (1971, 205); Mansuelli (1988, 141).

<sup>1120</sup> The date 128 has been suggested by Salmon (1969, 114), see Camodeca (1991, 21), but there is no evidence for this. Harris (1971, 150) believes it happened at the same date as Auximum, which according to Vell. 1.15.3 was founded in 157. Mansuelli (1988, 136) dates it between 167 and 157. Eck & Pack (1981, 159-61) point out that there is no clear evidence that Heba ever was a colony in the Republican period at all. Sirago (1971, 65) states there were other foundations in the second century which are not mentioned in the sources, and names Florentia as an example. However, nothing is known of this foundation.

<sup>1121</sup> Afzelius (1942, 187); De Lachenal (1993, xvii). Small & Buck (1994, 25) and Gualtieri & Fracchia (2001, 125) assume that more than half of Lucania was confiscated, but there is no evidence for this.

<sup>1122</sup> Liv. *Per.* 14.8; Vell. 1.14.7. Afzelius (1942, 191). This seems rather large; even if the colony had 6,000 colonists who each received ten *iugera*, the necessary amount of land would only be 150 km<sup>2</sup>. The fertile valley between the Sele river, Altavilla, Roccadaspide, Capaccio, Giungano, Cilento, and the sea measures about 180 km<sup>2</sup>. Marcone (1997, 121) assumes Paestum had 3,000 colonists, but there is no evidence for this.

<sup>1123</sup> Strab. 5.4.13; Plin. *HN* 3.5.70. Afzelius (1942, 191). Some believe that the story of the displacement of the Picentes was made up to provide an explanation for the name of the area and never actually took place, e.g. Frank (1911, 374); Beloch (1926, 475); Giglio (2001, 129-3). On the other hand, Salmon (1967, 288), Staveley (1989, 422), Torelli (1990, 95), Wulff Alonso (1991, 27), Russi (1995, 7), Naso (2000, 272), Torelli (2002, 70), Antonelli (2003, 79), and Williamson (2005, 157) all accept the displacement of the Picentes. The territory as assumed by Afzelius seems too large; 1,000 km<sup>2</sup> would allow for 40,000 10-*iugera* plots, but it is unlikely that so many Picentes were deported.



27. Year: 272

Place: Bruttium

Circumstances: Pyrrhic War

Amount confiscated: One half of the Sila Forest was confiscated.<sup>1124</sup>

Amount privatized within five years: None.

Amount of *ager publicus* left: The Sila Forest remained an important part of *ager publicus* until the late Republic.

Amount privatized later: None.

Sources: DH 20.15.1.

28. Year: 272

Place: Apulia

Circumstances: Pyrrhic War

Amount confiscated: It may be that some land was confiscated in Apulia after the Pyrrhic War.<sup>1125</sup>

Amount privatized within five years: None.

Amount of *ager publicus* left: Unknown.

Amount privatized later: None.

Sources:

29. Year: 268

Place: Samnium

Circumstances: Rebellion against Roman control.<sup>1126</sup>

Amount confiscated: Some land was confiscated for colonization.

Amount privatized within five years: The colonies Beneventum and Aesernia were founded in 268 and 263 respectively.<sup>1127</sup>

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<sup>1124</sup> DH 20.15.1. Pareti (1997, 360); Colicelli (1998, 114); Accardo (2000, 27); Torelli (2002, 70); Rathbone (2003, 169). However, Beloch (1926, 471), Toynbee (1965b, 121), and Brunt (1971, 281) think the Sila forest was not confiscated until the Second Punic War, so that there was no *ager publicus* in Bruttium at all before this war. However, there is no reason to doubt the statement in Dionysius. It is logical that some land was confiscated after the defeat in the Pyrrhic War, since other people also lost land at this time.

<sup>1125</sup> Beloch (1926, 589) assumes no land was confiscated here until the Second Punic War. On the other hand, some land in Lucania was confiscated as well, and it may be that this happened also in Apulia.

<sup>1126</sup> Zonar. 8.7; DH 20.17.1-2.

<sup>1127</sup> Liv. Per. 15.5, 16.7; Vell. 1.14.7-8; Eutrop. 2.16. Beloch (1926, 450) dates the confiscation of this land to the Pyrrhic War, Afzelius (1942, 188) on the other hand to 268. The territory of Aesernia is estimated at 385 km<sup>2</sup> (154,000 *iugera*), that of Beneventum at 575 (230,000 *iugera*) by Afzelius (1942, 191). However, Beloch (1880, 149), followed by Torelli (2002, 72-4), estimates the territory of Beneventum at 100 km<sup>2</sup> (40,000 *iugera*). In the case of Aesernia, it is unlikely that all the mountainous terrain surrounding the city was included in the territory; the valley between Sant'Agapito, Forlì del Sannio, and Macchia d'Isernia measures about 75 km<sup>2</sup> (30,000 *iugera*). Chouquer et al. (1987, 142) describe a small *limitatio* here that may date back to the third century.

Amount of *ager publicus* left: It is possible that some of the mountainous terrain remained *ager publicus*.

Amount privatized later: None.

Sources: Zonar. 8.7; DH 20.17.1-2; Eutrop. 2.16; Liv. *Per.* 15.5, 16.7; Vell. 1.14.7-8.

30. Year: 268

Place: Picenum

Circumstances: Picenum was conquered in war; some of its people were deported to the Ager Picentinus in Lucania.<sup>1128</sup>

Amount confiscated: Some land was confiscated for colonization.<sup>1129</sup>

Amount privatized within five years: The colony Firmum was founded in 264.<sup>1130</sup>

Some viritate distributions probably took place.<sup>1131</sup>

Amount of *ager publicus* left: Some land was left for later colonization.

Amount privatized later: Pisaurum and Potentia were founded in 184, both possibly with 2,000 colonists who received 6 *iugera* each.<sup>1132</sup>

Auximum was founded at an unknown date.<sup>1133</sup>

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If each colony had 4,000 colonists who received ten *iugera* each, then 80,000 *iugera* (200 km<sup>2</sup>) would be needed for the two colonies.

<sup>1128</sup> *Fasti triumphales* 268/7.

<sup>1129</sup> Humbert (1978, 237) and Staveley (1989, 425) assume that the whole of Picenum became *ager publicus*, but it is more likely that many of the Picentes were granted the Roman citizenship. See Beloch (1962, 474); Afzelius (1942, 48).

<sup>1130</sup> Vell. 1.14.8. The size of this colony is not mentioned; the territory depicted on Beloch's map, however, measures about 420 km<sup>2</sup>. This seems far too large: if the colony had 4,000 colonists who received ten *iugera* each, then 40,000 *iugera* (100 km<sup>2</sup>) would be needed. Vell. 1.14.8 also mentions Aefulum as a colony, which some have taken to refer to Aesis: Stephenson (1891, 14); Fraccaro (1919, 193); Bozza (1939, 63); Harris (1971, 247); Nagle (1973, 371); Valvo (1977, 198); Mercando et al. (1981, 313); Luni (1995, 483); Antonelli (2003, 84); Van Dooren (2008, 221). However, it is not at all certain that Aesis is meant: Delplace (1993, 13); Bandelli (1999b, 193).

<sup>1131</sup> In 241 the *tribus* Velina was established in Picenum, which makes it likely that land was distributed to Roman citizens in Picenum. However, it is also possible that some of the members of this *tribus* were Picentes who had received the Roman citizenship: Beloch (1926, 601-2); Afzelius (1942, 22-3).

<sup>1132</sup> Vell. 1.15.2-3. For Potentia and Pisaurum together only 60 km<sup>2</sup> would have been necessary.

<sup>1133</sup> There has been much debate as to the foundation date of Auximum. The year 157 is given in Vell. 1.15.3, who states that it happened 'one hundred and eighty-five years ago, three years before Cassius the censor began the building of a theatre beginning at the Lupercal and facing the Palatine. But the remarkable austerity of the state and Scipio the consul successfully opposed him in its building'. Oros. 4.21.4 dates the destruction to 154 as well. The year 157 is accepted by many, e.g. Stephenson (1891, 14); Beloch (1926, 474); Boren (1958, 893); Toynbee (1965b, 208); Nicolet (1977, 97); De Martino (1980, 61); Rossi (1980, 51); Foraboschi (1992, 77); Delplace (1993, 13-4); Luni (1995, 483); Antonelli (2003, 88). App. BC 1.28, on the other hand, says that 'at this same time (around 106 BC) the consul Scipio pulled down the theatre which Lucius Cassius had begun'. This has led some to believe that Appian confused 106 with 128, which was three years before the censorship of a Cassius and a Caepio, and that this was the year of Auximum's

Gracchan activity is shown by the find of a *cippus* near Fanum Fortunae.<sup>1134</sup>  
Sources: Oros. 4.4.5-7, 4.21.4; *Fasti triumphales* 268/7; Liv. *Per.* 15.4-5; Vell. 1.14.8, 1.15.2-3.

31. Year: 267

Place: Apulia

Circumstances: The Messapii and Sallentini were conquered in war.<sup>1135</sup>

Amount confiscated: Some land was confiscated for colonization.<sup>1136</sup>

Amount privatized within five years: The colony Brundisium was founded in c. 266.<sup>1137</sup>

Amount of *ager publicus* left: It is possible that some *ager publicus* remained.

Amount privatized later: Some land distributed after the Second Punic War may have been confiscated already at this time.

The Gracchi may have been active in this region as well.<sup>1138</sup>

Sources: *Fasti triumphales* 267/6; Liv. *Per.* 19.5; Cic. *Att.* 4.1.4, *Sest.* 53.131; Zonar. 8.7; Vell. 1.14.8.

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foundation: Salmon (1963, 6-13 and 1969, 113); Dilke (1971, 181); Hopkins (1978a, 64); Camodeca (1991, 21); Patterson (2006, 202). Another possibility is 106 BC, the consulship of another Caepio. See for this problem North (1992), who argues that theatres were destroyed in both 157 and 106, in which case Appian's passage is not relevant to the dating of the colony of Auximum. Velleius is notoriously unreliable when it comes to dates, and 157 would be unlikely, since at that time there had been no colonies established since twenty years. On the other hand, no colonies were founded around 128 either, and Auximum's date must remain uncertain. De Felice (1961-2, 269) thinks Potentia in Lucania was also a colony founded in 184, but the references to Potentia as a colony are all to the city in Picenum.

<sup>1134</sup> The *Liber Coloniarum* mentions distributions by *limites graccani* in Auximum and Ancona. De Martino (1984, 38) and Delplace (1993, 28) point at the Gracchan *cippus* found in Fanum as evidence for the statement of the *Liber*; however, Fanum is not anywhere near Auximum and Ancona: Campbell (2000, 410-11); Roselaar (forthcoming a).

<sup>1135</sup> *Fasti triumphales* 266/5.

<sup>1136</sup> Sirago (1995, 144) and Yntema (2006, 92) argue that the land in the Sallentine peninsula was confiscated at this time, but there is no real evidence for this. Grelle (2001, 21) assumes that only the land for Brundisium was confiscated; although in (1988, 38) he seems to suggest more land was taken. Compatangelo (1999, 17) does not come to a conclusion; however, she states that the land that has been centuriated comprises about two thirds of the land of the Sallentini, whatever the date it was taken.

<sup>1137</sup> Liv. *Per.* 19.5; Vell. 1.14.8; Cic. *Att.* 4.1.4, *Sest.* 53.131. Afzelius (1942, 191) estimates its territory at 375 km<sup>2</sup> (150,000 *iugera*). If there were 4,000 colonists who received ten *iugera* each, at least 100 km<sup>2</sup> (40,000 *iugera*) would have been necessary, and there is no reason why the territory would have been so much larger.

<sup>1138</sup> Barium and Lupiae are both the centres of very large centuriation grids, and the *Liber Coloniarum* mentions Lupiae, Austrinum, and Barium as having been distributed by means of *limites graccani*. This makes a Gracchan date for these centuriations likely, see De Martino (1984, 39); Compatangelo (1989, 55-60 and 1999, 17); Chouquer & Favory (1992, 113); Desy (1993, 108); Bonora Mazzoli (2001, 62-70); Uggeri (2001, 38-50). Others point out that there is no external evidence for this, see Jones (1980, 91); Campbell (2000, 405).

31A: Year: 241

Place: Sarsina

Circumstances: A victory over the Sassinates is recorded.

Amount confiscated: It is possible that land was confiscated in the area.<sup>1139</sup>

Amount privatized within five years: None.

Amount of *ager publicus* left: Some *ager publicus* was left for later distributions.

Amount privatized later: There are several records of the establishments of *fora* (Forum Livii, Forum Popillii, Forum Cornelii, Faventia) in the area, but it is not certain these were established for Roman citizens.

Sources: *Fasti triumphales* 266/5.

32. Year: 241

Place: Falerii

Circumstances: Falerii Vetus rebelled against the Romans. 15,000 People were killed; the rest of the inhabitants were moved to a new city.

Amount confiscated: Falerii lost one half of its land.<sup>1140</sup>

Amount privatized within five years: The new city was probably founded on the half that was not confiscated.<sup>1141</sup>

Amount of *ager publicus* left: There are no later references to *ager publicus* in this area.

Amount privatized later: Possibly some of the *ager in trientabulis* was located here.

Sources: Zonar. 8.18; Polyb. 1.65.2; Eutrop. 2.28.1.

33. Year: 225

Place: Cisalpine Gaul

Circumstances: The Boii and Insubres were defeated in war.<sup>1142</sup>

Amount confiscated: Some land was confiscated.

Amount privatized within five years: The colonies Cremona and Placentia were founded in 218 with 6,000 colonists each.<sup>1143</sup>

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<sup>1139</sup> Chevallier (1983, 45). He locates the confiscated territory in the river valleys of the Ronco, Savio, Bidente, Marecchia, and Montone rivers, between Ariminum and the territory of Bononia. However, since the *fora* in this area were all founded after the Second Punic War, it may be that the land here was not confiscated until the war. See Ewins (1952, 57-9).

<sup>1140</sup> Zonar. 8.18; Polyb. 1.65.2; Eutrop. 2.28.1. According to Beloch (1926, 610) the southern half of territory around Mount Soracte was confiscated. Afzelius (1942, 41) and Cambi (2004, 79) on the other hand think it was the northern part that was taken. Van Dooren (2008, 107) points to the low settlement density in Nepet and the southern Ager Faliscus, which he argues points to the presence of *ager publicus*, but there is no reason why public land would be less densely settled.

<sup>1141</sup> Potter (1979, 98); Morley (1996, 98).

<sup>1142</sup> *Fasti Triumphales* 225/4, 223/2; Liv. *Per.* 20.8-11.

<sup>1143</sup> Polyb. 3.40.5; Liv. *Per.* 20.10-1, 20.8; Vell. 1.14.8; Asc. 3C; Tac. *Hist.* 3.34. The size of these colonies is not known. If the 6,000 colonists each received 10 *iugera*, each colony would need at

Amount of *ager publicus* left: Unknown.

Amount privatized later: In 190 both colonies received 3,000 extra colonists, maybe because of depopulation.<sup>1144</sup>

Sources: Liv. 36.39.3, 37.46.9-47.2; *Per.* 20.8-11; *Fasti Triumphales* 225/4, 223/2; Asc. 3C; Polyb. 3.40.5; Zonar. 8.18, 8.20; Tac. *Hist.* 3.34; Vell. 1.14.8.

#### 34. Year: 210

Place: Campania

Circumstances: Capua had joined Hannibal in the Second Punic War.

Amount confiscated: Capua lost its whole territory, the Ager Campanus, which measured about 350 km<sup>2</sup>.<sup>1145</sup>

Amount privatized within five years: A small amount of land was sold as *ager quaestorius*.

Amount of *ager publicus* left: 350 km<sup>2</sup>.

Amount privatized later: The colonies Puteoli, Volturnum, Liternum and Salernum were founded in 194, possibly each with 300 colonists who received 2 *iugera*.<sup>1146</sup>

The Ager Campanus was distributed to Roman citizens in 59.<sup>1147</sup>

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least 150 km<sup>2</sup>. Tozzi (1972, 20), Pasquinucci (1985, 35), Bandelli (1988, 10), and Foraboschi (1992, 80) state that the colonists received 25 *iugera* each, although there is no evidence for this. The visible centuriation around Cremona measures 848 km<sup>2</sup>, although Tozzi (1972, 20) and Garnsey (1979, 13 and 1998, 123) put it at 400 km<sup>2</sup> and Baldacci (1986, 94) at 450. That around Placentia measures 293 km<sup>2</sup>. It is likely that these centuriations were carried out not at the foundation of the colony, but at some later date, for example when the towns were resettled by colonists in triumviral period. Grassi (1991, 47) thinks the Insubres did not lose any land, but Arslan (1991, 461) states that the land used for Cremona belonged to them.

<sup>1144</sup> Liv. 37.46.9-47.2.

<sup>1145</sup> Liv. 26.16.6-8; App. *Hann.* 7.43. The centuriation grid visible here measures about 346 km<sup>2</sup>; this was most likely executed in 59 BC, but since the land distributed at that time was the same as that measured in 165 BC, it is likely that the original Ager Campanus had measured some 500 km<sup>2</sup> (350 plus the land sold as *ager quaestorius* and used for the colonies of 194). See for the boundaries of the Ager Campanus Levi (1921-2, 70-6); Frederiksen (1981, 265-79); Brunt (1987, 315); Gabba (1989a, 197); Chouquer & Favory (1992, 116). Calatia appears to have been part of the Ager Campanus, since Obs. 11 records for the year 167 that 'in Calatia, on *ager publicus*, it rained blood for three days and two nights'.

<sup>1146</sup> Liv. 34.45.1-2; Vell. 1.15.3. The size of these colonies is not known; if they each contained 300 colonists who received two *iugera*, they were no larger than 1.5 km<sup>2</sup> each. With some added common land the size of Puteoli, Liternum, and Volturnum together cannot have been larger than 60 km<sup>2</sup>, since there is simply no more room on the coast of Campania. Salernum will have been of the same order of magnitude. Sherwin-White (1973, 78 n. 4) states that plots in these colonies measured 6 *iugera*, but there is no evidence for this. Frederiksen (1970-1, 348) thinks the colonies of 194 were five different ones from those of 197, but this is certainly wrong.

<sup>1147</sup> Cic. *Att.* 2.16.1, 8.10.4, 11.20.3, *Q.* 2.1.1, 2.6.2, 2.8, *Sest.* 4.9, *Agr.* 1.6.18; App. *BC* 2.2.10; Suet. *Iul.* 20.3, 81; Vell. 2.44.4; Plu. *Cat. Mi.* 33.1; Plin. *HN* 7.176; Cass. Dio 38.7.3.

Sources: Liv. 26.16.6-8, 34.45.1-2; Cic. *Att.* 2.16.1, 8.10.4, 11.20.3, *Q.* 2.1.1, 2.6.2, 2.8, *Sest.* 4.9, *Agr.* 1.6.18; App. *BC* 2.10; *Hann.* 43; Suet. *Iul.* 20.3, 81; Vell. 1.15.3, 2.44.4; Plu. *Cat. Mi.* 33.1; Plin. *HN* 7.52.176; Cass. Dio 38.7.3.

35. Year: 200

Place: Lucania

Circumstances: The Lucanians had joined Hannibal in the Second Punic War.

Amount confiscated: A large amount of land was confiscated here.<sup>1148</sup>

Amount privatized within five years: The colonies *Castrum Hannibalis* and *Buxentum* were founded in 199 and 194 respectively, possibly with 300 colonists who received two *iugera* each.<sup>1149</sup>

Amount of *ager publicus* left: Most of the land confiscated here remained *ager publicus*.

Amount privatized later: Much land was distributed by the Gracchi, especially in the Tanager valley.<sup>1150</sup>

Sources: Liv. 31.12.7, 32.7.3; 34.45.2, 39.23.3-4; *Liber Coloniarum*.

36. Year: 200

Place: Bruttium

Circumstances: The Bruttians had joined Hannibal in the Second Punic War.

Amount confiscated: A large amount of land was confiscated.<sup>1151</sup>

Amount privatized within five years: None.

Amount of *ager publicus* left: All land here was left for later distributions.

Amount privatized later: The colony *Thurii Copia* was founded in 193; *Croton*, *Tempsa*, and *Vibo* were founded in 192.<sup>1152</sup>

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<sup>1148</sup> It is unknown how much land was confiscated in Lucania. Toynbee (1965b, 119) and Russi (1995, 21) assume more than half of Lucania became *ager publicus*. Torelli (1981, 425) estimates that 70% of the arable land in southern Italy in general was confiscated after the Second Punic War. The presence of *ager publicus* in Lucania is attested by a miracle reported in Liv. 31.12.7.

<sup>1149</sup> Liv. 32.7.3; 34.45.2. Gualtieri (2003, 46) erroneously dates the foundation of *Buxentum* to 191 BC. *Buxentum* had been abandoned only eight years after its foundation, and had to be settled with new colonists in 186 BC: Liv. 39.23.3-4.

<sup>1150</sup> In *Volcei*, *Atina*, *Consilinum*, and *Tegianum cippi* of the Gracchan land commission have been found. See Spadea (1998, 41). *Grumentum* and *Clampetia* are mentioned in the *Liber Coloniarum* as being measured by *limites graccani*. See Simelon (1993, 61, 65); Russi (1995, 36-9); Pareti (1997, 443); Campbell (2000, 403); Roselaar (forthcoming a).

<sup>1151</sup> App. *Hann.* 9.61. Nicolet (1977, 125); Pareti (1997, 429). Salmon (1969, 165 n. 2) claims it was more than one third; Ghinatti (1977a, 148) and Russi (1995, 21) claim it was more than one half, but these estimates are based on the idea that either one third or one half was a 'standard amount' taken by the Romans, and that the Bruttians lost more than usual. Toynbee (1965b, 119) thinks it was almost one half. Kahrstedt (1959, 189) assumes that the whole of Bruttium was made *ager publicus*, and remained so except for the lands on which the colonies were founded, but there is no evidence for this.

<sup>1152</sup> Liv. 34.45.3-4, 34.53.1-2, 35.9.7-9, 35.40.5-6; Vell. 1.14.8; Strab. 6.1.5, 6.1.13. *Croton* and *Tempsa* likely received 300 colonists with two *iugera* each, which would mean only 1.5 km<sup>2</sup> per colony. If

Some Bruttian land was distributed by the Gracchi; Gaius founded the colony Scolacium Minervium.<sup>1153</sup>

Sources: Vell. 1.14.8, 1.15.4; Liv. 34.45.3-4, 34.53.1-2, 35.9.7-9, 35.40.5-6; App. Hann. 9.61; Strab. 6.1.5, 6.1.13.

36A. Year: 200

Place: Etruria

Circumstances: It is possible that some land was confiscated after a rebellion in the Second Punic War.

Amount confiscated: A large amount of land was confiscated.<sup>1154</sup>

Amount privatized within five years: None.

Amount of *ager publicus* left: All land here was left for later distributions.

Amount privatized later: Possibly some land was distributed in Arretium by the Gracchi.<sup>1155</sup>

Sources: Liv. 27.21.6-7, 27.24, 28.10.4-5, 29.36.10-2; Zonar. 9.6; Plu. Marc. 28.1; *Liber Coloniarum*.

37. Year: 200

Place: Samnium

Circumstances: The Samnites (except for the Pentri) had joined Hannibal in the Second Punic War.<sup>1156</sup>

Amount confiscated: Some land was confiscated here.

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each measured 20 km<sup>2</sup>, only 40 in total would be needed. Thurii was settled with 3,000 infantry who received 20 *iugera* each and 300 centurions who received 40 *iugera* each, a total of 180 km<sup>2</sup>, with the express statement that extra, unassigned land was granted to the colony, 'which could, were it desired, be assigned to fresh colonists'. Vibo received 3,700 infantry with 15 *iugera* each and 300 centurions with 30 *iugera* each, a total of 161.25 km<sup>2</sup>. There is plenty of space around the cities to accommodate such settlements. Vell. 1.14.8 states that a colony was settled in Vibo in 239, but this is probably an error, although some, e.g. Colicelli (1998, 114), believe the statement.

<sup>1153</sup> Vell. 1.15.4; see ch. 5.2.3. De Felice (1961-2, 270) thinks that Scolacium was first founded in 199, but he apparently confuses it with Castra Hannibalis.

<sup>1154</sup> In 208 there were rumours of a rebellion in Etruria and Umbria, started by the city of Arretium. The Romans took the Etruscan rebellion seriously, since they later started an investigation of which cities exactly had been trying to rebel. Many individual Etruscans who had tried to betray Rome were punished, and their possessions confiscated (Liv. 27.21.6-7, 27.24, 28.10.4-5, 29.36.10-2; Zonar. 9.6; Plu. Marc. 28.1). It may be that some of the land owned by these Etruscans was added to the *ager publicus*; Sisani (2007, 224) locates it around Mevaniola and Urvinum Mataurense, but these places are not mentioned anywhere as involved in the rebellion. See Van Dooren (2008, 219). However, this cannot have been a great amount of land, since only individuals seem to have been involved.

<sup>1155</sup> The presence of *limites graccani* in Arretium, according to the *Liber Coloniarum*, lends some credence to a confiscation of land here: Harris (1971, 205).

<sup>1156</sup> Liv. 22.61.11.

Amount privatized within five years: Some land in Samnium was distributed to the veterans of Scipio.<sup>1157</sup>

Amount of *ager publicus* left: Some *ager publicus* was left for later distribution.

Amount privatized later: Some land in Samnium was distributed by the Gracchi.<sup>1158</sup>

Sources: *Liber Coloniarum*; Liv. 22.61.11, 31.4.1-3.

### 38. Year: 200

Place: Apulia

Circumstances: The Apulians had joined Hannibal in the Second Punic War.<sup>1159</sup>

Amount confiscated: A large amount of land was confiscated in Apulia.<sup>1160</sup>

Amount privatized within five years: The colony Sipontum was founded in 194.<sup>1161</sup>

Land was distributed to the veterans of Scipio in 200 (see item 23).<sup>1162</sup>

Amount of *ager publicus* left: Some *ager publicus* was left for later distribution.

Amount privatized later: Much land in Apulia was distributed by the Gracchi; Gaius founded the colony Tarentum.<sup>1163</sup>

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<sup>1157</sup> Liv. 31.4.1-3, but we do not know where this was located.

<sup>1158</sup> Three *cippi* of the Gracchi have been found in Rocca San Felice, which is located in the territory of the Hirpini on the border between Lucania and Samnium. Compsa, very close to Rocca San Felice, is mentioned in *Liber Coloniarum* as being divided *limitibus graccanis*. See Tagliamonte (1996, 153); Campbell (2000, 452-3; Roselaar (forthcoming a). Beloch (1926, 494-5) assumes that the colonies Herculia Telesia and Allifae were founded by the Gracchi and Veneria Livia Augusta Abellinum by Livius Drusus, because they often named their colonies after gods, and Abellinum cannot have been named after Livia Augusta. This is, however, very unlikely; moreover, the colonies promised by Drusus were probably never executed. See Compatangelo (1991, 142 n. 11).

<sup>1159</sup> Liv. 22.61.11.

<sup>1160</sup> Desy (1993, 78) thinks not much land was confiscated in Apulia at all, but that is unlikely, looking at the Gracchan activity here, see Grelle (1981, 193 and 2001, 19); Volpe (2001, 316); Torelli (2002, 129).

<sup>1161</sup> Liv. 34.45.3; CIL 9.699. It was abandoned only eight years after its foundation, Liv. 39.23.3-4. See D'Andria (1979, 302); Sallares (2002, 265). If it had 300 colonists who each received two *iugera*, the total distributed amount was 1.5 km<sup>2</sup>; with added land this may have been no more than 20 km<sup>2</sup>.

<sup>1162</sup> Liv. 31.4.1-2, 31.49.5, 32.1.6. Silvestrini (2001) locates these distributions in the territories of Vibinum, Venusia, Luceria, Herdonia, and Canusium, based on the fact that the *tribus* Galeria has been recorded in all these areas and that this *tribus* was the one usually given to Scipio's veterans.

<sup>1163</sup> Plu. CG 8.3; Vir. ill. 65; Plin. HN 3.10.95. A large number of centuriation grids is visible in Apulia, but it is unfortunately not always possible to date these. Large centuriations are visible near Canusium and between Canusium and Barium; smaller grids are visible around Herdonia, Ausculum and between these two cities and Aecae. Three Gracchan *cippi* have been found in Celenza Valfortore in northern Apulia; this is located quite close (though still about ten km away) to the centuriations in Luceria, Herdonia, Aecae, and Ausculum, which may therefore be Gracchan. Venusia and Compsa are mentioned in the *Liber Coloniarum* as being distributed by *limites graccani*, and they are also located within reasonable distance of Celenza Valfortore, see



Sources: Liv. 22.61.11, 31.4.1-2, 31.49.5, 32.1.6, 34.45.3, 39.23.3-4; Plu. CG 8.3; *Vir. ill.* 65; Plin. *HN* 3.10.95; CIL 9.699; *Liber Coloniarum*.

39. Year: 191

Place: Cisalpine Gaul

Circumstances: The Gallic tribes were conquered in war and according to the sources deported from their lands.<sup>1164</sup>

Amount confiscated: The Boii lost half their land. The Insubres also had to give up some land.<sup>1165</sup>

Amount privatized within five years: The Latin colony Bononia was founded in 189.<sup>1166</sup>

Amount of *ager publicus* left: A large amount of land was left here for later colonization.

Amount privatized later: The Roman colonies Mutina and Parma were founded in 183.<sup>1167</sup> Aquileia was founded in 181.<sup>1168</sup>

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Campbell (2000, 404); De Martino (1984, 38); Grelle (2001, 25), but cf. Bonora Mazzoli (2001, 67). Herdonia, Ausculum, Arpi, Collatia, Sipontum, Salapia, Teanum, and the territory around M. Garganus are all stated to have been distributed by a *Lex Sempronia*, but for those places not located close to the Gracchan *cippi* there is no external evidence, see Campbell (2000, 404-5); Bonora Mazzoli (2001, 64-6). On the other hand, there is no real reason to doubt the *Liber*: Roselaar (forthcoming a). Tarentum is known to have been a Gracchan colony, Neptunia, and is mentioned as being distributed by *limites graccani* in the *Liber Coloniarum*, see D'Andria (1979, 286); Keppie (1983, 83); Smith (1996, 80); Campbell (2000, 167). Beloch (1880, 117) assumes Neptunia and Scolacium both received 3,000 colonists, but there is no evidence for this.

<sup>1164</sup> *Fasti Triumphales* 191/0. See for the deportation ch 2. note 224.

<sup>1165</sup> Liv. 36.39.3; Zonar. 8.18, 8.20. Williams (2001, 218) thinks no land in Transpadane Gaul was confiscated, except for the land used for Cremona and Aquileia, to which Càssola (1991, 17) adds Eporedia.

<sup>1166</sup> Liv. 37.57.7-8; Vell. 1.15.2. The colony had 3,000 infantry who received 50 *iugera* each and 300 centurions who received 70 *iugera* each, a total of 427.5 km<sup>2</sup>. The visible centuriation around Bononia measures 519 km<sup>2</sup>. Chevallier (1980, 71) states the territory measured 393 km<sup>2</sup>, but this seems too small. Scalais (1930-2, 226) says the colony had 16,000 km<sup>2</sup> of territory, but this is nonsense.

<sup>1167</sup> Liv. 39.55.5-6; Vell. 1.15.2; Cic. *Phil.* 13.9.20; Strab. 5.1.8; CIL 1<sup>2</sup>.621. Mutina had 2,000 colonists who received five *iugera* each, a total of 25 km<sup>2</sup>. Parma had 2,000 colonists who received eight *iugera* each, or 40 km<sup>2</sup> in total. The visible centuriation around Mutina measures 165 km<sup>2</sup>, that around Parma 361. Dilke (1971, 148) overstates their size, saying that the centuriation of Mutina measured 250 km<sup>2</sup> and that of Parma 450 km<sup>2</sup>. In any case, it is likely that these were created when these towns were resettled in the triumviral period. Pasquinucci (1985, 38) argues that there are two centuriations visible in Mutina, and the one in the southwest dates from the colony's foundation, since it is the smallest. Corti (2004, 87) argues that the centuriation took place during the general viri-tane distribution in 173.

<sup>1168</sup> The Latin colony Aquileia received 3,000 infantry with 50 *iugera* each, 300 centurions with 100 *iugera* each and 60 *equites* with 140 *iugera* each, a total of 471 km<sup>2</sup> (188,400 km<sup>2</sup>). There are no large centuriations in the area. See for the territory of Aquileia Bradford (1957, 173), who states, however, that the colony of 181 needed only 200 km<sup>2</sup>. Scalais (1930-2, 227) thinks the territory measured 1,200 km<sup>2</sup>, but this is too much.

In 173 a large virginate distribution took place, involving apparently all the remaining *ager publicus*.<sup>1169</sup> In 169 Aquileia received 1,500 new colonists.<sup>1170</sup> Sources: Liv. 37.57.7-8, 39.55.5-6, 42.4.3, 43.17.1; Cic. *Phil.* 13.9.20; *Fasti Triumphales* 191/0; Strab. 5.1.8; CIL 12.621; Vell. 1.15.2.

40. Year: 180

Place: Liguria

Circumstances: The Ligurians were conquered in war.<sup>1171</sup> They were deported to the Ager Taurasinus.

Amount confiscated: Some land was confiscated.

Amount privatized within five years: In 179 the Friniates and other Ligurians were deported from the mountains to the plains.<sup>1172</sup>

Amount of *ager publicus* left: Some land was left for later distribution.

Amount privatized later: In 173 land in the Ager Ligustinus was distributed (see item 39).

Sources: Liv. 39.2.9, 40.53.3; *Fasti Triumphales* 175/4; Flor. 1.2.3.4-5.

41. Year: 180

Place: Liguria

Circumstances: In 180 the town of Pisae offered the Romans land on which to found a colony, because they wanted Roman protection against the Ligurians.<sup>1173</sup>

Amount confiscated: Some land was taken for colonization.

Amount privatized within five years: The colony Luna was founded in 177 with 2000 colonists who received 51.5 (or 6.5) *iugera* each.<sup>1174</sup>

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<sup>1169</sup> Liv. 42.4.3. Toynbee (1965b, 198) and Corti (2004, 80) think all land which still was *ager publicus* was now distributed; Bonetto (2004, 59), on the other hand, argues that much *ager publicus* was left in Cisalpina. Ewins (1952, 61); Baldacci (1986, 98); and Broadhead (2000, 154) think the towns of Dertona, Pollentia, Valentia, Industria, Potentia, and Hasta developed as a result of the land distribution in 173, but there is no evidence that land was distributed in this area in 173. Bandelli (2007, 19-20) argues the distribution in 173 did not take place in this area, but near Mutina and Parma. Chevallier (1980, 119-20) states that these towns were founded by the Gracchi, but this is extremely unlikely; Bringmann (2002, 213) ascribes them to Fulvius Flaccus in 125. See Salmon (1969, 96).

<sup>1170</sup> Liv. 43.17.1; Flor. 1.2.3.4-5. Van Dooren (2008, 111) states that in 175 Rhegium Lepidum was founded as a colony, but this was in fact a *forum*.

<sup>1171</sup> Liv. 39.2.9, 40.53.3; *Fasti Triumphales* 175/4.

<sup>1172</sup> Liv. 42.22.5-6.

<sup>1173</sup> It is sometimes assume that Pisae itself was a colony as well, especially in modern tourist guides etc; however, no source mentions Pisae as such. Even though Pisae is mentioned several times by Livy, especially in connection with the foundation of Luna, he never says it was colony, while he often mentions colonial status of other cities even if this is irrelevant. Bringmann (2002, 193) states that the colony was never founded, because there were not enough people to fill it, but this is certainly not the case.

Amount of *ager publicus* left: There are no references to later *ager publicus* in this area, but is possible that some of the mountainous terrain remained *ager publicus*.

Amount privatized later: Unknown.

Sources: Liv. 41.13.4; Vell. 1.15.2; Plin. HN 3.5.50.

#### 42. Year: 173

Place: Statielli

Circumstances: The Statielli were defeated in 173.

Amount confiscated: Some land was taken as *ager publicus*.<sup>1175</sup>

Amount privatized within five years: In 172 the Statielli were moved to the other side of the Po.<sup>1176</sup>

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<sup>1174</sup> There has been much confusion between the colonies at Luna and Luca, which are both located on land taken from the Liguri and were both reportedly founded in 177. Liv. 41.13.4 mentions Luna as a colony: *Et Lunam (ms: et unam) colonia eodem anno duo milia civium Romanorum sunt deducta. Triumviri deduxerunt P. Aelius <M. Aemilius> Lepidus Cn. Sicinius; quinquagena et singula iugera et semisses agri in singulos dati sunt.* Vell. 1.15.2 only mentions Luca. Plin. HN 3.5.50, however, says *primum Etruriae oppidum Luna, portu nobile, colonia Luca a mari recedens*; the only town he calls a colony is Luca. Modern scholars differ: Beloch (1880, 66), Salmon (1969, 109), Bernardi (1973, 81), and Sherwin-White (1973, 78 n. 4) think that only Luna was a colony. Toynbee (1965b, 534-40) and Coarelli (1985-7, 27-8) think that both places were colonies, but that Luca was a Latin colony founded in 180 on the land given by Pisae, and Luna a Roman one founded in 177. Williams (2001, 209) dates Luca to 178 and Luna to 177. Nicolet (1977, 277-8) dates Luca to 184 or 177. Mansuelli (1988, 89) dates both colonies to 177. In any case, the only thing we can be reasonably sure about is that Luna was a colony founded in 177; Luca may have been colonized around the same time or later, since it was apparently a colony in Pliny's time. Scalais (1930-2, 228) thinks the territory of Luca measured 2,000 km<sup>2</sup>. Foraboschi (1992, 86) thinks that the total number of colonists was about 5,000; Bandelli (1999b, 205) and Baldacci (1986, 97) think Luca received 3,000 colonists and Luna 2,000, but there is no evidence for this.

Another issue is the amount of 51.5 *iugera* that was apparently distributed. Although there are other colonies in this period where large allotments were handed out, the number 51.5 is strange; moreover, these large allotments were more characteristic for Latin colonies, not for Roman, as Luna is usually assumed to have been, although there is no direct evidence for this: Galsterer (1976, 63); Frézouls (1981, 128); Broadhead (2001, 77); Pina Polo (2006, 186). It has therefore been emended by Tibiletti (1950, 203) to 6.5 *iugera*, which would be a likely error of transmission from VI to LI. This would fit much better into the pattern of Roman colonies of this period, with land grants between five and ten *iugera*, see Bernardi (1973, 104); Potter (1987, 75). Coarelli (1985-7, 29) on the other hand argues that in such dangerous territory 6.5 *iugera* would be too small an amount, and that the centuriation grid seems to favour larger plots. The territory is stated by him to have measured 300 km<sup>2</sup>, which would be unnecessary if the plots were so small. Bradley (1957, 174), Toynbee (1965b, 539), Coarelli (1985-7, 29), and Mansuelli (1988, 89) also believe the 51.5 *iugera*. If there were 3,000 colonists and they received 6.5 *iugera*, the total amount would have been 19,500 *iugera* (about 50 km<sup>2</sup>); in the case of 51.5 it would be 154,500 (386 km<sup>2</sup>).

<sup>1175</sup> Triebebel (1980, 95); Corti (2004, 81). Contra: Beloch (1886, 67).

<sup>1176</sup> Liv. 42.22.5-6. See Càssola (1991, 17); Foraboschi (1992, 87); Pina Polo (2006, 189). It is likely that the land used for this was *ager publicus*, since Livy says that 'they were transported across the Po where land was assigned to them'. Baldacci (1986, 97) states the land that the Statielli received had earlier been taken from the Boii, not from the Statielli themselves; Corti (2004, 81) likewise

Amount of *ager publicus* left: Some *ager publicus* seems to have been left over.  
Amount privatized later: In 109 the colony Dertona was founded, apparently on land previously taken from the Statielli or the Salassi.<sup>1177</sup>  
Sources: Liv. 42.22.5-6.

43. Year: 140

Place: Salassi

Circumstances: The Salassi were defeated in 143.

Amount confiscated: Some land was taken as *ager publicus*.

Amount privatized within five years: None.

Amount of *ager publicus* left: Some *ager publicus* seems to have been left over.

Amount privatized later: It is possible that the land for the colony Dertona was confiscated now.<sup>1178</sup> In 100 the colony Eporedia was founded, but it may be that the land for this colony had not been securely confiscated until the Cimbrian war, since the Cimbri were defeated in this area.

Sources:

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assumes that the Statielli did not receive back their own land, but were given other tracts of *ager publicus*. She assumes that the land taken from the Statielli was then included in the distribution to Romans and Latins that had started in 173.

<sup>1177</sup> Salmon (1969, 121).

<sup>1178</sup> Fraccaro (1939, 95), Denti (1991, 38), and Foraboschi (1992, 92) think the land had been taken from the Salassi in 143, and that there were 2,000 colonists who received 50 *iugera* each. Fraccaro states that the centuriation around Dertona measures 140,000 *iugera* (350 km<sup>2</sup>), but 2,000 colonists would only need 100,000 *iugera* (250 km<sup>2</sup>).



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### Translations

#### Appian

- Appian, *The civil wars*, transl. with an introduction by J. Carter (London 1996)
- Appian, *The civil war*, transl. H. White (Loeb, 1913)
- Appien, *Les guerres civiles à Rome*; trad. de J.-I. Combes-Dounous; rev. et ann. par C. Voisin (Paris 1993-2000)
- Appian von Alexandria, *Römische Geschichte*; übersetzt von O. Veh. Tl. 2: Die Bürgerkriege; durchgesehen, eingeleitet und erläutert von W. Will (Stuttgart 1989)

#### Cato

- On farming* = *De agricultura*; a modern transl. with commentary by A. Dalby (Totnes 1998)

#### Digest

- Transl. A. Watson (Philadelphia 1998, 1<sup>st</sup> ed. 1985)

#### Gaius

- The Institutes of Gaius*, transl. F. De Zulueta (Oxford 1946)

#### Livy

- The dawn of the Roman Empire* (books 31-40), transl. J. C. Yardley (Oxford 2000)

## Publiek land in de Romeinse Republiek: sociale en economische geschiedenis van de *ager publicus*

Het historische belang van de *ager publicus* – land in eigendom van de Romeinse staat – in de Romeinse Republiek is sinds lange tijd voor vanzelfsprekend aangenomen. De rol die *ager publicus* speelde in maatschappelijke, politieke en economische ontwikkelingen is echter nooit systematisch bestudeerd. Uit de antieke bronnen lijkt *ager publicus* een dominante rol gespeeld te hebben gedurende de hele Republiek, maar het precieze belang van dit publieke land is nooit voldoende onderkend. Dit proefschrift poogt deze lacune in onze kennis te vullen door zich enerzijds te richten op de rol van *ager publicus* in de republikeinse economie en maatschappij, terwijl het anderzijds ingaat op de technische en juridische aspecten van dit soort land.

Een van de problemen die het moeilijk maakt de rol van *ager publicus* precies te beoordelen is het ontbreken van een schatting betreffende de hoeveelheid en locatie van het publieke land dat op enig moment in bezit van de staat was. Verschillende oudere werken, zoals die van Beloch en Afzelius, hebben uitspraken gedaan over de hoeveelheid *ager publicus*, maar hun pogingen berusten op een al te optimistische inschatting van de mogelijkheden om dit soort land te identificeren. In feite kunnen, zelfs op basis van een volledige verzameling van alle beschikbare antieke bronnen, slechts tentatieve uitspraken over de locatie en hoeveelheid *ager publicus* worden gedaan. Ook zijn de bronnen onvoldoende gedetailleerd om een precieze kaart van de *ager publicus* in de Republiek mogelijk te maken.

Ondanks de beperkingen van het bronnenmateriaal is het duidelijk dat de Romeinen tijdens hun verovering van Italië grote stukken publiek land buitmaakten. Een groot deel van dit land werd niet onmiddellijk geprivatiseerd, maar bleef publiek bezit van de Romeinse staat. Dit gebeurde niet alleen na de Tweede Punische Oorlog (218 – 201 v. C.), maar ook in de vierde en derde eeuw v. C. Het publieke land in midden-Italië – Latium, Etruria, Campania en Sabinum – werd op zijn laatst in de decennia na de Tweede Punische Oorlog aan individuele bezitters toegewezen; tijdens de tweede eeuw v. C. lag het grootste deel van de *ager publicus* daarom in de periferie van Italië: Lucania, Bruttium, Apulia, Calabria, Picenum en Gallia Cisalpina.

In deze gebieden had de bevolking overwegend de status van Latijn of bondgenoot. Dit proefschrift betoogt dat *ager publicus*, die theoretisch in handen van de staat bleef, in feite vaak in bezit bleef van de volkeren van welke hij aanvankelijk was geconfisqueerd. Het is zeker niet zo dat alle *ager publicus* bezet werd door de Romeinse elite, zoals vaak gesuggereerd wordt op basis van de antieke bronnen. Zeker gezien het feit dat de markt voor landbouwproducten in

de vierde en derde eeuw klein was, is het te verwachten dat alleen het land in de nabije omgeving van Rome in trek was onder commerciële producenten. Voor kleine boeren was de *ager publicus* in de Italische periferie niet toegankelijk, omdat zij zich hier niet konden vestigen zonder steun van de overheid.

De bezetting van *ager publicus* door de lokale Italische bevolking is voor de tweede eeuw duidelijk geattesteerd in de bronnen, hoewel dit waarschijnlijk ook al in eerdere periodes het geval was. Het is mogelijk dat de Romeinen *ager publicus* beschouwden als een instrument om de relaties met hun bondgenoten te reguleren. Regelmatig werd publiek land gegeven aan burgers of bondgenoten als beloning voor bewezen diensten. Daarnaast betoog ik dat de Romeinse overheid haar bondgenoten toegang gaf tot *ager publicus* met als doel zich te verzekeren van hun loyaliteit: zolang de bondgenoten niet in opstand kwamen tegen het Romeinse regime, mochten zij gebruik maken van *ager publicus*.

Al in de derde eeuw werd de bezetting van *ager publicus* problematisch. In deze periode groeide een aantal steden in midden-Italië, met name Rome, en daarmee ook de markt voor landbouwproducten zoals graan, wijn, olijfolie, wol en leer. Deze goederen werden in de derde en tweede eeuw voornamelijk in Italië zelf geproduceerd, aangezien import nog geen grote rol speelde. Omdat de stad Rome de grootste markt vormde en transport over lange afstanden lastig en kostbaar was, moest bovendien het grootste deel van de consumptiegoederen in de directe omgeving van Rome worden geproduceerd, hetgeen leidde tot een vraag naar land nabij Rome.

Hoewel er hier nog enkele stukken *ager publicus* gelegen waren, werd investeren in publiek land als risicovol beschouwd: het land was eigendom van de staat en kon in theorie op ieder moment worden afgenomen van de gebruikers. Het is daarom waarschijnlijk dat de groei van de commerciële landbouw al in de derde eeuw leidde tot een vraag naar mogelijkheden om publiek land met zekere bezitsrechten te verkrijgen.

In de derde eeuw voldeed de staat inderdaad aan deze behoefte door verschillende bezitsvormen te creëren die het land weliswaar niet volledig privé maakten, maar tegelijkertijd wel vaste bezitsrechten voor individuele bezitters mogelijk maakten: de *ager quaestorius*, *ager in trientabulis* en *ager censorius*. Waarschijnlijk kwamen deze gronden voornamelijk bij de elite terecht, omdat het bezit ervan niet gratis was; bovendien was de hoeveelheid land die onder deze rechtsvormen viel klein en waren ze alle gelegen in de nabijheid van Rome. De overige *ager publicus* in de Italische periferie kon daarom nog steeds bezet worden door een ieder die dat wilde, zowel Romeinse burgers als Latijnen en bondgenoten.

In het begin van de tweede eeuw v. C. stimuleerden de gunstige economische omstandigheden een snelle groei van de vrije Romeinse burgerbevolking. Dit leidde tot een snelle groei van de vraag naar land, met name in midden-Italië. Aanvankelijk kon aan de vraag naar land tegemoet worden gekomen door landverdelingen in het noorden en zuiden van Italië, waar nog voldoende vrije

*ager publicus* beschikbaar was. Na 170 kwam echter een einde aan zulke verdelingen, terwijl de bevolking bleef groeien. Het traditionele beeld van de tweede eeuw, geschetst door Toynbee, Brunt en Hopkins, betoogt dat in deze periode de *ager publicus* in steeds grotere mate werd bezet door de Romeinse elite, die hierop grote landgoederen met slavenarbeid aanlegde. Dit zou hebben geleid tot de verdrijving van de arme boeren van het land, en daardoor tot een geleidelijke afname van de vrije burgerbevolking. Veel aannemelijker is echter dat de bevolkingsgroei zich ook in de tweede helft van de tweede eeuw doorzette, en dat juist dit leidde tot problemen voor de kleine boeren.

Het feit dat de meeste *ager publicus* zich niet in midden-Italië bevond maakt het moeilijk de traditionele reconstructie van de tweede eeuw te handhaven. In dit gebied was het meeste land geprivatiseerd of met vaste bezitsrechten aan individuen toegewezen. Het grootste probleem in deze regio was simpelweg een tekort aan land om zowel een groeiende bevolking als een groeiende productie voor de markt te huisvesten. De problemen voor de kleine boeren waren het grootst in midden-Italië, maar dit kan onmogelijk verklaard worden door de accumulatie van *publiek* land door de elite. Waarschijnlijk leden veel kleine boeren in dit gebied onder fragmentatie van landbezit; veel landgoederen waren te klein om een familie van te onderhouden. Tegelijkertijd zorgde de hoge vraag naar land in midden-Italië ervoor dat kleine boeren-eigenaren hun land voor een redelijke prijs konden verkopen aan grotere producenten. Het was dus niet de *ager publicus*, maar het private land van kleine boeren dat door de elite werd geaccumuleerd.

Veel kleine boeren trokken naar de stad, waar in het begin van de tweede eeuw veel mogelijkheden bestonden om door loonarbeid in het levensonderhoud te voorzien. Anderen bleven op het platteland en pachtten daar kleine stukjes land om hun eigen ontoereikende bezittingen aan te vullen. Ook het leger was een belangrijke bron van inkomsten voor veel kleine en landloze boeren. In de loop van de tweede eeuw traden echter nieuwe problemen op: de mogelijkheden voor loonarbeid in de stad namen af, terwijl de prijzen juist stegen. Bovendien waren oorlogen die in de tweede helft van de eeuw gevochten werden minder winstgevend en werd militaire dienst daardoor minder aantrekkelijk voor landloze boeren.

Dit leidde ertoe dat veel burgers zich niet meer in de census registreerden, om zo de militaire dienst te ontduiken. Als gevolg daarvan trokken de Romeinse politici de conclusie dat de vrije burgerbevolking afnam, terwijl de problemen in de tweede eeuw in feite juist veroorzaakt werden door bevolkingsgroei. In deze situatie kon een politiek hervormer makkelijk steun verwerven onder de ontevreden en verarmde bevolking. Tiberius Gracchus stelde in 133 voor om de nog onverdeelde *ager publicus* in de perifere gebieden van de *ager Romanus* te verdelen aan kleine boeren. Hoewel het dus moeilijk is vol te houden dat *ager publicus* de *oorzaak* van de problemen was, kan het wel gezien worden als een van de *oplossingen* die gesuggereerd werden.

De *lex Sempronia agraria* van 133 was buitengewoon vernuftig geconstrueerd. Zo verleende de wet de begunstigden het eigendomsrecht op de grond, maar maakte zij deze grond tegelijkertijd onvervreemdbaar door verkoop. Ook bezwaarde zij de toegewezen percelen met een *vectigal*. Dit maakte het voor de staat mogelijk om het land terug te nemen als de ontvanger er niet in slaagde zichzelf te onderhouden, terwijl de begunstigden het land niet konden verkopen aan grootgrondbezitters. Degenen die de *ager publicus* in bezit hadden gehad voordat Tiberius zijn wet indiende moesten zich tevreden stellen met het onaantastbare bezit van 500 *iugera* (125 hectare) staatsland, plus een bonus voor hun kinderen.

Het land dat Tiberius wilde verdelen was echter niet leeg: in vele gevallen was het in bezit van Italische bondgenoten. Sommigen hadden hun land na de verovering door de Romeinen in de vierde en derde eeuw nooit af hoeven staan, en hadden er geen rekening mee gehouden dat dit na zo'n lange periode alsnog zou gebeuren. Hoewel ook de Italische bezitters rechten kregen op 500 *iugera* land, waren er velen die meer bezaten en dus het teveel moesten afstaan. Het is waarschijnlijk dat in sommige regio's een grote hoeveelheid land als *ager publicus* was geconfisqueerd, en dat in zulke gebieden de Italische bevolking geen andere keuze had dan het bebouwen van *ager publicus*, die officieel eigendom van de Romeinse staat was. In dat geval verloren zij relatief meer van het door hen geëxploiteerde land aan de Gracchische landverdelingen dan Romeinse burgers.

Na de activiteiten van Tiberius en zijn broer Gaius (volkstribuun in 122-1 v. C.) werd het land dat door hen onder arme boeren was verdeeld dan wel aan de oude occupanten als onaantastbaar bezit was toegewezen, geleidelijk volledig geprivatiseerd. We kunnen concluderen dat deze privatisering een direct gevolg was van de toenemende druk op het land: in de derde eeuw leidde de druk op het land tot het creëren van zekere rechten op *ager publicus* in de nabijheid van Rome, terwijl in de tweede eeuw de voortdurende vraag naar land leidde tot de privatisering van het publieke land in de periferie van Italië. In veel vroegmoderne Europese landen vonden vergelijkbare ontwikkelingen plaats: vaak werd de privatisering van publieke gronden gezien als een oplossing voor te grote competitie om land. Degenen die de sterkste rechten op de publieke of semi-publieke gronden hadden, stelden deze veilig door degenen die geen of slechts gewoonterechtelijke aanspraken konden doen gelden, buiten te sluiten.

Toch was er zelfs in de vroege eerste eeuw v. C. nog steeds *ager publicus* in Italië. De belangrijkste categorie publiek land waren nu de publieke weiden, de *ager scripturarius*, die niet onderworpen waren aan privatiseringsprocessen. Er waren echter ook nog steeds publieke landbouwgronden; hiervan was na de *Lex agraria* van 111 een maximum bezit van 30 *iugera* toegestaan. De resterende *ager publicus* zou een belangrijke rol spelen in de decennia voor de Bondgenotenoorlog (91 - 88 v. C.). De bondgenoten die *ager publicus* hadden moeten afstaan voor de landverdelingen van de Gracchen hadden gemerkt dat hun loyaliteit hun niets opgeleverd had: zij hadden hun bezittingen uiteindelijk

toch verloren aan de Romeinse staat. De verliezen die zij geleden hadden in de Gracchische periode, gekoppeld aan groeiende ontevredenheid op andere vlakken, maakte hen meer bereid om tegen het Romeinse gezag in opstand te komen.

De resterende *ager publicus* werd geprivatiseerd in de eerste eeuw v. C., toen generaals als Pompeius en Caesar grote hoeveelheden land nodig hadden om te verdelen aan hun veteranen. Zo was in een relatief korte periode, tussen 133 en 59 v. C., een einde gekomen aan een institutie die van fundamenteel belang was geweest tijdens de gehele Republikeinse periode, van de eerste veroveringen van Rome in Latium tot haar uitbreiding tot een Middellandse wereldrijk.



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It goes without saying, of course, that all views expressed in this thesis are my own, and that I am solely responsible for any mistakes that may remain.

## CURRICULUM VITAE

Saskia Tessa Roselaar werd geboren op 5 januari 1980 te Alkmaar. In 1998 behaalde zij haar VWO-diploma aan het Murmellius Gymnasium te Alkmaar. In 2004 studeerde zij af 'met zeer veel genoegen' in de Geschiedenis van de Oudheid en Antieke Cultuur aan de Universiteit Utrecht. Vanaf september 2004 werd zij aangesteld als assistent in opleiding aan de Universiteit Leiden, waar zij haar proefschrift in augustus 2008 voltooide.

## ILLUSTRATIONS AND FIGURES



Photo 1: The Liris valley, seen from Altinum

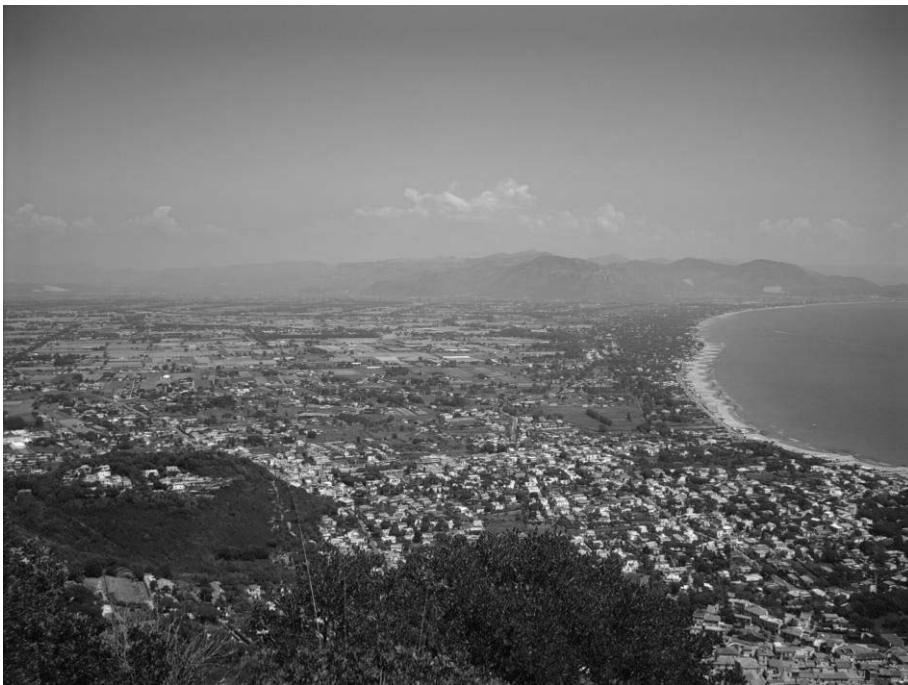


Photo 2: The Ager Pomptinus as seen from Circeii, towards Terracina



Photo 3: View towards Luceria, with sheep and goat herd



Photo 4: The territory of Buxentum



Photo 5: The *arx* at Sora



Photo 6: Excavations at Alba Fucens



Photo 7: Olive plantation on a hill, with intercropping of other crops



Photo 8: The Monti Lepini as seen from Signia



Photo 9: Grain in Apulia



Photo 10: Tanager valley (Val di Diano)



Photo 11: The landscape in Samnium, as seen from Monte Vairano





Photo 12: The territory of Terracina



Photo 13: The territory of Sora



Photo 14: The centuriated plain south of Alba Fucens



Photo 15: The territory of Carseoli

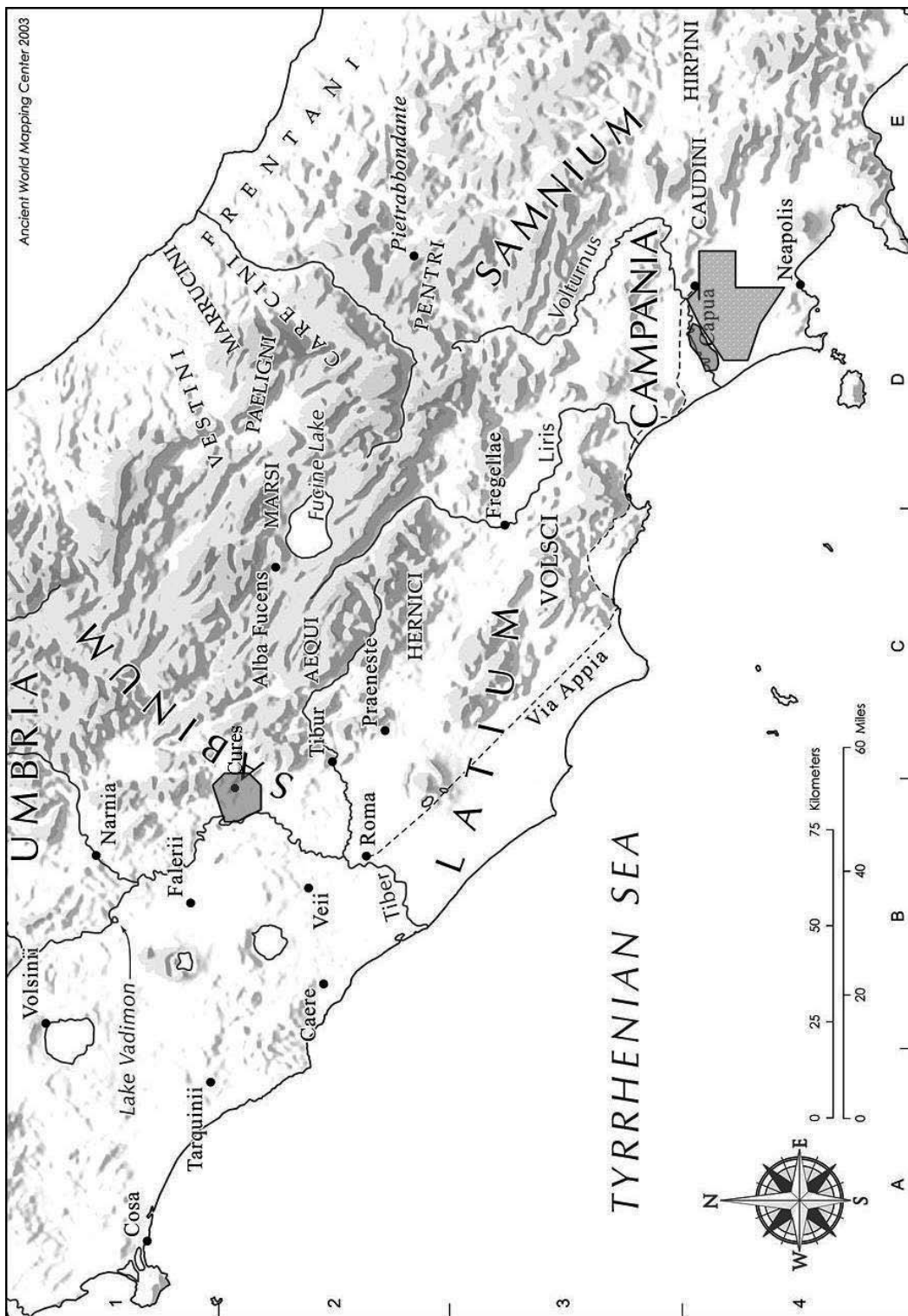


Figure 1: The possible locations of *ager censorius* (south of Capua) and *ager quaestorius* (around Cures and north of the *ager censorius*).

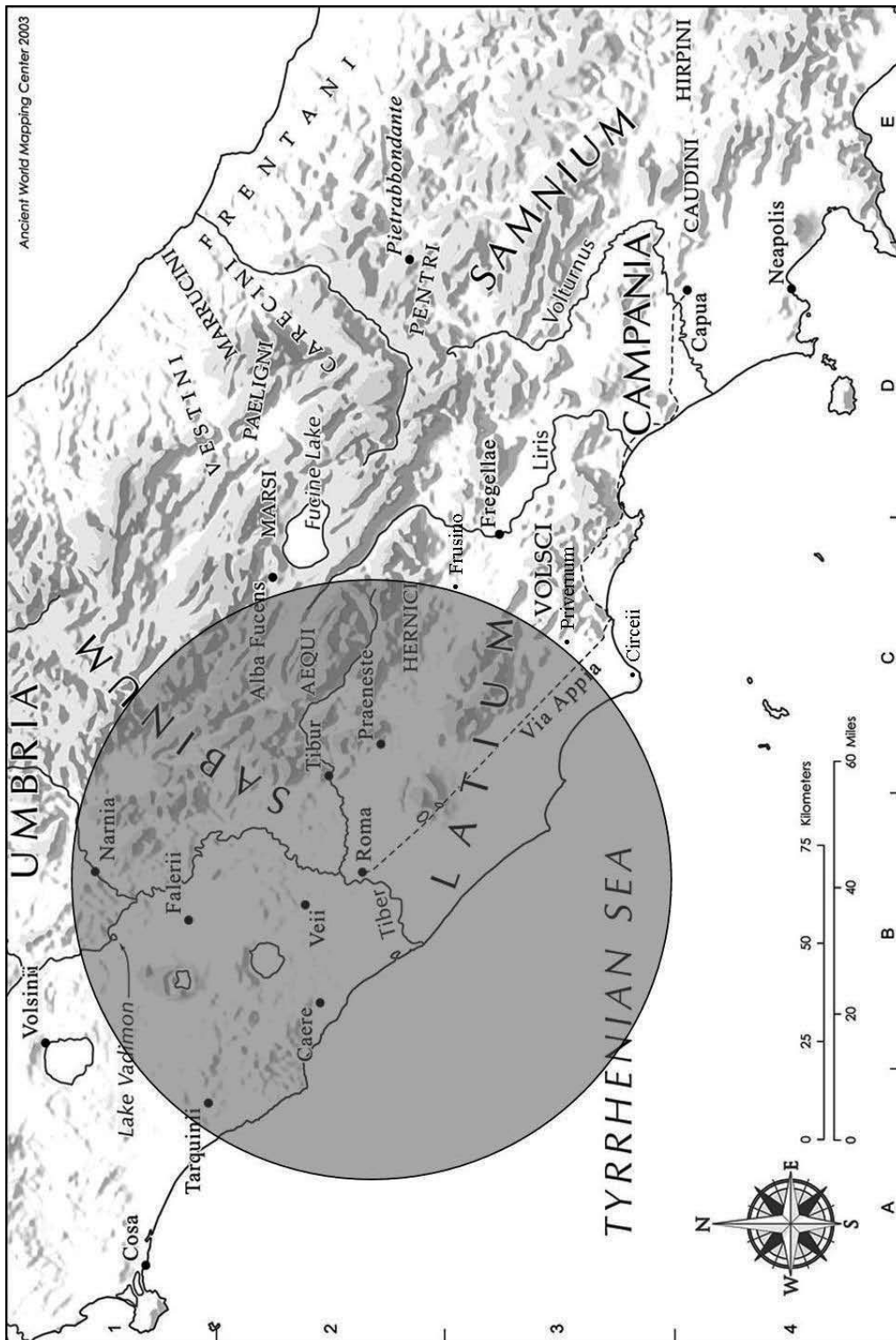


Figure 2: The extent of the 50-mile boundary outside of Rome, within which the *ager in trientabulis* was located.

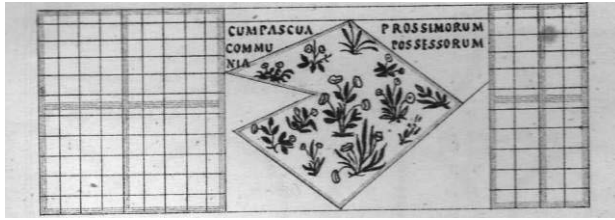


Figure 3: *Ager compascuus*: unmeasured land within the centuriated territory, to be used by the neighbours (from the Agrimensores)

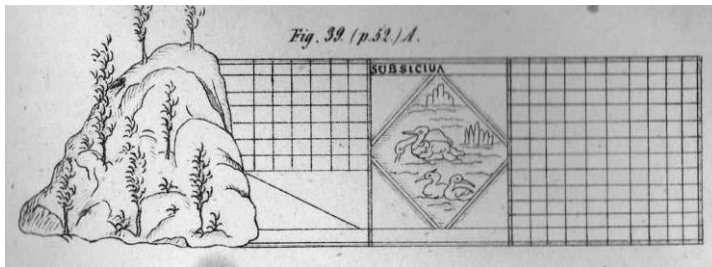


Figure 4: *Subseciva*: unmeasured land within the centuriated territory, often used as *ager compascuus* by the neighbours (from the Agrimensores)



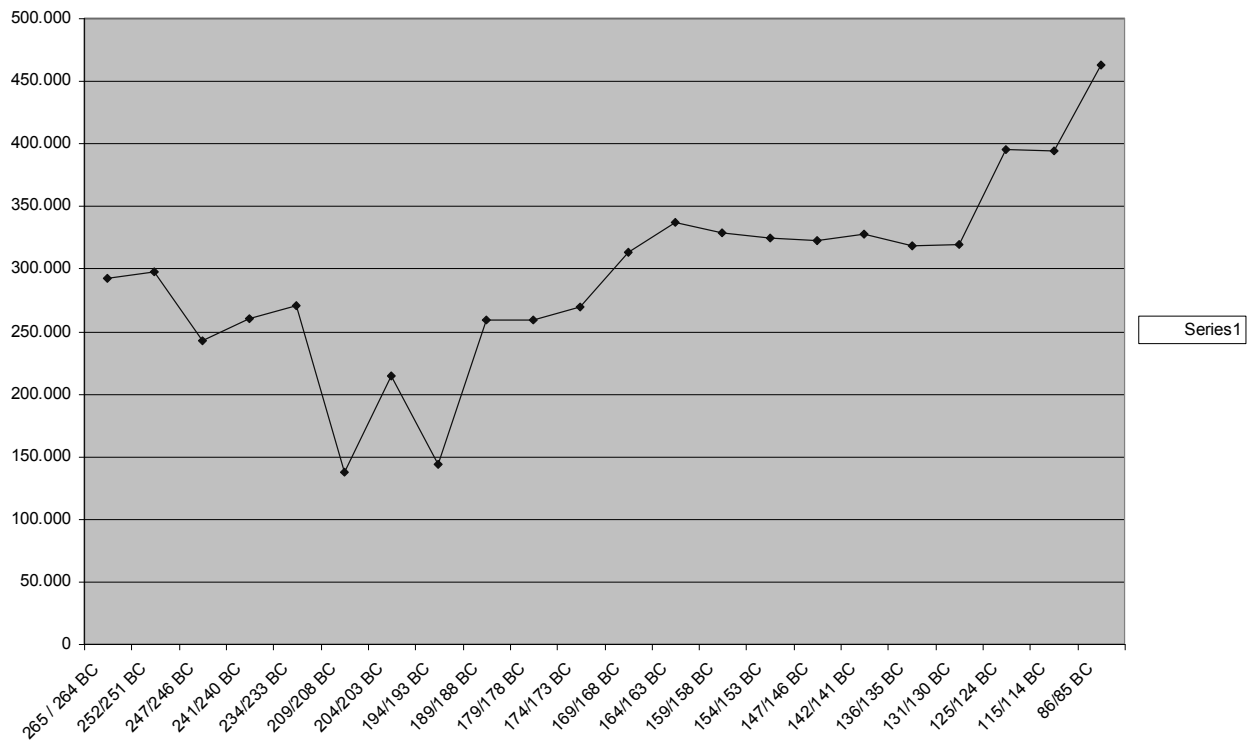


Figure 6: The census figures of the third and second centuries BC (by Saskia Hin)

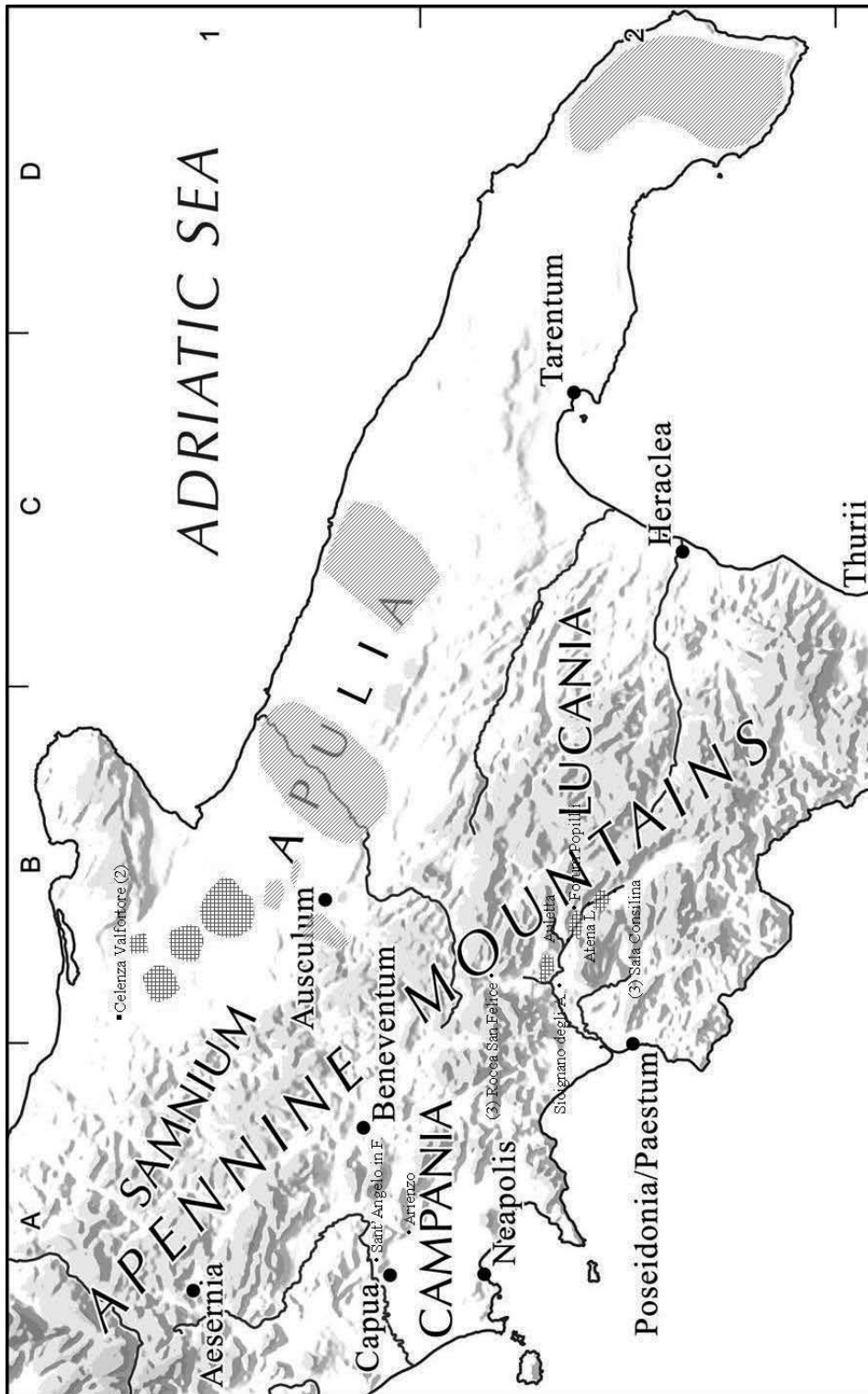


Figure 7: Possible (hatched) and certain (squared) Gracchan centuriation patterns.