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WASHINGTON UNIVERSITY

Department of Classics

THE GRACCHAN AGRARIAN REFORM AND THE ITALIANS

by

Michael Claiborne

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1. PROBLEMS AND SOURCES

The purpose of this thesis is to investigate an old controversy about the agrarian legislation of Tiberius Gracchus: whether the bill distributed land exclusively to citizens, or also to non-Roman allies. Both possibilities have been argued before. I will argue that non-citizens did benefit, and that many of the contradictions in our sources can be explained if we understand that these non-citizens were primarily Latins rather than other Italians. At the same time, in supporting this theory it will be necessary to demonstrate an important aspect of Tiberius's law. It has generally been assumed that the distributed land remained public property. But in recent years some scholars have called this into question, arguing instead that the land was partially or completely privatized. For reasons that will soon be clear, this view is probably incompatible with the possibility that non-citizens received land. I will therefore defend the traditional understanding in more detail than has been considered necessary before. Finally, I will show how my understanding of the law explains certain developments of the subsequent half-century better than the alternatives. However, before discussing uncertainties about the land bill, it will help for the sake of clarity to mention briefly the facts that are more or less firmly established, and then to survey the sources and their differences.

Rome began as a city-state, and only very slowly did it evolve to something more. In its early history it was one of a number of Latin-speaking cities joined together in an alliance known as the Latin League. Citizens of these states enjoyed a privileged status throughout the league, marked by special rights of association, including *connubium*, the right to intermarry, *ius migrationis*, the right to move to another city and adopt its

citizenship, and *commercium* the right to engage in commerce. When the league defeated an outside city it would sometimes establish a joint colony on the conquered territory, which would then enjoy these same rights.

Rome's dominance over the other Latin cities, if Livy is to be believed, was acknowledged even in the monarchic period. However it was Rome's victory over its Latin allies in 338 that established *Latinitas* as a secondary status, divorced from its original ethno-linguistic and geographic significance.¹ Many of the original Latin cities were incorporated into the Roman state as full citizens.² But the number of individuals possessing Latin rights continued to grow, for it remained the policy to establish Latin colonies on conquered territory throughout Italy until after the Second Punic War. At the same time, as it expanded beyond the boundaries of Latium, Rome incorporated a number of non-Latin peoples through diplomacy or conquest. These it ruled on an *ad hoc* basis by individual treaties rather than according to a fixed system. Their citizens typically did not enjoy the rights associated with *Latinitas*. However their service to the Roman state was the same: both were obligated to provide a certain quota of soldiers to the Roman army. Collectively these non-citizens were known as *socii nominisque Latini*.

Not all of the territory that Rome conquered was used to establish colonies. The rest became *ager publicus*, public land left open to individual use. This land became a center of controversy in 133, when Tiberius Gracchus, tribune of the plebs, promulgated legislation to create a committee titled *tresviri agris iudicandis adsignandis*, composed of

¹ Sherwin-White (1973, 96-102).

² *Ibid.*, 59.

himself, his brother Gaius, and his father-in-law Appius Claudius. Their task was to confiscate public land from those who held more than 500 iugera, without compensation, and to distribute that land to poorer individuals. The law passed over the opposition of the Senate and the veto of one of his colleagues, whom Tiberius persuaded the plebeian assembly to impeach. When the Senate refused to grant money to fund the work of the commission, Tiberius appropriated the funds bequeathed to Rome by the recently deceased king of Pergamum. At the end of the year Tiberius announced his intention to seek reelection, an unusual action in the Roman system. The day of the election saw fighting break out between Tiberius's supporters and opponents led by the pontifex maximus, who was acting in a private capacity. Tiberius was killed along with many others. The Senate gave retrospective approval to action by prosecuting some of Tiberius's supporters. However the law remained in effect.

In 129 a delegation of Latins and *socii* came to Scipio Aemilianus to complain that the commission was violating their rights. Scipio intervened to persuade the Senate to deprive the commission of at least some of its power of adjudication, and thus, in a way that is too complicated to be worth explaining, unintentionally impeded to some degree the commissions ability to distribute land. Scipio's popularity suffered. Soon after he died in bed, and, it seems that no one yet doubted, from natural causes. Eventually the anti-Gracchan faction decided that Scipio had been murdered and adopted him as their own martyr to set against Tiberius.

In 126 a tribune M. Junius Pennus proposed, in Cicero's words, *usu urbis prohibere perigrinos*. Gaius Gracchus, then quaestor, spoke against the proposal, and a

fragment of this speech survives. The same year he served in Sardina under one of the consuls. In 125 Fulvius Flaccus, consul and now a member of Tiberius's commission, proposed extending Roman citizenship to all Italians. The bill was withdrawn in the face of opposition from the senate. The same year the Latin city of Fregellae revolted and was destroyed. Gaius, then governor of Sardinia, was accused of involvement.

In 124 Gaius returned from Sardina and successfully sought the office of Tribune of the Plebs, to which he was reelected the following year. His legislation during these two years was much more ambitious than his brother's. Its exact composition and chronology are subject to debate, but a few laws are important for our purposes.³ First, he promulgated another land bill. Second, he secured passage, through the agency of another tribune named Rubrius, of a law establishing Rome's first transmarine colonies. Third, he proposed, unsuccessfully, to extend full citizenship to the Latins, and voting rights to the other Italians. Finally, he may have proposed, again unsuccessfully, that the order in which the centuries voted in the centurian assembly should be randomized instead of voting according to census class.

In 122 Gaius failed to secure a third term as tribune, allegedly because the votes had been miscounted. His popularity had perhaps suffered because of the activities of another tribune, Livius Drusus, who spent the year trying to out-demagogue Gaius on the Senate's behalf through his own laws, including one establishing more colonies and another protecting Latins from corporal punishment. After Gaius left office the plebeian assembly was scheduled to vote on the repeal of his legislation. Supporters of both sides

³On the laws themselves see Stockton (1979, 114-61).; Greenidge and Clay (1960, 30-41). On the chronology see Stockton (1979 226-39).

occupied the Capitol in anticipation of voting. Violence again broke out, and again the tribune and many of his supporters were killed, this time with official senatorial approval in the form of the first “*senatus consultum ultimum*.” A few years later the agrarian commission was abolished.

So much can be stated for certain. Nearly all the rest is subject to dispute. Some questions relate to the dramatic elements of the episode: What motivated Tiberius to undertake his reform? Why was the senate so vociferously opposed? Who was responsible for the outbreak of violence? Others have to do with drier, technical aspects of Tiberius's law: how were the commissioners chosen? How much land did he permit possessors to keep? How much was distributed, where, and to how many individuals? We are concerned with the more limited question of who received land. But the essential problem is the same: Although the years from 133 to 121 are better documented than most of the rest of Roman history, our sources are wholly inadequate in view of the importance and complexity of the events. We have no first-hand account of the sort Cicero provides for the late Republic, nor even a coherent and reliable narrative like Livy's for the earlier period. Here I will provide an overview of the sources that do survive and their contradictions.

1.1 The ancient evidence

Our oldest source is the rhetoric of Gaius Gracchus himself.⁴ Gaius, unlike his brother, was a distinguished orator and his speeches were widely read after his death, such that even Cicero said he was *legendus iuventuti*.⁵ The remains amount to a few

⁴ORF2 178 ff; Stockton (1979, 216-25).

⁵*Brutus* 126.

pages. Unfortunately they contain almost no useful information. Many are cited by grammarians as instances of archaic words or forms, without any context to explain their significance. Others are more substantial pieces of invective or allusions to his brother Tiberius, large enough to be called paragraphs. But while these inform us about his personality and the development of Roman rhetoric, they say nothing about his legislation. Only two mention non-citizens: First, a fragment from Gaius's speech against the alien expulsion act of L. Pennus, which Festus cites for the use of *res publicas*: “These peoples have lost their states, among other things, through greed and stupidity.”⁶ The second is an anecdote demonstrating “how much passion and intemperance there is in young men,” in which a Roman magistrate beats to death a “laborer from the Venusian plebs.”⁷

A final piece of evidence contemporary to the Gracchi is a fragment from a speech by one C. Fannius against Gaius's citizenship bill: “If you give citizenship to the Latins, I suppose you think you will have a place at public meetings, as you do now, and take part in games and holidays. Do you not think they will occupy everything?”⁸ The fragment mentions only Latins, but this is presumably from the same speech that Cicero calls *oratio de sociis et nomine Latino*, meaning it must have addressed the other Italians.⁹

Besides these fragments, we know of several sources that are totally lost to us but were

⁶ORF2 f.22: eae nationes cum aliis rebus per avaritiam atque stultitiam res publicas suas amiserunt. bubulcus de plebe Venusina

⁷ORF2 179-80: quanta libido quantaque intemperantia sit hominum adolescentium;

⁸ORF2 144: Si Latinis civitatem dederitis, credo, existamatis vos ita, ut nunc constitistis, in contione habituros locum aut ludis et fastis diebus interfuturos. Nonne illos omnia occupaturos putatis?

⁹*Brutus* 99

available to ancient authors. The same Fannius who spoke against Gaius's citizenship bill wrote a history of the period, presumably hostile to the Gracchi, which some suppose to be the source for much of the anti-Gracchan tradition.¹⁰ Another source is a pamphlet of Gaius's mentioned by Plutarch, at least part of which described his brother's motives.¹¹ Plutarch also mentions letters from the brothers' mother Cornelia, two of which may survive from a manuscript of Cornelius Nepos, though their authenticity is naturally disputed, and even if genuine they are not very interesting from a historian's perspective.¹² But of course there were many others we do not hear of. To illustrate, Stockton illuminates this point by reminding us that Atticus had no difficulty digging up the names of the ten men who served as *legati* to Mummius in 146.¹³

Another source is the fragmentary *lex agraria* of 111. The statute is, according to Lintott, more complex than any comparable document surviving from the Classical Greece or the Hellenistic period, and far more complex than anything Roman up to this point.¹⁴ It contains more archaic Latin than any text besides Cato's *de Agri Cultura*. But it is also very fragmentary. The remains consist of thirteen pieces, one discovered in the 19th century, twelve probably in the 15th century, some of which survive today only in humanist copies.¹⁵ Mommsen's was the standard text until very recently, when two were

¹⁰Badian (1972), 677.

¹¹*Ti. Gracch.* 9.7

¹²*C. Gracch.* 13.1; Stockton (1979), 26.

¹³Stockton (1979), 3-4; *ad Atticum* 13.20.2, 13.32.3.

¹⁴Lintott (1992, 5, 166-9).

¹⁵For the textual history see *Ibid.*, 66 ff.

published in short succession: Lintott's in 1992, and Crawford's in 1996.

The task of reconstruction is made easier by the fact that the tablet was reused for this law, the other side containing a *lex repetundarum* dating probably to 123 or 122.¹⁶ However, while Lintott and Crawford agree more or less on the spacing of the fragments, they disagree greatly when it comes to filling in the lacunae. Lintott sees the letters as being more or less equally spaced, while Crawford writes "the face with the *lex agraria* is in places rough. In addition, the letters are small, the lines close together, abbreviations erratic," such that in the surviving portions the number of letters contained in the same space on different lines can differ by as much as twenty-five percent.¹⁷ As a result, Crawford tends to be much more cautious in his reconstructions, while Lintott's text is easier to read. It seems that most scholars prefer Lintott's edition, for this reason and because it is much more conveniently formatted. In my discussion I will mention both but prefer Crawford's, not only for his caution, but also because my understanding of the law and the historical context is much closer to Lintott's, and it is better for the sake of argument to choose the more challenging text.

The main purpose of the law seems to be to declare that all the land distributed by the *tresviri*, and all the land of the possessors to which they granted recognition, is to be private. Because the law addresses its changes directly to the Gracchan legislation its importance is obvious. Yet it has been relatively neglected when compared with the use of similar evidence in the study of other periods, partly due to its complexity, along with its fragmentary state and tumultuous textual history, but also because it is much more

¹⁶On the identity and dating of this law see *Ibid.*, 166 ff.

¹⁷*Ibid.*, 64; Crawford (1996, 44-6.).

difficult to fit with our other evidence. Several terms and categories that appear here are found nowhere else in Roman law. Further, fitting the statute into our only surviving narrative of the time, Appian's, is extremely challenging, as will be clear when I tackle the question below. There is one exception to this neglect: the third line of the law refers to land which "a triumvir gave [or] assigned by lot to a Roman citizen."¹⁸ This is one of two passages constantly cited by those who believe that only citizens received land.

Cicero is our next nearest source. He often found occasion to mention the Gracchi, usually in a negative way. Two works of his are particularly relevant. The first is his *Republic*, which is set not long before Scipio's death in 129, and for the sake of verisimilitude refers to Tiberius several times. A fragment from this work provides the second of the two most important pieces of evidence thought to show that non-citizens were excluded from the reform: "Tiberius Gracchus persevered in the case of citizens, but he ignored the rights and treaties of the allies and Latins"¹⁹ The second source is Cicero's three *orationes de lege agraria contra Rullum*, in which he opposes a land bill brought by the tribune Rullus. Cicero's rhetorical strategy in these speeches is to deny Rullus's claim to the tradition of Tiberius Gracchus, and he does this by showing the ways his law contrasts with that of the popular hero, for whom Cicero here has only kind words. Though little read, these speeches are among our best sources for the content of Tiberius's law, and they will figure prominently in my argument.

The next source after Cicero is the history of Velleius, who wrote in the first century CE. Velleius's account is vociferously hostile to Tiberius and Gaius, and for that

¹⁸ III vir sortito ceivi Romano dedit adsignavit.

¹⁹3.29.41: Ti. Gracchus, perseveravit in civibus, sociorum nominisque Latini iura neclexit ac foedera.

alone reason is valuable as a source for anti-Gracchan rhetoric. The Italians figure prominently in this rhetoric, to the extent that in the summary of Tiberius's legislation they actually come before the land bill: “He split from the *boni*, and promised all of Italy citizenship; at the same time by promulgating agrarian laws, with everyone immediately wanting [land], he confounded high and low and brought the republic into great danger and the edge of destruction”²⁰ Likewise he says that Tiberius was killed “standing with his supporters and rousing the mob of almost all of Italy.”²¹ The Italian policy of Tiberius, unattested elsewhere, seems at first glance to lend support to the idea that he included them in the land bill, especially since such complaints would make little sense in Velleius's day. In fact, Velleius himself is clearly not invested in the issue: When it comes time to describe the Social War, he even expresses sympathy for the Italians: “As their fortune was harsh, so their cause was very just: for they asked for citizenship in the state whose power they defended by arms.”²² Clearly the anti-Italian rhetoric aimed against the Gracchi was not the historian's own.

Unfortunately this testimony becomes less valuable when we realize how confused Velleius is on other details. After Tiberius's death the rhetoric seems to slip from attacking the tribune on the grounds that his supporters were non-Roman Italians to alleging that they were non-Italian foreigners: When Scipio is heckled by Tiberius's

²⁰2.2: descivit a bonis, pollicitusque toti Italiae civitatem, simul etiam promulgatis agrariis legibus omnibus statim concupiscentibus, summa imis miscuit et in praeruptum atque anceps periculum adduxit rem publicum.

²¹2.3: stantem in area cum catervis suis et concientem paene totius Italiae frequentiam

²²2.15: quorum ut fortuna atrox, ita causa fuit iustitissima: petebant enim eam civitatem, cuius imprium armis tuebantur.

supporters in the assembly, he says that he will not be frightened by those “for whom Italy is a stepmother”²³ Thus Scipio dismisses Tiberius's supporters as being insufficiently attached to Italy, whereas in the rest of Velleius's narrative the problem is that they are too Italian. His confusion is more evident when he introduces Gaius's legislation: “His goals were much greater and bolder: he offered citizenship to all the Italians; he tried to extend it all the way to the Alps; he divided the land; he forbade any citizen to have more than five-hundred iugera, which had previously been forbidden by the *Lex Licinia*”²⁴ Thus he attacks Gaius for extending citizenship, a measure he already attributed to Tiberius, and whereas he had brushed over Tiberius's land bill to focus on the Italian issue, here he attributes the provisions of that bill to Gaius as if they were new. We can only conclude that he had trouble distinguishing the brothers, and consequently we cannot tell against whom the rhetoric about Italians was originally aimed.

The rest of the Latin tradition has been almost entirely lost. A few scraps remain, all hostile to the brothers, but non-citizens are curiously absent. The *periochae* of Livy does not mention Latins or Italians. It even leaves the trouble in 129 vague, saying only “seditions were stirred up by the triumvirs elected to divide the land, Fulvius Flaccus, Gaius Gracchus and Gaius Papirius Carbo” almost as if it were deliberately avoiding the issue.²⁵ Likewise the *de Viris Illustribus* does not mention non-citizens, even when

²³2.4: quorum noverca est Italia.

²⁴2.6: longe maiora et aciora petens, dabat civitatem omnibus Italicis, extendebat eam paene usque Alpibus, dividebat agros, vetabat quemquam civem plus quingentis iugeribus habere, quo aliquando lege Licinia cautum erat.

²⁵59: seditiones a triumviris Fulvio Flacco et C. Graccho et C. Papirio Carbone agro diuidendo creatis excitatae,

discussing Gaius, except to say that “he incurred unpopularity for the defections of Asculana and Fregellae.”²⁶ Florus, whose ultimate source may be Livy, and whose account may therefore reflect his, describes Tiberius's motives in interestingly vague terms that would not exclude Latins: “Because he pitied the *plebs*, who had been forced off their land, so that that the people who conquered the world and controlled the globe could not rejoice in house and home”²⁷ As will be demonstrated below, the term *plebs* was applicable to Latins as well as Romans.²⁸

On the Greek side we are somewhat better equipped. Here the tradition goes back to Posidonius, the Syrian Greek polymath who lived in the late second and early first century and wrote a continuation of Polybius's history. Living in Rome not long after the events, and knowing some of the actors first hand, he would have been at least as well equipped as Cicero to provide a reliable account. That work has of course been lost, but scholars generally accept that it was the main source for the latter part of Diodorus Siculus's *Library*, written in the second half of the first century BC.²⁹ This part of Diodorus's work survives only in fragments. It does not seem to be especially unfavorable to Tiberius, though one fragment states that he received the appropriate punishment.³⁰ It is however extremely hostile to Gaius, whom it describes as a madman

²⁶65.2: Asculanae et Fregellanae defectionis invidiam sustinuit

²⁷2.2: quia depulsam agris suis plebem miseratus est, ne populus gentium victor orbisque possessor laribus ac focus suis exsultaret. Stockton (1979, 225).

²⁸ See p. 112 ff.

²⁹Stockton (1979, 3).

³⁰24/25.7.2: τῆς προσηκούσης κολάσεως ἔτυχεν

and a tyrant, entirely responsible for the violence that ended his life.³¹ Not surprisingly, Diodorus, and probably Posidonius too, saw the Gracchan reforms through the lens of Greek political philosophy. Gaius's intention, he says, was to overthrow the aristocracy and establish a democracy.³²

On the subject of Tiberius and Gaius's legislation the fragments have little to say. There is a quick summary of Gaius's proposals, followed by the statement that from this sort of behavior comes lawlessness and the overthrow of the state.³³ Tiberius's land bill is described only as giving land to τῶι δήμῳι, “the people.”³⁴ Diodorus's favorite word for the supporters of the Gracchi is οἱ ὄχλοι.³⁵ He describes these flowing into Rome from the countryside like rivers into the sea.³⁶ This shows a class-based disdain, but tells us nothing about their citizenship status. One fragment, however, may give an interesting hint. Apparently contrasting Octavius's supporters with Tiberius', Diodorus describes the former as having “a crowd that was not newly-assembled and φυλῶδες,, but composed of the most practical and prosperous element of the people.”³⁷ The word φυλῶδες is a *hapax*, which the LSJ defines “of many races.” That may suggest that non-citizens numbered among Tiberius's supporters. However this definition seems to strain the

³¹24/25.28a.1 27.9.1

³²24/25.25.1 ὁ Γράχος δημηγορήσας περὶ τοῦ καταλῦσαι ἀριστοκρατίαν, δημοκρατίαν δὲ συστήσαι . . .

³³24/25.25.1: ἐκ δὲ τούτων τῶν ὀλέθριος ἀνομία καὶ πόλεως ἀνατροπὴ γίνεται.

³⁴24/25.6.1

³⁵24/25. 6.1, 24, 25.1, 25.2.

³⁶24/25.6.1 συνέρρεον εἰς Ῥώμην οἱ ὄχλοι ἀπὸ τῆς χώρας ὡσπερὶ ποταμοὶ τινες εἰς τὴν πάντα δυναμένην δέχεσθαι θάλατταν.

³⁷24/25.7.2 ἔχων πλῆθος οὐ νεοσύλλογον καὶ φυλῶδες, ἀλλὰ τὸ πρακτικώτατον τοῦ δήμου καὶ τοῖς βίοις κάρπιμον.

meaning of the world φυλή, which usually refers to more or less artificial political divisions within a people, such as the *tribus* of the Roman assemblies, as opposed to separate ἔθνη. Perhaps Diodorus anachronistically imagines Italy as one state, and the peoples which comprise it as separate φυλαί, on the analogy of the Doric and Ionic tribes in Greece, but it is at least as probable that by φυλῶδες he means that Tiberius had among his supporters many individuals from the rural tribes who were not commonly seen in the city. Plutarch, as we will see, likewise describes a flood of supporters from outside the city, but still presents them all as citizens.

Another, much later source is Cassius Dio. He wrote in the second century CE, and his brief account of the Gracchi mostly survives. Dio's account is every bit as one-sided as Velleius's. It tells a story of how Tiberius "ἐτάραξε τὰ τῶν Ῥωμαίων." Everything is reduced to personal conflicts: Tiberius was bitter over events at Numantium a few years earlier, when the Senate rejected a truce he had negotiated, and so he used the people to get his revenge.³⁸ The opposition of Marcus Octavius is attributed to a family feud.³⁹ Gaius was worse than Tiberius, because the latter had been driven by bitterness, while the former's behavior was due entirely to an innate depravity.⁴⁰ Naturally then Dio does not have much to say about the brothers' legislation. His few words on the subject are vague: Tiberius, he says, proposed certain laws to help those who served in the army, a category that could easily include Latins and Italians.⁴¹ Tiberius and Gaius's supporters

³⁸24.83.2-3.

³⁹24.83.4

⁴⁰25.85.1

⁴¹24.83.7

are referred to only as ὁ ὄμιλος, "the crowd"⁴²

But by far the most important sources are Plutarch and Appian. The former hardly needs introduction here. Plutarch, as he famously stresses in his *Life of Alexander*, did not intend to write history, and it is unfortunate for him and for us that we have been forced by the size of his corpus and the paucity of other sources to misuse him as if he did. The degree to which Plutarch's Roman lives are adequate to this purpose varies widely. When writing about famous Greeks he could draw upon a lifetime of learning and an impressive memory, but for their counterparts he was out of his natural element, and the task was made more difficult by his imperfect Latin.⁴³ Thus if he had a reliable narrative to anchor his accounts, as he seems to have had for the years after 60 BC, probably Asinius Pollio, which had possibly been translated into Greek, he could do pretty well.⁴⁴ In other cases, such as his *Life of Cicero*, written before he had discovered Pollio, or his lives in general before 60 BC, he tended to compensate by layering on the anecdotal and colorful elements more thickly and with messier results.⁴⁵ When his subject is Cicero or Caesar this is easy to detect. For the Gracchi we can only guess what sources he used or how his account would compare to a genuine history. For instance he claims knowledge of a pamphlet by Gaius about his brother, but this does not necessarily indicate he had seen it himself.⁴⁶ That Plutarch did not have a continuous narrative to work from is perhaps

⁴²24.83.3, 7, 25.85.3.

⁴³Pelling (1979, 74-5).

⁴⁴Ibid., 84-5.

⁴⁵Ibid., 76-7, 85.

⁴⁶*Ti. Gracchus* 9.7

indicated by the fact that he presents a proposal to expel non-citizens in 121 as if it were unprecedented, when we know that Pennus had proposed the same in 126.⁴⁷ This suggests that Plutarch not only did not know about the event, which fell between his two biographies, but also that he did not have very complete information even about Tiberius and Gaius, since he must not have read Gaius's speech against the earlier law.

Plutarch gives us little reason to question the impression given by Cicero, that only Roman citizens benefited. Most of the time he uses vague expressions such as “the people” or “the poor,” but he does on a few occasions specifically mention citizens. In his description of the history of the public land that Tiberius proposed to distribute, it is citizens that are allowed to occupy it and citizens that are driven off by the rich.⁴⁸ Likewise, he says that Tiberius's law ordered the rich to give up their land to poorer citizens.⁴⁹ The significance of the tribune's death is that it was the first sedition since the expulsion of the kings to end in the bloodshed of citizens.⁵⁰ Finally, if any significance can be attached to the statement, a slave insults the supporters of Gaius and Fulvius by saying “Make way for good men, you evil citizens.”⁵¹

Plutarch passes over the episode with Scipio in 129, since it takes place between the two lives. The first appearance of non-citizens is when he discusses the hypocrisy of the Senate, which was willing to accept Livius Drusus's demagoguery while opposing

⁴⁷*C. Gracchus* 12.2.

⁴⁸*Ti. Gracch.* 8.1, 3.

⁴⁹*Ibid.*, 9.2

⁵⁰*Ibid.*, 20.1

⁵¹*C. Gracchus* 13.2

Gaius's: "And further, when Gaius proposed to bestow upon the Latins equal rights of suffrage, he gave offense; but when Livius brought in a bill forbidding that any Latin should be chastised with rods even during military service, he had the senate's support."⁵² Next, he introduces Fulvius Flaccus, who he says was suspected "of stirring up trouble with the allies and of secretly inciting the Italians the revolt," and who had proposed "a policy which was unsound and revolutionary," probably referring, whether Plutarch knew it or not, to the earlier citizenship bill.⁵³ Besides this there is Gaius's opposition to the expulsion of aliens, and an accusation that his mother Cornelia had hired foreigners disguised as non-citizens to support her son. Overall, if our evidence ended with Plutarch we would have little reason to think Tiberius's law gave land to Italians or Latins.

But there is also Appian. He, an Alexandrian Greek and Roman citizen, clearly intended for his work to be read by Greeks less familiar with the Roman constitution.⁵⁴ Thus he takes time to explain even elementary details of Roman society, such as who *equites* were.⁵⁵ At the same time he prefers to exclude any details not essential to his narrative, and shows no concern for consistency even in the names he assigns various magistrates.⁵⁶ These factors combine to create a general impression of a lack of polish.

⁵²Ibid., 9.3: ἔτι δὲ ὁ μὲν τοῖς Λατίνοις ἰσοψηφίαν διδοὺς ἐλύπει, τοῦ δέ, ὅπως μὴδὲ ἐπὶ στρατείας ἐξῆ τινα Λατίνων ῥάβδοις αἰκίσασθαι γράψαντος ἐβοήθουν τῷ νόμῳ. Here and elsewhere I have followed Perinn's translation from the Loeb Classical Library.

⁵³Ibid., 10.3: ὑποπτος δὲ καὶ τοῖς ἄλλοις ὡς τὰ συμμαχικὰ διακινῶν καὶ παροξύνων κρύφα τοὺς Ἰταλιώτας πρὸς ἀπόστασιν. οἷς ἀναποδείκτως καὶ ἀνελέγκτως λεγομένοις αὐτὸς προσετίθει πίστιν ὁ Φούλβιος οὐχ ὑγαινούσης οὐδὲ εἰρηνικῆς ὧν προαιρέσεως.

⁵⁴Bucher (2000, 438).

⁵⁵*Bell. Civ.* 1.91

⁵⁶Bucher (2000, 438); Luce (1961, 21).

Appian's narrative leaves little doubt that Italians benefited from both brothers' legislation. The purpose of allowing *ager publicus* to be occupied was “to increase the population of the Italian race” When Tiberius argued for his law “he spoke in grand terms about the Italian race, how it was courageous in war and related by blood,” and after passed he was praised “as the founder not of one city nor even one race, but of all the peoples of Italy.”⁵⁷ Such language is hard to ignore, and this is the origin of the problem for modern scholars, whose efforts to resolve it I will now discuss.

2.2 The modern scholarship

There was a time, not long past, when this question did not trouble the minds of scholars, at least not those who wrote in English. When Hugh Last wrote his chapter on Tiberius Gracchus for the *Cambridge Ancient History* in 1932, he took up a subject already fraught as any other with controversies as old as modern scholarship.⁵⁸ But on this particular issue, his chapter betrays an enviable lack of concern. Last writes: “The *lex agraria* was a simple measure, designed to provide allotments for the poor.”⁵⁹ Besides this there is hardly a word on the subject, and no mention of Italians until after Tiberius dies. As his review of Göhler’s *Rom und Italien* written a few years later seems to indicate, he had assumed that only citizens benefited, but had not considered it a point needing argument.⁶⁰ Yet since that time it has proved one of the most annoyingly

⁵⁷Ibid., 1.9: ἐς πολυανδρίαν τοῦ Ἰταλικοῦ γένους., 13; ἐσεμνολόγησε περὶ τοῦ Ἰταλικοῦ γένους ὡς εὐπολεμωτάτου τε καὶ συγγενοῦς; οἷα δὴ κτίστης οὐ μιᾶς πόλεως οὐδὲ ἐνὸς γένους, ἀλλὰ πάντων, ὅσα ἐν Ἰταλίᾳ ἔθνη

⁵⁸Last (1932)

⁵⁹Ibid., 23.

⁶⁰Gohler (1939). Last (1940, 83).

insoluble controversies of the whole period.

It was in fact Göhler's book and the opposition it provoked that brought the question to attention. His argument that Italians benefited was not new – Mommsen had said as much in his history four decades earlier - but Göhler was the first to argue forcefully, not only that Italians were involved, but that they were actually central to Tiberius's project.⁶¹ The reaction was mostly negative.⁶² Walbank criticized the “distortion” of history produced by his “preoccupation with Italy.”⁶³ On the particular issue of their participation in the land distribution he said “there is absolutely no evidence,” referring the reader to Gelzer's review of the same book.⁶⁴

Gelzer's criticisms are significant because they set the parameters for the subsequent debate. Here he reiterates ideas already set forth his ideas on the subject in his review of Täger's *Tiberius Gracchus*.⁶⁵ In his source criticism, Täger had proposed that the rhetoric about Italy and Italians that pervades Appian's account derives ultimately from Tiberius himself, and by implication that Italians were an important part of the land reform. To Gelzer, in contrast, this was simply a matter of confusion on the part of one of our sources, Appian, being so far removed from the events, did not understand the issue of citizenship in earlier Roman history, and so when he writes *Italioi* and *Romaioi*, he

⁶¹Mommsen (1868, iii.88).

⁶² It probably did not help that the book is permeated with a kind of racialism that leads him to praise Gaius Gracchus as “ein politischer Fuehrer echt nordischer Praegung” (145).

⁶³Walbank (1942, 87).

⁶⁴Ibid.; Gelzer (1941).

⁶⁵Täger (1928); Gelzer (1929).

refers not to citizens and non-citizens, but to the *plebs urbana* and *plebs rustica*.⁶⁶ This reflects one of Gelzer's greatest points of disagreement with Göhler, who repeatedly praises Appian as a reliable source and an excellent historian.⁶⁷ Gelzer in contrast preferred Plutarch's account, and he considered Appian to be not only less reliable than the biographer, but so unreliable that we should not believe anything he says absent outside confirmation.⁶⁸

This argument did not prove as decisive as Gelzer hoped and Walbank seemed to think, and the doubt survived to become entangled in the whole complex of controversies surrounding the Gracchi and their work. From that point we can trace two trajectories in scholarship on the subject. The first group are those whose interest is primarily in the sources, the second those who aim above all to reconstruct the history and use the sources only as a means to this end.

Scholars not focused on historiography in and of itself have tended to be noncommittal or even dismissive of the issue. The precedent was set by Badian, who in his influential *Foreign Clientellae* spends less than five of the book's several hundred pages on the possibility that non-citizens participated in Tiberius's reform.⁶⁹ Within slightly more than two pages of rather large print he has decided that they did not, based on the quote from Cicero and the clause from the law of 111.⁷⁰ In the next three pages he

⁶⁶Gelzer (1941, 149 ff.)

⁶⁷Göhler (1939, 90, 165).

⁶⁸Gelzer (1941, 150): So bedauerlich das fuer uns ist, koennen wir Appian nur das entnehmen, was durch andere Quellen bestaetigt wird.

⁶⁹Badian (1958, 169-73.)

⁷⁰Ibid., 169-71.

proposes that Appian's source was an Italophile author, probably from the Augustan period, whose misinformation in turn ultimately derived from Gaius's pamphlet, in which he exaggerated his brother's Italian sympathies for political reasons.⁷¹ So much suffices for a monograph on the role of non-citizens in Roman politics. Two decades later when the same scholar wrote an influential survey titled "Tiberius Gracchus and the Beginning of the Roman Revolution," he did not consider the question worth even this much, dismissing it in two sentences.⁷² The first states bluntly: "As is nowadays generally admitted, Tiberius' law was confined to Roman citizens, so that Tiberius Gracchus *perseveravit in civibus* . . . Despite Appian's references to 'the Italian race' and the pan-Italic picture he presents, it is clear that the allies had no share in the Gracchan allotments."⁷³ A second footnote simplifies his explanation of Appian's account to calling it "a tendentious falsification."⁷⁴

Badian's cursory treatment influenced other historians. Scullard in his 1959 book *From the Gracchi to Nero* did not mention the question in his text, but referred his reader to Badian in a footnote in case the thought had crossed their minds.⁷⁵ Brunt in *Italian Manpower* devotes a footnote to the issue, pointing to Gelzer, though hinting reservations about the consensus.⁷⁶ Sherwin-White in his second edition of *Roman Citizenship*

⁷¹Ibid., 171-3.

⁷²Badian (1972).

⁷³Ibid., 681.

⁷⁴Ibid., 701 n.100.

⁷⁵Scullard (1959 n.9). The newest edition (1982) keeps the note but adds that the theory "has however again been revived."

⁷⁶Brunt (1971, 76 n.1).

included an appendix titled “Some Recent Theories About Latini, Municipales, and Socii Italici.”⁷⁷ For this question “recent” seems to mean up to 1939, and after stating the consensus he says: “Göhler sought to counter this common opinion by arguing that the *lex Sempronia* proposed the distribution of land to landless Romans and Italians alike. His argument is against the main indications of the somewhat ambiguous evidence, and he has found few followers.”⁷⁸

So far the consensus was still based on two pieces of evidence: the isolated quote from Cicero and the clause mentioning citizens in the law of 111. In 1980 a third support was added by J.S. Richardson's article “The Ownership of Roman Land: Tiberius Gracchus and the Italians.”⁷⁹ Richardson thought to look at the legality of giving land to non-citizens, and demonstrated that it should have been impossible because Roman land could not be transferred to individuals without the right of *commercium*.⁸⁰ This important point will be discussed in more detail below. He then proposed that Tiberius did include non-citizens, but only after conferring citizenship on them.⁸¹ Scholars rightly rejected the second point as implausible, for reasons I will also discuss, but they seized on the first argument as further proof of the consensus.⁸²

The most recent work of this tendency is *Public Land in the Roman Republic* by

⁷⁷Sherwin-White (1973, 190 ff.).

⁷⁸Ibid (217).

⁷⁹Richardson (1980).

⁸⁰Ibid., 6-8.

⁸¹Ibid., 8-10.

⁸²Lintott (1992, 208). Roselaar (2010, 81).

Saskia Roselaar, who presents a comprehensive history of the *ager publicus*, which she sees as a story of gradual privatization, in which process Tiberius's reform was a decisive point.⁸³ Over the course of the book she argues that officially public land tended in practice to be cultivated by the same Italians who had inhabited it before it was confiscated by Rome.⁸⁴ On the subject of Tiberius's reform she surveys scholarship on the question of non-citizen participation, and comes to agree with the consensus, citing the law of 111, and Richardson's argument, though not the Cicero quote, which she rightly sees as indecisive.⁸⁵ The sum of her proposals is that Tiberius's law took land occupied by Italians and gave it to Roman citizens. This could not be more incompatible with Appian's narrative, and she papers over the conflict rather unconvincingly by saying that Tiberius's law was "generous" to the Italians in the sense that it did not take from them as much land as it could have.⁸⁶

The other tendency is represented by those scholars who are more interested in the sources for their own sake. It is simple enough when one is focused solely on the facts to say that Appian is wrong and Plutarch is right, and even to offer casual explanations for why Appian is wrong. But when discussing the sources in depth it is not so easy to simply write off the view of an author who accounts for almost half of our information on the subject. It is necessary to explain why Appian is wrong. If he is mistaken, how did he make his mistake? And if he is distorting history, what is his motive?

⁸³Roselaar (2010).

⁸⁴Ibid., 69 ff.

⁸⁵Ibid., 243 ff.

⁸⁶Ibid., 248.

The most important to take up the torch on Göhler's side was Gabba, in his monograph on Appian and subsequent commentary, and with him Cuff.⁸⁷ Together they convincingly refute Gelzer's idea that Appian meant something other than "Italians" when he wrote *Italiotai* by demonstrating the coherence of the *Bella Civilia*: For Appian the war between Marius and Sulla grew directly out of the Social War, and the roots of that conflict traced back to unsettled grievances from the time of the Gracchi.⁸⁸ The issue of non-citizens is therefore relevant from the beginning of the work. Once this is accepted Gelzer's view becomes untenable. As Cuff expresses well: "Appian was not capable of mistranslating *agrestes* with *Italiotai* not only because he clearly understood, as is evident from his other works, the distinction between Italians and Romans of the countryside at this period but also because it would demand from him too big a howler. His stupidity is attested at many points in the *Romaica*; what he was not capable of was re-writing history on a grand scale."⁸⁹ Gelzer's view was thus refuted, and to my knowledge no one has argued it since, though Brunt still cited it approvingly.

Subsequently there have been other, more or less convoluted attempts to explain Appian's account as an honest mistake. Nagles argues that Gelzer is half right: when Appian writes *Italiotai*, he does indeed mean Italian allies, as Gabba and Cuff show, but sometimes he actually refers to Roman citizens, as Gelzer thought.⁹⁰ The fault lies not with Appian, but with one of his sources. This source was working from another

⁸⁷Gabba (1956), (1958). Cuff (1967).

⁸⁸Gabba on Appian's terminology: (1958, 15, 18, 29, 31, 59). Cuff (1967, 178-9).

⁸⁹Cuff (1967, 181.)

⁹⁰Nagle (1970), 375 ff.

document that accurately described the law as giving land to Romans, but for whatever reason when he read “Romans” in the original he would write “Italians” in his own narrative. This in Nagle’s view accounts for several apparent contradictions. First, at the beginning Italians are supposed to receive land, but a few pages later are outraged over being deprived of the *ager publicus*. Further, Appian begins by saying that the Romans allowed Italians to occupy public land, but later states that they were occupying it illegally. Nagle argues that both can be explained if in the first instances the “Italians” were Roman citizens.

Another explanation for the disparity has been proposed by Shochat, who unlike most others favors Appian’s narrative.⁹¹ Shochat argues that it is in fact Plutarch who is inconsistent in his terminology, using the word *polites* even where he seems to mean something more broad. Thus in his *Life of Tiberius*, the tribunes gives a speech contrasting slaves with citizens. But, Schochat argues, this dichotomy makes no sense, because the two were not opposites. The opposite of “slave” should have been “free,” and the opposite of “citizen” “non-citizen.” Shochat therefore believes that Plutarch was working with the same information as Appian, and in fact that the passage quoted even came from the same speech of Tiberius that Appian used, but that Plutarch replaced each mention of non-citizens with the word *polites*.

Bertelli’s explanation is chronological. Plutarch says that Tiberius Gracchus changed his original draft of the land bill in at least one respect, by removing the compensation that was originally to be given for land that was confiscated.⁹² Bertelli

⁹¹Shochat (1970), 34-9.

⁹²Bertelli (1978), 145 ff.

proposes that at the same time Tiberius removed this provision he also excluded Italians from the law in order to make it easier to pass. Having changed the legislation he also changed his rhetoric, hence the contradiction noted by Schochat. Appian, along with Velleius, overlooked the shift in rhetoric and therefore believed wrongly that Tiberius persevered in helping the Italians, when the fact is that he only *perseveravit in civibus* as Cicero says.

A final theory I will mention is that of Henrik Mouritsen, who has recently tried to explain the conflicting evidence.⁹³ Mouritsen essentially argues that Appian invented the involvement of Italians in order to better fit the Gracchi into his narrative. Appian, he says, wanted to narrate “an ascending curve of ever increasing violence” between Romans, but this plan met an obstacle in the Social War, a conflict with non-Romans.⁹⁴ He therefore invented a revisionist history in which Italians were involved in Roman civil bloodshed from the very beginning of that bloodshed, the violence that killed the Gracchi. In this way he could portray the Social War as a coherent part of the story leading up to the civil wars. Thus Mouritsen follows Badian in blaming the discrepancy on dishonesty, while he answers Cuff’s complaints by arguing that the narrative is internally consistent because consistency was the whole point of the fabrication. Mouritsen presents two reasons for believing that the Italians did not benefit: the first is the delegation of the allies to Scipio, where in Mouritsen’s view Appian has gone in the space of a few pages from describing a conflict between rich Romans and poor Italians to one between rich Italians and poor Romans. The truth is revealed by the quote from

⁹³Mouritsen (2008).

⁹⁴Ibid., 472.

Cicero. The second piece of evidence is the clause from the law of 111.⁹⁵

By now this survey ought to have made clear the weakness of these approaches. On one side are scholars who prefer not to engage the question, accepting a consensus that from the beginning has rested on very shaky grounds. On the other side there are scholars who deal directly with the sources, do not look beyond these sources, instead constructing convoluted and unfalsifiable theories based on a few scanty pieces of evidence. Mouritsen's recent article demonstrates this point. He cites the same endlessly discussed Cicero fragment as if it were unambiguous, and the same provision from the law of 111 while disregarding a century of scholarship on the document.

It is my intention to remedy these methodological faults by combining the two approaches. I will, unlike the first tendency, seriously address the issue of who received land, but I will approach the question by way of sources and issues neglected by those adhering to the second tendency, especially by addressing the legal basis for giving land to non-citizens. Only when I have established this will I proceed to Appian and Plutarch to present my own theory. Admittedly this theory will be unavoidably tenuous given the shortcomings of our sources, but it will be based on a broader base of evidence and, I will also argue that, combined with my understanding of Tiberius's law, it will present an account that is more satisfying than the alternatives.

⁹⁵Ibid., 472-3.

2. LEGAL ASPECTS OF LAND DISTRIBUTION

This chapter will address the legal aspects of Tiberius's land bill, and in particular the question of whether and under what conditions that bill could have distributed land to non-citizens. This much about Tiberius's laws is undisputed: it created a commission of three men, titled *tresviri agris iudicandis adsignandis*, whose task was to confiscate land possessed over the limit of five-hundred iugera as defined by the *Lex Licinia*, with an additional two-hundred fifty allowed for each child, and to distribute this land to individuals.⁹⁶ Many details besides these are open to question, but our particular concern is with the status of the land that was distributed. For, as will be seen, the bill could probably not have distributed land to non-citizens if the land was privatized. However two points suggest it remained public. First, the recipients owed a vectigal on their land, at least from the time of Gaius. I will argue based on precedents that this is a distinguishing characteristic of public land. Second, the land was inalienable. This was unparalleled in Rome history to this point, but imitated in future distributions where the land also remained public. Finally, I will demonstrate privatization was not necessary for Tiberius to achieve his attested goals.

2.1 Methodology

It is first necessary to justify my methodology. The events with which we are concerned occurred during something of a blind spot in our knowledge of Roman legal

⁹⁶ Summarized by Badian (1972), 701-6 and Stockton (1979), 58-60. It used to be thought that the two-hundred fifty iugera were only allowed for two children, for a total of one-thousand iugera, but the sole evidence for this is the Periocha of Livy and *De Viris Illustribus*, which give one-thousand instead of five-hundred as the limit. It is likely that this is nothing more than a copyist's mistake, the symbols for one-thousand and five-hundred being quite similar. It is unclear whether the two-hundred fifty iugera were for each child or each son. The sources are Greek, and they use the ambiguous word *paidēs*: Badian (1972), 703. However Rathbone (2003), 161 maintains the view that one-thousand iugera were allowed.

history. Significant fragments of the twelve tables may be safely relied upon into the fourth century, while Cicero provides a great deal of information beginning in the first century, and from the imperial period there are the writings of the jurists and codes of Theodosius and Justinian. That leaves a gap of roughly two centuries about which historians have generally considered it dangerous and ahistorical to conjecture.

I believe that such a stance is misguided, and on this particular issue it amounts to a refusal to engage with a significant part of our evidence. Behind it lie three mistaken assumptions. The first is that there was a decisive break somewhere in Roman legal history, before which laws that existed later cannot apply. In reality the Romans were, if we allow ourselves to generalize, remarkably conservative and legalistic at all periods, so that there is no revolution to be perceived in Roman law during the historical period, only continuous development.⁹⁷ As late as the sixth century CE the jurists of Cicero's day were considered valid enough to be cited in Justinian's digest. It is therefore not somehow safer to assume radical change, which is what a neglect of later law often implies, than to suppose continuity. In any case, we have the twelve tables and the jurists to anchor our arguments.

A related assumption is that Tiberius and Gaius Gracchus operated in a revolutionary time, and so it is unsafe to assume that the normal laws applied. This is the view of Lintott, who goes so far as to say that the distributed land was not necessarily public or private.⁹⁸ But, although Tiberius was certainly willing to test the limits of the roman constitution in running for reelection and deposing his colleague Octavius, there is

⁹⁷Jolowicz (1954, 5-6).

⁹⁸ Lintott (1992), 210.

little indication that his land bill was considered especially revolutionary.⁹⁹ If it were, we would likely hear something to that effect, in particular from Cicero, who in his *De Officiis* identifies the protection of private property as one of the principle reasons for the existence of the state.¹⁰⁰ Thus he complains about the confiscations of Sulla and Caesar, and about a less-known tribune Lucius Phillipus who dared to hint at an *aequatio bonorum*, but never says anything about the Gracchi undermining property rights.¹⁰¹

Moreover, the Gracchi had a vital interest in assuring that no one could challenge the legality of their legislation. If it were possible to portray the transfer of land as being in any way illegitimate, then the prior possessors could safely take the occupants to court, or else removed them by force and use this argument to defend themselves against legal challenges. If Tiberius cared at all about the security of his distributions, as he clearly did, then he would have wanted to ensure that they were impeccably legal. Such concern for the legality of land distributions can be seen in later cases, such as when Caesar's soldiers asked the Senate to confirm their holdings after the dictator's assassination.¹⁰² Probably for this reason Tiberius was said to have sought the advice of leading citizens and jurists in drafting his legislation.¹⁰³ Hence we hear of no such challenges, and, in contrast to the legislation of Saturninus, Tiberius's bill remained in effect after his death.

Finally, it has been argued that imperial law was rigid whereas Republican law

⁹⁹ Rathbone (2003, 160).

¹⁰⁰ 2.78: Id enim est proprium, ut supra dixi, civitatis atque urbis, ut sit libera et non sollicita suae rei cuiusque custodia. Walcot (1975), 120.

¹⁰¹ On Caesar and Sulla: *De Off.* 2.43, 27, 29; On Lucius Philippus: 2.73, Walcot (1975), 121.

¹⁰² Appian *Bell. Civ.* 2.135

¹⁰³ Plutarch *T. Gracch.* 8.7

was not, and so it is mistaken to apply Tiberius's legislation to anachronistically strict standards.¹⁰⁴ But this confuses rigidity with formality. Imperial law was more formal than republican law, having more categories and explicit rules, but the law was actually considerably less rigid in that the point of many of these rules was to allow for greater flexibility and to create exceptions.¹⁰⁵ Thus, to take the example of contracts, the early law was very informal in the sense that there was only one type, a verbal promise called a "stipulatio," which required nothing else than that the word "spondeo" be spoken.¹⁰⁶ But it was very rigid in that it allowed essentially no way out of a contract once it was made, even if one of the parties to the agreement had been under duress or been deceived.¹⁰⁷ As the law developed and became formalized exceptions for these sorts of things were introduced.¹⁰⁸ If anything, then, we should expect seemingly arbitrary rules to have been more stringent in the republic than in later times. Of course, as will shortly become clear, the meaning of terms like "rigid" and "formal" may be disputed.

So it is reasonable to draw upon our knowledge of earlier and later law to judge what would and would not have been possible for Tiberius in drafting his legislation. Richardson did this with a very basic aspect of Roman law that is not subject to dispute.¹⁰⁹ Since at least the twelve tables Roman law recognized two types of property:

¹⁰⁴e.g. Roselaar (2010, 87-8).

¹⁰⁵On the distinction see Jolowicz (1954, 423).

¹⁰⁶Watson (1984, 1-4).

¹⁰⁷Buckland (1966), 236

¹⁰⁸Jolowicz (1954, 423).

¹⁰⁹Richardson (1980).

res Mancipi, and *res nec Mancipi*, everything else.¹¹⁰ According to Gaius, the earliest of the jurists whose work survives mostly intact, *res Mancipi* included Italian land, slaves, domesticated animals, and rustic servitudes, while *res nec Mancipi* included everything else.¹¹¹ The categories were relevant to the acquisition of ownership. Of the several methods of attaining ownership, some were classified as *ius gentium*, for the whole world, others *ius civile*. The latter category applied to *res Mancipi*. Its ownership was *dominium ex iure Quiritium*, and it could only be got in certain special ways, pertaining to citizens alone, or else those with *commercium*. Some non-citizens had this privilege, particularly Latins, but it is generally agreed that *socii* did not.¹¹²

This line was observed scrupulously, as an anecdote from Livy attests.¹¹³ In 170 the Senate heard the complaints of a delegation from certain Gallic tribes about the behavior of a Roman consul the previous year. Though unwilling to act on these

¹¹⁰ Details and relevant citations from the jurists can be found in Buckland (1966), 180-282 *passim*. On the antiquity of the distinction between *res Mancipi* and *res nec Mancipi* see Watston (1971), 60 ff.

¹¹¹ Buckland (1966, 239).

¹¹² This is usually assumed, but not stated explicitly: Roselaar (2010), 81 n.273; Lintott (1992), 208, 224; Sherwin-White (1973) 125-6, c.f. 109-10. A passage from Livy (35.7.2-3) is usually cited, relating an event from 193: “Cum multis faeneribus legibus constricta avaritia esset, via fraudis inita erat ut in socios, qui non teneretur iis legibus, nomina transcriberent.” Therefore a law was passed “Ut cum socios ac nomine Latino creditae pecuniae ius idem quod cum civibus Romanis esset.” Roselaar takes this to mean that “transactions between Romans and allies had not been subject to any *Roman* laws before 193 . . . business between Romans and allies was possible at any time, even if the allies in question did not possess the *ius commercii*, but that in the case of disputes, the injured party could not claim protection from Roman courts of law.” This seems to me to be a reasonable interpretation of what not having *commercium* would actually entail. Sherwin-White on the other hand concedes on the basis of this story that some allied states may have been granted *commercium*, but suggests that these were exceptional. However it is not clear to me how relevant the issue of *commercium* is here to begin with unless *res Mancipi* were being transferred. Buckland states “The exclusion from *commercium* does not mean exclusion from commerce, but only from the specially Roman part of the law. They could not have civil *dominium* or transfer property by civil law methods, e.g. *mancipatio* or *cessio in iure*” (96). That should mean they could transfer property by *traditio*, a valid method for transferring *res nec Mancipi*, which Gaius attests included money (2.20): “Itaque si tibi vestem vel aurum vel argentum tradidero sive ex veditionis causa sive ex donationis sive quavis alia ex causa, statim tua fit ea res, si modo ego eius dominus sim.”

¹¹³ Livy 43.5; Richardson (1981), 7.

complaints, as a good-will gesture they gave them gifts, including horses, which were *res mancipi*. At the same time they were granted *commercium* and the right to remove the horses from Italy.¹¹⁴ Note that this was not a commercial transaction, and even an act of the Senate had to observe the principle. Apparently too a permanent grant of *commercium* was more natural, perhaps more permissible, than a one-time exemption.

Richardson argued that this ruled out the possibility of giving land to non-citizens.¹¹⁵ It is true that the law could have conferred *commercium* on the recipients, but if Tiberius tried to do this it is unlikely that we would not hear about it, especially considering the opposition to later legislation extending citizenship. In particular Gaius's bill would probably have given Latin rights to the Italians, one of which was the *ius commercii*.¹¹⁶ The same point undermines Richardson's own argument that Tiberius had conferred citizenship unilaterally, on the precedent of similar grants made on the battlefields of the Punic Wars.¹¹⁷ It suffices to recall the cries of opposition to Marius,

¹¹⁴ Livy 43.5.9: *illa petentibus data ut denorum equorum iis commercium esset educendique ex Italia potestas fieret.*

¹¹⁵ Richardson (1980). The fact that this apparently went unnoticed until Richardson's article is not encouraging. Richardson has a second argument, but it is much weaker. He observes (7-8) that under Roman law land was considered to belong to whatever state the owner happened to be a citizen of. Therefore by giving land to non-citizens Tiberius would effectively cede Roman territory to other states, which he could not have done without arousing a controversy that is not evidenced in our sources. However it is not clear that this would have actually caused controversy. First, Rome privileged several states by giving their magistrates automatic Roman citizenship. Theoretically this would have annexed to Rome whatever land they owned, including their houses in their home cities, but it is hard to think this was observed in fact. Second, Rome had been establishing Latin colonies on Roman land for hundreds of years, thereby ceding territory to whole new non-Roman states. Perhaps there is significance in the fact that both these examples involve Latins. Richardson states that Latin land was considered peregrine (7), but this does not seem to be correct, as Lintott observes (1992, 234), since in the law of 111 Latins are listed separately from peregrini (1.29).

¹¹⁶ On the origin of Latin rights see Sherwin-White (1973) 32-7; on the specifics of these rights in the late republic see *ibid.* 108-113.

¹¹⁷ Richardson (1980), 8-9. Richardson bases his argument on Cicero's complaints about the Gracchi disturbing the *socii*, and especially the statement "Ti. Gracchus perseveravit in civibus, sociorum nominisque Latini iura neclexit ac foedera." Since the allies could not reasonably claim that Tiberius was

when he did just this¹¹⁸

Tiberius could therefore not plausibly have given ownership of land to Italians. But the transfer of actual ownership is of key importance, a point which Richardson and others who cite his argument have overlooked. If the land was not privatized, and ownership was not actually transferred from the state to the individual, then there is no difficulty. It is not unreasonable that Richardson would make this assumption, for it is generally agreed that land distributed in the past, whether in colonies or to individuals, had become the private property of the recipients.¹¹⁹ However, Richardson did not seem to realize that the opposite had been assumed in the case of the land distributed by the Gracchi, at least since Mommsen, for the simple reason that we have a law from 111 declaring the distributed land to be private, which naturally suggests that it was not private before. Therefore in his commentary on the law Mommsen said without further comment "ager ita datus adsignatus non factus est pleno iure privatus."¹²⁰ But in recent years this view has increasingly come under attack, especially by Roselaar, who in a recent monograph argues that the Gracchan distribution amounted to a privatization of

violating their treaties by confiscating Roman *ager publicus*, Richardson argues that this may refer to his granting Roman citizenship to their citizens. I think a more likely explanation is that the Italians claimed that they were being deprived not only of Roman land but also of their own land that had been left to them in their treaties with Rome. One of the duties of the commission was, as the epitome of Livy (58) states, "iudicare, qua publicus ager, qua privatus esset." Appian (1.27) describes how by the time the commission began its work it was difficult to tell which land was public and which was private because of both obstruction by the possessors and genuine confusion on their part, so that the commissioners invited individuals to bring suits against those who were illegally possessing public land. Presumably there would have been just as much confusion over the boundary between *ager publicus* and the Italians' land, and Appian clearly states that the lawsuits were the reason for the allies' complaints to Scipio (1.28).

¹¹⁸ Plut. *Mar.* 28, Val. Max. v.2.8, Cic. *pro Balbo* 20.46.

¹¹⁹ See below n.192.

¹²⁰ Mommsen (1905, 99).

the *ager publicus*.¹²¹ For this reason, if we are to consider the possibility that Italians received land, it is now necessary to examine the question more fully than it has been before.

2.2 The legal status of *ager publicus*

Public property did not fit easily into Roman law.¹²² It was once fashionable to imagine, and the thought still sometimes appears, that early Rome was a society without private ownership, which was a later innovation from a kind of primitive communism in which land was shared by the *gentes*.¹²³ Evidence for this idea was never really there, and most now reject it.¹²⁴ Much is said in the twelve tables about private property, nothing of public land.¹²⁵ The later thus seems to be the innovation.¹²⁶ Because no unique place is defined for the state, scholars' discussions rely on the understanding that it acted as an

¹²¹It is actually very difficult to tell what most scholars think on this subject. Roselaar (2010, 233 n.34) cites a long list of scholars as supporting the view that the land became private, but, as far as I can see, they only agree with Mommsen that the land was *ager privatus vectigalisque*, on which see below. But Mommsen, as we will see, thought that this category of land, despite its name, was in fact public, and this seems to be the assumption of most of these scholars. For instance, Roselaar cites Mouritsen (1998, 92) as supporting her argument, but Mouritsen actually writes “this [land] was first turned into *ager privatus vectigalisque*, and, after the abolition of the duty, private property,” indicating that he does not think the terms are synonymous. Others are much less clear. Rathbone (2003, 165), for instance, whom she also cites as supporting this view, first defines *ager privatus vectigalisque* as “private property on leasehold,” but then says that “the state retained ultimate ownership.” This may mean something akin to Lintott's argument that the lands status was ambiguous. Roselaar is the only scholar I have seen to argue unambiguously that the land was made fully private by Tiberius's law, although others do agree with her on specific points.

¹²² Thus there is no discussion of acquisition of property from the state in the jurists: Buckland (1966), 205.

¹²³ The view is expressed in e.g. Stockton (1979), 208.

¹²⁴ Rathbone (2003), 138.

¹²⁵ *Ibid.*, 138. Rathbone also points to the existence of property classes since the monarchy.

¹²⁶ Rathbone (2003), 139 says that the state had “a horror of unoccupied public land,” hence the principle of *usucapio*, and the fact that it was “reluctant to confiscate private citizen property, and any which it did acquire was auctioned back into private ownership.”

individual.¹²⁷ Public land was the property of the Roman people, just as private land belonged to a person, and their rights were the same.¹²⁸ That assumption underlies the analysis that follows.

The origins of *ager publicus* are murky with propaganda and projections from later controversies.¹²⁹ This is not the place to discuss the specific difficulties, since our concern is with the state of the land in 133. Appian's account is thought to be basically correct:¹³⁰

Ῥωμαῖοι τὴν Ἰταλίαν πολέμῳ κατὰ μέρη χειρούμενοι γῆς μέρος ἐλάμβανον καὶ πόλεις ἐνώκιζον ἢ ἐς τὰς πρότερον οὔσας κληρούχους ἀπὸ σφῶν κατέλεγον. καὶ τὰδε μὲν ἀντὶ φρουρίων ἐπενόουν, τῆς δὲ γῆς τῆς δορικτήτου σφίσις ἐκάστοτε γιγνομένης τὴν μὲν ἐξειργασμένην αὐτίκα τοῖς οἰκίζομένοις ἐπιδηήρουν ἢ ἐπίπρασκον ἢ ἐξεμίσθουν, τὴν δ' ἄργον ἐκ τοῦ πολέμου τότε οὔσαν, ἢ δὴ καὶ μάλιστα ἐπλήθυνεν, οὐκ ἄγοντές πω σχολὴν διαλαχεῖν ἐπεκλήρυττον ἐν τοσῶδε τοῖς ἐθέλουσιν ἐκπονεῖν ἐπὶ τέλει τῶν ἐτησίῳν καρπῶν, δεκάτη μὲν τῶν σπειρομένων, πέμπτη δὲ τῶν φυτευομένων. ὄριστο δὲ καὶ τοῖς προβατεύουσι τέλη μειζόνων τε καὶ ἐλαττόνων ζώων. καὶ τὰδε ἔπραττον ἐς πολυανδρίαν τοῦ Ἰταλικοῦ γένους, φερεπονωτάτου σφίσις ὀφθέντος, ἵνα συμμάχους οἰκείους ἔχοιεν. ἐς δὲ τοῦναντίον αὐτοῖς περιήει. οἱ γὰρ πλούσιοι τῆσδε τῆς ἀνεμήτου γῆς τὴν πολλὴν καταλαβόντες καὶ χρόνῳ θαρροῦντες οὐ τίνα σφᾶς ἔτι ἀφαιρήσεσθαι τὰ τε ἀγχοῦ σφίσις ὅσα τε ἦν ἄλλα βραχέα πενήτων, τὰ μὲν ὠνούμενοι πειθοῖ, τὰ δὲ βία λαμβάνοντες, πεδία μακρὰ ἀντὶ χωρίων ἐγεώργουν, ὠνητοῖς ἐς αὐτὰ γεωργοῖς καὶ ποιμέσι χρώμενοι τοῦ μὴ τοὺς ἐλευθέρους ἐς τὰς στρατείας ἀπὸ τῆς γεωργίας περισπᾶν

¹²⁷ This is implicit in the idea that *commercium* would be required to transfer property to individuals, which in this case is supported by Livy (see n. 5). If the state were not governed by the same laws that governed individuals then it should not have mattered whom it gave land to. This is also true in the case of the definition of the relationship between the state and the possessors of public land as one of *precarium*, originally a relationship between patron and client: Buckland (1996), 524. Cicero at any rate seems to imagine the *populus Romanus* operating as an individual in so far as it owned property.

¹²⁸ In fact in imperial law much of the land of the empire technically did belong to an individual, the emperor, in which case it was treated in virtually in the same way as land belonging to the people: Buckland (1966), 190; Gaius 2.21.

¹²⁹ Rathbone (2003), 136.

¹³⁰ Appian *Bell Civ.* 1.7; for evidence confirming the accuracy of Appian's account see Rathbone (2003), 136-8. For the most up-to-date and detailed discussion of the origins of *ager publicus* see Roselaar (2010), 18-63. The translation is that of Horace White for the Loeb Classical Library, with slight modifications.

The Romans, as they subdued the Italian nations successively in war, seized a part of their lands and built towns there, or established their own colonies in those already existing, and used them in place of garrisons. Of the land acquired by war they assigned the cultivated part forthwith to settlers, or leased or sold it. Since they had no leisure as yet to allot the part which then lay desolated by war (this was generally the greater part), they made proclamation that in the meantime those who were willing to work it might do so for a share of the yearly crops, a tenth of the grain and a fifth of the fruit. From those who kept flocks was required a share of the animals, both oxen and small cattle. They did these things in order to multiply the Italian race, which they considered the most industrious of peoples, so that they might have plenty of allies at home. But the very opposite thing happened; for the rich, getting possession of the greater part of the undistributed lands, and being emboldened by the lapse of time to believe that they would never be dispossessed, and adding to their holdings the small farms of their poor neighbors, partly by purchase and partly by force, came to cultivate vast tracts instead of single estates, using for this purpose slaves as laborers and herdsmen, lest free laborers should be drawn from agriculture into the army.

As it conquered Italy Rome acquired land it had neither the means nor the inclination to distribute, and so it allowed individuals to occupy it, perhaps intending to charge rent, as Appian says. That probably was impractical with the state's limited resources, and there is no evidence for its collection.¹³¹ Instead the land fell through purchase and violence under the control of the rich, who grew accustomed to using it as their own, to the point that they probably saw no difference between it and their private holdings. By Cato's time there had been passed the *Lex Licinia*, which forbade possession of more than five-hundred iugera, apparently to no effect, no doubt again due to the lack of means for its enforcement.¹³²

¹³¹ Roselaar (2010), 90-3.

¹³² The reality and date of the *Lex Licinia* is a difficult issue, of which Roselaar (2010), 99 ff. has a good discussion. The sources say 367, but many think 500 iugera is an implausible amount of land for this early in history, and either move the law to a later date, or suppose that it did not apply to public land, at least not exclusively. The issue is not very relevant for the topic at hand, since it's clear enough what the law was understood to be by 133.

To understand the status of these land-holders, it is necessary to understand the distinction in Roman law between possession and full ownership, or *dominium*.¹³³ The former was a necessary but not sufficient condition for the later. There were various ways to effect the transfer, one of which was *usucapio*.¹³⁴ By this principle, if one held property for a certain time, two years in the case of land, that sufficed to get ownership.¹³⁵ The special condition of public land was that it was not subject to *usucapio*.¹³⁶ Its holders therefore persisted in this limbo of *possessio*, even for generations.

This status did bestow on those who held it some protection.¹³⁷ One could invoke the *interdictum uti possidetis*, which ran as follows: "Uti nunc possidetis eum fundum, quo de agitur, quod nec vi nec clam nec precario alter ab altero possidetis."¹³⁸ It thus defended the possessor except in three scenarios: if he held the thing by violence, by theft, or at the favor of the other party. Therefore the possessor had to acquire public land legitimately, through purchase or simply by being the first to take it, and afterward he was protected from ejection by other possessors. As is clear from Appian's description, the possession of land was still bought, sold and inherited, even though ownership never changed hands, and of course, if we believe Appian and Plutarch, much of it had been

¹³³ Buckland (1966), 186-88, 196-7; Watson (1968), 80 ff.

¹³⁴ Buckland (1966), 241 ff; Watson (1968), 62 ff. Attested already in the 12 tablets Buckland (1966), 205.

¹³⁵ Ibid.

¹³⁶ Rathbone, (2003), 140.

¹³⁷ Buckland (1966), 196.

¹³⁸ Watson (1968), 86 ff, citing Festus s.v. *possessio*, whose language Watson thinks was "not far different from that of the Republic even if it is not identical with it" (87). The phrase "nec vi nec clam nec precario" appears in the *Lex agraria* of 111 and is echoed by Cicero in one of his speeches against Rullus (3.11) in 63, suggested that even if this edict did not exist in these exact terms in 133, the principle is relatively early: Roselaar (2010), 115.

taken by underhanded means, without the possessors benefiting from their theoretical protection.

The possessor of *ager publicus* always held the land as a *precarium* from the state.¹³⁹ If the Roman people decided to take it back, they had no right to appeal. At most they could complain about the basic unfairness, or claim that the land was in fact private.¹⁴⁰ Thus after Tiberius passed his law the rich could not claim that it was illegal, but only said that it was not right to take away land after so long a lapse of time, during which they had come to treat it as their own. It seems too that the Italians disputed that their land was public.

2.3 The vectigal

I will now turn to the evidence that the land remained public, the first piece of which is the vectigal. The existence of a vectigal on the distributed land is first mentioned when Octavius proposes to abolish it.¹⁴¹ Gaius had passed a new agrarian law, for reasons that are not clear, and it is possible that this was a new element.¹⁴² But this does not hurt my argument if I demonstrate that the vectigal was a sign the land was public. For if Gaius imposed a vectigal on land that had already been allotted, then that land could surely not have been private. If, on the contrary, the vectigal applied only to the land distributed under the new law, then we could argue that Tiberius's law had made the land private only by positing a drastic change in the legislation. That seems unlikely given the

¹³⁹ Roselaar (2010), 114.

¹⁴⁰ Appian *Bell. Civ.* 1.10, 18.

¹⁴¹ Plutarch *C. Grach.* 9.2

¹⁴² Discussed by Roselaar (2010), 233.

testimony of the sources, who find this law barely worthy of mention, or like the *periochiae* of Livy state bluntly that it was identical.¹⁴³

2.3.1 *Privatus vectigalisque*

The argument that the vectigal is characteristic of public land is based on the simple fact that, as I will show, in every case where a vectigal appears in Roman history the land is private, except in one dubious instance. That is a category titled *privatus vectigalisque* which appears in the *Lex agraria* of 111. In the surviving text the term refers only to land in Africa, but Mommsen believed that this was the status of the land that the agrarian commission distributed in Italy. Since he also believed that this land remained public, he defined the term thus: "id est iure populi fuit, sed usu privatus tamdiu, quamdiu vectigal inde recte solveretur, et quamquam cum reliqua hereditate transferebatur, tamen venundari non potuit."¹⁴⁴ In other words it was nothing more than public land leased to private individuals, which the state would repossess if the rent were not paid. The word *privatus* then referred not to its legal status, but only to the way it was used. More recently Roselaar has made the opposite argument, taking the term as proof that land could be legally public and subject to a vectigal at the same time.¹⁴⁵

But the existence of this land in Africa cannot be taken as evidence for policy in Italy unless we know that that the law treated the land the same in both instances. There is good reason to believe otherwise. Under imperial law, according to Gaius "on

¹⁴³ How Gaius's law differed will be discussed below, p. 74 ff.

¹⁴⁴ Mommsen (1905, 99).

¹⁴⁵ Roselaar (2010), 233.

provincial soil ownership belongs to the Roman people or to Caesar.”¹⁴⁶ The other jurists confirm this up to the time of the Digest of Justinian, which states “by these means ownership is acquired not only in Italy but in all the land which is governed by our empire”¹⁴⁷ On this basis it is generally agreed that in the imperial period, until the policy changed under Justinian, there was no legally valid private ownership of land outside of Italy, except in the rare communities that had been granted *ius Italicum*.¹⁴⁸ Since non-citizens without *commercium* could not own land in Italy, which was *res Mancipi*, this means that the only truly private land that was owned by Roman citizens was on Italian soil.

A.H.M. Jones disputes the reality of this policy on two grounds. First, there is no indication that Rome ever treated provincial landowners as if they could be freely evicted.¹⁴⁹ The emperor confiscated land from individuals only as punishment for a crime. However just because the state did not carry out a certain action does not prove that it could not possibly have justified that action. Likely this particular action would have seemed imprudent, with no benefits to justify carrying it out on a scale that would be visible in our sources. Jones continues by arguing that “If Justinian was conscious that the *dominium* in provincial soil was vested in himself, he parted with his rights in a singularly light-hearted manner.”¹⁵⁰ However the Digest was not the place for

¹⁴⁶Gaius *Inst.* 2.7: in provinciali solo . . . dominium populi Romani est vel Caesaris

¹⁴⁷Just. *Inst.* 2.6: non solum in Italia sed in omni terra quae nostro imperio gubernatur, dominium rerum, iusta causa possessionis praecedente, acquiratur.

¹⁴⁸Buckland (1966, 190).

¹⁴⁹Jones (1941, 26).

¹⁵⁰*Ibid.*

commentary, and the change is indeed noticed by the commentator Theophilus, whom Jones dismisses as merely repeating Gaius's error.¹⁵¹ Finally, Jones considers it absurd that entire provinces would belong the emperor, and idea which is “unexpected and, on any sound constitutional doctrine, inexplicable.”¹⁵² His explanation is that Gaius was confused by the designations *provinciae populi Romani* and *provinciae Caesaris*, taking these terms to refer to not to administration but to ownership, a misunderstanding which was reinforced by the fact that Caesar was commonly used in the provinces to refer by metonymy to the Roman state. This error was passed on to the later jurists, but according to Jones it was never a legal reality. But it is perverse to say that something was not constitutional, despite the opinion of the empire's legal experts, because it does not seem to us to be “sound constitutional doctrine.” The law meant what the Romans understood it to mean.

We should therefore accept that this distinction existed up to the time of Justinian. A second question is how early it originated. Frank believed that there no such distinction was drawn until the principate, and this has generally been accepted.¹⁵³ But his argument is based chiefly on the observation that Romans did not go around driving provincials from their land. Yet as Jones demonstrates this point can be made equally well for the principate, and again the same arguments to the contrary apply. A second problem with this theory is that it requires there to have been at some point a radical degradation in the rights of provincial landholders. If Frank is correct, then under the Republic provincials

¹⁵¹Ibid.; *Comm. in Inst.* 2.1.40

¹⁵²Ibid., 30.

¹⁵³Frank (1927); Buckland (1966, 290).

owned their land and enjoyed the same protections and private owners in Italy. Yet it seems that under the empire they had no protection at all until perhaps the reign of Trajan.¹⁵⁴

We can avoid supposing such a radical change if we push the origin of the policy back further. In fact a hint of it can be perceived in Cicero's attack on Rullus's land bill. Part of Rullus's proposal entailed the sale of public land in the provinces, which Cicero attacked in this way:¹⁵⁵ “Under this chapter, citizens, I say that all nations, peoples, provinces, and kingdoms are handed over and surrendered to the power, jurisdiction and authority of the Xviri. I ask this first: is there any place anywhere that the Xviri will not be able to say has become the public property of the Roman people?” He goes on to list the provinces acquired by conquest or inherited, including even Egypt, and says that every one will be at the mercy of Rullus's commission.¹⁵⁶ Obviously Cicero could be lying. His audience did not necessarily know the laws governing provincial land. But it is likely that Cicero is stating here an understanding which had already evolved, even if it had not yet been codified in law, that all provincial land was the rightful property of the Roman people.¹⁵⁷

¹⁵⁴Buckland (1966, 290).

¹⁵⁵ 2.39: Hoc capite, Quirites, omnis gentis, nationes, provincias, regna Xvirum dicioni, iudicio potestatique permissa et condonata esse dico. Primum hoc quaero, ecqui tandem locus usquam sit quem non possint Xviri dicere publicum populi Romani esse factum?

¹⁵⁶ Frank (1927, 151) overlooks the passage just quoted when he explains the list as including *all* lands considered public. Cicero is clearly describing a general vulnerability of provincial land; the list is for illustration.

¹⁵⁷ Jonkers (1963), 81 says “In theory Cicero is right,” whereas Hardy, (1924, 76) calls the claim “preposterous.” Of course it is preposterous that Rullus would actually sell of entire provinces, but that does not mean the legal argument is not sound.

The origin of this principle should probably be dated to the point at which the status of provincial land would have first become an issue. Frank believes that the distinction between Italian and non-Italian land cannot antedate the Social War, before which much of Italy would have belonged to other states.¹⁵⁸ But this is not necessarily true. The anecdote from Livy, cited above, shows that Italy as a geographic entity was already relevant much earlier. A more probable beginning is the time when a significant number of Romans first acquired property overseas. This would probably be the first transmarine settlement, Gaius's colony at Carthage.¹⁵⁹

Before this time overseas land probably had no legal protection by default except where that was specifically granted.¹⁶⁰ But the *Lex Rubria* would not likely assign land to colonists without saying something about the legal status of their possession. As such it represents a logical starting place for the evolution of this principle. That statute does not survive, but we find in the *Lex agraria* of 111 evidence that it treated land differently than land in Italy. First, the phrase *ager publicus*, which is present in virtually every sentence of the section on Italy, appears nowhere in the section on Africa. Instead it refers only to “*quei ager locus in Africa est,*” without bothering to specify its status.¹⁶¹ This suggests that private and public had less relevance. In fact, Lintott argues that calling the land

¹⁵⁸Frank (1927, 147).

¹⁵⁹ On the novelty of colonization outside Italy see Velleius ii.7. Mommsen (*Staatsrecht* 3.731) in fact attributes the origin of the idea of Gaius Gracchus, but not to this law. Instead he argues that the principle first appears when Gaius leased contracts to collected taxes. I think Frank (1927, 148) is right that this tells us nothing about the status of the land.

¹⁶⁰ As Roselaar suggests was the case for dealings with individuals without *commercium*: see above.

¹⁶¹ 1.48

public would be redundant, since it belonged to the Roman people by default.¹⁶²

A further hint is an apparent mention of *socii nominisque Latini*.¹⁶³ This is sometimes read as part of a clause excluding them from participation. Crawford however argues that a simpler way to exclude them would be by explicitly mentioning Roman citizens, as is done at the beginning of the section on Italy, and he therefore says that this must instead have allowed for their inclusion.¹⁶⁴ Lintott does not go so far, but allows the possibility of exclusion or inclusion.¹⁶⁵ If Italians did receive lots of *ager privatus vectigalisque*, then clearly different rules were in effect than in Italy, where this could not have happened.¹⁶⁶

It is therefore likely that *ager privatus vectigalisque* meant something more complex than that the land was private and at the same time subject to a vectigal. It does not seem to have been private in the same way as Italian land, at least. Perhaps the law created this unique category as a way to deal with the legal oddity of privately-held land

¹⁶² Lintott (1992), 248.

¹⁶³ l. 50

¹⁶⁴ Crawford (1996), 170.

¹⁶⁵ Lintott (1992), 249.

¹⁶⁶ De Ligt (2001), amazingly offers an almost complete and, as he repeatedly acknowledges, imaginative reconstruction of this section of the text, which all other commentators consider hopelessly fragmentary. The section as a whole he takes to be a list of different types of property, given in order of the preference they will receive in the case of disputes. On this point he says the following (208): "Since the days of Mommsen, it has been widely agreed that only Roman citizens were allowed to bid for the public land that the Roman state sold as *ager privatus vectigalisque* [He cites Hinrichs and Johannsen for this view, with Lintott as an example of dissent. I do not know why he ignores Crawford]. Similarly, it is generally accepted that only Roman citizens could become owners of formerly public land as a result of colonial foundations. Following its acquisition by a Roman citizen, however, there was nothing to prevent a piece of formerly public land from passing into the ownership of allies or Latins." As far as I can tell the implication of this interpretation is the same, that land outside of Italy was not governed by the same rules, since within Italy it was certainly not possible for an individual without *commercium* to buy land from a Roman.

outside Italy. Crawford argues that the term, which appears nowhere else in Roman law, but is nevertheless treated as self-explanatory in the surviving sections of the law of 111, was defined in an earlier part of the law that is now too fragmentary to reconstruct.¹⁶⁷ This section occupies a place after the end of the regulations for land in Italy, but before the section on Africa. The point, in his view, was “to allow de facto rights of private ownership on certain provincial land, on which it was nonetheless intended to collect revenue; and . . . discussions of it in terms of Roman juridical categories are unsatisfactory, precisely because the category did not survive in the form created here”¹⁶⁸

If Crawford is correct about the purpose of this section, then it may be possible to discern some characteristics of the new category from the surviving text. The phrase “quod eius agri loci extra terra Italia est” is strangely redundant after the section on Italy ended seven lines ago, and the previous line mentioned land in Africa.¹⁶⁹ It must mean that there was some special significance in the fact that the land was outside Italy. Further, there is the interesting phrase “[. . . habeat poss]ideat fraturque item, utei sei is ager locus publi[ce . . .],” according to Lintott's edition.¹⁷⁰ Crawford adds the word *venisset*, since it follows the word *publice* everywhere else in the text.¹⁷¹ That would mean “let [someone] hold, possess, and enjoy [the land], just as if this land had been

¹⁶⁷ Crawford (1996), 56. ll.48-52. On the contents of this section see Lintott (1992), 245; Crawford (1996), 55.

¹⁶⁸ Crawford (1996), 171.

¹⁶⁹ l.49; Crawford (1996), 171.

¹⁷⁰ l. 52. Lintott (1992), 190.

¹⁷¹ ll. 58, 65, 67 75.

let/sold publicly.”¹⁷² But it seems to me that one could just as likely read “utei sei is ager locus publi[us] populei Romanei esset,” meaning “just as if this land were public.” One of the earliest editors of this law, Carlo Sigonio, proposed a very similar reading in the 16th century, lacking only the *esset*, which Crawford dismisses as “implausible, since this formula is not attested in the African section of the statue.”¹⁷³ But then by Crawford's own argument the African section has not yet begun. If the purpose of this section is to provide a definition for *ager publicus vectigalisque*, then there would be no reason to repeat the terms of that definition later in the text. Combining these guesses, the section would define *ager privatus vectigalisque* as land outside of Italy, that had been given to a *privatus*, who was to pay a vectigal, and in turn use the land just as if he were the possessor of public land in Italy.

Obviously this is all very speculative, and no strong arguments can be made of such material. But this section has shown that the rules governing provincial land were probably still evolving, that Roman law was more likely to lean towards giving less privilege to such land rather than more, and that this uncertainty would give much more flexibility to a law establishing the first colony outside of Italy than would be possible for a comparable project in Italy. At the very least, then, the existence of *privatus vectigalisque* in Africa cannot be taken as evidence of policy in Italy.

¹⁷² The verb *venire* can mean either sell or let: Roselaar (2010), 123. De Ligt (2001), 187 argues against taking *venire* to mean lease due to the “intellectual gymnastics” that result. But if I am correct in thinking that land outside Italy could not be fully private already by this point, then the distinction may not be important. It would only be a sale in the sense that *ager publicus* in Italy could be sold between possessors.

¹⁷³ Crawford (1996, 170).

2.3.2 *Vectigalia* in Italy

In Italy there were several precedents for the leasing of public land, each of which suggests that a vectigal served to mark public status. They are *ager censorius*, *ager quaestorius*, *ager in trientabulis* and finally the vectigal that was supposedly owed on occupied public land.¹⁷⁴ The first three emerged during the Second Punic War. In 211 Rome defeated the rebel city Capua and confiscated its land, thus initiating a policy that Rome would continue to carry out against its rebellious allies throughout the war, and the accumulation that was responsible for most of the *ager publicus* existing in 133.

With war pressing the treasury, Rome almost immediately put this land to use to raise funds. In 210 the senate ordered the censors to lease land around Capua, creating *ager censorius*.¹⁷⁵ The occupants were to pay a regular rent. Again in 205 Livy records "because money was lacking for the war, the quaestors were ordered to lease the region in the *ager Campanus* from the *Fossa Graeca* to the sea."¹⁷⁶ This was the *ager quaestorius*.¹⁷⁷ Unfortunately for the Roman treasury both projects were carried out quite

¹⁷⁴ I omit to discuss sacred land, which is not pertinent here. See Rathbone (2003), 154-5: "Whereas in the Greek city-states and Hellenistic kingdoms 'sacred' land was an important category of public land, there is so little evidence for it in Roman Italy, excluding the Greek south, that clearly Roman cults were funded very differently . . . However from the slight indications we have, including evidence from cults in other Italic communities, it seems that sacred properties were usually managed by the priests of the cult who leased them out more or less as if they were private properties." This is an extension of the general principle that public land was not an organic part of Roman law, which fell back on treating corporate owners such as the state or a cult as if they were individuals.

¹⁷⁵ Livy 27.11.8

¹⁷⁶ 28.46.4: quia pecunia ad bellum deerat, agri Campani regionem a Fossa Graeca ad mare versam vendere quaestores iussi.

¹⁷⁷ *Ager Quaestorius* actually belongs here less clearly than the others. First, the quote from Livy uses the ambiguous *vendere* (see n. 89) which can mean either sale or lease. Nicolet (1967), 97 takes this to mean that the land was sold. Others believe the land was leased: Roselaar (2010), 122-3; Campbell (200), 473-4. I have preferred the latter point of view, especially because it is implausible that the land could have reverted to *ager occupatorius* (see n.96) if it had become private. More likely if confusion arose it would have involved the private owners *de facto* annexing neighboring public land into their private estates, as

ineptly. In the case of *ager quaestorius* Siculus Flaccus records "by selling and buying the possessors so confused things that [the land] reverted to the condition of *ager occupatorius*."¹⁷⁸ The state even resorted to offering a reward to anyone who could prove that the land was public.¹⁷⁹ Perhaps for this reason we find little evidence for this category of land, the decree in 205 being the only dateable instance.¹⁸⁰

A similar fate befell the *ager censorius*.¹⁸¹ Livy records that leases went ahead as planned in 210, but then in 173 we read: "M. Lucretius, tribune of the plebs, promulgated a law stating that the censors should lease the *ager Campanus* for cultivation, which had not been done so many years after the capture of Capua that the greed of private individuals was allowed to roam free."¹⁸² It proved difficult to remove to the occupants, so that in 165, in spite of complaints that "private individuals had occupied land

happened in other cases. It is also questionable whether a vectigal was owed or paid on this land. Hyginus (1) 92.8-9 speaks of *ager quaestorius vectigalius*, but he may be referring to two types of land, or there may have been a change in the nature of *ager quaestorius* by this time, since of course the term meant nothing more than "land under the supervision of the quaestors." See Campbell (200), 474 on the possibilities. Rathbone (2003), 153 writes, "I suspect [the vectigalia] were in practice uncollected because [it was] not worth it." Roselaar, (2010), 124 on the other hand, thinks there probably was a vectigal in theory, but it could not be collected once confusion had arisen over the status of the land. I wonder if there is significance in the fact that this land was the responsibility of the quaestors, and other land of the censors. Perhaps the censors were considered more competent when a regular fee was to be collected, while quaestors were sufficient for a one-time payment.

¹⁷⁸ 120.13-16: *emendo vendendoque aliquas particulas ita confunderunt possessores, ut ad occupatoriorum condicionem reciderent.* Roselaar (2010), 124.

¹⁷⁹ Livy 28.46; Gabba (1989, 199).

¹⁸⁰ Roselaar (2010), 125. Some ascribe a greater antiquity to *ager quaestorius*. However, apart from the fact that there is no evidence, I am inclined to agree with Rathbone (2003), 157 about the management of the *Ager Campanus*: "Everything suggests that this was the first time the Roman state had tried to lease out public land." Further, I do not think it is coincidental that all these categories first appear in the context of raising funds for the second Punic War.

¹⁸¹ Rathbone (2003), 130.

¹⁸² Livy 42.19.2: *M. Lucretius tribunus plebis promulgavit, ut agrum Campanum censores fruendum locarent quod factum tot annis post captam Capuam non fuerat, ut in vacuo vagaretur cupiditas privatorum.*

everywhere indiscriminately," the praetor P. Lentulus was authorized to buy out the occupants with public money, even though they had no legitimate claim.¹⁸³ Evidently no one was yet prepared to be a Tiberius Gracchus. But the state had learned from its failures. Now the praetor inscribed on bronze and publicly displayed a map of the allotments, and it is possible that a massive centuriation grid dates to this time.¹⁸⁴ The claims were established so securely that according to Cicero neither the Gracchi nor Sulla had dared to touch them.¹⁸⁵

A third interesting case is the *ager in trientabulis*. In 210 the Roman state accepted loans from private individuals to help fund the war.¹⁸⁶ In 204, finding itself unready to make good on these obligations, it offered its creditors public land worth a third of its debt, hence the name, with the intention that they would later trade it for cash reimbursements.¹⁸⁷ Many preferred to keep the land, which was near Rome and highly-desirable, and it even appears as late as the *Lex agraria* of 111.¹⁸⁸ Interestingly, the land was subject to a vectigal, but its purpose was not to raise money. Instead, Livy writes, "the consuls were to impose a vectigal of one *as* per *iugerum* in order to attest that the land was public."¹⁸⁹

¹⁸³ Rathbone (2003), 156. Livy 42.19.1: *privati sine discrimine passim possiderant*

¹⁸⁴ Cicero *Leg. agr.* 2.81-2; Rathbone (2003), 156.

¹⁸⁵ Cicero *leg. agr.* 2.81.

¹⁸⁶ Livy 29.16.1-3

¹⁸⁷ Livy 31.13.6-9

¹⁸⁸ II.31-2.

¹⁸⁹ Livy 31.13.7: *consules . . . in iugera asses vectigal testandi causa publicum agrum esse imposituros.*

Livy does not explain how the rent of one as per iugera would attest to its public status, but we can imagine from the examples of the *ager censorius* and *ager quaestorius*. The reason must not have been to protect the interests of the state, which clearly did not care if the possessors preferred to keep their land, but rather to protect the recipients from a similar confusion that would cause the land to revert to *ager occupatorius*. It is possible that in the absence of an effective bureaucracy the collection of this nominal fee would have ensured that the state had up-to-date information on who held what land. It would regularly confirm for the parties involved that the land was public, in the process creating a paper trail of receipts for the possessors and records for the state, both of which would serve as more reliable evidence than moveable boundary stones, there being no *forma* until 165.

Each of these examples could have, and to some degree must have informed Tiberius's law. In previous distributions, to individuals or in colonies, it is unknown whether the land became private.¹⁹⁰ Scholars usually assume it did, and in fact Rathbone thinks this was never stated simply "because it seemed so obvious to the Romans."¹⁹¹ On the other side, Nicolet believes it did not.¹⁹² But in either case these instances were logical examples to follow. Tiberius, Appian says, was concerned for the security of the new landholders, fearing the rich might drive them out or buy up their property again.¹⁹³ This is why he made the land inalienable. But the same motive explains the vectigal. After all,

¹⁹⁰ Roselaar (2010), 55 n.143.

¹⁹¹ Rathbone (2003), 141. For the assumption see e.g. Salmon (1969, 13).

¹⁹² Nicolet (1994), 621.

¹⁹³ 1.10: οὐδὲ ἀνεῖσθαι παρὰ τῶν κληρουμένων: ὁ γάρ τοι Γράκχος καὶ τότε προῖδόμενος ἀπηγόρευε μὴ πωλεῖν.

Tiberius must not have hoped to raise money from the recipients. Such an idea is unattested, either for Tiberius or Gaius, even though money was an issue at several points. It would be strange in any case, given the complaints about poverty, to impose a further burden on the finances of the poor. Instead the vectigal on the land complemented its inalienability, since not only would the tenants be forbidden from selling their shares, the authorities would have regular contact with them to ensure they did not. At the same time there would be written evidence to support their claims in case of a dispute.

2.4 Inalienability

The prohibition against alienating the distributed land also suggests that it remained public, in the first place because it is unlikely that such a condition could legally be imposed on private land. The connection between private ownership of a piece of a property and the right to sell that property is so strong that Festus defines the term *censui censendo* as land that can be bought and sold under *ius civile*, that is by one of the methods used to transfer *res mancipi*.¹⁹⁴ Since Cicero attests that enrollment in the census was virtually synonymous with private ownership, this means that the right to alienate was a fundamental part of private ownership.¹⁹⁵

Roselaar argues that Tiberius's law could have included inalienability, along with the vectigal, as conditions in a contract of sale. But a detail of Roman contract law weakens this argument: even if included, such conditions could only be *in personam*, not

¹⁹⁴ Festus s.v.: “Censui censendo agri proprie appellatur, qui et emi et venire iure civili possunt.”

¹⁹⁵ Cic. *Flac.* 32.80: “Illud quaero sintne ista praedia censui censendo, habeant ius civile, sint necne sint mancipi, subsignari apud aerarium aut apud censorem possint.” This and the preceding quote are cited by Roselaar (2010), 234 n.39 in support of her argument that only private property was enrolled in the census. She says that this does not undermine her argument that land was privatized and made inalienable because of the example of *privatus vectigalisque*.

be *in rem*, meaning they were enforceable against the person but not the property.¹⁹⁶ An example will illustrate the problem: If Gaius sold a plot of land to Publius on the condition that Publius not alienate it, and Publius then sold it to Marcus, Publius has now broken the contract, and Gaius can sue him for this. But the sale is still valid, the land still belongs to Marcus, and there is nothing Gaius can do to recover it.

Applying this to Tiberius's law, we can see that such a measure would have been pointless. If the law privatized the land on the condition that the recipients not sell it, and they sold in anyway, the state could certainly punish them if it wished, but it would have lost the land forever. The new possessor would not even have violated the *Lex Licinia*. In fact, he would be better off than if he had controlled the land before, since he would own it outright, secure from future confiscations. Even so, one might argue, the threat of prosecution would keep the new recipients from selling their land. But here we find another weakness in Roman law. According to Appian, the rich intimidated the smallholders into selling their farms. However unjust from the modern point of view, that was in fact perfectly legal, for contracts remained valid even if one of the parties was under duress.¹⁹⁷ Overall this is hard to square with Appian's claim that the rich found this provision especially irksome.

So much was true in the imperial period. Here we encounter the tricky problem of whether this principle can be safely applied to the Republic, and that depends to a great

¹⁹⁶ Buckland (1966), 188-9, 276. Slaves were apparently the one exception. It was possible to sell a slave on the condition “that the slave should not be sold or prostituted or freed, or should be freed. They differed in their effect *in rem*: the most straightforward case is that of a slave sold not to be freed. Manumission by any later holder was void”: 188.

¹⁹⁷ Buckland (1966), 236: At least if the transfer was effected by *mancipatio*, the usual means for transferring *res Mancipi*.

degree on whether we see this limitation as an issue of rigidity, which would suggest an early origin, or formality, which might be explained as something invented by later jurists. I am inclined to think the former. The earliest contracts, as already mentioned, were nothing more than verbal promises. Thus they were inherently more personal than later categories of written contracts. This makes it more likely that early law would see an agreement as one made between two individuals, applicable only to those individuals, and therefore not detachable from the personal context so as to be applicable to the piece of property independent of who owns it.

On public land inalienability posed no problem. *Ager publicus* was the property of the people and they could do with it what they wanted. Further, as with the vectigal, a look at other instances of inalienability supports the connection to public status. All of these come after 133. Whereas for the rest of his law Tiberius could claim that his law followed good precedent, this was not true of the land's inalienability. Here he dared to break with tradition unequivocally, knowing that if the lots could be sold, they would inevitably fall back under the control of the rich.

Earl discerns another motive, to bind the settler to his land so that he would be liable for military service the rest of his life.¹⁹⁸ Badian enthusiastically adopts his idea, writing, “this is so obvious that, once stated, it must be accepted,” and following this thought he perceives possible precedents in early restrictions on the movement of colonists.¹⁹⁹ But in the first place this restriction had quite a different purpose. For Latin colonists, it is clear that their movement was restricted only at the request of their own

¹⁹⁸ Earl (1963), 37.

¹⁹⁹ Badian (1972), 680.

governments, who did not want their citizens to escape military service by taking advantage of their *ius migrationis* and moving to Rome at a time when these states found it increasingly difficult to supply their quota of soldiers.²⁰⁰ Citizen colonists, on the other hand, were a special case.²⁰¹ They had a specifically military function, to protect the coast, and the land they farmed was especially undesirable, so that desertion was a real concern.²⁰²

Neither of these problems likely applied to the Gracchan law. The settlements increased Roman manpower only if the farms were productive, so that even if we see the primary goal as military, the economic success of the farmers was still a necessary first step. The risk then was not that the settler would want to desert his land, but that his rich neighbor would seize it as had happened in the preceding period. This is of course just what Appian says, and no further explanation is necessary. Badian may indeed be right that the example of citizen colonies made inalienability easier to accept. Along similar lines Salmon posits that at first “the very foundation of a Citizen colony must have seemed of dubious legality,” but that surely was beyond doubt by 133.²⁰³ However restriction on the use public land is far removed from interfering with private property rights, and I do not think that was a plausible leap for Tiberius to make, nor are complaints to that effect present in our sources.

²⁰⁰ Livy 41.8-9; Husband (1916).

²⁰¹ For this policy: Livy 27.38

²⁰² Salmon (1970), 70-81.

²⁰³ Salmon (1970), 73.

The three instances after 133 are the distribution to Sulla's veterans in the 80s, Rullus's proposed law in 63, and Caesar's settlements during his dictatorship. There may be more, but our information about colonies becomes quite poor once we lose Livy.²⁰⁴ An obvious candidate is Saturninus's law to settle Marian veterans, but however intriguing we find Appian's statement that "the people were angry because the Italians profited from the law," the fact that the settlement was to be north of the Rubicon, thus technically outside Italy, would make its relevance doubtful, even if we had better sources.²⁰⁵

2.4.1 Sulla

The *Sullani* are a clearer case. They settled throughout Italy, on already existing *ager publicus*, as well as on the land Sulla had confiscated from rebellious allies.²⁰⁶ We know that it became inalienable from Cicero's speech against Rullus, in which he charged that the tribune and his friends would profit by purchasing the land themselves afterward. Then anticipating Rullus's defense: "For if they say that this is not allowed by the law, it is not allowed by the *lex Cornelia* either; and yet we see that the *ager Praenestinus* is possessed by a few individuals."²⁰⁷ His claim that the provision had proved ineffective, if true, shows that inalienability would only work so far as the state was willing to enforce it, and in this case it apparently was not. That the land of the *Sullani* remained public is clear from their lasting insecurity. For, according to Appian, Sulla had a more insidious

²⁰⁴ Salmon (1970), 17.

²⁰⁵ *Bell. Civ.* 1.29

²⁰⁶ *App Bell. Civ.* 1.100

²⁰⁷ *leg. agr.* 2.78: Nam si dicent per legem id non, licere, ne per Corneliam quidem licet; at videmus . . . agrum Praenestium a paucis possideri.

purpose than just finding land for his veterans, one which should not perhaps be discounted in Tiberius's case: “As they could not be secure in their own holdings unless all of Sulla's affairs were on a firm foundation, they were his stoutest champions even after he was deceased.”²⁰⁸

The *Sullani* kept their land, but precariously. Two decades later Cicero describes them as terrified over the possibility of an agrarian law, trembling at the very name of the tribune.²⁰⁹ He used their enduring unpopularity against Rullus by claiming that they would benefit from this law. At one point he says it will *sanciret* their land, at another that it will allow them to sell it to the commission, which the possessors had wanted to do but could not because it was impossible to find a buyer.²¹⁰ That could mean the land was by now alienable, but then his claim about the *ager Praenestius* would lose much of its force. More likely their land would become alienable only then through another provision that privatized all public land distributed since 83. Cicero quotes the provision:

“Whatever lands, buildings, lakes, pools, places, possessions' – he omitted the sky and sea; the rest he included – has been publicly given, assigned, leased, or granted, these will all be made private with no restrictions.”²¹¹ This, Cicero clarified, is Rullus's way of

²⁰⁸ App. *Bell. Civ.* 1.96: ὡς γὰρ οὐχ ἔξοντες αὐτὰ βεβαίως, εἰ μὴ πάντ' εἶη τὰ Σύλλα βέβαια, ὑπερηγωνίζοντο αὐτοῦ και μεταστάντος. White's translation.

²⁰⁹ *de leg. agr.* 2.31: “Qui paulo ante diem noctemque tribunicium omen horrebant, vestram vim metuabant, mentionem legis agrariae pertimescebant.”

²¹⁰ *leg. agr.* 3.10: “At si illa solum sanciret quae a Sulla essent data, tacerem, modo ipse se Sullanum esse confiteretur”; 2.31: “Quam multos enim, Quirites, existimatis esse qui latitudinem possessionum tueri, qui invidiam Sullanorum agrorum ferre non possint, qui endere cupiant, emptorem non reperiant, perdere iam denique illos agros ratione aliqua velint? . . . ei nunc etiam ultro rogabntur atque orabuntur ut agros partim publicos, partim plenos invidiae, plenos periculi quanti ipsi velint xviris tradunt”;

²¹¹ *leg. agr.* 3.7: 'Qvi post Marivm et Carbonem consvles agri, aedificia, lacvs, stagna, loca, possessiones'--caelum et mare praetermisit, cetera complexus est--'pvblice data adsignata, vendita, concessa svnt . . . ea omnia eo ivre sint . . . vt quae optimo ivre privata svnt.' *Vendita* here must mean “leased,” since if the land had been sold it would already be private.

privatizing the holdings of the *Sullani* without mentioning the dictator by name, and thus going farther than Sulla himself had dared.²¹²

But the law did not pass, and their danger continued. Caesar, probably as dictator, confirmed their status in some way, presumably to secure their support.²¹³ But this must not have been privatization, but perhaps instead analogous to the kind of security that Tiberius Gracchus had given to the possessors on their holdings up to five-hundred iugera. Consequently the veterans' security lasted only as long as he did. In 43 Decimus Brutus proposed using the land of the *Sullani* to settle the veterans of Mutina, along with the *ager Campanus*, a part of which must have remained public.²¹⁴

2.4.2 Rullus

In 63 Rullus promulgated a law whose proposals were these: a commission of ten men would be appointed, with the power to sell public land in Italy and in the provinces, and to use the profits therefrom to buy out possessors of public land, especially in the *ager Campanus*, which would in turn be distributed.²¹⁵ As we have seen, the distributed land was to be inalienable, and additionally Cicero says a “very heavy vectigal is imposed”.²¹⁶ We also have seen that it would privatize the public land which had been

²¹² *leg. agr.* 3.7-8: “a quo, Rulle? post Marium et Carbonem consules quis adsignavit, quis dedit, quis concessit praeter Sullam? . . . At hoc Valeria lex non dicit, Corneliae leges non sanciant, Sulla ipse non postulat.”

²¹³ Cic. *ad fam.* 13.8: “Caesar Sullanas venditiones et assignationes ratas esse velit.”

²¹⁴ *ad fam.* 11.3: “Quattuor legionibus iis, quibus agros dandos censuistis, video facultatem fore ex agris Sullanis et agro Campano”

²¹⁵ *leg. agr.* 2.16, 33.

²¹⁶ *leg. agr.* 2.56: pergrande vectigal imponitur

distributed since 83. Although our only information about this law only from Cicero's speeches opposing it, these are in fact among our most interesting sources. For Cicero's rhetoric against Rullus makes sense only if, first, the land distributed by the law would remain public, and, by implication, if the same was true of the land distributed by Tiberius's law.

The speeches have been described as embarrassingly demagogic. Hardy, for instance, in one of the few works of scholarship ever written on the speech, said “It would hardly perhaps be worth while to examine Cicero's criticisms . . . unworthy as they are of a serious statesmen, were it not that they throw so much light on his methods of political controversy.”²¹⁷ More succinctly Jonkers said it reads “like a wolf preaching the gospel.”²¹⁸ Particularly at fault is the consul's effusive praise of Tiberius Gracchus, hardly a hero of his. He introduces the subject thus: “For I recall that two famous, brilliant men, beloved by the Roman *plebs*, Tiberius and Gaius Gracchus, established the *plebs* on public land, which before was occupied by private individuals. Now, I am not the sort of consul who, like most, think it is a crime to praise the Gracchi, whose plans, wisdom and laws I see are responsible for many parts of the Roman constitution.”²¹⁹ He assures his audience that he has no problem with *genus ipsum legis agrariae*, that is, the idea of a redistribution in itself.²²⁰

²¹⁷ Hardy (1924), 87.

²¹⁸ Jonkers (1963, 53).

²¹⁹ *leg. agr.* 2.10. Venit enim mihi in mentem duos clarissimos, ingeniosissimos, amantissimos plebei Romanae viros, Tiberium et Gaium Gracchos, plebem in agris publicis constituisse, qui agi a privatis antea possidebantur. Non sum autem ego is consul qui, ut plerique, nefas esse arbitrer Gracchos laudare, quorum consiliis, sapientia, legibus multas esse video rei publicae partis constitutas.

²²⁰ *leg. agr.* 2.10.

This praise of the Gracchi is one prong of his strategy. He cannot do otherwise when speaking before the plebs on the subject of land reform. Another is, typically, to present himself as a defender of the *mos maiorum*.²²¹ But of course usually in his writings the Gracchi are the quintessential violators of the *mos maiorum*. It follows that he must get around this contradiction by directing the attention of his audience away from the distributions themselves, and towards provisions in which the law differs from the *lex Sempronia*.

These, it turns out, are the provisions that would make land private.²²² First there is the sale of public land. He uses familiar analogies to make his case throughout, at one point presenting Rullus as a prodigal heir selling his inheritance, later describing the sale in terms of a legal dispute over an inheritance where the Roman people will have no one to defend its claim.²²³ Then there is the provision privatizing the land Sulla had distributed. But worst of all is a provision he left out of the above quote, that not only would distributed land be privatized, but even possessed land. He explains the implications.²²⁴

“For there is a lot of land that was made public by the *Lex Cornelia* but not assigned or sold to anyone which a few people shamefully possess. He looks out for this land, he protects this land, he makes this land private;

²²¹ Hopwood (2007), 76.

²²² Hopwood (2007), 86 sees that Cicero presents the alienation of public land as “revolutionary.”

²²³ *leg. agr.* 2.48: “Vt in suis rebus, ita in re publica luxuriosus <est> nepos, qui prius silvas vendat quam vineas”; 2.44: “Primum cur <de> populi Romani hereditate xviri iudicent, cum vos volueritis de privatis hereditatibus cviros iudicare? Deinde quis aget causam populi Romani? ubi res ista agetur?”

²²⁴ *leg. agr.* 3.12: Sunt enim multi agri lege Cornelia publicati nec cuiquam adsignati neque venditi qui a paucis hominibus impudentissime possidentur. His cavet, hos defendit, hos privatos facit; hos, inquam, agros quos Sulla nemini dedit Rullus non vobis adsignare volt, sed eis condonare qui possident. Causam quaero cur ea quae maiores vobis in Italia, Sicilia, Africa, duabus Hispaniis, Macedonia, Asia reliquerunt venire patiamini, cum ea quae vestra sunt condonari possessoribus eadem lege videatis.

These lands, I say, which Sulla gave to no one Rullus does not want to assign to you, but to grant to those who possess it. I ask why you are allowing him to sell the land which your ancestors left you in Italy, Sicily, Africa, the two Spains, Macedonia, and Asia, while you see the land that is yours granted to possessors by the same law.”

This, he implies, is the land Rullus should be distributing.

To be sure, Cicero's arguments are not all in good faith. He attacks the law for giving Rullus's agrarian commission the power to judge which land was public and which private as if it were unprecedented.²²⁵ In fact Tiberius's *tresviris iudicandis adsignandis* had just this power, as Cicero must know, who is one of our chief sources for the complaints of the Italians over this point. That detail at least he could expect his audience not to know. But he could not reasonably expect them to have forgotten that the Gracchan distribution had alienated public land. If they knew anything about the Gracchi at all it was, in Cicero's words, “plebem in agris publicis constituisse, qui agri a privatis antea possidebantur.”²²⁶ His strategy is to present Rullus's bill as doing the opposite, taking land from the people and giving it to private individuals. Thus he concludes his third speech on a dramatic note: “These are your plunder, your possessions; I will resist and fight back and not allow the Roman people to be removed from a single one of its possessions while I am consul.”²²⁷ He adds secondarily: “especially, citizens, when nothing is sought for

²²⁵ *leg. agr.* 2.56: “Cognitio xvirum, privatus sit an publicus . . . Hoc quantum iudicium, quam intolerandum, quam regium sit, quem praeterit, posse quibuscumque locis velint nulla disceptatione, nullo consilio privata publicare, publica liberare?”

²²⁶ *leg. agr.* 2.10

²²⁷ *leg. agr.* 3.15: Vestra sunt praeda, vestrae possessiones; resistam atque repugnabo neque patiar a quoquam populum Romanum de suis possessionibus me consule demoveri.

you.”²²⁸ He evidently wants to downplay the distribution, which would keep the land public, and highlight the sales that would make it private.

2.4.3 Caesar

Finally, in the case of Caesar's veterans, Appian says that Brutus and Cassius allowed them to sell their land in 43, which he had forbidden for twenty years.²²⁹ It was natural for Caesar to include this provision, having apparently taken the law of Rullus as his template. He assured the senate that he would remove whatever provisions they found objectionable.²³⁰ Probably for this reason he did not follow Rullus in helping the *Sullani*, instead allowing their land to remain public. But the senate could not reasonably object to the inalienability clause, which Cicero had criticized only because he did not think it would be enforced, and so it was included. Caesar had most likely presented it, like Rullus, as a protection against corruption, though again his motive may have been the same as Sulla's, to create a constituency deeply invested in his survival. After his assassination the soldiers, many of whom were still waiting to be led to their colonies, came before the senate to demand confirmation of their holdings, both those promised and the ones they already occupied.²³¹ Like the *Sullani* they had no protection except that which came directly from their patron.

²²⁸ praesertim, Quirites, cum vobis nihil quaeratur.

²²⁹ *Bell. Civ.* 3.2.

²³⁰ Cassius Dio 38.1

²³¹ App. *Bell Civ.* 2.135.

2.5 Tiberius' motives

A possible counterargument to these points is that Tiberius's primary goal was to increase the number of *assidui*, citizens with the requisite wealth to serve in the military, and that he could only accomplish this by privatizing land.²³² Otherwise it would not contribute to the recipient's census class. But, in the first place, we should avoid oversimplification. Badian rightly stresses the multiplicity of motives that our sources ascribe to Tiberius.²³³ It is true that Appian emphasizes the issue of *euandria*, but this is only one source, and even he sometimes shows more concern for the humanitarian angle. Sallust predictably frames it as part of the class conflict, while Plutarch and Cicero stress personal motives of glory-seeking and spite. Probably the real Tiberius's motives were no less complex.

Still, the issue of manpower clearly had a place in Tiberius's arguments, and when arguing that the land remained public it will be best to avoid accusing him of dishonesty. One solution is to suggest suggest that public land would in fact count towards one's census status, as Bernstein suggests.²³⁴ Censors, he observes, had jurisdiction over some public land, the *ager censorius*, and the censor adjudicated disputes on public property in general. Furthermore, he infers that records were kept from the limit imposed on the *Lex licinia* as well as from Appian's statement that a vectigal was collected, and this he says

²³² Earl (1963), 37; Roselaar (2010), 233-35.

²³³ Badian (1972), 675.

²³⁴ Bernstein (1978), 129. He adds: "What Tiberius Gracchus is reported as telling his contemporaries about the military benefits of his rogatio if passed into law - that it would generate the manpower the legions needed to maintain and extend empire - must have fallen upon their ears as rank nonsense. For this reason alone the hypothesis [that public land was not counted in the census] must be rejected." Of course this is just Roselaar's argument in reverse.

was probably the job of the censor. But neither argument is very convincing. The first is not particularly indicative of anything except that the censor had duties besides the census. For the second point, we have seen there are good arguments that the vectigal was actually not collected, and certainly the *lex Licinia* was not enforced, for the very reason that the state did not have the means. As another solution, Shochat proposes that revenue from the land would count towards the recipients census status.²³⁵ But presumably these individuals could expect to live mostly off their own produce. They would not necessarily have much in the way of regular revenue, and even that must have been difficult for the state to measure.²³⁶

A better answer is to challenge the assumption that the recipients were necessarily landless. It is clear enough that Tiberius meant to benefit the rural plebs rather than the urban plebs.²³⁷ Tiberius's supporters are described as flooding into the city from the countryside.²³⁸ After his bill has passed they return to the fields while his opponents remain in the city.²³⁹ His reelection was threatened when his supporters could not attend because of the harvest season, compelling him to appeal to voters in the city, and there were accusations of non-citizens disguised as “harvesters” among his supporters.²⁴⁰ These

²³⁵ Shochat (1980), 142.

²³⁶ Roselaar (2010), 254 n. 101 says in answer to Shochat only that “it seems unlikely . . . that small farmers would have been able to save much money.” This seems like a weak response, especially since the census status would have been quite low by this period.

²³⁷ Brunt (1988), 245, 250-1, arguing that the urban plebs were generally uninterested in land reform.

²³⁸ Appian *Bell. Civ.* 1.13; Plutarch *C. Gracch.* 3.1, 12.1.

²³⁹ Appian *Bell. Civ.* 1.13: καὶ μετὰ ταῦθ' οἱ μὲν κεκρατηκότεες ἐς τοὺς ἀγροὺς ἀνεχώρουν, ὅθεν ἐπὶ ταῦτ' ἐληλύθεισαν, οἱ δ' ἤσημένοι δυσφοροῦντες ἔτι παρέμενον.

²⁴⁰ Appian *Bell. Civ.* 1.14; Plutarch *C. Gr.* 13.2.

were “poor” in the eyes of our sources, but they need not have been destitute. We hear little about the rural population, but they could not all have been starving and landless. To give one figure, the curial class in the late republic, which we might consider the next level down from the senatorial and equestrian classes that dominate our sources, numbered by Brunt's estimate some fifty-thousand.²⁴¹ There were many grades between the wealthier classes and the indigent.

So Cicero, speaking in the city against Rullus's agrarian law, which would distribute land to the rural plebs, says “What arrogance and audacity is this, that part of the population is cut out, the order of tribes neglected, land given to the *rustici*, who have [land], before the *urbani*, to whom this pleasant expectation of land has been presented?”²⁴² The rural plebs “have” while the urban do not. When we consider how low the threshold for *assidui* had fallen, so that they could not be expected to supply their own armor, it is easy to see that there must have been tens or hundreds of thousands of marginal but landowning peasants, who might be ruined by any turn of bad luck.²⁴³

Of course it would not make sense to transfer peasants from their private land to *ager publicus* if that meant depriving them of their status as *assidui*. But it does if we understand instead that the beneficiaries of the distribution were to use the land to supplement what they already owned. In fact this had good precedent. Accounts of distributions from early Roman history give the sizes of allotments as two to seven

²⁴¹ Brunt (1988, 245).

²⁴² Cicero *de lege agr.*: Primum quae est ista superbia et contumelia ut populi pars amputetur, ordo tribuum neglegatur, ante rusticis detur ager, qui habent, quam urbanis, quibus ista agri spes et iucunditas ostenditur?

²⁴³ On the lowering of the status of *assidui* see Brunt (1971, 74-83, 402-8).

iugera, which probably could not have supported their occupants.²⁴⁴ We must conclude either, with Brunt, that they could supplement this with public land, or else that these were meant to add to the estates they already had, as Rathbone argues.²⁴⁵

In fact this explains the curious fact, that our sources suggest the poor had been deprived not of their own land, but of access to *ager publicus*. First, Appian says the rich preferred slaves to free laborers because the latter might be conscripted. Badian tries to explain this with the possibility that *coloni* were subject to military service, but this makes no sense in the context of Tiberius's concern about the declining number of *assidui*.²⁴⁶ Rather these workers must have been *assidui* already. Moreover Appian presents the monopolization of public land and the immiseration of the plebs as complementary. The same suggestion is visible in Sallust, who writes “the people were oppressed by military service and poverty; generals divided the spoils of war with a few; meanwhile soldiers' parents and small children, whenever they had a more powerful neighbor, were driven from their homes.”²⁴⁷ Observe first that the people are suffering from military service and poverty at the same time, and further that this sentence and the expulsion of the soldiers' families bracket the complaint that the rich monopolized the *praeda*. It is likely that this *praeda* refers to public land, since Rome probably acquired

²⁴⁴ Salmon (1970, 21) and n.21 on the traditional *heredium* of a Roman citizen; Rathbone (2003, 141) and Brunt (1988, 246) on its inadequacy.

²⁴⁵ Brunt (1988, 246); Rathbone (2003, 141). The latter says, somewhat mysteriously “access to *ager publicus* is a red herring,” probably because he thinks it did not exist yet in any significant amount.

²⁴⁶ Badian (1972), 686.

²⁴⁷ Sallust *Iug.* 41: *populus militia atque inopia urgebatur; praedas bellicas imperatores cum paucis diripiebant: interea parentes aut parui liberi militum, uti quisque potentiori confinis erat, sedibus pellebantur.*

the bulk of its *ager publicus* in this period as it put down rebellious allies.²⁴⁸ But it is Plutarch who states this most clearly:²⁴⁹

Of the territory which the Romans won in war from their neighbours . . . a part they made common land, and assigned it for occupation to the poor and indigent among the citizens . . . when the rich began to offer larger rents and drove out the poor, a law was enacted forbidding the holding by one person of more than five hundred *plethora* of land . . . But later on the neighboring 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.

It is interesting that Plutarch describes the poor as unwilling to undertake military service after being deprived of their land, instead of being ineligible. The issue of *assidui* may be a red herring after all, if the problem was simply that the poor were shirking military service.²⁵⁰ Finally, as Harris shows, on Tiberius's famous journey through Etruria he would have passed through *ager publicus*, so that it was apparently the absence of free farmers from public land that inspired his reform.²⁵¹

Whether Tiberius was correct in his assessment of Rome's problems is another issue. Forty years ago Badian could write, "The social and economic crisis that faced

²⁴⁸ Roselaar (2010), 18 ff.

²⁴⁹ Plutarch *Ti. Grac.* 8.1-3: Ῥωμαῖοι τῆς τῶν ἀστυγειτόνων χώρας ὅσῃν ἀπετέμοντο πολέμῳ . . . τὴν δὲ ποιούμενοι δημοσίαν ἐδίδοσαν νέμεσθαι τοῖς ἀκτήμοσι καὶ ἀπόροις τῶν πολιτῶν . . . ἀρξαμένων δὲ τῶν πλουσίων ὑπερβάλλειν τὰς ἀποφοράς καὶ τοὺς πένητας ἐξελαυνόντων, ἐγράφη νόμος οὐκ ἔῶν πλέθρα γῆς ἔχειν πλείονα τῶν πεντακοσίων . . . ὕστερον δὲ τῶν γεινιόντων πλουσίων ὑποβλήτοις προσώποις μεταφερόντων τὰς μισθώσεις εἰς ἑαυτοὺς, τέλος δὲ φανερῶς ἤδη δι' ἑαυτῶν τὰ πλεῖστα κατεχόντων, ἐξωσθέντες οἱ πένητες οὔτε ταῖς στρατείαις ἔτι προθύμους παρεῖχον ἑαυτοῦς, ἡμέλουν τε παίδων ἀνατροφῆς

²⁵⁰ There has been much debate about the significance of the stagnant numbers recorded in the Roman census throughout this century, and the sudden leap in the census of 125. See Nicolet (1994).

²⁵¹ Harris (1971), 203-4.

Rome in 133 – depopulation, slavery impoverishment – should certainly not be denied.”²⁵² Today one is more likely to read that “the idea of serious manpower shortage . . . is not only unproven, but wildly implausible and counter-intuitive.”²⁵³

However this is not the place to address this question. All that matters for our purposes is what Tiberius understood to be the problem his law would address, and whether in light of this we can offer a plausible reconstruction of the law. One should not underestimate how ignorant he might have been of conditions outside the city. Entire colonies could be abandoned without anyone in Rome noticing.²⁵⁴ I suggest that Tiberius saw declining census numbers and difficulty finding recruits, along with dangerous unrest among the slaves, and saw that public land, which had been meant for the benefit of common farmers, was occupied by the slaves of the rich. He intended to give economic security to the *assidui* and encourage them to have children by restoring their access to this land. To achieve this goal he did not need to privatize it.

²⁵² Badian (1972), 687.

²⁵³ Lo Cascio (2008), 253, expressing a view also held, though less strongly expressed, by Roselaar (2010), 227.

²⁵⁴ Stockton (1979), 6 n.2, citing the instance at Livy 39.23.

3. THE AGRARIAN LAW OF 111

We now come to the law of 111, arguably our most direct source for the laws of Tiberius and Gaius Gracchus. What intervened between Gaius and this law is a very complicated question, to which we will return **below**.²⁵⁵ But for the issue at hand it is possible to read the law without addressing the intervening period, because it explicitly frames its measures in relation to the bill of Gaius Gracchus.²⁵⁶ As has already been stated, one phrase in line 3 is often cited in isolation as decisive evidence that non-citizens did receive land. In this chapter I will show that when subject to a more detailed analysis the law is not incompatible with the possibility of allied participation.

As a whole the law has three or four sections, depending on the editor.²⁵⁷ Only the first forty-two of one-hundred five lines address land in Italy, and as we have seen the other sections have less relevance, and are in any case much more fragmentary. The section on Italy, briefly summarized, lists certain categories of public land, declares these categories to be private, specifies legal procedures for confirming one's holdings, and addresses a few exceptions to privatization. The first eight lines contain the most important provisions of the law, as well as the phrase in line 3 that has received so much attention for mentioning Roman citizens. Our discussion will therefore begin with an analysis of this section.

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²⁵⁶ The first sentence that can be reconstructed reads (ll.1-2): “*Quei ager poplicus populi Romanei in terram Italiam P. Muucio L. Calpurnio cos. fuit [i.e. 133], extra eum agrum, quei ager ex lege plebeive scito, quod C. Sempronius T.f. tr. pl. rogavit, exceptum cavatumve est nei divideretur . . .*”

²⁵⁷ Mommsen, Johannsen, and Crawford see three: land in Italy, in Africa, and in Greece. Lintott argues that the unreadable lines 43-52 constitute a fourth section, land elsewhere in the empire.

3.1 Lines 1-8

3.1.1: Text

The following text and translation are Crawford's.²⁵⁸ Alternate readings, especially from Lintott's edition, will be cited in the course of the discussion where they are relevant.

- 1** [?Sp. Thorius? ???f. tr(ibunus) pl(ebis) plebem ioure rogoavit plebesque ioure scivit in foro --- a(nte) d(iem) ---, tribus ??? princi]pium fuit, pro tribu Q. Fabius Q.f. primus scivit. quei ager poplicus populi Romanei in terram It//aliam P. Muucio L. Calpur[nio co(n)s(ulibus) fuit, extra eum agrum, quei ager ex lege plebeive scito, quod C. Sempronius Ti.f. tr(ibunus) pl(ebis) rogavit, exceptum cavitumve est, nei divideretur ---]
- 2** [--- quem quisque de eo agro loco ex lege plebeive scito sibi a]grum locum sumpsit reliquitve, quod non modus maior siet, quam quantum unum hominem e//x lege plebeive sc(ito) sibi sumer[e relinquereve licuit ---; quei ager publicus populi Romanei in terra Italia P. Muucio L. Calpurnio co(n)s(ulibus) fuit, extra eum agrum,]
- 3** [quei ager ex lege plebeive scito quod C. Sempronius Ti.f. tr(ibunus) pl(ebis) rogavit, exceptum cavitumve est nei divideretur --- quem agrum locum] quoieique de eo agro loco ex lege plebeive sc(ito) IIIvir sortito ceivi Romano dedit adsignavit, quod non i//n eo agro loco est, quod ultr[a ---; quei ager publicus populi Romanei in terra Italia P. Muucio L. Capurnio co(n)s(ulibus) fuit, extra eum agrum, quei ager ex lege plebeive sc(ito),]
- 4** [quod C. Sempronius Ti.f. tr(ibunus) pl(ebis) rogavit, exceptum cavitumve est nei divideretur, quei ager locus de eo agro logo --- a IIIviro --- re]ditus est; ^{vvv} quei ager publicus populi Romanei in terra Italia P. Muccio L. Calpurnio co(n)s(ulibus) fuit, ex[t]ra eum agrum, quei ager ex lege [plebeive scito, quod C. Sempronius Ti.f. tr(ibunus) pl(bis) rogavit, exceptum cavitumve est nei divideretur, ---]
- 5** [--- quodque quomq]ue agri locei publice in terra Italia, quod eius extra urbem Roma<m> est, quod eius in urbe{m} oppido vico est, quo//d eius IIIvir dedid adsignavit, quod [---]
- 6** [---; quei ager publicus populi Romanei in terra Italia P. Muucio L. Calpurnio co(n)s(ulibus) fuit, extra eum agrum, quei ager ex] lege plebive scito, ^v quod C. Sempronius Ti.f. tr(ibunus) pl(ebis) rog(avit), exceptum cavitumve est nei divideretur, quod quoieiqu//e de eo agro loco agri locei aedific[iei --- q]uibu[s ---]

²⁵⁸ Crawford (1996, 113 ff., 141 ff.); Not that Crawford believes this was the bill of Spurius Thorius and reconstructs the opening accordingly. I will disagree with this view below in section 5.1.

7 [--- i]n terra Italia IIIvir dedit adsignavit reliquit inve formas tabulasve retulit referive iussit; ^{vvv} ager locus a//edificium omnis quei supra scriptu[s] est, extra eum agrum quei ager ex lege plebeive sc(ito), quod C.

Sempronius Ti.f. tr(ibunus) pl(ebis) rog(avit), except]um cavatum[ve est nei divideretur, privatus esto ---]

8 [--- eiusque locei agri aedificiei possessi]o ita, utei ceterorum locorum agrorum aedificiorum privatorum est, esto, censorque, queiquomque erit, fa[c]ito utei is ager locus aedificium quei e[x hac lege privatus factus est eritve in censum referatur, deque eo agro loco aed]ificio eum quoum [is ager locus aediicium erit, ---]

1 [?Sp. Thorius? son of ??? as tribune of the plebs lawfully proposed to the plebs and the plebs lawfully voted, in the forum --- on --- the tribe ???] was the first to vote, Q. Fabius, son of Quintus, voted first for the tribe. Whatever public land of the Roman people [there was] in the land of Italy [in the consulship of] P. Mucius and L. Calpur[nius, apart from 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 ---]

2 [--- whatever] land or piece of land [of that land or piece of land anyone according to the statute or plebiscite]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 plebescite [---; whatever public land of the Roman people were was in the land of Italy in the consulship of P. Mucius and L. Calpurnius, apart from that land,]

3 [whose division was excluded or forbidden according to the statute or plebiscite which C. Sempronius, son of Tiberius, tribune of the plebs, proposed --- 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, which is not in that land or piece of land, which [is] beyond [---; whatever public land of the Roman people there was in the land of Italy in the consulship of P. Mucius and L. Calpurnius, apart from that land, whose]

4 [division was excluded or forbidden according to the statute or plebiscite which C. Sempronius, son of Tiberius, tribune of the plebs, proposed, whatever land or piece of land from that land or piece of land ---] was [---] restored [by a IIIvir]; whatever public land of the Roman people there was in the land of Italy in the consulship of P. Mucius and L. Calpurnius, apart from 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 ---]

5 [---; and whatever] of public land or pieces of land in the land of Italy, whatever of it is outside the city of Rome, whatever of it is in a city, town or village, whatever of it a IIIvir has granted or assigned, whatever [---]

6 [---; whatever public land of the Roman people there was in the land of Italy in the consulship of P. Mucius and L. Calprunius, apart from 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, whatever land, piece of land or building from that land or piece of land to anyone [---] to whom [---]

7 [---] in the land of Italy a IIIvir has granted, assigned, or left or entered on maps or in records or ordered to be entered; all land, pieces of land, or buildings, which [are] written down above, [apart from 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, is to be private ---]

8 [--- and] there is to be [possession of that land, piece of land or building] just as there is of the other private pieces of land, lands or buildings, and the censor, whoever 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 is shall be---]

3.1.2: Categories of land

There can be little doubt that the *modus* in line 2 is the five-hundred iugera of the *Lex Licinia*, and so the category in question must be that of *vetus possessor*, which Lintott therefore emends.²⁵⁹ Lintott also interprets the the word *[re]ditus* in line 4 to mean that this clause specified the category of land that had been given by the commission in exchange for other land.²⁶⁰ Finally, he sees lines 4-6 as a single clause, rather than the two of Crawford's edition. Thus, if we follow Lintott there are only four categories of land: that possessed since before 133 (ll. 1-2), that assigned by the commission (ll. 2-3), that given to possessors in exchange for other land (ll. 3-5), and that assigned within existing

²⁵⁹ Lintott (1992, 205); Crawford (1996, 153) says “it is not at all certain that we should actually restore the phrase *vetus possessor*,” but he does not seem to interpret the meaning of this clause any differently. The term *vetus possessor* appears in l. 13, which allows the privatization of an additional 30 iugera of public land beyond that already mentioned, ll. 16-7, which deal with judicial confirmation of their holdings, and l.21, on which see below.

²⁶⁰ Lintott (1992, 207).

municipalities, which may have been distributed on a different basis (ll. 5-6). Lines 6-7 then extend this to include buildings, which was perhaps a legal novelty.²⁶¹

3.1.3: The significance of “*ceivi Romano*” in line 3

Following Lintott's reading, lines 2-3 indicate that the recipients of distributed land were citizens.²⁶² Since Mommsen, however, some have thought these lines refer not to *viritim* distributions but to colonies, because sortition was the regular practice for the latter.²⁶³ But Decimus Brutus, in a letter to Cicero after the battle of Mutina discussing the settlement of veterans, stated that land could be assigned to those veterans by lot, which suggests that sortition was, if not standard practice, at least not unprecedented, and even without that evidence it would seem to be a natural way to assign plots of land.²⁶⁴ Nevertheless the fragmentary state of this law creates enough room for doubt that many reject the implication of this clause.²⁶⁵

It is also possible to read this clause as applying only to a particular group of distributed land. Crawford considers "very odd" the order implied by Lintott's reading, which proceeds from discussing land occupied by possessors to land distributed by the commission, and then returns again to land occupied by possessors..²⁶⁶ Instead, he thinks that the second category did not include all distributed land but only land that had been

²⁶¹ Ibid., 209.

²⁶² Ibid., 206;

²⁶³ Mommsen (1905, 101ff);

²⁶⁴ Cicero *ad. fam.* 11.20: *aequaliter aut sorte agros legionibus assignari puto oportere*; Crawford (1996, 154).

²⁶⁵ e.g. Stockton (1979, 45).

²⁶⁶ Crawford (1996, 156).

seized from possessors and then distributed. Other distributed land would then have to be included in one of the remaining categories, possibly lines 4-5 or lines 6-7. This does not add any further types of land to Lintott's interpretation, but this latter category does not specify *civei Romano*, at least in the surviving text.

It must however be counted against the possibility that non-citizens are hiding somewhere in this section, that all of these categories of land are listed specifically because they are to be privatized, and we return to Richardson's objections against the possibility that this could be done with land belonging to individuals without *commercium*.²⁶⁷ There is no mention of *commercium* in this section, or in any surviving part of the text, when presumably it would have required at least a clause for itself. Furthermore, at the end of this section the law instructs the censors to register the newly privatized land in the census, which would obviously have been inappropriate for property that did not belong to citizens.²⁶⁸ Therefore all of the categories of land listed almost certainly belonged only to Roman citizens at the time of the law, and so far the law suggests that non-citizens were excluded.

3.1.4: The land excluded from distribution by Gaius Gracchus

But, just as was the case for the original distribution, this does not mean that non-citizens could not have received land, only that their land could not have become private

²⁶⁷ Lintott (1992, 208). Lintott brings up the issue of *commercium* several times in his commentary, and states the issue most strongly here: "The idea that the assignments here could have extended to non-Romans . . . is surely excluded by the fact that the land concerned is later to be registered with the Roman censor as private land."

²⁶⁸ Lintott (1992, 212), who allows that land may have been distributed to non-citizens by not privatized, even though he ruled this out on p. 44; Crawford (1996, 159), who says that the requirement to enroll in the census "implies that ll. 1-10 deal with land held by Roman citizens," but that "it is a habit of these texts to assume the general qualification, 'where appropriate.'" However Crawford, unlike Lintott, neglects the problem of *commercium* throughout his commentary.

in 111. In fact, it is possible, though not necessary to support my argument, that the Italians and Latins are in fact mentioned indirectly at the beginning of the law, under the category of land excluded from distribution by Gaius Gracchus: “extra eum agrum, qui ager ex lege plebeive scito, quod C. Sempronius T.f. tr. pl. rogavit, exceptum vitumve est ne divideretur.” This clause raises two difficult issues. The first is why Gaius Gracchus passed an agrarian law, and how this law differed from that of his brother. The second is what land he excluded. Neither Appian nor Plutarch consider agrarian law of Gaius worthy of attention, focusing instead on the parts of his program that differed from his older brother.²⁶⁹ Velleius, though not the most reliable source, describes the bill in terms that sound identical to Tiberius's: "he divided the land, he forbade any citizen to have more than five-hundred iugera, which had previously been forbidden by the *lex Licinia*."²⁷⁰ Likewise the epitome of Livy seems to state explicitly that the law was identical: "He passed an agrarian law, which his brother had also passed."²⁷¹ Mommsen took this very literally and so referred only to Tiberius's bill.²⁷²

But this raises the question of why Gaius passed a new agrarian bill that added nothing of substance. One explanation is that a new law was necessary since the work of the original agrarian commission had come to a halt after Scipio's intervention on behalf

²⁶⁹ Plutarch *C. Grach.* says only that it distributed land among the poor, while Appian does not mention it at all.

²⁷⁰ 2.6: dividebat agros, vetabat quemquam civem plus quingentis iugeribus habere, quod aliquando lege Licinia cautum erat

²⁷¹ 60: Tulit . . . legem agrariam, quam et frater eius tulerat.

²⁷² Mommsen (1905, 99), explaining “nam Gaium fratrem in summa re nihil innovasse, sed legem quam et frater eius tulerat agrariam retulisse firmat Livius.”

of the Italian allies in 129.²⁷³ Roselaar believes that once the *IIIvir iudicandis adsignandis* had been deprived of the power to *iudicare* it could no longer function effectively at all, since there was not much left in the way of undisputed *ager publicus*.²⁷⁴ In her view Gaius's law took two steps to remedy this and restart the distributions: first, it re-appropriated the power of adjudicating, so that the commission could return to its work; second, it exempted land possessed by the Italian allies, so that they would no longer have reason to complain.²⁷⁵ In support of this argument, Roselaar points to the thirteen boundary stones which have been discovered, claiming that they all date to one of two periods, nine to the first commission working from 133, and the other four the the commission that began in 123.²⁷⁶

There are several problems with this explanation. First, it is unlikely that the work of the commission was halted between 129 and 123. In 125 the consul Fulvius Flaccus presented his bill granting citizenship to the Italians, a measure which Appian describes as a kind of *quid pro quo*, saying that the Italians were happy to give up land in exchange for citizenship.²⁷⁷ Clearly then Appian believed that the work of the commission continued to threaten the Italians. Dio Cassius confirms this when he says that after Scipio's death “the land commissioners ravaged at will practically all Italy”, a statement

²⁷³ Roselaar (2010, 241).

²⁷⁴ *Ibid.*, 241.

²⁷⁵ *Ibid.*, 241-2.

²⁷⁶ *Ibid.*, 240-1, n. 61.

²⁷⁷ 1.21: καί τινες εἰσηγοῦντο τοὺς συμμάχους ἅπαντας, οἱ δὲ περὶ τῆς γῆς μάλιστα ἀντέλεγον, εἰς τὴν Ῥωμαίων πολιτείαν ἀναγράψαι, ὡς μείζονι χάριτι περὶ τῆς γῆς οὐ διοισομένους. καὶ ἐδέχοντο ἄσμενοι τοῦθ' οἱ Ἰταλιῶται, προτιθέντες τῶν χωρίων τὴν πολιτείαν

which Roselaar dismisses by saying it “does not seem to be based on fact.”²⁷⁸ Probably the consul of 129 only temporarily obstructed the work of the commission by his unwillingness to preside over these cases, and then probably only when the land in question was possessed by an Italian. Appian says *tas dikas*, which may refer only to the cases involving Italians, not to all cases.²⁷⁹

Roselaar's point about the boundary stones proves nothing, first because only thirteen such stones survive, and if they happen to belong to two short periods this could easily be explained as coincidence. But I see no reason why the stones with Gaius's name could not date before 123.²⁸⁰ Of the stones, five have the names of C. Sempronius Gracchus, M. Fulvius Flaccus, and C. Papirius Carbo, who according to Appian were on the commission at the time of Scipio's intervention, giving a *terminus post quem* of 129, but not necessarily excluding any date after that.²⁸¹ Gaius had already been on the commission in 133, and it is clear from surviving fragments of his speeches that, notwithstanding Plutarch's statement to the contrary, he was politically active well before seeking the office of tribune.²⁸²

It is tempting to connect the intervention of Scipio in 129 to the fact that the commission has the title a(gris) i(udicandis) a(dsignandis) on the boundary stones, but

²⁷⁸ *Cass. Dio* 24.84.2: τοὺς γεωνόμους πᾶσαν ὡς εἶπεῖν τὴν Ἰταλίαν πορθῆσαι; Roselaar (2010, 241 n.66).

²⁷⁹ Lintott (1992, 46).

²⁸⁰ Roselaar cites on Campbell (2000, 452-3), which lists the stones but gives no information about dating. It is hypothesized that the chairmanship of the commission rotated yearly between its three members, and that the order or the names of the *cippi* reflect this rotation, but this is not certain and even if accepted there would have been time for three rotations between 129 and Gaius's death in 122. See Stockton (1979, 54-5).

²⁸¹ Appian *Bell. Civ.* 1.18.

²⁸² Stockton (1979, 97-8); Plutarch *C. Gracch.* 1.1.

a(gris) d(andis) a(dsignandis) on both the law of 111 and the *lex repetundarum* dated to 123 or 122.²⁸³ But this presents a chronological problem for the argument that a second law was needed to restart the work of the commission, since then the word *iudicandis* should have returned to the commission's title.²⁸⁴ Stockton suggests that the *lex repetundarum* was passed in 123 before Gaius's agrarian bill, but this does nothing to explain the title on the law of 111, unless another law had changed the name of the commission again after Gaius's death.²⁸⁵

But a simpler explanation may be that it was Gaius's law that changed the function and name of the commission, thus removing an issue which annoyed the non-citizens whose support he was trying to gain.²⁸⁶ The loss of this power then must not have obstructed the work of the commission very much, since the possession and status of the land it distributed would only occasionally be in doubt. Thus it would be natural for the law of 111 to refer to the commission by this title, since it takes Gaius's law as its starting point. In this interpretation all the boundary stones would predate Gaius's bill, but again this is not strange given how few have been found.

Nevertheless, it may be that Italian land is at least part of the exception mentioned in the law of 111. Mommsen suggested that it referred to the *ager Campanus*, which according to Cicero was not touched either by the Gracchi or by Sulla.²⁸⁷ This has been

²⁸³ *lex rep.* ll. 2, 13, 16; *lex. agr.* ll. 3, 7, 11, 15-6, 27.

²⁸⁴ Stockton (1979, 59 n.56), who ultimately says "Why the *dandis* was added here I cannot fathom."

²⁸⁵ *Ibid.*

²⁸⁶ A possibility suggested by Lintott (1992, 46).

²⁸⁷ Mommsen (1905, 108-9).

challenged on the basis of two boundary stones found on this land, and Lintott argues that Cicero's language is more ambiguous than it first seems.²⁸⁸ Göhler argues that Tiberius meant to distribute this land, but it was subsequently excluded by Gaius's law, because the latter intended to found a colony there.²⁸⁹ Lintott however points out that the exception is found even in a section dealing with colonies, where it would be "self defeating."²⁹⁰ Furthermore, the *ager Campanus* continued to be rented out by censors, as it had been since the time of the Second Punic War, and would continue to be at least to the end of the republic, which should mean that it did not have to be excluded at all.²⁹¹ We have seen that Rullus, the first to propose using the *ager Campanus* for distributions, would have purchased it from the possessors, probably because this would seem more just. Tiberius's law did not purchase any land, but was based on the premise that the landholders tenure was illegitimate, something he could not have reasonably claimed in the case of possessors who paid rent. The issue may be moot anyway, as Crawford argues, since of the two stones one is on the very edge of the land, and the other may be outside it.²⁹²

Lintott argues that the Italians' land was excluded: "In my view T. Grachus' commission may have initially dealt with land which before 133 BC had been traditionally ceded to Italian communities for exploitation, perhaps land which originally

²⁸⁸ Lintott (1992, 203-4).

²⁸⁹ Göhler (1939, 150).

²⁹⁰ Lintott (1992, 204).

²⁹¹ Ibid.

²⁹² Crawford (1996, 157).

had been confiscated from them, but such operations were ended by his brother's law.²⁹³ He is probably incorrect that some parts of the *ager publicus* had been ceded to allies. Since citizens had no security of tenure on public land, it is improbable that this privilege would have been granted to non-citizens.

More likely it was not any particular area that was excluded, but rather the land of the Italian possessors in general. It is usually assumed that Tiberius allowed the Italians to keep land under 500 iugera just as he did the Roman possessors, even though the former technically had no right to possess any.²⁹⁴ But this may have been nothing more than a policy he chose to follow as head of the commission, rather than something included explicitly in the law. By 129 the *de facto* leadership of the commission had probably passed to Fulvius Flaccus as the most prominent member. Gaius was still in his early 20s, and according to Plutarch not yet a very public figure, and Carbo is practically invisible in our sources, not even being present on the day Gaius and Flaccus were killed.²⁹⁵ Under Flaccus's direction the commission would not be bound by Tiberius's policy, and if it began to distribute Italian land, that would explain why we hear no complaints from the allies until 129, and why Flaccus was the one to offer citizenship to the Italians as compensation. Thus the *periochia* of Livy lists Flaccus's name first when it describes the disturbances in 129, and we read that Flaccus gave a speech against Scipio that year.²⁹⁶

²⁹³ Lintott (1992), 204,

²⁹⁴ Stockton (1979, 42).

²⁹⁵ Plutarch *C. Gracch* 1.1: Γάιος δὲ Γράγχος ἐν ἀρχῇ μὲν ἢ δεδιῶς τοὺς ἐχθροὺς ἢ φόβον συνάγων ἐπ' αὐτοὺς ὑπεξέστη τε τῆς ἀγορᾶς καὶ καθ' ἑαυτὸν ἡσυχίαν ἔχων διέτριβεν

²⁹⁶ Livy 59: Seditio a triumviris Fulvio Flacco et C. Graccho et C. Papirio Carbone agro diuidendo creatis excitatae; Plutarch, *C. Gracch.*, 10.2

It would be very reasonable if Gaius, once he realized there was no hope of extending citizenship to the Italians, decided instead to pass a second agrarian bill including explicit protection for Italian possessors. Of course he would not likely allow them to possess an unlimited amount of land, which would undermine the purpose of the bill, but he could have simply extended the limit set by the *lex Licinia* to them. If this is correct, then repeating this exception at the beginning of the list of categories of property to be privatized would automatically exclude land held by Italians and Latins, including any land which may have been distributed by the commission.

3.2: Explicit mentions of non-citizens

Non-citizens are mentioned explicitly in the text three. The first appearance is in lines 20-23, a section concerning land that had been given to possessors in exchange for other land, and confirming that this land is also to be private. The second is line 29 which guarantees the continued enjoyment of certain rights to Latins and peregrines. Finally, line 29-31 appear to specify jurisdiction in the case of disputes between citizens and non-citizens.

3.2.1: Lines 20-23

3.2.1.1: Text²⁹⁷

20 ager locus publicus popul[i Romanei,]
21 [quei --- extra eum agrum, quem --- ex s(enatus)] c(onsulto) a(nte)
d(iem) <(undeimam)> k(alendas) Octobris oina quom agro, quei trans
Curione est, locaverunt, quei in eo agro loc[o ceivis] Romanus sociumve
nominisve Latini, quibus ex formula togatorum [milites in terra Italia
inperare solent, agrum lo]cum publicum populi Romanei de su possessione
vetus possessor prove vetere posseso[re dedit,]
22 [--- quo in agro loco oppidum coloniave ex lege plebeive scito
constitueretur deduceretur conlaceretur, quo in agro loco IIIvir a(gris)

²⁹⁷ Crawford (1996, 115, 143).

d(andis) a(dsignandis) i]d oppidum coloniamve ex lege plebeive sc(ito) constituit deduxitve onlocavitve, quem agrum [locum]ve pro eo agro loc<o>ve de eo agro loco, quei publicus populi Roman[ei in Italia P. Mucio L. Calpurnio co(n)s(ulibus) fuit, extra eum a]grum locum, quei ager locus ex lege plebeive sc(ito), quod C. Semproni(us) Ti.f. tr(ibunus) pl(ebis) rog(avit), excep[tum ^{vac}]

23 [cavitumve est nei divideretur, ---] quoive ab eo heredive eius is ager locus testamento hereditati deditioive obvenit obveneritve [<queive ab eo> emit e]meritve, queive ab emptore eius emit emeritve, is ager privatus esto, que[m IIIvir a(gris) d(andis) a(dsignandis) ita utei s(upra) s(criptum) est pro eo agro loco, qu]o coloniam deduxit ita utei s(upra) s(criptum) est, agrum locum aedificium dedit reddidit adsignavit;

20 [Whatever] public land and pieces of land of the [Roman] people

21 [?there shall be? --- apart from that land which --- so-and-so] contracted out [according to] a decree [of the senate] on 20 September, together with the land which is beyond the Curio, [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 togati, in that land or piece of land as a prior possessor or as equivalent to a prior possessor [granted] public [land] or a piece of land of the Roman people from his possession

22 [--- to the effect that a town or colony might be constituted, founded or settled in that land or piece of land according to a statute of plebiscite, 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 from the land or piece of land in question from the land or pieces of land which were the public property of the Roman people [in Italy in the consulship of P. Mucius and L. Calpurnius, apart from that] land or piece of land,

23 whose [division] was excluded [or forbidden] according to the statute or plebiscite which C Sempronius, son of Tiberius, tribune of the plebs, proposed [--- ?for him?] or for the person, to whom that land or piece of land has or shall have passed from him or his heir by testament, inheritance or surrender, [<or who> has] or shall have bought [,from him,.] or who has or shall have bought from the purchaser from him, 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, just as is written down above;

3.2.1.2: Analysis

Lintott finds this unacceptable, since non-citizens without *commercium* could not have received ownership of Roman land. Therefore, in the lacuna in line 22, (“Roman[ei . . . a]grum” in the text cited from Crawford above) he inserts before “extra” the additional clause: “ei sed fraude sua possidere liceto,” which he translates “that man shall lawfully possess it without prejudice to himself.”²⁹⁸ Then in at the end of the lacuna at the beginning of line 23, where Crawford does not venture to offer a reconstruction, Lintott reads “. . . eique ceivei Romano nominisve Latini (?), quoi is ager locus a III viro datus redditus adsignatus erit.”²⁹⁹ Thus the law would only reaffirm the right of Italians to possess public land that had been exchanged for other public land, and then in a further clause privatize the land belonging only to citizens and Latins, who had *commercium*.³⁰⁰

Crawford calls Lintott's reconstruction “a mistake,” without specifying why.³⁰¹ There are in fact two difficulties. First is the inclusion of the clause referring to land excluded by Gaius at the end of line 22 and beginning of line 23. The order of clauses in Lintott's emendation does not seem to be paralleled elsewhere in the text, the exception always following immediately upon the reference to the two consuls. Further, the order suggests that the exception applies to the ability of individuals to possess the land. Yet if we accept the argument that Italian land was included in the provision, then the meaning would be “Let Romans, Latins and Italians possess this land, apart from land possessed

²⁹⁸ Lintott (1992, 182-3, 224).

²⁹⁹ Ibid. 182.

³⁰⁰ Ibid., 224.

³⁰¹ Crawford (1996, 164).

by Italians [among other exceptions]”: obvious nonsense.

Perhaps it is better to place the phrase “ei . . . liceto,” or something like it, to the beginning of the second lacuna mentioned above. Then the sentence could be read “whatever land a Roman, Latin or Italian received outside of [among other exceptions] that land possessed by Italians . . .” It would then do nothing more than further define the land that may have been handed over, perhaps also stating that any land possessed in violation of the law of Gaius will not receive such security. This may not seem totally logical, but at least if we keep the phrase together and do not split it as Lintott does, then we can appeal to Crawford's explanation for an earlier clause in lines 11-13: “[B]oth here and in ll. 15-16, 16-18, 20-3, q.v., the habits of Roman draftsmen make it more plausible to suppose that what has happened is that the legislator has taken over in its totality the description of a certain category of land from the original legislation referring to it.”³⁰² Thus we may imagine that the draftsmen copied the entire formula referring to the relevant land, including the exception, even where its relevance is questionable. A second problem is that in Lintott's reconstruction the lacuna in line 22 seems superfluous for citizens and Latins, since their land is private in the second, unless it were for some reason necessary to confirm the right of possession before privatization. This was not done in the instance above where land was declared private, but perhaps that was because there was no question of the right of possession in those cases.

In any case, Crawford does not, despite the implication of this reconstruction, take the further step of arguing against the usual view that the Italians and Latins could not

³⁰² Ibid., 159.

have received ownership of land because they lacked *commercium*. He says "The clause as a whole is presumably separate from the provisions in ll.3-4 and 16-17 because it relates to land given in exchange for land surrendered specifically for a colony or other urban settlement, in a context which is wholly unknown to us; and because Latins and allies are also here beneficiaries, presumably by virtue of the importance attached by Rome to colonies."³⁰³ The fact that colonies were "important" to the Romans is irrelevant in itself, and does not change the fact that the Italians should not have been able to receive ownership without a grant of *commercium*. However Crawford's point that the context is unknown, a caution shared by Lintott, may mean that nothing conclusive can be said about this section.

3.2.2: Line 29

3.2.2.1: Text³⁰⁴

29 [--- quod ex h(ac) l(ege), i]ta ut ei s(upra) s(criptum) est, in agreis qu[ei in Ita]lia sunt, qui P. Mucio L. Calpurnio co(n)s(ulibus) publiceis populi Ro[manei fuerunt, c(eivei)] Romano favere licebit, item Latino peregrinoque, quibus M. Livio L. Calpurnio [co(n)s(ulibus) in eis agreis qui s(p)ra s(criptei) sunt id facere ex lege p]eb]eive sc(ito) exve <f>oedere licuit, sed <f>raude sua <f>acere liceto.

29 [--- 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, 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.

³⁰³ Ibid., 164.

³⁰⁴ Ibid., 116, 144.

3.2.2.2: Analysis

The meaning of this provision is straightforward enough: Latins and *peregrines* are to enjoy the same rights on public land as Romans, provided they were permitted by treaty or statute to use that land in 112, the year before this law. We can assume that at least two of those statutes are the laws of Tiberius and Gaius. It is notable that the clause specifying land not excepted by Gaius Gracchus is not present here, which supports the argument that it is the land of the Latins and Italians to which this clause refers.³⁰⁵

The question is what those rights are. In the first place, it must be the right to continue to possess the land. That the word *facere* could refer to possession is shown by a fragment from a speech of Cato referring to the *lex Licinia*, in which *facere* is parallel to *habere*: “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?”³⁰⁶ But the provision must refer to more than that, because otherwise it could have stated this more clearly, as does a later provision guaranteeing continued enjoyment of *ager in trientabulis*.³⁰⁷ One possibility that suggests itself is permission to make the land public, as is allowed to Romans earlier in the law. Lintott rejects this possibility out of hand, considering the issue settled by this point.³⁰⁸ It is true that the form of the law suggests that non-citizens' land was not to be privatized. This sentence appears in the middle of a

³⁰⁵ Lintott (1992, 234).

³⁰⁶ Cato fr. 167.

³⁰⁷ ll. 31-2.

³⁰⁸ Lintott (1992, 234).

series of provisions running from line 25 to line 36 dealing with land that remained public: public pasture, roads, *ager in trientabulis*, and leased land.³⁰⁹

But it is notable that this provision, unlike the previous one referring to non-citizens, lists not Latins and *socii*, but Latins and *peregrini*. Crawford calls attention to this oddity without explaining it.³¹⁰ Roselaar writes “It may be that the term *peregrini* incorporated both Italian allies and non-Italians who had rights to *ager publicus* in 112. Furthermore, line 29 specifically refers to 'statutes, plebiscites, or treaties' which would have given these groups access to *ager publicus* prior to the passing of the law of 111.”³¹¹ But there are several problems with this explanation. It is difficult to imagine what non-Italians would be using *ager publicus* in Italy. It is even more difficult to imagine what law would have specifically given them the right to do so. Considering the argument over whether even Latins and allies were included in the Gracchan laws, we should not expect they or anyone else could have included non-Italians. Further, lines 20 to 23 argue against this possibility. That section refers to exchanges carried out by the Gracchan commission, and lists only Romans, Latins and allies as possible parties. This must mean either that no one else occupied public land, or else that if they did occupy public land they were not given the same protection. It was reasonable for Tiberius and Gaius to be concerned about complaints from the allies, but I doubt whether anyone would care about protecting the non-Italians, if there were any.

³⁰⁹ The only exception is line 27, stating that land public land exchanged for formerly private land is to become private, but it can be explained as the necessary complement of the provision that private land exchanged for public land is to be treated like other private land. See Lintott (1992, 230).

³¹⁰ Crawford (1996, 167).

³¹¹ Roselaar (2010, 278).

The explanation must then lie in some special characteristic of Latins, not shared by allies, that is relevant here but was not relevant earlier. Lines 20-3 referred to Romans, Latins and allies because those were the only groups afforded any protection, and so it would not apply to *peregrini* from outside Italy. In other words the categories refer to the positive rights held by these groups. But the provision in line 29 can only apply to non-citizens to begin with. It divides non-citizens into two groups, Latins and everyone else. *Peregrini*, we may conclude, are those who lack the relevant privilege.

This privilege must surely be *commercium*. The Latins are set apart because their land can theoretically become private, whereas the land of the Italian allies cannot. Lintott is right that this provision does not privatize the land in the same way that lines 1-8 privatized the land held by citizens, but in fact the law gives two ways for this transfer to happen. The first part of the law, outlined above, essentially states that any land dealt with by the Gracchan laws is to be private, and seems to exclude non-citizens, either tacitly or, if they were part of the exception clause, explicitly. For the following two provisions Crawford gives this outline:³¹²

- | | |
|-----------|---|
| ll. 11-12 | no-one is to do anything to infringe possession by <i>viasii</i> and <i>vicani</i> or land granted or assigned or left. |
| ll. 12-13 | land of <i>viasii</i> and <i>vicani</i> is not to be private |
| | [Opening formula: <i>Ager publicus</i> in 133 apart from land excepted by Gaius Gracchus, etc.] |
| ll. 13-14 | insofar as remaining public land, if in the future possessed and held, up to 30 <i>iugera</i> , is to be private. |

³¹² Crawford (1996, 54).

The group or groups here referred to as *viasii vicani* appear nowhere else in Roman law.³¹³ From the name scholars guess that they were settlers who received land alongside roads with the intention that they would take care of those roads. Mommsen saw that their land remained public, a view adopted by Lintott and Crawford, and that lies behind the emendation of lines 12-13.³¹⁴ It would seem logical at first that if this land was to remain public it should be grouped with other such land in lines 25 to 36, but its placement here can be explained by the fact that it was also affected, if not actually created by the law of Tiberius or Gaius. Therefore it was necessary to specify this category as an exception to the opening section, in which all other land affected by the commission is made private. Lines 13-14 then return to discussing privatization, but, as the repetition of the opening formula suggests, there is an important difference: this was land that had not been affected by the commission.³¹⁵ Mommsen took this to refer to land that had been possessed in the years between the death of Tiberius and the law of 111, but both Lintott and Crawford think that is unlikely because the law uses the future tense, “possidebit habebitve.”³¹⁶ Lintott even says “these holdings will then be, as it were, a continuation of the Gracchan allotment scheme.”³¹⁷

This creates a problem which neither of these editors address: theoretically one could take 30 iugera, privatize it, then take another 30, *ad infinitum*. The answer may be

³¹³ Ibid., 160. Everyone else considers *viasii vicani* to be one group, but Crawford says we cannot rule out the possibility that there two separate groups: *viasii* and *vicani*,

³¹⁴ Lintott (1992, 213); Crawford (1996, 159).

³¹⁵ Lintott (1992), 215.

³¹⁶ Ibid. 216. Crawford (1996, 161).

³¹⁷ Lintott (1992, 216).

that, since there is no provision instructing the censors to register this land as private, as there had been in the first part of the law, the provision does not mean that the land will be formally declared private in any way. Instead it provides limited legal protection: In the case of a dispute or a future attempt at confiscation the possessor would be able to claim up to thirty iugera of public land as private.

Lintott also says “In so far as the holding of *ager Romanus* as private property was only open to Roman citizens or those with *commercium*, we should probably add *c(eivis) R(omanus)*.”³¹⁸ He is probably correct that this applies only to Roman citizens, at least at this point in the law. However specifying this here would be no more necessary than in the opening section, if as argued, Latins and Italians would be covered by the exception clause. But, to return to line 29, it is likely that this legal protection would be extended to Latins, who having *commercium* could legitimately claim private ownership. That would explain why Latins are distinguished not from Italians but from *peregrini*, a term that would include all non-citizens without *commercium*. This is relevant for the next provision in the law, which addresses the treatment of non-Romans in legal disputes.

3.2.3: Line 30-31

3.2.3.1: Text³¹⁹

29 quod ex h(ac) l(ege) ita, ut ei s(upra) s(criptum) est, in agreis, que[i] in terra Italia]

30 [sunt, quei P. Mucio L. Calpurnio co(n)s(ulibus) publiceis populi Romanei fuerunt, quoi quomque Latino peregrinoque facere licuerit, quod eoru]m quis, qu[od eum ex h(ac) l(ee) f]acere oportuerit, non fecerit, quodve quis eorum ex h(ac) l(ege) [damnum fecerit, mag(istratus)] prove mag(istratu), quo d<e> ea re in ious aditum erit, quod ex h(ac) l(ege)

³¹⁸ Ibid., 216.

³¹⁹ Crawford (1996, 116, 144).

petetur, item iudicium iudi[cem recuperatoresve ex h(ac) l(ege) ei et in eum dato ita ut ei] et in eum iudicium iudicem recuperatoresve ex h(ac) l(ege) dare oporteret, sei quis de ea re iudiciu[m postulet.]

31 [quei ceivis Romanus esset queive a ceive Romano peteret ---]

29 “Whatever, according to this statute, just as it is written down above, in the lands which [are in the land of Italy,]

30 [which were the public property of the Roman people in the consulship of P. Mucius and L. Calpurnius, it shall have been lawful for any Latin and foreigner to do, whatever of those things] anyone shall not have done, which it shall have been appropriate [for him] to do [according to this statute,] or whatever [loss] anyone of them [shall have suffered] provided for according to this statute, [the magistrate] or pro-magistrate, before whom anyone shall have gone for a pret-trial concerning that matter, whatever suit there shall be according to this statute, he is likewise [to grant] trial and [appoint] a judge [or *recuperatores* according to this statute to the person in question and against ht person in question, just as] it were appropriate to grant trial and appoint a judge or *recuperatores* according to this statute [to the person in question] and against the person in qustion, if anyone [were demanding] trial concerning that matter,

31 [who was a Roman citizen or who was suing from a Roman citizen ---]

3.2.3.2: Analysis

Clearly the meaning of this provision depends entirely on the phrase at the beginning of line 30, which is based on the interpretation of Mommsen, afterward adopted by Lintott and Crawford.³²⁰ Assuming they are correct, the provision states that in the case of a dispute over land affected by this statute a non-citizen will be given the same hearing as a citizen.

Lintott says that “the allies may have considered themselves privileged, rather than disadvantaged, in being treated on the same level as Roman citizens,” but there is no reason to think that would be the case.³²¹ In 129 the Italians had come to Scipio because they were upset at their treatment by the land commission. There is no reason to expect

³²⁰ Lintott (1992, 235); Crawford (1996, 167).

³²¹ Ibid., 235.

they would receive more favorable treatment two decades later. Further, even if the judge were impartial, it is not clear how much of a legal defense there would be for an Italian possessor, who could probably not claim an equal right to land that belonged to the Roman people. If, on the other hand, a Latin could claim up to thirty iugera as private property, as I have argued, then he would be able to defend himself in a way that other Italians could not. Thus at the beginning of line 31 this provision again mentions only Latins and *peregrini*, rather than *socii*, because the *ius commercii* would be decisive in such cases.

3.3: Conclusion

To summarize, although there is no explicit indication in the surviving text of the law that the Gracchan commission distributed land to Italians, it also does not rule out such a possibility. Non-citizens are not mentioned in the opening sections of the law because the land discussed there was to be privatized and enrolled in the census. I have argued that land owned by non-citizens may be among the land excluded from distribution by Gaius Gracchus, but the possibility of non-citizen participation does not depend on this hypothesis. Finally, the law seems to indicate that Latins and other Italians would receive different treatment in the aftermath of the bill, the former possibly being able to declare up to thirty iugera of their land private in the case of a dispute.

4. APPIAN AND PLUTARCH

4.1 Appian's Historicity

Having established that non-citizen participation in the distributions is consistent both with the statute of 111 and the law in general, the next step is to examine the apparent contradictions in our two main literary sources, Appian and Plutarch. The first issue to address is the possibility that the involvement of Italians was fabricated, as argued by Badian and Mouritsen. Badian blames the distortion on an earlier “Italophile” writer, whom Appian copied unsuspectingly.³²² Mouritsen believes that, although Appian may have been influenced by Gaius’s propoganda, the inclusion of the Italians in his account is his own conscious creation.³²³ Behind this theory lies a radical view of the reliability not only of Appian, but of all ancient historians. Gelzer, we have seen, was already willing to practically dismiss Appian as a historical source, but Mourtsen goes further by arguing that we cannot separate fiction and historiography. For the ancient historian “the relationship between the historical text and the past ‘reality’ was not perceived in terms of direct referentially . . . the past was . . . open to constant change and rewriting,” so that Appian was fully capable of “a literary rewriting of the past.”³²⁴ Mourtsen believes he can detect the fictional element by pointing out the narrative inconsistencies, the chief one in this case being that the Italians are first for the land distribution, then against it when they come to complain to Scipio.³²⁵

³²²Badian (1958, 172).

³²³Mouritsen (1998, 15 ff.)

³²⁴Ibid., 12-3.

³²⁵ Ibid., 17-8. Mourtsen (2008, 472-3).

This idea proves to be self-defeating. If Appian had as little regard for the truth as Mouritsen's argument suggests, then it is difficult to see what would have prevented him from constructing an internally consistent account. The Scipio episode should not have been too difficult to deal with. First, he could simply have ignored it. Appian's history is by no means comprehensive. He moves rapidly from 133 to 124, pausing only to mention this incident and Fulvius Flaccus's proposal to extend citizenship. If for some reason he did feel compelled to discuss it, it would have been a simple matter to avoid the appearance of contradiction by modifying a few details. Several modern scholars have explained it as a difference in interests between the poor and rich Italians.³²⁶ Appian, who is hardly uninterested in class conflict, could easily have done the same. If he were inclined to be more creative, he could have changed the Italians to rich Romans, just as, according to Mouritsen, he had changed poor Romans to Italians.

The fact that Appian left this and other weak-spots in his narrative is easiest to explain if we accept that ultimately he was writing history and therefore did not have the freedom to do such things. The incident with Scipio is there because it was in his sources and it seemed important. It is even possible that he did not understand himself why the Italians would oppose a law from which they benefited, yet he included it all the same, if not because he felt an obligation to the truth, then at least because he could not have gotten away with omitting it. Mouritsen says about Flaccus's bill, the only other incident that Appian includes in the period between 133 and 123, "the whole story is likely Appian's own confection."³²⁷ But if he could invent details like this, and even more if he

³²⁶Stockton (1979, 43-4); Bertelli (1978, 142-3).

³²⁷Mouritsen (2008, 476).

could, rewrite history on a larger scale by including the Italians in Tiberius's reform, then there is no reason he should have found this episode so insurmountable.³²⁸

Further, we may ask why Appian includes the Gracchi in his history at all. Mouritsen takes it for granted that, "The beginning of civil strife was generally traced back to Ti. Gracchus' tribunate."³²⁹ This is true of modern historiography, and no doubt Appian's influence is an important reason. But we should not assume it was so obvious for the ancients. Different historians gave different dates for the beginning of Rome's troubles, and there is no reason Appian had to begin in 133. In fact, it seems that this was not his original intention. Bucher demonstrates that Appian composed his work serially, following a program he sketched out in his preface, and that during the composition of the first books, as he read more widely in Roman history, he altered his program somewhat, in particular by expanding the book on the civil wars.³³⁰ His original plan was to narrate three *staseis*: Marius against Sulla, Caesar against Pompey, and Antony against Octavian.³³¹ Apparently the Gracchi were not yet on his mind, however natural a starting point they seem to us. Yet by the time he began the *Bella Civilia* this had changed.

Mouritsen argues that Appian had to include the Gracchan period because its violence presaged the war between Marius and Sulla, and about the Social War because it occurred during the interval and in the same geographic area.³³² But it seems more likely

³²⁸Cuff (1967, 181).

³²⁹Mouritsen (1998, 20).

³³⁰Bucher (2000, 418).

³³¹Bucher (2000, 420).

³³²Mouritsen (1998), 21.

that the line of causation ran the other way: Appian read in his source or sources that the war between Marius and Sulla grew out of the Social War, and with further research he found that the roots of the Social War, not the war between Marius and Sulla, lay in the Gracchan period. He seems to say as much in the opening to his narrative of the Social War, in which he simultaneously apologizes for its inclusion, fearing apparently that his reader would find it extraneous, and explains its origins in the Gracchan period:³³³

λήγων δὲ καὶ ὄδε στάσεις τε ἄλλας καὶ στασιάρχους δυνατωτέρους ἀνέθρεψεν οὐ νόμων εἰσηγήσεσιν ἔτι οὐδὲ δημοκοπίας, ἀλλὰ ἀθροίσι στρατεύμασι κατ' ἀλλήλων χρωμένους. καὶ αὐτὸν διὰ τὰδε συνήγαγον ἐς τήνδε τὴν συγγραφὴν, ἕκ τε τῆς ἐν Ῥώμῃ στάσεως ἀρξάμενον καὶ ἐς πολὺν χεῖρονα στάσιν ἐτέραν ἐκπεσόντα. ἤρξατο δὲ ὄδε. Φούλβιος Φλάκκος ὑπατεύων μάλιστα δὴ πρῶτος ὄδε ἐς τὸ φανερώτατον ἠρέθιζε τοὺς Ἰταλιώτας ἐπιθυμεῖν τῆς Ῥωμαίων πολιτείας ὡς κοινωνοὺς τῆς ἡγεμονίας ἀντὶ ὑπηκόων ἐσομένους.

When [the Social War] was ended it gave rise to new seditions under more powerful leaders, who did not work by introducing new laws, or by playing the demagogue, but by employing whole armies against each other. I have treated it in this history because it had its origin in a Roman sedition and resulted in another one much worse. It began in this way. Fulvius Flaccus in his consulship first openly excited among the Italians the desire for Roman citizenship, so as to be partners in the hegemony instead of subjects . . .

The appearance of this apology here, and the blunt statement that conflict's origins lay in the Gracchan period, suggest that the seam in Appian's work where he attached the new material is to be located, not between the Gracchi and the Social War, as Mouritsen's theory would suggest, but between these two as a unit and the rest of the history beginning with Marius and Sulla.

A desire for consistency therefore cannot explain why Appian includes the Italians

³³³*Bell. Civ.* 1.34, White's translation.

as beneficiaries in Tiberius's reforms. If, as Mouritsen believes, the Gracchi and the Social War did not fit into his narrative, he could simply have begun with Marius and Sulla as he had originally intended. The same is true for his “Italophile” source. There would be no sense in this author tracing his narrative back to the Gracchi if there were not in his view a real connection to the Italian issue. One might argue that he fabricated such a connection due to their status as popular heroes. But this is difficult to accept, because if Tiberius’s law did not give land to the Italians, then its only impact on them was to deprive them of the access to public land they already had. Tiberius would not likely then have been well remembered. Furthermore, not only Tiberius’s reform, but the agrarian issue as a whole would be a sore spot for the Italians. The Italophile could have constructed a much neater narrative by passing over the agrarian question entirely and focusing on political rather than economic grievances. The same is true for Bertelli’s argument that Tiberius had originally intended to include the Italians but had withdrawn this part of the law in the face of opposition.³³⁴ Whatever happened in 133, no explanation is satisfactory if it cannot account for the fact that Tiberius went down in history as a friend of the Italians.

It is true that even if Appian and his hypothetical Italophile source believed that they were writing accurate history, this still does not prove that they were correct. There are many ways that such a misunderstanding could have arisen. Deliberate falsification is one possibility, though I think it is unlikely unless a convincing motive can be produced. A more plausible theory would involve an accumulation of misunderstandings across

³³⁴Bertelli (1978, 145 ff.)

several sources.³³⁵ For instance, it is clear that a substantial portion of the anti-Gracchan rhetoric was hostile to non-citizen Italians. Already this rhetoric seems to have led Velleius to the mistaken belief that Tiberius tried to extend citizenship to the Italians. Perhaps a later source, or even Appian himself, carried this mistake further, to the point of imagining that all of Tiberius's legislation, including the land bill, benefited the Italians at the expense of citizens, and this led Appian to trace the origin of the Italian problem to 133. Or perhaps another writer saw the same parallel as Plutarch between the Gracchi on one side and Agis and Cleomenes on the other, and the analogy colored their presentation of Tiberius's legislation to the point of suggesting, or even stating, that just as the two Spartan kings had given land to the *perioikoi*, so Tiberius gave land to the non-citizen Italians. There is endless room for speculation along these lines, and such explanations remain and always will remain possible. The only way to answer them is by presenting a more compelling and preferably less speculative explanation. In particular, I will now demonstrate that Plutarch's is likely to be the less accurate account, due to his stated aims and his usual method of work, as well as certain gaps in his knowledge of Roman law where Appian is evidently better informed.

4.2 Plutarch's methods and aims

Pelling shows how Plutarch in his later Roman lives adapted more or less the

³³⁵At this point the argument may seem to call for a discussion of the specific sources used by Appian and Plutarch. I would refer the reader to Cuff's (1967, 177-8) convincing argument for the uselessness of such speculation, which would at best allow us to attach specific names to the sort of hypotheses I describe in this paragraph. But given that we do not actually have any of the names commonly mentioned, such as Assinius Pollio, the argument that Appian was misled by one or more particular sources must necessarily be circular. It is therefore best to agree with Stockton (1979, 3) that "[w]e cannot begin to assert what or which earlier sources [Appian, Plutarch and the others] drew on either at first hand or through some intermediary channel." Stockton makes an exception for Diodorus, who is commonly agreed to have used Posidonius, about whom we are somewhat better informed.

same source material to fit his goals in each individual biography. He had, on the one hand, various techniques to streamline and compress material, which might include suppressing one minor character and transferring his actions to another, conflating similar items, or rearranging events to make them clearer and easier to narrate.³³⁶ Thus, for instance, two laws in the *Life of Cato* become one in the biographies of other characters, and in Antony's life the subject character gives a speech to Caesar's troops that in the *Life of Caesar* is spoken by the general himself.³³⁷ On the other hand he has methods to inflate inadequate material, which he can do by adding circumstantial details or fabricating content.³³⁸ This is clearest in his Life of Antony, where his only source for much of Antony's early life seems to be scattered anecdotes from Cicero's *Phillipics*, for which the biographer is compelled to invent contexts.³³⁹ Since Plutarch wrote these lives to be read alongside each other, he obviously was not trying to deceive his readers while hoping that they would not notice the discrepancies. Rather, this is what he meant when he said he was writing lives and not history. As far as Plutarch was concerned, if his readers wanted the facts they should look elsewhere. His job was to paint a compelling portrait of his characters.

Yet, as Pelling shows, Plutarch does not follow a consistent "biographical theory."³⁴⁰ The lives tend to focus on the moral and personal, as Plutarch says, but this is

³³⁶Pelling (1980), 127-9.

³³⁷*Cato* 43; *Pompey* 52.4; *Crassus* 15.7; *Antony* 5.10; *Caesar* 31.3.

³³⁸Pelling (1980, 129-31).

³³⁹*Ibid.*

³⁴⁰*Ibid.*, 135 ff.

not always the case. A particularly notable exception is the *Life of Caesar*, which is unusually historical and political, compared, for instance, to the *Life of Pompey*, which follows a stereotypically tragic scheme, and the *Life of Brutus*, which describes the same events as Caesar's life in terms of personal relationships.³⁴¹ The difference in tone can be explained by the theme Plutarch chose to follow for this life, which Pelling calls the "*demos-tyrannis*" analysis.³⁴² Thus throughout the biography Plutarch finds occasions to insert the words *monarchia* and *tyrannis* where they do not appear in parallel passages in the other lives. By the final chapters Caesar's rule has become "an acknowledged tyranny", and Caesar has become a stock tyrant, saying things like "For you and all I caught fighting against me are mine."³⁴³ The *demos* plays a central role in this story, which is reiterated throughout the life. The *demos* first encourage him to seek power, and they are responsible for his rise.³⁴⁴ But after he becomes a tyrant Caesar goes too far, so that he alienates not only the senate but even the *demos*.³⁴⁵ Their consequent desertion to Brutus precipitates his downfall.³⁴⁶

The *Life of Caesar* is an instructive parallel for the lives of Tiberius and Gaius, because this "*tyrannis-demos*" structure could be easily fit to the latter two. It is significant that Plutarch is our main source for the idea that Tiberius wanted to make

³⁴¹Ibid., 135-6; Pelling (1979, 77-9).

³⁴²Pelling (1980, 137).

³⁴³*Caesar* 57.1: ὁμολογουμένη τυραννίς 35.6-11: ἐμὸς γὰρ εἰ καὶ σὺ καὶ πάντες ὅσους εἴληφα τῶν πρὸς ἐμὲ στασιασάντων

³⁴⁴Ibid. 6.

³⁴⁵Ibid. 60.3: οὐ μόνον ἠνίασε τὴν βουλὴν, ἀλλὰ καὶ τὸν δῆμον.

³⁴⁶Ibid. 62.1: οὕτω δὴ τρέπονται πρὸς Μάρκον Βροῦτον οἱ πολλοί

himself a tyrant. In his account we read the accusation that Tiberius was presented with a diadem and purple robe, and that the violence which kills Tiberius begins when the tribune seems to ask for a crown.³⁴⁷ In Appian's account Tiberius himself gives a signal to his partisans to begin fighting.³⁴⁸ The idea that Tiberius wanted to make himself tyrant, prevalent in modern accounts, is surprisingly rare in the ancient sources. Sallust attests that “they said he was preparing a monarchy,” and it may have appeared in Livy if Dio Cassius followed him, but apart from that it is hardly evident in the Latin sources.³⁴⁹ Opposition to the Gracchi is instead aimed less at their motives than the effects of their legislation, which is described either as well-intentioned but misguided or driven by spite.³⁵⁰ Appian, who is generally supportive of monarchy, even expresses surprise that the Romans did not consider appointing a dictator during this period, an idea which as far as he could tell never occurred to them.³⁵¹ That would be an odd thing to say if his sources claimed that Tiberius or Gaius had tried to establish a tyranny.

The idea did exist before Plutarch, as is clear from the fragments of Diodorus, and it should perhaps be attributed to Posidonius, who wrote his history as a continuation of Polybius's. That historian had famously described a cyclical change in government from

³⁴⁷*Ti. Gracchus* 14.2, 19.2.

³⁴⁸*Bell Civ.* 1.15

³⁴⁹Sallust *Iug.* 31: *regnum parare aiebant*

³⁵⁰E.g. Cicero *Brutus* 27.103: “*ex invidia foederis Numantini bonis iratus;*” Sallust *Iug.* 42: “*Et sane Gracchis cupidine victoriae haud satis moderatus animus fuit.*”

³⁵¹*Ibid.* 1.16: *καί μοι θαῦμα καταφαίνεται τὸ πολλάκις ἐν τοιοῖσδε φόβοις διὰ τῆς αὐτοκράτορος ἀρχῆς διασεωσμένους τότε μὴδ' ἐπὶ νοῦν τὸν δικτάτορα λαβεῖν, ἀλλὰ χρησιμώτατον τοῖς προτέροις τότε τὸ ἔργον εὐρεθὲν μὴδ' ἐν μνήμῃ τοῖς πολλοῖς ἄρα γενέσθαι μήτε τότε μήθ' ὕστερον.* On Appian's support for monarchy: Bucher (2000, 430 ff.).

monarchy to oligarchy to democracy and back to oligarchy, and he warned that Rome would someday descend into mob rule, and by implication would return to monarchy.³⁵² Polybius had ended his history before 133, and it would not be surprising if Posidonius presented the course of events initiated by Tiberius's tribunate as a fulfillment of his predecessor's predictions. Thus Diodorus writes that Gaius rebelled against the laws and aimed to establish a democracy, and at the same time that he behaved tyrannically.³⁵³ Plutarch may subsequently have adopted the idea as way to frame his lives of Tiberius and Gaius, though in a more personalized form, divorced from its generalized significance.

We can see further parallels to the Life of Caesar in the behavior of the *demos*. After giving reasons for Tiberius's actions, Plutarch says that the most important was their encouragement.³⁵⁴ Tiberius's main misstep in this account is his impeachment of Octavius, an episode which takes up a large part of the biography.³⁵⁵ This action angered not only the powerful but even the people, and the resulting unpopularity led Tiberius's friends to fear for his life and encourage him to seek reelection.³⁵⁶ Tiberius therefore sets about trying to win back the people's favor, but on the day of the voting it seems that he

³⁵²Polybius 6.9, 57.

³⁵³24/25.25.1: δημηγορήσας περὶ τοῦ καταλῦσαι ἀριστοκρατίαν, δημοκρατίαν δὲ συστήσαι; τῶν γὰρ ἀρχόντων καταφρονήσας κατεξάνίσταται καὶ τῶν νόμων. 28a.1: ὁ δὲ τυρρανικῶς ἤδη διεξάγων.

³⁵⁴Ti. *Gracch.* 8.7: τὴν δὲ πλείστην αὐτός ὁ δῆμος ὀρμὴν καὶ φιλοτιμίαν ἐξῆψε.

³⁵⁵Ibid. 10-2, 15. In the *Comparison* 5.1 he says: τῶν τοίνυν ἐγκλημάτων τῶν κατὰ Τιβερίου μέγιστόν ἐστιν ὅτι τὸν συνάρχοντα τῆς δημαρχίας ἐξέβαλε.

³⁵⁶Ti. *Gracchus* 15.1: τὸ περὶ τὸ Ὀκτάβιον οὐ τοῖς δυνατοῖς μόνον, ἀλλὰ καὶ τοῖς πολλοῖς ἐκπαθέστερον; 16.1.

will lose because part of the *demos* is absent.³⁵⁷ Plutarch, unlike Appian, does not explain that this was due to of the harvest.³⁵⁸

Plutarch does not make this theme too obvious in the *Life of Tiberius*, and does not stress the loss of the people's favor, but in part that is because the story is only half over. The lives of Tiberius and Gaius are essentially one biography, as Plutarch shows in Gaius's life by omitting the usual introductory material and jumping into his subject's political career, which picks up where Tiberius left off. Gaius is described with much stronger language than his brother. He "shakes up" the *demos* and aims to "undo" the senate.³⁵⁹ Likewise the affection and then desertion of the people are described more vividly. At Gaius's height the people were willing to do absolutely anything for him.³⁶⁰ But as a result of the activities of Livius Drusus the people are satisfied and Gaius's influence is "quenched."³⁶¹ Before his death, some, moved by pity, regret having abandoned him and return to his side.³⁶² But in his final movements his remaining followers desert him, and Gaius dies cursing the *demos* for their ingratitude.³⁶³

The lives of Tiberius and Gaius, along with their Greek parallels, the lives of Agis

³⁵⁷Ibid. 16.

³⁵⁸*Bell. Civ.* 1.14

³⁵⁹*C. Gracchus* 4.1: προανασεισας τον δημον; 5.1: καταλυνω την συγκλητον.

³⁶⁰Ibid. 8.1: επι τουτοις του δημου μεγαλυνοντος αυτον και παν οτιουν ετοιμως εχοντος ενδεικνυσθαι προς ευνοιαν

³⁶¹Ibid. 11.3: της δυναμewς αυτου μαραινομενης και του δημου μεστου γεγονoτος

³⁶²Ibid. 14.5.

³⁶³Ibid. 16.5: ενθα δη λεγεται καθεσθεις εις γονυ και τας χειρας ανατεινας προς την θεον επευξασθαι τον Ρωμαιων δημον αντι της αχαριστίας εκεινης και προδοσίας μηδέποτε παύσασθαι δουλεύοντα: φανερωσ γαρ οι πλειστοι μετεβαλλοντο κηρυγματι δοθεισης αδειας

and Cleomenes, are fundamentally stories about the relations of popular leaders to their fellow *politai*. Thus in his comparison of the two pairs Plutarch draws attention to their deaths as particularly indicative of their characters: the Gracchi, he says, died fighting their own fellow-citizens.³⁶⁴ Their actual legislation is for the biographer a less important point. In fact, to him the Gracchan bills were not even very ambitious. Tiberius went no farther than a redistribution of land, and Gaius wanted at most to reform the courts. Agis and Cleomenes, in contrast, did not bother with small and piecemeal measures, but aimed at revolution.³⁶⁵

Given this expressed lack of concern with the brothers as legislators, along Plutarch's usual methods, it is not hard to understand why he would write Latins and Italians out of the history, where Appian would include them. Appian's history is about the social conflicts of the later republic, at the core of which, as he makes clear in his opening, is the struggle between the *boule* and the *demos*.³⁶⁶ He is not interested in the brothers for their own sake, but only in so far as they fit into this narrative as prominent leaders of one party, whose deaths represent a victory for the other. Plutarch's is a very different story. He is interested in the brothers as characters, and in their rise and fall. The *demos* and the senate play their parts in both, but their roles are flexible and inconsistent.

³⁶⁴*Comp.* 3.1: οἶμαι δὲ καὶ τὰς τελευτὰς τῶν ἀνδρῶν ἐμφαίνειν τινὰ τῆς ἀρετῆς διαφορὰν. ἐκεῖνοι μὲν γὰρ μαχόμενοι πρὸς τοὺς πολίτας, εἶτα φεύγοντες ἐτελεύτησαν

³⁶⁵*Ibid.* 2.1-2: ἢ γε μὴν ἐπιβουλὴ καὶ τόλμα τῶν καινοτομουμένων πολὺ τῷ μεγέθει παρήλλαττεν. ἐπολιτεύοντο γὰρ ὁ μὲν ὁδῶν κατασκευὰς καὶ πόλεων κτίσεις, καὶ τὸ πάντων νεανικώτατον ἦν Τιβερίῳ μὲν ἀνασῶσαι δημοσίους ἀγρούς, Γαίῳ δὲ μῖξαι τὰ δικαστήρια προσεμβάλλοντι τῶν ἵππικῶν τριακοσίους· ὁ δὲ Ἄγιδος καὶ Κλεομένους νεωτερισμός, τὸ μικρὰ καὶ κατὰ μέρος τῶν ἡμαρτημένων ἰᾶσθαι καὶ ἀποκόπτειν ὕδραν τινὰ τέμνοντος, ὡς φησὶν ὁ Πλάτων, ἠγησάμενος εἶναι, τὴν ἅμα πάντα ἀπαλλάξαι κακὰ καὶ μετασκευάσαι δυναμένην μεταβολὴν ἐπῆγε τοῖς πράγμασιν.

³⁶⁶*Bell. Civ.* 1: Ῥωμαῖοις ὁ δῆμος καὶ ἡ βουλὴ πολλάκις ἐς ἀλλήλους . . . ἐστασίασαν

Thus Livius Drusus manages to isolate Gaius by bringing the *demos* over to the side of the senate, an explanation that would be impossible for Appian.³⁶⁷ Further, in Plutarch's narrative the death of Gaius is the end, where in Appian it is the beginning. For the biographer non-citizens would be a superfluous and confusing detail that would muddle a story about reformers and their compatriots, something a writer who prizes elegance and clarity would find unacceptable. Appian, in contrast, will continue to follow the parties involved through the civil wars, among which he includes the Social War. For him there is no question of superfluity, because in his story the Italians are more important characters than the Gracchi.

4.3: Italians, Latins and *plebs*

Nevertheless, it is not necessary to suppose that Plutarch is completely mistaken, and that Appian is completely right. Here I would like to explore an attractive theory that Sherwin-White proposed but never explored in detail. After dismissing the issue of Italian participation in the main text of *Roman Citizenship*, Sherwin-White suggests in one footnote that Cicero's famous statement "may not exclude a minor redistribution of lands to landless Latins."³⁶⁸ Then in a second note he suggests: "The reference to Italici as 'kinsmen' in the speech of Tiberius may well conceal a mention of *Latini coloniarii*, who were largely of Roman derivation."³⁶⁹ This is an attractive theory worthy of more than two footnotes, first because Latins could conceivably have been confused for both citizens and Italians in different contexts, accidentally or intentionally, and second

³⁶⁷C. *Gracch* 9.4 ἡμερώτερον γὰρ ἔσχε πρὸς τὴν βουλὴν ὁ δῆμος

³⁶⁸Sherwin-White (1973 217 n.5)

³⁶⁹*Ibid.*, 218 n.4.

because such a confusion explains several contradictions in Appian and Plutarch.

From the Roman point of view, it would be natural enough to subsume Latins as part of a broader category of "Italian allies." Göhler observes that Plutarch seems to confuse them in this way when describing Gaius's citizenship bill, one of the few explicit appearances of non-citizens in his account.³⁷⁰ Plutarch mentions it four times: On the one hand he says τοῖς Λατίνοις ἰσοψηφίαν διδούς, then καλῶν δὲ ἐπὶ κοινωνίαι πολιτείας τοῦς Λατίνους.³⁷¹ So far only Latins, but then he refers to a νόμος συμμαχικός, which should address *socii*, and describes it as ἰσοψηφίους ποιῶν τοῦς Ἰταλιώτας.³⁷² The apparent contradiction has in the past lead some like Last to hypothesize that there were two laws, but Göhler and others since have recognized that Plutarch must have confused the same law which Appian succinctly summarizes thus: τοῦς Λατίνους ἐπὶ πάντα ἐκάλει τὰ Ῥωμαίων . . . τῶν τε ἐτέρων συμμαχῶν, οἷς οὐκ ἐξῆν ψῆφον ἐν ταῖς Ῥωμαίων χειροτονίαις φέρειν, ἐδίδου φέρειν ἀπὸ τοῦδε.³⁷³ Decisive confirmation is provided by Cicero's reference to a speech against the law titled *oratio de sociis et nomine Latino*, in which the speaker refers only to the Latins as receiving citizenship.³⁷⁴

Göhler explains the confusion by arguing that when Plutarch writes "Latins" he actually means "Italians." The reason, Göhler says, is that by Plutarch's time all Italians spoke Latin, and so he did not understand the legal distinction conveyed by that term.

³⁷⁰Göhler (1939, 164).

³⁷¹*C. Gracch.* 8.3, 9.3.

³⁷²*Ibid.* 5.1.

³⁷³Last (1932, 59); Göhler (1932, 165); *Bell. Civ.* 1.23.

³⁷⁴*Brutus* 99.

However it is more likely that the confusion runs in the other direction. Even if Plutarch did not understand the use of the word "Latins," there would be no reason why he should more likely confuse them with Italians than with Romans. But in any case he probably did know what the term meant, since in the principate *Latinitas* became an honorary status conferred on provincials.³⁷⁵ Further, the term ἰσοψηφία, "equal suffrage," only makes sense if those receiving it had a lesser form of suffrage before.³⁷⁶ But no such lesser form is attested apart from the restriction of Latins to one voting tribe. Thus Göhler is right that the first and last of the quotes above refer to the same measure, but the beneficiaries in both cases must be Latins, not Italians. As Appian makes clear, it is the Latins whose suffrage is upgraded, while the other Italians receive the lesser form of suffrage previously held by the Italians.

A similar conflation can be seen in Appian. Cicero, describing the context of the complaints to Scipio in 129, says that Tiberius "sociorum nominisque Latini iura neclexit ac foedera," and refers to "concitatis sociis et nomine Latino."³⁷⁷ But in Appian we read only of Italiotai bringing complaints to Scipio.³⁷⁸ It is possible that such a confusion already existed in the rhetoric of Tiberius and Gaius's opponents. Velleius says that Tiberius promised citizenship *toti Italiae*, and that Gaius tried to extend it *paene usque Alpes*.³⁷⁹ However that Appian understands the distinction between the two is clear from

³⁷⁵Sherwin-White (1973, 360ff).

³⁷⁶Badian (1958, 299).

³⁷⁷*de Rep.* 1.19.31, 3.29.41.

³⁷⁸*Bell. Civ.* 1.19

³⁷⁹2.2, 6.

his description of Gaius's citizenship bill. Yet Appian, writing for a Greek audience, typically neglects constitutional and legal niceties unless they are essential to his narrative, as can be seen in his inconsistent nomenclature for magistrates.³⁸⁰ In describing the events that would lead to the Social War it was necessary for Appian, unlike Plutarch, to observe the distinction between citizens and non-citizens. But the existence of citizens on one side and two types of non-citizens, Italians and Latins, on the other might have confused his readers and was unnecessary to the narrative at every point except the citizenship bill, so Appian simplified the conflict into one of Italians against Romans.

The conflation of Latins and Italians helps to make sense of a contradiction in Appian's narrative: Tiberius refers to the Italians as *συγγενεῖς*.³⁸¹ Yet in the description of Gaius's bill the term *συγγενής* apparently distinguishes Latins from Italians. Appian writes: “τοὺς Λατίνους ἐπὶ πάντα ἐκάλει τὰ Ῥωμαίων, ὡς οὐκ εὐπρεπῶς συγγενέσι τῆς βουλῆς ἀντιστῆναι δυναμένης.”³⁸² Thus Gaius believed, wrongly, that the Senate could not refuse citizenship to their kinsmen. But, as Appian has just told us, they refused Flaccus's bill a few years earlier, which would have offered citizenship to all the Italian allies, because they were unwilling to have their inferiors become equal to themselves.³⁸³ This can only make sense if the Latins were *συγγενεῖς* but the Italians were not.

That would in fact be a reasonable view at the time, since it is quite possible that still at this time, as Mouritsen proposes, “the Italians were perceived [by the Romans] not

³⁸⁰Bucher (2000, 438); Luce (1961, 21).

³⁸¹*Bell. Civ.* 1.9

³⁸²*Bell. Civ.* 1.23

³⁸³*Ibid.* 1.21: ἡ βουλή δ' ἐχάλεπαινε, τοὺς ὑπηκόους σφῶν ἰσοπολίτας εἰ ποιήσονται.

as 'us' but as 'them.'" Certainly much of Italy was Romanized, but not all of it, and some Italians must have seemed very foreign. Latins would have stronger claim to consanguinity. A large proportion of them were colonists no more than a generation or two removed from Roman citizenship.³⁸⁴ In fact, it is possible that some of them had once been Roman citizens themselves, since, although the old *ius migrationis* of the Latins had been restricted, there is no indication that Romans could not move to Latin colonies and adopt Latin status if they wished. It is unlikely that such settlers would soon abandon their identity as members of the dominant group. From epigraphical evidence these communities "appear to imitate Roman institutions with riotous abandon."³⁸⁵ At the same time, there still remained Latin cities that had never been colonies, and even most of the colonies were by now centuries old. These old and new Latins would have been united by their common status and grievances, while the new Latins could not have entirely severed their connections with Roman society and identity, and all three shared a common language and rights of *connubium* and *commercium*.

Likewise, it was also possible for Plutarch to confuse Latins with Roman voters. It should be noted that there are only a few instances where Plutarch refers directly to citizens. Both he and Appian prefer vaguer terms, such as οἱ πένητες, "the poor," οἱ πολλοί, "the masses," or, especially in Plutarch's account, ὁ δῆμος. This last term is usually taken to refer exclusively to Roman citizens. Gabba, for instances, glosses it as "i Romani."³⁸⁶ But a closer examination shows that Plutarch often uses the term to refer

³⁸⁴Since the Second Punic War two new Latin colonies had been established and three resettled.

³⁸⁵Sherwin-White (1973, 99).

³⁸⁶ Gabba (1958, 19).

specifically to the plebeian assembly. Just as Greek writers would translate the Senate as ἡ βουλή, we should expect the most natural translation for the assembly to be ἡ ἐκκλησία. This is in fact the term used by another Greek writer, Dio Cassius.³⁸⁷

But Plutarch employs this designation only four times, three being some variant of the phrase “he dismissed the assembly,” the other perhaps referring to the physical location.³⁸⁸ Instead, he uses the word δῆμος for the plebeian assembly. This is clearest when he writes: “διέλυσε τὴν ἐκκλησίαν. τῆι δὲ ὑστεραῖαι τοῦ δημοῦ συνελθόντος,” where the two appear to be synonyms used for the sake of variation.³⁸⁹ Likewise, it is the *demos* that politicians call to vote and to which they address their speeches.³⁹⁰ To be sure, Plutarch is not consistent in this use of the word. In other passages δῆμος is used as a synonym of terms like οἱ πολλοί, and antonym of οἱ δυνατοί.³⁹¹ At one point it seems to mean “popular opinion,” while referring elsewhere to Gaius's supporters: first the *demos* is overpowered when Gaius does not do well at the elections, but later the same *demos* turns against him.³⁹²

Nevertheless, it is clear that Plutarch has chosen to use this term to refer to the

³⁸⁷24.83.5

³⁸⁸Twice διέλυσε τὴν ἐκκλησίαν (*T. Gracch.* 12.1, 15.1), once τὴν ἐκκλησίαν ἀφῆκαν (*T. Gracch.* 16.2). The other occurrence refers to Scipio speaking in the assembly (*Ti. Gracch.* 21.8).

³⁸⁹*Ti. Gracch.* 12.1

³⁹⁰*Ti. Gracch.* 15.1: λόγον ἐν τῶι δήμῳ διεξελθεῖν; 11.1: αὐτοῦ καλοῦντος ἐπὶ τὴν ψῆφον; 11.4: ἐκέλευσε τῶι δήμῳ ψῆφον ἀποδοῦναι

³⁹¹*Ibid.* 20.1: φόβῳ μὲν οἱ δυνατοὶ τῶν πολλῶν, αἰδούμενοι δὲ τὴν βουλὴν ὁ δῆμος; 21.1: Ἡ δὲ βουλὴ θεραπεύουσα τὸν δῆμον ἐκ τῶν παρόντων, οὔτε πρὸς τὴν διανομὴν ἔτι τῆς χώρας ἠναντιοῦτο, καὶ ἀντὶ τοῦ Τιβερίου προῦθηκε τοῖς πολλοῖς ὀριστὴν ἐλέσθαι.

³⁹²*C. Gracch.* 3.1: τοσοῦτον δ' οὖν ἐξεβίασαντο τὸν δῆμον οἱ δυνατοὶ καὶ τῆς ἐλπίδος τοῦ Γαίου καθεῖλον, ὅσον οὐχ ὡς προσεδόκησε πρῶτον, ἀλλὰ τέταρτον ἀναγορευθῆναι; 13.4.

plebs, or more specifically to the attendants of the plebeian assembly. It is therefore not synonymous with the citizen body, as some have mistakenly assumed, because Latins would also be included in this group, for, although this fact is often disregarded, one of the privileges conferred by *Latinitas* was the right to vote in the plebeian assembly. Any Latin could freely participate in the assembly, and all who chose to do so were collectively assigned to a tribe by lot.³⁹³ But Plutarch seems to have been ignorant of this right. We have already seen his conflation of Latins and Italians in describing Gaius's proposal to extend citizenship to the former and voting rights to the latter. He shows a similar confusion over a proposal to expel foreigners from the city in 122. Appian clearly states that the senate ordered that no one who was ineligible to vote should come within a certain distance of the city during the election: μηδένα τῶν οὐ φερόντων ψῆφον ἐπιδημεῖν τῇ πόλει μηδὲ προσπελάζειν ἀπὸ τεσσαράκοντα σταδίων παρὰ τὴν ἐσομένην περὶ τῶνδε τῶν νόμων χειροτονίαν.³⁹⁴ Latins are still permitted, probably because the senate could not reasonably deprive them of their right to vote. Plutarch in contrast says that all non-citizens were to be expelled: ἔπεισεν ἡ βουλὴ τὸν ὕπατον Φάννιον ἐκβαλεῖν τοὺς ἄλλους πλὴν Ῥωμαίων ἅπαντας.³⁹⁵ Then he refers to the measure in less definite terms: μηδένα τῶν συμμάχων μηδὲ τῶν φίλων ἐν Ῥώμῃ φανῆναι περὶ τὰς ἡμέρας ἐκεῖνας.³⁹⁶ Most likely Plutarch read that non-voters, specifically *socii*, were excluded from the city, and as far as he knew this meant all non-citizens. His ignorance on this

³⁹³Lintott (1999,46).

³⁹⁴*Bell. Civ.* 1.23

³⁹⁵*C. Gracch.* 12.1.

³⁹⁶*Ibid.* 12.2

point could potentially cause serious confusion, since every time voters or the assembly were mentioned he would assume that only citizens were present, while elsewhere he would not see any reason to distinguish Latins from Italians.

The inclusion of Latins in the assembly and therefore the δῆμος of Plutarch's account helps to explain what otherwise amounts to a non-sequitur in the biography: describing the competition between Gaius and Drusus for the affection of the δῆμος, he lists only three measures, one of which is Gaius's bill to extend citizenship to the Latins, and Drusus's proposal to protect the Latins from corporal punishment.³⁹⁷ Because of these measures, the *demos* viewed the senate more favorably and forgot their past grievances.³⁹⁸ Thus Plutarch implies that the *demos* was concerned with the treatment of Latins. The sequence of events makes the most sense if both proposals were meant to win votes in the plebeian assembly.³⁹⁹

4.4: The Latin Vote

Göhler attracted criticism for attaching importance to this right of the Latins to vote. He says that it was "ein gewaltiger Erfolg fuer die Bundesgenossen und nicht weniger fuer Gaius," and even that Fulvius, and by implication Gaius would not have dared to bring their citizenship bills without the support of the Latin voters.⁴⁰⁰ In response Last writes "how [the Latins] can in fact have had any real significance is not

³⁹⁷Ibid., 9.1, 3.

³⁹⁸Ibid., 9.4: ἡμερώτερον γὰρ ἔσχε πρὸς τὴν βουλὴν ὁ δῆμος, καὶ τοὺς γνωριμωτάτους αὐτοῦ πρότερον ὑφορωμένου καὶ μισοῦντος, ἐξέλυσε καὶ κατεπράυνε τὴν μνησικακίαν καὶ χαλεπότητα ταύτην ὁ Λίβιος.

³⁹⁹Badian's argument (1958, 187-90), that Drusus was following a policy of *divide et impera* by turning the Latins against the Italians does not make sense unless we assume that they preferred Drusus's proposal because it gave the Italians nothings, even though it gave them less than Gaius's.

⁴⁰⁰Göhler (1939, 166, 137).

explained," and that in truth their voters were probably "politically meaningless."⁴⁰¹ This view remains typical. To give one example, Stockton states matter-of-factly, "The Italians had no voice at all in Roman legislation; and the Latins could only influence the way in which a single tribe out of the total of thirty-five voted on any given occasion. Hence any enthusiasm which the prospective beneficiaries of this proposal might feel for it could not be translated into support in the assembly for its passage into law."⁴⁰² Even beyond the particular question of the Gracchi the Latins receive little attention. Two recent studies of Republican elections by Yakobson and Mouritsen contain no indication at all that Latins could vote.⁴⁰³

But this view that their vote was insignificant is not necessarily correct. The plebeian assembly was divided into thirty-five tribes. It is unlikely that Roman elections in this period were attended by more than a few thousand voters, so we should expect there to have been one to two hundred voters for each tribe.⁴⁰⁴ But of course not all tribes saw equal turnout. Four were "urban," the rest "rural," and since elections were held in the city, and freedmen were enrolled only in the urban tribes, the voters in these tribes must have been more numerous and probably poorer on average. Attendance in the rural

⁴⁰¹Last (1940, 84).

⁴⁰²Stockton (1979, 158). Sherwin-White (1973, 215) similarly says that Göhler "exaggerated the importance of the privilege that allowed Latins present in Rome to vote in a single tribal unit, as though this conveyed significant political power."

⁴⁰³Yakobson (1999). Mouritsen (2001).

⁴⁰⁴According to Mouritsen (2001, 18-26), in the late republic elections took place in the Saepta, which may have been capable of holding as many as fifty-thousand or more voters. But the move to there from the Comitium, which could hold only a few thousand, did not take place until the mid-second century, shortly before the activity of the Gracchi. Since there is no reason to believe the number of voters exploded during this time, normal turnout must still have been no more than the number that could have fit in the Comitium.

tribes probably varied based on their distance from the city, but it was not unheard of for some to be unrepresented, and others probably had only a few voters.⁴⁰⁵

As such, it is very likely that Latins were regularly in a position to determine how one of the thirty-five tribes would vote. That may seem small at first glance, but a comparison to our system will show that it really is not. One thirty-fifth of our electoral college would be 15 votes, somewhere between Missouri and Ohio, and several times more than certain other states where billions of dollars are spent every four years. For legislation, it would be equivalent to roughly three senators or thirteen representatives. These are not numbers that a politician would totally disregard, either in seeking office or passing legislation. A fragment from Diodorus Siculus describing voting on an unknown piece of legislation proposed probably by Gaius dramatically illustrates this fact:⁴⁰⁶

Ἵτι ἑπτακαίδεκα φυλαὶ τὸν νόμον ἀπεδοκίμαζον, ἄλλαι δὲ ταύταις ἴσαι παρεδέχοντο: τῆς δὲ ὀκτωκαιδεκάτης διαριθμουμένης μία ψῆφος ὑπερῆρε τῶν κυρούντων τὸν νόμον. τῆς δὲ τοῦ δήμου κρίσεως εἰς οὕτω μικρὰν ῥοπήν συγκλειομένης, ὁ Γράκχος ἠγωνία ὡς ὑπὲρ τοῦ ζῆν κινδυνεύων, τῆι δὲ προσθήκη μιᾶς γνώμης μαθὼν ἑαυτὸν νικῶντα μετὰ χαρᾶς ἀνεφθέγξατο, “Τὸ μὲν ξίφος ἐπίκειται τοῖς ἐχθροῖς, περὶ δὲ τῶν ἄλλων ὡς ἂν ἡ τύχη βραβεύσῃ στέρξομεν.

“Seventeen tribes voted against the law, and an equal number of others approved it. When the eighteenth was tallied, there was a plurality of one for those supporting the measure. While the decision of the people was narrowing down to so close a finish Gracchus was as overwrought as if he were fighting for very life, but when he realized that he had won by the addition of a single vote he cried out: 'Now the sword hangs over the head of my enemies! As for all else, whatever the decision of Fortune, we shall be content.'”

However, since the Latins would be randomly assigned to a tribe, it follows that their

⁴⁰⁵Mouritsen (2001, 23); Cicero, *Sest. 109*, mentions an instance when five tribes were absent. Five voters were chosen from the other tribes to vote in their place

⁴⁰⁶24/25.27.1 in the Loeb edition, where it is taken to refer to Gaius rather than Tiberius. The translation is Walton's.

influence would have differed, perhaps greatly, from one election to the next. If they were assigned to an urban tribe, or a particularly well attended rural one, they may not have made a difference. On the other hand, if they were allotted one of the more sparsely attended ones they may have outnumbered the Romans and determined its vote by themselves. A politician who courted Latin voters at the expense of support among the Romans therefore took a great risk.

In fact there are several indications in Plutarch and Appian that Latin voters played a significant role. First, both describe throngs of supporters coming from the countryside in response to the tribunes' legislation.⁴⁰⁷ Some were probably non-voting Italians, but they could not likely account for all of Tiberius and Gaius's supporters. There was little purpose in their being present, except perhaps to provide physical protection and, as Göhler suggests "als Stimmungsmacher" (137). The opponents of the Gracchi were likely to play-up the non-citizen element in their supporters, as can be seen in the accusation that Cornelia had hired non-citizens disguised as farmers to protect her son. This accusation more than the actual presence of large numbers of Italians may explain the proposal to expel all non-Romans from the city, which may have been justified on the grounds that these non-citizens were intimidating voters, or even meant to vote fraudulently. Certainly the Gaius's supporters engaged in accusations of fraud against the other side after the tribune failed to win reelection.⁴⁰⁸

A large Latin presence is easier to understand, for the simple reason that they could vote. Appian makes it clear that Gaius's opponents considered his Latin supporters

⁴⁰⁷*C. Gracch.* 3.1.

⁴⁰⁸*Ibid.* 12.4

valuable to him when he writes says that the point of extending voting rights to the Italians was so that they would vote for his legislation.⁴⁰⁹ Since it is usually understood that Gaius's bill offered the same voting rights to the Italians as the Latins currently possessed, this implies that the Latins were already among Gaius's voters, and they were important enough that he wanted to have more of them.⁴¹⁰ Nevertheless, their support, however valued, could not be sufficient. This may explain why the Gracchi did not perform as well at the polls as reports of their floods of supporters suggest they should have: Tiberius seemed likely to lose in 133; Gaius came in fourth in 124, and lost in 122. They would have been at a disadvantage if a large proportion of their supporters were confined to one tribe. In particular this would have been a disadvantage to be identified as the non-Roman candidate in the eyes of citizen voters.

It would therefore still have been politically convenient for Tiberius to emphasize the support that came from the citizen body. This is another likely source of confusion. As discussed above, Shochat's argument against the reliability of Plutarch depends on what he sees as a nonsensical dichotomy between citizens and slaves that appears twice.⁴¹¹ Yet, as Bertelli observes, this argument fails because the same contrast appears in Appian.

There Tiberius is given two speeches, the first of which contrasts Italians and barbarian slaves, the second citizens and slaves.⁴¹² Bertelli attributes this to a matter of chronology:

⁴⁰⁹*Bell. Civ.* 1.23: οἷς οὐκ ἐξῆν ψῆφον ἐν ταῖς Ῥωμαίων χειροτονίαις φέρειν, ἐδίδου φέρειν ἀπὸ τοῦδε ἐπὶ τῷ ἔχειν καὶ τοῦσδε ἐν ταῖς χειροτονίαις τῶν νόμων αὐτῶ συντελοῦντας.

⁴¹⁰Stockton (1979, 157). His interpretation (Ibid, 158) is: "Appian's implication that Gaius could hope in the future to have the Italian vote on his side is careless or mistaken, since the grant to the mass of them of the *ius Latii* could do virtually nothing to affect assembly decisions."

⁴¹¹Shochat (1970, 34-9); *Ti. Gracch.* 8.3, 9.5.

⁴¹²*Bell. Civ.* 1.9, 1.11.

Tiberius first proposed a bill that would give land to non-citizens, but when this attracted resistance he changed his bill and altered his rhetoric accordingly.⁴¹³ But it is unnecessary to hypothesize a change in this aspect of the law, especially when there is no evidence yet for opposition to the idea of distributing land to non-citizens. Another possible, and perhaps simpler, explanation is that the politician presented his law differently in different contexts. Tiberius was noted for the extent of his canvassing in the countryside.⁴¹⁴ In more heavily Roman districts, or in the city itself, he may have wanted to downplay the fact that non-citizens would benefit and instead focus on its value for citizens. In districts with a greater Latin presence, on the other hand, he may have wished stress this aspect of the law, and to encourage his mixed audience to unite behind it by reminding them of their kinship. Thus the two speeches reflected in both accounts are not necessarily incompatible, and the apparent discrepancy may have its origin in Tiberius's actual rhetoric rather than a distortion in our sources.

As has already been stated, it is clear that Tiberius's support came mainly from the rustic plebs.⁴¹⁵ But if his land bill did not exclude non-citizens from receiving land, then Latins must have comprised a large part of the pool of possible recipients. The census of 130 counted 319,000 Romans, a number which is probably not far from the truth.⁴¹⁶ A

⁴¹³Bertelli (1978, 145 ff.).

⁴¹⁴Mouritsen (2001, 81-3); Diod. 34/35.6.1; App. *Bell Civ.* 1.56-7. Cic. *Cat.* 4.4.

⁴¹⁵See below n. 237

⁴¹⁶Brunt (1971, 13). On the reliability of these figures see *Ibid.*, 26 ff. Brunt estimates that they are off by 10 to 25 per cent. That is a certainly a very large margin of error giving us a possible range of approximately 240,000 to 400,000. However the truth is likely to be somewhere closer to the attested figures than at one of the extremes, particularly since the numbers remain consistently at around 300,000 over the course of the third century. In any case, we are more concerned here with orders of magnitude than exact figures.

large proportion of these lived in the city. No such figures exist for the Latins, but Brunt estimates that they numbered about 120,000 at the end of the Second Punic War, and that there were roughly 150,000 “ex-Latins” counted in the census of 69.⁴¹⁷ One might quibble with Brunt's methods, but the real number could not have been very far off. There were perhaps forty to fifty Latin cities at this time, each of which presumably had at least a few thousand inhabitants.⁴¹⁸ The average number of settlers sent to each new colony in the ten instances attested by Livy is roughly 3,600.⁴¹⁹ If we guess two to three thousand as an average figure for the population of these cities in 133, probably too cautious, we get a number not far below Brunt's. Thus in 133 there was perhaps something on the order of one Latin for every three Roman citizens, and possible as many as one for every two.

It is commonly thought that the greater ambition of Gaius's program compared to his brother's can be explained by the fact that Tiberius's support had failed him when he ran for reelection. Therefore Gaius sought to win the urban poor with the grain dole and the equites with his *lex de repetundis*. Perhaps he had also decided to consolidate and increase the value of one of Tiberius's main constituencies, the Latins, by giving them fuller voting rights. It is not clear how Gaius's law would have affected their enrollment in the tribes, and whether it would have dispersed their votes to make them more valuable. Given how contentious this issue was after citizenship was extended in the Social War, Gaius may have found it safer to leave it out of a bill already sure to attract

⁴¹⁷Ibid., 84, 97.

⁴¹⁸Salmon (1970, 110-1) counts 48 Latin colonies, not including the old Latins and five towns which had been given Latin rights; Brunt (1971, 56) estimates that in 225 there were 36 total Latin cities, which added to the six founded after 225 would only amount to 42. Livy gives a figure of 30 at the time of Hannibal's invasion, a suspiciously round number: Salmon (1970, 82).

⁴¹⁹Brunt (1971, 56).

controversy. But one effect would have been certain: the Latins would have gained the right to vote in the centuriate assembly, and this would have been very important if Gaius wanted to run for higher office, as rumor held, according to Plutarch.⁴²⁰ There is evidence that this was on his mind: a letter attributed to Sallust mentions a proposal of Gaius's to randomize the order in which the centuries voted, rather than having them vote in order of wealth.⁴²¹ This would have increased the significance of the poorer centuries, which may have been important if Gaius ran for praetor or consul, having made himself unpopular among that class.⁴²²

These Latins must have been overwhelmingly engaged in agriculture, presumably to a greater extent than their more urbanized citizen counterparts. Further, they were likely to have a special interest in *ager publicus*. First, many of these colonies had been founded on land confiscated from rebellious allies, the remainder of which would have become *ager publicus*. They were therefore especially well positioned to benefit from the right to occupy it, and for the same reason would have been specially aggrieved at its monopolization by the rich. In this case the Latins would have every reason to support Tiberius, and to show that support with their vote, however significant or insignificant that was.

⁴²⁰*C. Gracch.* 8.1

⁴²¹[Sall.] *ad. Caes. sen.* 2.8: “Magistratibus creandis haud mihi quidem absurde placet lex quam C. Gracchus in tribunatu promulgaverat, ut ex confusis quinque classibus sorte centuriae vocarentur. Ita coaequatus dignitate pecunia, virtute antire alius alium properabit.” Our only source of the proposal, but Stockton suggests it may have been part of a last batch of laws that Plutarch mentions but does not describe: *Pl. C. Gracch.* 12.1; Stockton (1979), 160.

⁴²²Stockton (1979), 160.

4.5 Precedents for non-citizen participation

Yet if Tiberius included non-citizen Latins in his law, and if *commercium* was not an obstacle, then, judging from the precedent of past colonization, it is likely that some number of Italians would have been included as well. Before the Second Punic War two types of colonies were established: large Latin colonies, drawing settlers from both Rome and the Latin states, in which both would relinquish their old citizenship for that of the new state, and small citizen colonies.⁴²³ After about 180 the policy changed to establishing only large citizen colonies, probably because Rome was reluctant to further diminish its supply of citizens.⁴²⁴ Latins were still included and given Roman citizenship, as can be seen in an incident related by Livy, when Latins who had enrolled as colonists but not yet moved to the settlement were prematurely passing as citizens.⁴²⁵ Salmon even suggests that Latins were the majority of settlers in the period after the Second Punic War.⁴²⁶

Italian involvement is harder to find. The clearest evidence is an instance when the Latin colony of Cosa was reenforced with one thousand new colonists in 197. The city was given permission to recruit the colonists itself, provided they were not from states that had defected during the Second Punic War.⁴²⁷ Since no Latin states had defected this can only mean that Rome assumed they would be recruiting from the Italian

⁴²³Salmon (1970, 15-7).

⁴²⁴Ibid. 78-9, 100.

⁴²⁵Livy 32.42.5; Richardson (1980, 4).

⁴²⁶Salmon (1970, 101).

⁴²⁷Livy 33.24.9: mille adscribi iussi, dum ne quis in eo numero esset, qui post P. Corneliium et Ti. Sempronium consules hostis faisset

cities as well.⁴²⁸ Another possible example is a *viritim* distribution in Cisalpine Gaul in 173, when ten iugera of land were given to Roman citizen and, according to Livy, three each to the “sociis nominis Latini.”⁴²⁹ Taken literally that should mean only Latins, but elsewhere Livy seems to use the term interchangeably with “socii nominisque Latini” as a kind of shorthand.⁴³⁰ So it at least does not rule out other allies, and Gabba and Richardson cite this as evidence for their participation.⁴³¹ Finally, in describing the founding of an early colony at Antium, Livy says that non-Latin Italians were recruited because of a shortage of volunteers.⁴³² This is too early to be accepted as a reliable account, but presumably it at least reflects later practice.⁴³³ Such shortages were a severe problem after the Second Punic War, to the extent that some colonies were planned but never settled because of a lack of recruits.⁴³⁴

Given this slight evidence, it is hard to deny that Italians were sometimes included, but it may be best to assume that the final example was most typical: when land was distributed, either in colonies or to individuals, citizens and Latins were preferred, but Italians were sometimes included. In fact, since colonists were volunteers, it is perhaps more accurate to say that they were not specifically excluded, unless a special

⁴²⁸Salmon (186 n.172)

⁴²⁹Ibid. 42.4.3-4

⁴³⁰Richardson (1980, 4).

⁴³¹Richardson (1980, 4); Gabba (1989, 213).

⁴³²3.1.7: iussi nomina dare qui agrum accipere vellent. fecit statim, ut fit, fastidium copia, adeoque pauci nomina dedere ut ad explendum numerum coloni Volsci adderentur.

⁴³³Brunt (1971, 84 n.4).

⁴³⁴Salmon (1970, 101).

exception was made as in the case of Cosa. It is less evident that Italians were ever included in citizen colonies, and the reason may be that Romans were unwilling to give them Roman citizenship, whereas they were willing to enfranchise Latins in certain instances.

This problem bears an interesting resemblance to our question. We have only three instances of possible Italian participation in distributions, all from the same source and all disputable in some way. Yet we cannot simply discount Livy's testimony in all three examples, and so some scholars accept that Italians did participate.⁴³⁵ In fact these settlements, particularly the instance in Cisalpine Gaul, may provide a parallel for the Gracchan distribution. The sources do not attest how the commission chose who was to receive land, and it is certainly possible that they waited for the recipients to come to them as volunteers. In that case who participated would depend, not only on the desire for land, but also on awareness of the distribution and proximity to wherever the commission chose to carry out its activities. These factors would probably ensure that Romans and Latins would predominate among the volunteers, but the commission may still have accepted Italians volunteers when they came forth.

But so far this theory fails to meet a standard set earlier, for it should be able to explain why Tiberius Gracchus was remembered as a champion of the Italians, if his legislation did not do any special service to non-Latin Italians. This is especially true since the Latins played a very different role in the social war than the other Italians.⁴³⁶ Only one Latin city is known to have joined the rebels. The others distinguished

⁴³⁵Roselaar (2010, 76).

⁴³⁶Sherwin-White (1973, 135-6).

themselves by their service, for which they were the first to receive citizenship. Thus the fact that the Latins benefited is not a sufficient explanation for the tradition represented by Appian and Velleius. A better answer can be found in the fate of the Gracchan reform after the brothers' deaths.

5. THE ITALIANS AND THE LAND AFTER 122

With the death of Gaius we enter one of the darkest periods in Roman history. The sum of our evidence amounts to little more than this single paragraph from Appian, describing the undoing of the Gracchan legislation:⁴³⁷

Καὶ ἡ στάσις ἢ τοῦ δευτέρου Γράκχου ἐς τὰδε ἔληγε: νόμος τε οὐ πολὺ ὕστερον ἐκυρώθη τὴν γῆν, ὑπὲρ ἧς διεφέροντο, ἐξεῖναι πιπράσκειν τοῖς ἔχουσιν: ἀπειρήτο γὰρ ἐκ Γράκχου τοῦ προτέρου καὶ τότε. καὶ εὐθὺς οἱ πλούσιοι παρὰ τῶν πενήτων ἐωνοῦντο, 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 τὰδε τὰ χρήματα χωρεῖν ἐς διανομάς. ὅπερ ἦν μὲν τις τοῖς πένησι παρηγορία διὰ τὰς διανομάς, 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 δῆμαρχος ἕτερος, καὶ ὁ δῆμος ἀθρόως ἀπάντων ἐξεπεπτώκει. ὅθεν ἐσπάνιζον ἔτι μᾶλλον ὁμοῦ πολιτῶν τε καὶ στρατιωτῶν καὶ γῆς προσόδου καὶ διανομῶν καὶ νομῶν, πεντεκαίδεκα μάλιστα ἔτεσιν ἀπὸ τῆς Γράκχου νομοθεσίας, ἐπὶ δίκαις ἐν ἀργίᾳ γεγονότες.

So the sedition of the younger Gracchus came to an end. Not long afterward a law was enacted to permit the holders to sell the land about which they had quarreled; for even this had been forbidden by the law of the elder Gracchus. Presently the rich bought the allotments of the poor, or found pretexts for seizing them by force. So the condition of the poor became even worse than it was before, until Spurius Borius, a tribune of the people, brought in a law providing that the work of distributing the public domain should no longer be continued, but that the land should belong to those in possession of it, who should pay rent for it to the people, and that the money so received should be distributed. This distribution was a kind of solace to the poor, but it did not serve to increase the population. By these devices the law of Gracchus (most excellent and useful if it could have been carried out) was once for all frustrated, and a little later the rent itself was abolished at the instance of another tribune. So the plebeians lost everything. Whence resulted a still further decline in the numbers of both citizens and soldiers, and in the revenue from the land and the distribution thereof; and about fifteen years after the enactment of the law of Gracchus, the laws themselves fell into abeyance by reason of the slackness of the judicial proceedings.

⁴³⁷ 1.27: White's translation.

This conception of the period as a time when the people were in retreat and the rich arrogantly exercised their power is very similar to the description of the same period by Sallust, who describes how for fifteen years the plebs were at the mercy of the rich, and had to suffer in silent indignation while they plundered the treasury.⁴³⁸

Yet despite the absence of any competing accounts scholars have almost universally dismissed their portrayal as misleading or even fictional. In this chapter I will present an understanding of this period that, first, supports the credibility of Appian's description of the time, and more important, when combined with the implications of the arguments made so far, helps to explain both why Tiberius was remembered as a friend of the Italians, and at least one factor in the resentment that led to the Social War.

5.1 Appian's three laws and the law of 111

Finding a place in Appian's account for our most important piece of evidence from the period, the law of 111, proves to be very difficult and complicated. The law of 111 has been identified as every one of the laws Appian mentions, or else one totally separate. However we can quickly narrow down the possibilities if we begin with two assumptions: that Appian's portrayal of the laws is accurate, and that he is not so ill-informed as to have missed something as important as the law of 111. With that we can immediately eliminate the second law as a possibility, because it imposed a vectigal where the law of 111 abolished it, and because it disbanded the agrarian commission.⁴³⁹ However fragmentary the law of 111 is, it is hard to believe that a measure as important

⁴³⁸ *Bell. Iug.* 31: his annis quindecim quam ludibrio fueritis superbiae paucorum . . . Superioribus annis taciti indignabamini aerarium expilari.

⁴³⁹ Lintott (1992, 284).

as that would have left no trace in the surviving portions. A logical place for it to appear would be in the provisions declaring that the land is to be private.

Crawford nevertheless supports identifying these two laws. His argument is chiefly based on the words τὴν μὲν γῆν μηκέτι διανέμειν, ἀλλ' εἶναι τῶν ἐχόντων in Appian's description, translating the last clause "to make it the property of those who held it."⁴⁴⁰ but the Greek could just as easily be taken to the natural consequence of ending the distribution, that the land would continue to be possessed by those who held it. Crawford further argues that since this *lex Thoria* is not mentioned by name in the Law of 111 it could not have preceded it.⁴⁴¹ But there is no special reason why it should have mentioned this law in particular, especially since it several times refers to all preceding legislation.⁴⁴² Finally, Crawford answers the point about the vectigal by saying that it "reads into Appian what is not there."⁴⁴³ I cannot imagine what else Crawford takes "καὶ φόρους ὑπὲρ αὐτῆς τῷ δήμῳ κατατίθεσθαι" to mean, but it surely must involve a very strained reading to not understand Appian as saying that a rent is to be paid on the land of τῶν ἐχόντων just mentioned. Roselaar, although she does not identify this law with the law of 111, also believes Appian's description indicates the land was privatized, understanding

⁴⁴⁰ Crawford (1996, 58-9).

⁴⁴¹ Appian's description is usually emended to read "Thorius" rather than "Borius," because the name Borius is unattested, the praenomen Spurius is unusual, Cicero twice mentions an agrarian law passed by a tribune named Spurius Thorius, and the letter beta and theta could easily have been confused: Crawford (1996, 59). This usually leads to the problem of interpreting Cicero's ambiguous description of this bill: "Sp. Thorius . . . qui agrum publicum vitiosa et inutili lege vectigali [ms: vectigale] levavit." It is very difficult to tell what Cicero meant to say, and the text may very well be corrupt. All sorts of emendations and interpretations have been proposed, but I do not think there is any hope of getting useful information out of this particular sentence.

⁴⁴² Roselaar (2010, 266).

⁴⁴³ Crawford (2006, 59).

the phrase in question to be a translation of “privatus esto.”⁴⁴⁴ But this still poses a problem because, as I argued above, it is unlikely that a vectigal could be imposed on private land. Besides which, according to Roselaar's understanding of Tiberius's law, this would mean that all the land had been privatized by 111. Yet it is difficult to see the relevance of the law in that scenario.

There are several pieces of evidence which allow us to date the second law with a reasonable amount of confidence to the year 119. First, in this year, according to Cicero, Carbo, the third commissioner alongside Fulvius and Gaius, committed suicide after being summoned to court.⁴⁴⁵ As a member of the commission Carbo should have been sacrosanct and therefore immune to prosecution.⁴⁴⁶ It is reasonable to conclude that the commission had just been abolished, and Carbo was summoned to court to belatedly face the charges which had been brought against Gaius's other supporters after 122.⁴⁴⁷

Second, Plutarch says Marius opposed a bill that would distribute money to the poor during his tribunate in 119. This seems inconsistent with the rest of Marius's tribunate and his behavior in general, so it is often supposed that Plutarch was confused and Marius actually supported the bill. But Stockton suggests for another possibility, that this distribution was in fact the one mentioned by Appian as part of the second law.⁴⁴⁸

Marius may have opposed this law as a *popularis* tribune, and his opponents attacked him

⁴⁴⁴ Roselaar (2010, 260).

⁴⁴⁵ Cic. *Brutus* 103, 159.

⁴⁴⁶ The *lex repetundarum* of 123/2 ll.8-9 lists the members of the commission among the magistrates who were sacrosanct.

⁴⁴⁷ Roselaar (2010, 264).

⁴⁴⁸ Stockton (1979, 203).

as opposing giving money to the poor. However in this interpretation Plutarch would have to be mistaken that Marius was successful.

Finally, Appian seems to say that the work of the Gracchi was undone approximately fifteen years ἀπὸ τῆς Γράκχου νομοθεσίας. He does not specify which Gracchus, but it is hard to believe he could have meant Gaius. Like our other sources, Appian does not seem to consider Gaius's land bill very important, and further, as Roselaar observes, he uses the term νομοθέτης to distinguish Tiberius from his brother elsewhere.⁴⁴⁹ Counting inclusively from 133 then we get a date of 119 for the law that abolished the commission. Each of these is weak support on its own, but together they are enough to suggest that the law should be dated to 119.

We can also eliminate the first law, though somewhat less easily, because there is no indication in the law of 111 that the agrarian commission was continuing to operate, as would have to be the case if it came before the second law. Every mention of the commission is in the past tense. Rathbone supports identifying this law with the one in question, but his argument that there is no previous legislation mentioned in it suffers from the same weakness as Crawford's.⁴⁵⁰ However, there is a special difficulty in this case, because Appian seems to indicate that the first law made the distributed land alienable. Yet it is clear from the law of 111 that the distributed land was still inalienable at that time, since no legal recognition is granted to land that had been alienated after its distribution.⁴⁵¹

⁴⁴⁹ Roselaar (2010), 263.

⁴⁵⁰ Rathbone

⁴⁵¹ Il. 15-6; Lintott (1992, 218).

One explanation of the contradiction is that the first law made alienable, not the land that had been distributed, but the land of the possessors. Roselaar argues that this is in fact what Appian means, and that this is made clear by the phrase *καὶ τόδε*, which she sees as indicating that this is a provision he had not mentioned before.⁴⁵² However in this case the next sentence would not logically follow, since it states that the rich began to buy up the land as soon as it became alienable. It is therefore better to understand that Appian is simply reminding his readers of a provision, which he had mentioned only briefly before, and translate the phrase “since Tiberius had forbidden just (*καὶ*) this.”⁴⁵³ Lintott suggests the same but without trying to exculpate Appian.⁴⁵⁴ We would then have to assume that Appian's description of the effects is his own invention, not necessarily unlikely. The difficulty is that there is no indication elsewhere that Tiberius had made the land of the old possessors alienable, and it is hard to see why he would want to do so. As long as the five-hundred iugera limit was enforced, as according to the law of 111 it continued to be, their selling their possessions could only increase the number of occupants.

A somewhat better explanation is Crawford's suggestion that “if there was a statute allowing the assignees to sell their land, it must also have made sure that the purchasers had good title. The fate of such land was therefore settled and there was no compelling reason for any subsequent statute to deal with it at all.”⁴⁵⁵ But this answer

⁴⁵² Roselaar (2010, 258).

⁴⁵³ LSJ s.v. B.6

⁴⁵⁴ Lintott (1992, 218).

⁴⁵⁵ Crawford (1996, 60).

does not entirely convince, for whatever the status of the land before it was alienated, it must have still had that status after it was alienated; it would not make sense for land that was public to become private when it was sold, or the opposite. Likewise, there is no reason why the land that had not been alienated should have less secure title than the land that had been, nor why the land that had not been alienated should alone receive confirmation while the land that had been should be left unconfirmed.

Thus whatever land was affected by the first statute, it must appear somewhere in the law of 111 along with the other types. We can solve the problem by modifying Crawford's suggestion, so that the land that had been alienated after the first law did receive confirmation, but not until the second law. Appian says that one of the provisions of the second law was that the distributions should stop and the land should continue to be held by those who currently possessed it: τὴν μὲν γῆν μηκέτι διανέμειν, ἀλλ' εἶναι τῶν ἐχόντων. This might be interpreted to mean that once the distributions stopped the possessors would be able to enjoy their land with impunity, as I suggested above, but it could equally well refer to an actual provision of the law pertinent to all *ager publicus*, including the land that the commission had distributed that had been made alienable by the second law, if one of the provisions of this law was to reimpose inalienability, at the same time as it reimposed the vectigal. The fact that the second law imposed a vectigal, even though Appian attests that one had already existed under Gaius's law, is not explained. Plutarch says that Drusus proposed abolishing the vectigal, but there is no indication that this ever became law, nor does Appian ever mention it. It is possible that the first law removed the vectigal when it made the land alienable, because collecting a

rent on land that could be bought and sold was impracticable, as the experience of *ager quaestorius* showed. The second law then reversed entirely the provisions of the first law, while at the same time it abolished the commission, all of which pointed towards the same goal of ensuring that everyone who possessed public land would continue to possess it.

In doing so it would be sensible for the law to give some kind of confirmation to those who had bought land during the interval when that was legal. A likely option would be to confer on them the status of *pro vetere possessore*, which appears in the law of 111 and has not been fully explained. Crawford says that the meaning of this phrase is “a matter of guesswork,” but Lintott offers an attractive guess, that this was the status of possessors who had been compelled to make exchanges by the agrarian commission, but were allowed to keep the land they received in exchange with the same security they had enjoyed on the original land.⁴⁵⁶ If this category had already existed, having been employed by the Gracchan commission, it would make sense to use it again so that those who had received alienated land would not be penalized for doing so. An advantage of this hypothesis is that it explains the apparent contradiction between Appian's first law, which seems to say that the distributed land was made alienable, and the text of the law of 111, which makes it clear that land was still inalienable at the time of its privatization.

5.2: The fate of the Gracchan program

Under this interpretation we do not have to dispute Appian and Sallust's description of the decade as a time when the people were in retreat and the Gracchan legislation was undone. The first law made the land alienable and perhaps removed the

⁴⁵⁶ Crawford (1996, 124); Lintott (1992, 205).

vectigal, if that had not been done already by Drusus. This led to complaints that the rich were once again driving out the poor and monopolizing the land. In response Spurius Thorius passed a bill meant to resolve the conflict by ensuring that everyone would continue to hold the land they currently possessed. The distributed land would once again become inalienable, while the commission would be abolished, thus freeing the possessors from that source of anxiety. Simultaneously a vectigal would be imposed, the revenues of which would go to fund distributions of grain or money to the poor. Especially because of the last element Thorius could, in the tradition of Livius Drusus, present the bill as a populist measure, and use this against those who opposed abolishing the commission. Cicero says that Thorius was especially skilled at speaking to the people, which may be a polite way of referring to his skills a demagogue, just as Cicero had presented himself as a *popularis consul* in his speeches against Rullus.⁴⁵⁷

Finally in 111 this last measure was undone and, as Appian says, the people had been deprived of everything. With the privatization of the land there would no longer be any question of distributing land occupied by the Roman elite. Meanwhile the rich would be free to force out their weaker neighbors as before, but now without any limit on the amount of land they could hold or fear of reprisal. Historians have failed to see how Appian's description of the post-Gracchan legislation could be anything but a misunderstanding at best and tendentious falsification at worst, because they have not considered how privatization and the abolition of the vectigal could do anything but benefit those who had received distributed land.

⁴⁵⁷ *Brutus* 136: Sp. Thorius satis valuit in populari genere dicendi; *de leg. agr.* 2.6: popularem me futurum esse consulem prima illa mea oratione Kalendis Ianuariis dixi.

5.3: Implications for the Italians and Latins

But although the undoing of the Gracchan legislation was against the interests of the poor, the way it was accomplished would have placed one group in a particularly disadvantageous position: non-Latin Italians. We have seen that the law of 111 said that all disputes between citizens and non-citizens should be held before a Roman judge. According to my argument, in the case of such disputes Latins, having *commercium*, would be able to claim up to thirty iugera as private property. This would likely protect the large majority of those who had received land from the Gracchi, as well as the less wealthy of the *veteres possessores*. Meanwhile many of the richer Latins with larger estates may have been able to claim Roman citizenship anyway and thus have had their land privatized, for it seems to have been normal for magistrates in Latin cities to be granted citizenship *per magistratum*.⁴⁵⁸ Thus, although the poor were probably always in a disadvantageous position in disputes with the rich, and Latins would likely receive less favorable treatment than citizens, from a legal standpoint the Latins were not left any worse off than the Romans. The situation for the other Italians was entirely different. If there were a dispute, they would be summoned to defend their tenure before a Roman judge, but unlike the Latins they had at best a very weak claim to support their tenure. Their land would be indisputably public, for it could not be otherwise if the possessor did not have *commercium*. In such a scenario there is no reason to expect that Italian possessors would receive better treatment than they had by the Gracchan commission after Tiberius's death.

Perhaps even worse, the only significant quantity of arable *ager publicus*

⁴⁵⁸ Sherwin-White (1973, 112).

remaining was likely that which the Italians occupied. Therefore the burden of any future distributions fell only on them. Appian makes this quite clear when describing the second Livius Drusus's legislation in the 90s: "Only the *demos* was pleased with the colonies. The Italians, on whose behalf Drusus was especially planning these things [i.e. his other legislation], were themselves frightened by the colonization bill, on the grounds that the public land of the Romans would be taken from them, which, still being undistributed, they cultivated, some by force, others secretly, and they were very much concerned even for their own possessions."⁴⁵⁹ Modern accounts, which tend to prefer social and economic explanations over the political question of citizenship more attested in our sources, generally cite this as one of the principle causes of the social war.⁴⁶⁰

But historians have not realized how differently this issue affected the Latins and the other Italians. The Latins actually stood to gain from Drusus's bill. Hence when Appian says that only the *demos* supported it, we should understand the Roman and Latin poor. The Italians, on the other hand, knew that the land for any future colonies or distributions could only be taken from them. The problem would have been solved if Drusus had succeeded in making them citizens. Then at very least they would have had the same right to thirty iugera. But although Drusus's assassination removed the immediate threat of a land bill, it was inevitable that another tribune would emerge with a similar proposal, and at the same time the senate's proposal to make it illegal to bring a

⁴⁵⁹ *Bell. Civ.* 1.36: μόνος ὁ δῆμος ἔχαιρε ταῖς ἀποικίαις. οἱ Ἰταλιῶται δ', ὑπὲρ ὧν δὴ καὶ μάλιστα ὁ Δροῦσος ταῦτα ἐτέχνάζε, καὶ οἶδε περὶ τῷ νόμῳ τῆς ἀποικίας ἐδεδοίκεσαν, ὡς τῆς δημοσίας Ῥωμαίων γῆς, ἣν ἀνέμητον οὔσαν ἔτι οἱ μὲν ἐκ βίας, οἱ δὲ λανθάνοντες ἐγεώργουν, αὐτίκα σφῶν ἀφαιρεθησομένης, καὶ πολλὰ καὶ περὶ τῆς ἰδίας ἐνοχλησόμενοι.

⁴⁶⁰ e.g. Badian (1958, 217 ff.) Roselaar (2010, 281 ff.).

bill extending citizenship meant that there was no hope of ever being freed from this threat. The simultaneous denial of political and economic rights was intolerable, and so they revolted. The Latins unsurprisingly stayed loyal, and were rewarded with political equality that Gaius had promised thirty years before.⁴⁶¹

With this in mind we can perhaps better understand the origin of the image of Tiberius Gracchus as a champion of the Italians. His land bill was based on the premise that Rome faced a shortage of manpower made more perilous by the growing number of barbarian slaves. It would remedy this by giving land to potential soldiers, including Roman citizens, Latins, and to a lesser degree Italians. At the same time he followed a policy of not disturbing the land of the Italian possessors, who technically had no right to occupy the property of the Roman people. After his death the commission under the direction of Fulvius Flaccus briefly reversed this policy, producing an angry reaction from the allies. Flaccus in response tried to conciliate the Italians by offering them citizenship, a novel idea, and Gaius passed a second agrarian bill to explicitly exclude their land from confiscation.

So far the Gracchan land bills have only avoided harming the Italians, rather than especially benefiting them. But the undoing of Tiberius's work over the course of the next decade, as Appian and Sallust attest was perceived to been the purpose of the three laws, was accomplished in such a way as to create an intolerable level of insecurity for the Italians, the reality of which was only reenforced by Drusus's legislation. For this reason a source that narrated the Social War from a perspective sympathetic to the Italians would naturally describe how this intolerable situation came about. When the enemies of the

⁴⁶¹ Sherwin-White (1973, 135 ff.)

Italians are described as those who undid the work of Tiberius Gracchus, then by implication Tiberius Gracchus becomes their friend. Such an image is not present in most of our sources because it only makes sense from the perspective of one group. To the Romans they played only a marginal role at the time, even though repercussions of their treatment three decades later would be tremendous.

6. EPILOGUE

One of the primary goals of this thesis has been to bring new sources to bear on an old problem. Many scholars have dealt with the issue of whether or not Italians benefited from the Gracchan agrarian reform, but for the most part they have limited their inquiries to the literary sources, especially Appian and Plutarch, with only a cursory glance at non-literary evidence such as the law of 111. In particular, the clause referring to "ceivi Romano" in the second line of the law has often been cited, usually to reinforce a conclusion already reached, without any attempt to analyze the law as a whole with a view to this question, or to incorporate substantial scholarship on the document. I have therefore provided a full analysis of this text, demonstrating that it is not incompatible with the hypothesis of non-citizen participation, and that its treatment of Latins and other Italians has important implications for . . .

A further and related shortcoming of scholarship on this question has been to neglect the fuller context of Roman law, particularly law relating to property and contracts. Our sources on this subject do belong to other periods, but I hope to have shown that, when used with due caution, these later sources such as the jurists help to provide a firmer ground on which to base the discussion. Richardson demonstrated this principle by observing the importance of the distinction between *res Mancipi* and *res nec Mancipi*, and the significance of *commercium* for the question of non-citizen participation. I have carried this approach further by inquiring into the legal status of the land once it was distributed, and the legal basis for two known features of Tiberius's agrarian bill, inalienability and the *vectigal*. I demonstrated on the basis of the latter two

features that the land most likely remained public, thus answering the problem posed by Richardson.

Having established the possibility of distributing land to non-citizens, I examined the accounts of Appian and Plutarch, looking first at their methods and aims as visible elsewhere in their works. I argued that theories involving a fabrication on the part of Appian are implausible, and that we should not supposed such an invention by one of his sources without an obvious motive, which has not been adduced. I then showed that Plutarch's account was likely the less reliable on this point, due both to his usual biographical methodology, and to his knowledge of the finer points of Roman citizenship, where he was evidently deficient compared to Appian. On this basis I concluded the contradiction can be explained most easily as a simplification by Plutarch rather than a falsification by Appian. I then suggested this simplification and the possible misunderstanding behind it may be more easily understood if we hypothesize that the non-citizen beneficiaries of the distribution were largely Latins rather than other Italian allies. The distinction between these two groups has been largely neglected in the past, but is particularly significant for this question, because of both the limited voting rights that Latins possessed, and the long precedent of Latin participation in Roman colonies.

Finally, I addressed the aftermath of the Gracchan legislation, with a view towards explaining how there arose the tradition reflected in Appian of Tiberius Gracchus as a champion of the Italians. I disputed the view of most scholars, who argue that Appian's portrayal of the post-Gracchan legislation, and particularly of the law of 111, is incorrect, and that this legislation represented a continuation rather than an undoing of the

Gracchan project. Moreover, I argue that, based on my understanding of law of 111's treatment of non-citizens, and of Appian's narrative, the negative affects of this legislation would have fallen especially on the non-Latin Italians. This, I suggest, may explain why some Italians later came to see Tiberius Gracchus and his land bill as being of special concern to them, whereas this concern is not reflected in our other sources.

The arguments in this thesis, if accepted, have significant implications for other areas of Roman history, and present further paths of research. In the first place, they suggest that it is a mistake to draw a sharp distinction between Roman citizens on one side, and all other Italians on the other. In particular, the limited voting rights possessed by the Latins should not be dismissed, as has nearly always been the case. I hope to have demonstrated that this constituency may have played an important role in the events of the 130s, and it would be worthwhile to investigate this factor in Roman politics before the Gracchi. If anything the Latins may have been more significant in the earlier history, when they probably would perhaps have been more numerous relative to the Roman citizen body.

Second, I have argued that the land distributed by the Gracchi remained public, as did land distributed by Sulla and Caesar, and it was possible that this was generally the case, both before this period and after. Too often scholars seem to assume that once land was distributed it necessarily became private. In the course of my readings I have found many dates specified as the point at which public land ceased to be important, including after the law of 111, after the settlement of Sulla's veterans, of Caesar's veterans, and in the triumviral period. To be sure, the law of 111 seems to have privatized most of the

extant *ager publicus*, but subsequently much land was made public in the confiscations of Sulla, and it is not obvious that this land was ever privatized. We should consider the possibility that a significant number of Italian farmers continued to depend on public land through the end of the Republic, and that *ager publicus* remained a significant part of Roman politics and the Roman economy.

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