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PUBLIC LAND IN THE ROMAN REPUBLIC

*A Social and Economic History of Ager Publicus
in Italy, 396–89 BC*

Saskia T. Roselaar

OXFORD STUDIES IN ROMAN
SOCIETY AND LAW

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SASKIA T. ROSELAAR

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Introduction

1.1. INTRODUCTION: WHY STUDY *AGER PUBLICUS*?

The subject of this book is *ager publicus populi Romani*, a kind of public land specific to the Roman Republic: owned by the state, it could be made available in various ways to Roman citizens. Although many works have been devoted to this kind of land, there is as yet no book which investigates in depth its role in the society, economy, and politics of the Roman Republic. The importance of *ager publicus* becomes clear immediately when reading the ancient sources: debates about *ager publicus* were prominent throughout the Republic. The main subject of discussion was the monopolization of this land by the elite and the resulting impoverishment of the small farmer. However, many aspects of the history of this type of land are still hotly debated, from its development in the early Republic and the legal rights to it that could be exercised by Roman citizens and allies, to its role in the events of the second century BC and the Gracchan period.¹ This has led Cornell to state: ‘The nature and function of the *ager publicus*, and the rights of the Roman citizens in relation to it, are among the most fundamental but at the same time the most intractable problems in all of Roman history.’² This book aims to fill the gap in our knowledge by giving a comprehensive overview of the history of *ager publicus* in the Roman Republic, focusing not only on the legal and technical aspects of the administration of this land, but also on the role it played in the Roman economy as a whole.

It is a result of the nature of the sources that the focus of the book must lie on the third and second centuries BC. For the earliest centuries of the Republic the sources only occasionally refer to public land, especially to record confiscations of such land during Rome’s conquest of Italy. They also record struggles for access to this land between patricians and plebeians in the early Republic, but it is likely that many such accounts were influenced by later events, and it is very difficult to disentangle fact from fiction for the early

¹ All dates are BC unless specified otherwise.

² Cornell (1989b, 326).

Republic. However, a short overview will be given of the possession of land in the early Republic, since the sources for the early Republic have played a major role in the debates on *ager publicus* in later centuries, even if their relevance to later periods is questionable. The early Republic will therefore be discussed briefly in Chapter 2. Only in the late third and second centuries do the sources for the nature of *ager publicus* become clearer, especially when it comes to the legal conditions attached to this land and the various ways in which it could be managed by the state. The main focus of the book will be on the second century, when crucial developments in Roman society, economy, and politics took place, which in turn had important consequences for *ager publicus*. The period after the Social War will only receive attention insofar as is necessary to sketch the disappearance of the last arable *ager publicus*.

The book will discuss only Italy; the Roman state also acquired land in the provinces during its conquest of the Mediterranean. However, the legal conditions pertaining to this land were different from those of Italian *ager publicus*. Moreover, provincial public land played fundamentally different roles in the history of the specific provinces in which it was located; most importantly, such land was not usually subject to a process of privatization, in contrast to Italian *ager publicus*. This kind of land is therefore not discussed in this book.

1.2. *AGER PUBLICUS* AND ROMAN HISTORY: AIMS AND OBJECTIVES OF THIS BOOK

Ager publicus has been the subject of scholarly debate since the early nineteenth century. However, certain aspects have been studied extensively, while others have been for the most part neglected. In the nineteenth and early twentieth centuries most studies focused on the legal conditions applying to *ager publicus*. A great deal of attention was given to the various laws relating to public land and the development of legal instruments regulating its possession. This research, although still of great value, was carried out mainly by German and Italian scholars, and both the language barrier and the antiquity of these works have been responsible for the fact that they are no longer regularly consulted.³ Furthermore, the legal focus of these works has made

³ The most important works are Niese (1888); Zancan (1934); Bozza (1939); Tibiletti (1948–9); and Burdese (1952).

them largely inaccessible to those who are not expert in Roman law. But most importantly, because these works are written by legal experts, they tend to neglect the historical importance of *ager publicus*. While discussing at great length the legal aspects of public land, many of these works completely neglect the actual functioning of public land in Roman economy and society and the central place it occupied in the history of the Republic.

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

Before answering any questions about the importance of *ager publicus*, we must first investigate how much of this land there actually was. Serious attempts at calculating its extent have never been undertaken. Scholars such as Beloch and Afzelius have attempted to calculate the size of the *Ager Romanus* and the land held by Latins and allies, but they do not treat *ager publicus* as a separate category of land. However, because of its prominence in the sources the existence of wide tracts of public land is usually taken for granted. Only Rathbone has recently challenged this view by suggesting that there was actually only a limited amount of *ager publicus*, at least before the second century;⁴ however, he does not provide detailed argumentation to support this claim. The first aim of this book will therefore be to gain a more comprehensive view of the extent and location of *ager publicus* available to the Roman state. It will of course be impossible to arrive at more than a rough estimate. Rather than giving precise figures therefore, in Chapter 2 and the Appendix, I shall try to establish approximately when land was confiscated as *ager publicus* and where this may have been located. I shall attempt to estimate how much public land was privatized in distributions to Roman citizens and allies, and thereby ceased to be public land of the Roman state. In this way

⁴ Rathbone (2003).

we may get a rough idea of the amount and location of land that was *ager publicus* at any moment, and for how long it retained this legal status.

It is my contention that there was a large amount of *ager publicus* available both before and after the Second Punic War, as is indeed assumed by most scholars. This then raises the question of why the Romans confiscated large amounts of land which was not privatized for the benefit of Roman citizens. Part of the explanation can be found in the legal concept of *occupatio*: this was the right, held by all Roman citizens, to use state-owned land for as long as the state did not need it. It is generally assumed that such occupation occurred on a large scale throughout the Republic, especially by the “rich”—a group usually not strictly defined, but which in the traditional narrative is assumed to have consisted of the elite of Roman Senators and *Equites*. However, rich Roman citizens were not the only people making use of *ager publicus*. It is often also assumed that much *ager publicus* was not held by Romans, but by Latin and Italian allies. This means that although *ager publicus* was technically the property of the Roman state, in fact many Italians were still using it. However, the occupation of *ager publicus* by non-Romans is not well documented, and many different patterns of landholding were possible. The consequences of the holding of *ager publicus* by allies, as well as the legal possibilities they had to hold such lands, are usually not well thought through by scholars, even when they accept that much *ager publicus* was in allied hands. Chapter 2 will try to shed some light on this complicated issue.

Although some of the confiscated land was privatized in distributions to Roman citizens, a considerable amount of land remained in ownership of the Roman state. Chapter 3 will focus on the legal conditions of the land that remained *ager publicus*. In the early Republic most of this land seems to have been free for occupation, but gradually some limits were created on the amount of land that could be occupied. The *Lex Licinia*, dated by the ancient sources to 367, is generally accepted to have been the main instrument in achieving this, although its date and nature are heavily debated. I will argue that a new interpretation of this law may clear up much of the confusion surrounding it.

In the course of the third and second centuries more differentiation was created in the nature of *ager publicus*. Some land remained free for occupation, while other land was sold or leased out under various terms. Much of the older legal literature treats the various categories of *ager publicus* as a given, without acknowledging the developments that took place during the Republican period. However, I argue that the Roman state was in fact rather flexible with regard to *ager publicus*; at various moments new legal categories of land were created. In my view, the creation of such new legal categories of land was

intimately related to economic developments in the Middle Republic; in Chapter 3, I will investigate the exact relationship between these developments and the creation of different legal categories of *ager publicus*.

A crucial period in the history of the Roman Republic, and also in that of *ager publicus*, was the second century. In fact, *ager publicus* has been considered a vital element in the scholarly reconstruction of this period. I shall argue that this emphasis on state-owned land is not wrong in itself, but that several important adjustments must be made to the traditional picture of the second century BC and the role of *ager publicus* in this period.

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

However, it has recently been recognized by such scholars as De Ligt and Lo Cascio that the second century may in fact have been a period of population growth, even if the rate of growth is still hotly debated.⁵ If this is true, many time-honoured ideas about *ager publicus* must be revised as well. The traditional view assumes that small farmers were dependent on *ager publicus*, but I suggest that this may not always have been the case. It is possible that the proletarianization of the small farmer described in the sources was not caused so much by the greed of the rich as by an increase in population. On the one hand rich farmers were looking for land on which to produce for the growing urban market, while on the other small farmers remaining on the land had to share the limited resources with an ever growing number of people. Chapter 4 will investigate the links between population growth and the increasing demand for access to land. I will argue that demand for land in the second century was indeed much larger than before, and that this led to increasing problems for many small Roman citizen farmers. At the same time not all regions of Italy experienced such problems, and I will therefore give due

⁵ Lo Cascio (e.g. 1994, 1999, 2001); De Ligt (2004, 2006).

attention to local and regional variations throughout Italy. To adequately explain the links between the various developments in the second century BC, it is often necessary to discuss the Italian economy in more detail, and therefore to move away from *ager publicus* as the sole topic of discussion. However, this will only show all the more the central importance of *ager publicus* for the economy and society of Italy. Public land cannot be studied in isolation, and discussion of this land must therefore be connected to the general reconstruction of developments in this crucial period.

The attempts at reform by Tiberius and Gaius Gracchus, tribunes of the plebs in 133 and 123–122 respectively, are the subject of Chapter 5. Their plans were a direct answer to the perceived crisis of the peasant farmers. The Gracchi planned to revive the class of free Roman citizen farmers by a time-honoured method: to recycle the surplus population of central Italy to *ager publicus* in the Italian periphery, as had happened by means of colonization and distribution of land in the fourth and third centuries. In 133 there was still a large amount of *ager publicus* available in northern and southern Italy, which could theoretically have been used by the state for distribution. However, it is likely that much of this land was still occupied by Italian allies who had continued to work the land they had held before it had been confiscated. The plans of the Romans to use this land themselves therefore caused serious complaints from the allies; thus the loss of *ager publicus* held by the Italian allies can be considered one of the causes of the Social War.

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

However, a considerable amount of public land which had not been touched by any previous legislation continued to exist into the first century BC. In this period land played a crucial role in the politics of the competing generals, who tried to retain the loyalty of their soldiers by distributing enormous amounts of land to retired veterans. However, the limited amounts of *ager publicus* still left quickly proved insufficient for this purpose, and the first-century generals therefore had to resort to the purchase and confiscation of land. This means that less than a hundred years after 133 most of the arable *ager publicus populi*

Romani had been privatized; public land in other forms, such as state-owned land in the provinces, was subject to fundamentally different conditions. This book will therefore sketch the history of *ager publicus* in Republican Italy, from its creation as a result of the Roman conquest of Italy, through to its disappearance in the second and first centuries BC due to changed economic and social circumstances in Italy, which resulted from Rome's increasing contacts with the wider Mediterranean world.

1.3. SOURCES AND METHODS

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

The most important literary sources for the later second century BC are the accounts of Appian and Plutarch. They are the only authors providing a continuous account of the developments leading up to the actions of the Gracchi and the events of the years 133–121. These two accounts, and especially Appian's, have been paramount in the historiography of the late Republic. Unfortunately, exactly because these accounts provide a very convincing and internally coherent picture of the developments in this period, modern scholarly effort has focused, for the main part, on finding affirmation for the developments sketched by the ancient sources, without trying to find possible alternatives. In this case the plausibility of the ancient sources has formed a serious obstacle for independent study of the late Republic.

However, both Appian's and Plutarch's works are surrounded by a number of problems. The first is obvious: they were written more than two centuries after the events they describe, and were therefore themselves based on other sources which we no longer possess. Some of the problems with their narratives are the same for both texts, since it is clear that, at least for part of their works, Appian and Plutarch used the same source.⁶ Notwithstanding the specific aims of each writer, the similarity between their texts suggests that they are a reasonably truthful representation of their common source.

⁶ Cardinali (1912, 45–92); Tibiletti (1948–9, 192–209); Forsén (1991, 55–9); Gargola (2008, 516). Others assume they used different sources: Gabba (1956, 37 n. 1); Sterckx (1969).

In the case of Appian it is mainly the famous introduction to his work that has been the cause of discussion. Some have argued that the situation described by Appian—the occupation of public land by the rich, the expulsion of the poor, the growth of slave-staffed estates, and a decline in the number of free citizens—is that of the second century, and therefore have used the information given in his introduction for the reconstruction of second-century events. Thus the law mentioned by Appian in this passage (see Ch. 3.2.2) and the rents on public land (see Ch. 3.3.3) are argued to have been imposed in the second century BC. However, the text of *BC* 1.7–9 sounds very much like a general preface to the Gracchan period, consisting of a short history of the Roman *ager publicus*. By way of introduction to Tiberius Gracchus' tribunate, which according to Appian was the beginning of the civil wars, he started with a general prologue describing the previous treatment of *ager publicus* by the Romans, since he considered land to be the central point of the Gracchan reform. The wording of the text is therefore deliberately vague, in keeping with its function as a general introduction.

There are actually indications that the policy of the Romans described in this passage is not datable to any specific period: first of all, Appian continuously uses the imperfect tense, which shows that land was taken and distributed by the Romans repeatedly when new land was conquered, or at least that Appian thought this to have been the case. Furthermore, the word *ἐκάστοτε* ('the captured land which became theirs *on each occasion*') indicates that the policy concerning *ager publicus* was in principle the same every time.⁷ It may be that Appian's account contains elements that were datable to specific periods, especially the second century, but that Appian understood these elements to be applicable to all *ager publicus*, no matter the date of its confiscation. The imposition of rents, for example, may be explained in this way (see Ch. 3.2.1).

The generalizing introduction does not have to be an original creation of Appian. It is more likely that he found it in his source(s). It is remarkably similar to Plutarch's discussion of the problems of small peasant farmers in his *Life of Tiberius Gracchus* 8.1–3, which shows that Appian did not create this passage from scratch. Both his work and Plutarch's have been accused of being fraught with 'Gracchan propaganda', and therefore of sketching an unreliable picture of the second century.⁸ If Appian's work (and that of his predecessors) was directly influenced by the Gracchi, it is possible that they themselves gave a general sketch of the Italian *ager publicus* in their speeches. A sketch in general terms of the degeneration of the Italian countryside would

⁷ Riecken (1911, 94).

⁸ Gabba (1954, 6–9).

be a logical element of the Gracchan rhetoric. Focusing too much on details would weaken their argument; the situation was not the same in each region of Italy, but they could not expect their audience to have been aware of all local variations. Thus the works of Appian and Plutarch can be understood as describing the way the Gracchi themselves presented their arguments to the public, and their arguments must have been at least reasonably accurate to be believable.

Therefore, even if it is clear that these works do not give a truthful account of developments in the second century, I argue that we are extremely fortunate to have such sources. If Appian and Plutarch used texts written or spoken by the Gracchi themselves to build their representation of second-century developments, we may use them to reconstruct the view the Gracchi themselves, and probably other elite Romans as well, held about the problems the Italian population had to face, and how the Gracchi thought to solve them.⁹

Moreover, it is often clear that these authors did not understand all the details they found in their sources. In some cases this causes confusion, as in Appian's use of the term *Ἰταλιῶται*. In this case the term he found in his sources had a different meaning in his own day as it had in the second century BC, which led him to project the meaning it had in his own time onto the second century BC (Ch. 5.2.4). However, in Appian's discussion of *ager publicus* this is less of a problem; in the second century AD *ager publicus* belonging to the state no longer existed in Italy—it still existed in the provinces, but this land was not subject to the same legal conditions as the Republican *ager publicus*—and this made it unlikely that Appian would have known the exact meaning of the legal terms he encountered in his sources, since the meaning they had in his time may have differed considerably from that in the Gracchan period. In fact, this is often an advantage, since in many cases Appian simply translated legal terms into Greek, without trying to explain them. This makes it easier to reconstruct which Latin terms may have stood at the basis of Greek terms; for example, *εἶναι τῶν ἐχόντων* in BC 1.27 may be a direct translation of the Latin *privatus esto* (see Ch. 5.3.1). Thus Appian's work can be useful in reconstructing legal changes regarding the land in the Gracchan period.

The degree of literary construction in the introduction to Appian's work is much debated. Some have argued that Appian had very specific aims when writing his work, and that the introduction was crucial in this.¹⁰ However,

⁹ Fortlage (1971–2, 166–91).

¹⁰ Gargola (1997, 568–76; 2008, 495–500). See for possible reconstructions of Appian's aims Bucher (2000, 442–54), who argues that Appian's main intention was to explain to his Greek audience how they could maintain their Greek identity while at the same time supporting Roman rule. Van Dooren (2008, 28–30) argues that Appian's account focuses on land and citizenship because these issues were the most important in late Republican politics.

even if it is likely that a certain measure of construction was present in Appian's work, the historical value of his account is still considerable. Any literary construction, furthermore, cannot be ascribed solely to Appian or Plutarch, but may already have been present in his source(s).

Therefore, although many details in Appian and Plutarch must be used with caution, the larger outline shows clearly the developments of the second century as they were presented by the politicians of the time. It is therefore time for a rehabilitation of Appian and Plutarch: one should not take everything they say at face value, but I think that very good use can be made of them, albeit in a different way than many scholars would like.

Another important literary source is Cicero. In his speeches, especially *De lege agraria*, and in some of his letters, he produces a lively picture of the privatization of the last remnants of arable *ager publicus*, which occurred in his lifetime. In some of his discussions on rhetoric and philosophy, moreover, various references can be found to *ager publicus* in earlier periods, especially the later second century. Unfortunately, most of these passages are devoid of context, so that for modern readers it is often frustratingly difficult to reconstruct Cicero's meaning exactly. Furthermore, Cicero's works are not free from considerable prejudice. He strongly opposed the distribution of land to the poor and presented as heroes those politicians who opposed the distribution of land, while his judgements on the Gracchi and other distributors of public land are usually very negative.¹¹ This attitude stemmed mainly from his views on private property, which he considered sacred; the distribution of land, even public, was something which could not be condoned. In his view, long-term occupation gave a man sufficient justification for considering land his private property, which made it unjustifiable to distribute *ager publicus* which had been occupied for long periods by private individuals (Ch. 2.1).¹² It is also likely that in his time a standard reconstruction of events concerning the Gracchan period had been created, including the familiar theme of its occupation by the elite. To make his speeches acceptable to his audience, Cicero could not move too far from this accepted picture. However, in his works dealing with the history of rhetoric or with philosophy there was less reason for a negative representation of the Gracchi, and references in such works are generally more reliable.¹³

For the general history of the Republic our most important sources are Livy, Dionysius of Halicarnassus, and Dio Cassius. Obviously, these works

¹¹ Negative opinions on the Gracchi are presented in Cic. *Lael.* 12.41; *Har. Resp.* 20.43; *Mil.* 27.72; *Rep.* 1.19.31; *Cat.* 4.2.4; *Off.* 2.12.43, 2.23.80; *Phil.* 8.4.13. See Béranger (1972).

¹² Garnsey (2007, 114–15).

¹³ Bernstein (1978, 243).

were all written long after the events they describe, and are therefore based on other sources. The sources paint a fairly coherent picture,¹⁴ but it is doubtful how much of this represents actual events from the early Republic. The most important problem with all of them is that they project later events back into earlier periods. For example, in their discussions of the early Republican period all sources show a remarkable similarity regarding the most crucial episode concerning *ager publicus*—the events of the years 133–121 BC, when the Gracchi made *ager publicus* the focal point of their legislation. This means that the problems important in the early Republic are described in the same terms as those of the Gracchan period: the rich (in the early Republic presented as the patricians) supposedly occupied *ager publicus*, leaving nothing for poor plebeians. For example, Dionysius of Halicarnassus records a speech allegedly held in 470 BC by L. Aemilius, who spoke in favour of the landless:

Those who have no lands of their own and live miserably off the possessions of others which they cultivate for hire either do not feel any desire at all to beget children, or, if they do, produce a miserable and wretched offspring, such as might be expected of those who are the fruit of humble marriages and are reared in impoverished circumstances.¹⁵

Gracchan connotations are clear in this piece of rhetoric. Reformers trying to remedy the situation, like Spurius Cassius in the 480s and C. Flaminius in 232, were, according to the sources, accused of being demagogues with royal aspirations, as were the Gracchi.¹⁶ It is therefore very difficult to make any positive statement about the possession of land in archaic Rome. The same may be the case with early Republican land laws, especially the *Lex Licinia* of 367 (Ch. 3.2.2). It has often been argued that the description of the situation leading up to the creation of this law, as well as its contents as described by Livy and Appian, were anachronistic for the fourth century BC, and that the sources concerning this law were influenced by Gracchan or even later agrarian laws.¹⁷

¹⁴ It is pointed out by many scholars, e.g. Drummond (1989, 172), Mouritsen (1998, 17), and Hermon (2001, 2–3), that the accounts in the sources are internally solid, but that the events as they are presented show too much later influence and cannot therefore be a truthful representation of the early Republic.

¹⁵ DH 9.51.6.

¹⁶ See Gabba (1954) for a detailed analysis of Gracchan analogies in Dionysius' account of the story of Spurius Cassius; see also Capanelli (1981, 11–39). On the influence of later (especially Gracchan) events on the historiography of the early Republic see Gutberlet (1985); Flach (1994); Cornell (1995, 1–25).

¹⁷ Gabba (1954); Drummond (1989, 184).

However, it is likely that the accounts in the sources that have come down to us, such as Livy and Dionysius, were to some degree based on source material dating back to the early Republic, such as official state documents and earlier annalistic sources. There is therefore a core of reliable information in them, even though much of what we have now is later embellishment. We must therefore try to establish which elements in the sources can be assigned to the early Republic and which are later additions, possibly influenced by later events (Ch. 2.1.2).¹⁸

Because all literary sources are to some extent problematic, they must be supplemented by other materials. We are fortunate to have a variety of sources that can shed light on the possession of land. An extremely important collection of sources is the works of the “Roman land surveyors” or *Agrimensores*. This is a collection of works from the Imperial period dealing with the surveying and distribution of land. Although this is a written source, it differs widely in nature from sources such as Livy or Appian. The works contained in this collection are of a technical nature, and their main goal was to give practical and technical information about such subjects as the foundation of colonies, the administration of land under the jurisdiction of towns, the legal status of various categories of land, and technical aspects of land surveying and demarcation.

The most important writer in the collection is Frontinus, who probably was active no later than the second century AD. He discusses different types of land, practical matters concerning surveying, and possible disputes that could arise over land. The other texts in the collection were written at a later date, but it is difficult to determine whether their authors had access to Frontinus’ work. In the case of Siculus Flaccus and Hyginus (1) and (2), the subject matter is often similar, and they sometimes quote him almost verbatim, which seems to point at some influence of Frontinus on later authors. Agennius Urbicus, probably working in the late fourth or early fifth century AD, focuses mostly on land disputes and the procedures required to resolve them. The *Commentum* is a tractate of the fifth or sixth century AD, which comments on all authors included in the collection of the *Agrimensores*.¹⁹

However, these texts also present various problems: first of all, they were written during the Empire, which makes it dangerous to project their contents onto the Republican period. For example, in the Imperial period towns

¹⁸ Cornell (1995, 18).

¹⁹ See for the writers of the works in the collection Campbell (2000, pp. xxvii–xliv). He concludes that it is uncertain that Frontinus should be identified with the writer of the *Strategemata* and *De aquis*, so that we cannot be sure about his date. He dates Hyginus (1) to about 100 AD, Hyginus (2), most likely a different author, to the second or third century, and Siculus Flaccus to the second century.

usually owned large amounts of public land, and a great deal of legislation existed to regulate this. For the Republic we have much less information about this issue, and it is to be expected that many regulations on town lands under the Empire were not yet in force in the Republican period (Ch. 3.5). Furthermore, the *Commentum*, and possibly some of the other texts as well, was written with a practical purpose, namely to inform (trainee) surveyors of various practical aspects of land surveying;²⁰ this means that the texts often do not give much detail on the legal aspects of the status of land or on specific local circumstances. Moreover, the texts now gathered in the *Agrimensores* were written by a number of different authors from the second century AD onwards, and were edited by further writers between the third and fifth centuries. Each writer focuses on different aspects of land measurement, with possibly different goals. Some quote each other, but in some cases it is clear that they have not understood each other. Especially the *Commentum* fails to represent accurately the contents of Agennius Urbicus' obscure technical statements. Most importantly, however, the manuscripts containing these texts have suffered various grades of deterioration, which sometimes makes their contents all but unintelligible. Some of the texts are fragmentary, and even those that are complete have suffered corruption in many respects.²¹ It is therefore dangerous to use the information in them without careful consideration of the text, and one must continually keep an eye out for possible corruptions.

One of the works contained in the collection is the so-called *Liber Coloniarium* or Book of Colonies. This work gives a list of Italian cities and describes, among other things, how and by whom the land in each of them was measured. It has been severely criticized for being unreliable as a result of corruption of the manuscripts, and is sometimes considered useless as a source for the Republican period.²² Indeed its limitations are many: the text probably dates from the later fourth century AD, and even though it was based on a survey made under Augustus and Tiberius, the information has become corrupted over the centuries. The information the *Liber* gives is limited to what would be interesting for land surveyors, and therefore most of its attention is given to various methods of land measurement and boundary marking occurring in the listed towns. The list is incomplete; some towns that were colonies are left out, while others are mentioned that never had colonial status. The information about the foundation of colonies goes no further

²⁰ Campbell (2000, p. xxxiv).

²¹ See for examples Guillaumin (2007).

²² Chouquer et al. (1987, 233–8) and Campbell (2000, pp. xl–xliv) argue that the *Liber* is useful only when its contents can be supported by other evidence.

back than the Gracchi; earlier settlements are not mentioned. However, the information that the *Liber* gives on the Gracchan settlements is extremely valuable; I have argued elsewhere that the terms *Lex Sempronia* and *limites Graccani* in the *Liber* are reliable indications of Gracchan involvement.²³

A source that can be used to supplement the information given by the written sources is the Roman land distribution grids visible all over Italy, most of them in the form of centuriation grids, but also in various other shapes, such as rectangles or strips. These grids are the most tangible evidence of Roman allocation of land. It has been suggested that the size and shape of the individual *centuriae* in such grids can be used to date the centuriation; for example, *centuriae* of the Gracchan land commission are assumed to have measured 13 by 13 or 14 by 14 *actus*, while those of the triumvirate measured 20 by 20 *actus*, and those of Augustus 15 by 15 *actus*.²⁴ Systems using strips (*strigatio* or *scamnatio*) are assumed to have been older than the system of centuriation by squares, which is supposed to have originated shortly before the Second Punic War.

However, the idea of a strict chronological development in the shape and size of *centuriae* has been criticized: their size could vary according to the circumstances of the terrain. *Strigatio* and *scamnatio* therefore did not necessarily disappear when centuriation became more common. Moreover, some people active in land distribution, for example Sulla or Caesar, did not employ a unique system of measurement, but used the same *centuria* size as others had done. The Gracchi did not employ grids of 13 by 13 or 14 by 14 *actus* only, but also various other sizes. Therefore the size of the *centuriae* alone cannot be decisive.²⁵ However, when several grids are located in one location, it is likely that the *strigatio* or *scamnatio* is the oldest, while the centuriation grids date to a later period. This at least provides a relative date for the grids as related to one another.

The most important external evidence for the dating of centuriation grids is the presence of boundary stones that can be ascribed to a specific period. Of special interest for the second century are boundary stones (*cippi*) set up by the Gracchan land commission, of which fourteen so far have been found throughout Italy.²⁶ These stones record their place in the centuriation grid and the names of the land commissioners, which makes it possible to date them to within a margin of only a few years. Most of these stones were found in areas where Gracchan activity has been attested by other sources, such as

²³ Roselaar (2009c).

²⁴ Chouquer et al. (1987, 245–53); Schubert (1996, 55–68).

²⁵ Roselaar (2009c).

²⁶ A list can be found in Campbell (2000, 452–3).

the *Liber Coloniarum*, and in such cases the various kinds of evidence clearly support each other.

The single most important epigraphic document for the history of the *ager publicus* is the so-called *Lex agraria*, a law inscribed on a bronze plaque, of which several fragments have been found in the north of Italy. It records an agrarian law dated to 111 BC, shortly after the Gracchan period (see for discussion Ch. 5.3.3). In minute detail, it lays down rules on *ager publicus* in Italy and Africa, privatizing some of it and providing rules for the administration of remaining public land. Unfortunately, the fragmentary nature of the inscription makes it impossible to reconstruct the complete text. Nevertheless, its contents can be reconstructed with a fair degree of certainty, which makes it the most important source we have for the administration and legal conditions of *ager publicus* in the late second century.²⁷

Legal information can also be found in the writings of the jurists, some of which have been preserved in the Digest of Justinian. Since *ager publicus* belonging to the state no longer existed in the sixth century AD, it does not appear in the Digest. However, various other kinds of land with which we are concerned, such as land under the jurisdiction of towns, do appear in it. Furthermore, although the compilation of this text took place almost 700 years after our period, some of the legal experts cited, such as Scaevola and Labeo, were active in the late Republic or early Empire, which makes their information a helpful source. However, when using texts by later jurists we must be careful not to extrapolate information for the Empire to the Republican period.

Useful information can also be gathered from comparative materials. This is especially relevant when reconstructing economic and social developments taking place in the Republican period. Various early modern societies, for example England, Germany, and Italy, had some system of public lands, and developments such as population growth and increasing commercialization often caused debates about access to such lands, leading eventually to their privatization. In this respect, the developments taking place in many early modern societies can be fruitfully compared to those in the late Republican period. We must keep in mind, however, that *ager publicus* in the Roman period was in many respects different from public land in other societies: even though the use of the term “public land” may at first sight raise associations with “common lands”, *ager publicus* in the Roman Republic belonged to the state, and in this respect it cannot be compared to common lands in other societies. Nevertheless, some elements of the history of common lands may

²⁷ Recent editions are Lintott (1992) and Crawford (1996).

apply to Roman *ager publicus*, and it may therefore be useful to compare such lands with those in Roman Italy (Ch. 4.4.1).

For the reconstruction of economic developments archaeological sources are very important. Especially field surveys are helpful, since they can cover a relatively large area and point out developments in the number and size of villages, villas, and individual sites over time. They can tell us much about developments such as the emergence of cash crop estates, the growth of luxury in the construction of *villae*, the increased reclamation and drainage of land, etc. It was from archaeological sources that doubts about the accuracy of Appian's and Plutarch's accounts first arose, because archaeological surveys failed to confirm the decline of small farmers, pointing instead to the continued importance of small sites in the second and first centuries BC.

However, problems with the interpretation of these sources are many. First of all, it is often difficult to date archaeological finds; shards of black-glaze pottery, the most common type in use during the Republican period, can usually only be roughly dated to between the fourth and second centuries BC, which makes their value in dating sites to more specific time periods limited. Moreover, many social and economic developments cannot be attested by archaeological materials; for example, agriculture with slave workers could take place on the same kind of farm as agriculture with free labourers, so that the emergence of the "slave mode of production" is hard to discern from archaeological sources (see Ch. 4.3.1). Even if we can recognize an increase in the number of large estates in a specific period or area, this does not tell us anything about the accumulation of land, since we do not usually know who the owners of such estates were; one person may have owned more than one individual estate. The survival of small farmers is not necessarily shown by the presence of small sites, since their inhabitants need not have been free peasants, but may have been tenants or slaves.

The role of *ager publicus* is especially difficult to reconstruct from archaeological sources, since the legal status of the land cannot be reconstructed from material remains. It may be that the development of large estates was hindered by the public status of land, but various patterns of landholding could counter such possibly negative effects; for example, much public land had already been assigned to individual landholders before the largest development of cash crop estates (Ch. 3.3). It is clear that archaeological sources suffer from many limitations, although they are still of great value when combined with other materials.²⁸

²⁸ For an analysis of the use of archaeological material in the reconstruction of agrarian history, see Witcher (2006a, 2008); Launaro (2008); Pelgrom (forthcoming).

All in all, a remarkable amount of material exists that can shed light on *ager publicus* in the Republican period. Although all materials are in some way defective, when we take into account all literary, legal, technical, archaeological, and comparative evidence, I think we are able to arrive at a reasonably detailed reconstruction of the history of *ager publicus* in the Roman Republic.

Ager Publicus from the Regal Period to 133

2.1. INTRODUCTION

The existence of *ager publicus* has been taken for granted by almost all scholars of the Roman Republic. Its presence follows naturally from the ancient sources: *ager publicus* appears to have played a central role in Roman society and politics ever since the earliest days of the Republic, and appears to have been central in the so-called ‘Struggle of the Orders’ between patricians and plebeians. In the nineteenth century some scholars claimed that in general most *ager publicus* that was acquired by the Roman state was turned into the private property of Roman citizens, and that relatively little public property remained,¹ but on the whole most scholars have accepted at face value the existence of large tracts of *ager publicus*.

Recently the idea that most *ager publicus* was privatized soon after it had been confiscated, at least before the Second Punic War, has received new support. Rathbone claims that ‘most land in Italy annexed by Republican Rome was distributed as private property’,² and that ‘*ager publicus* was essentially a transient category in which conquered and annexed land rested pending its transfer to private ownership.’³ He points to the paramount importance of private property in Cicero’s *De officiis*, which discusses the institutions of the ideal state: ‘The men who administer public affairs must first of all see that everyone holds on to what is his, and that private men are never deprived of their goods by public acts.’ Cicero expresses strong disagreement with the plan of L. Marcius Philippus, who in 100 BC tried to distribute *ager publicus*. He argues that this plan ‘deserved to lose him his civil rights, pointing as it did to an equalization of goods. What greater plague could there be than that? For political communities and citizenships were constituted especially so that men could hold on to what was theirs.’⁴

¹ Niese (1888, 418–19).

² Rathbone (2003, 135).

³ Rathbone (2003, 175).

⁴ Cic. *Off.* 2.21.73. See also 2.22.78 and *Mil.* 28.78. See Rathbone (2003, 139); Garnsey (2007, 114–15).

According to Rathbone the dominance of the ideal of private property led to the privatization of most public land. Private ownership as a legal possibility for landholding was already very old, as we will see below, and Rathbone points out that the concept of *ager publicus* appeared in history only from the early fourth century.⁵ Rathbone argues that ‘from the late fourth century . . . as the scale of annexation mushroomed, more pasture, woodland and wetland was retained in state ownership as *ager publicus populi Romani*, and left open to almost unfettered use by Roman citizens’.⁶ In his view, then, the only land that remained *ager publicus* before the Second Punic War was pasture, woodland, and wetland; he denies that much arable land was being left open as *ager publicus* in this period.⁷ Although Rathbone’s theory, published in 2003, differs radically from established historiographical tradition, it has so far received surprisingly little attention from other scholars. It is therefore time to analyse it more thoroughly.

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

⁵ Rathbone (2003, 140): ‘Only from around 390 can unoccupied land have been seen as part of Roman territory with some “public” status, rather than as the “unclaimed land” of no state, that is the *ager incertus* of archaic augural lore.’ However, from the sources—even though they are coloured by later events—it appears that there were debates about public land that was held by Rome before 390 as well.

⁶ Rathbone (2003, 149). What he means exactly by ‘pasture’ is unclear. Pasture is not a self-defining category; arable land can be used as pasture, while much land used as pasture is also suitable for agriculture.

⁷ It is difficult to judge from Rathbone’s account how much land he actually thinks was distributed; ‘most’ may mean any amount above 50%. It seems, however, that he denies altogether the existence of arable *ager publicus* before the Second Punic War; for the second century he has a different view.

2.2. PUBLIC LAND IN THE REGAL AND EARLY REPUBLICAN PERIODS

2.2.1. Public land in the regal period

Even if the reliability of the literary sources is problematic (Ch. 1.3), the confiscation of land from defeated enemies seems to have occurred from the earliest history of Rome onwards. The procedure of taking land and sending colonists to it was apparently practised by other peoples as well; various cities are mentioned as being colonies of the Latins or other peoples.⁸

However, not all land confiscated by Rome was given to colonists; there was also land that remained public. The nature of such land is unclear; the scholarly debate is centred on the question as to who controlled this land: the state (in the regal period in the person of the king), individual members of the elite, or groups known as *gentes*. One of the most persistent theories is that in archaic Rome private property existed only to a very limited extent. According to this theory, each citizen had received two *iugera* of land, the *heredium*, from Romulus.⁹ These allotments were passed on to the holders' heirs, and could not be alienated. In historical times the amount of land distributed in colonies and virgane divisions was often very small, often either two or seven *iugera*. This has led to the idea that such plots were standard in early Roman society; and since this amount of land is thought to have been insufficient to feed a family (but see Ch. 4.3.7), there must have been other land available as well, which was public in some way or another.¹⁰

It has been suggested that all this other land was possessed by family groups called *gentes*.¹¹ Each *gens* possessed its own land, which it had originally acquired by conquest. Some scholars assume that this so-called *ager gentilicium* was partly distributed by the leader of each *gens*, the *pater gentis*, to its individual members, while the rest remained common land which could be used by the members of the *gens*.¹² Other scholars think *ager gentilicium* was used in common by all its members; this idea is especially held by those who

⁸ DH 3.38.1, 3.38.4, 3.49.3, 8.18.1, 8.19.1; Liv. 4.49.3, 7.27.2; Var. R. 3.16.29. See Galsterer (1976, 85).

⁹ Var. R. 1.10.2; Festus 47 L; Plin. HN 19.19.50. See De Neeve (1984, 205 n. 13). Other scholars believe this was no more than a myth; Oakley (1997, 676), for example, argues that the *heredium* was an antiquarian construct based on the size of plots in later colonies.

¹⁰ Kaser (1956, 233–4); Diósdí (1970, 34).

¹¹ Burdese (1952, 34); Franciosi (1995, 44).

¹² Festus 289 L explains that the earliest Senators 'were called fathers, because they distributed plots of land to their dependants and their own children' (*patres Senatores ideo appellati sunt, quia agrorum partes adtribuerant tenuioribus ac si liberis propriis*). See Diósdí

assume it was used mainly as pasture, and that agriculture was unimportant in archaic Rome.¹³ Private possession of larger quantities of land is, as a consequence, assumed not to have originated until later in Roman history.¹⁴

The main argument in favour of this theory can be found in the laws of the Twelve Tables, supposedly created in 451 bc. Here we find some indications for the collective tenure of land. In the Twelve Tables the words used for 'property', *familia* and *pecunia*, both refer to moveable goods (slaves and cattle respectively), suggesting that originally land cannot have been owned by private individuals (except for the *heredium*).¹⁵ Moreover, the laws specify that the *gentiles* of a deceased person, i.e. people belonging to the same *gens*, can inherit if someone dies without a will, and that if someone becomes mentally ill, his *gentiles* can take control of his possessions.¹⁶

Another argument for the presence of collective land owned by the *gentes* is based on the names of the early Republican *tribus*. The Ager Romanus, the total of *ager publicus* and private land belonging to Roman citizens, was divided into *tribus*, and many of these carry the names of powerful *gentes*. Therefore the adherents of the *gentes*-theory believe that the *tribus* were named after the *gentes*, for example because the *gens* had originally conquered this land in war and now owned it as collective land.¹⁷

However, a greater number of sources in fact indicate that private property existed very early in Roman history. According to legend, king Servius Tullius (578–534) introduced the census, allegedly based on a distribution of the population in five *classes*.¹⁸ Of course, the property levels for each class as cited by Livy cannot date back to the sixth century bc; it is generally assumed that when the census was first introduced in the regal period there was only one *classis* of people who owned landed property and served as cavalry and

(1970, 38), Capogrossi Colognesi (1980, 29, 41), and Hermon (2001, 54) for distribution of land by patrons to clients.

¹³ Bozza (1939, 146).

¹⁴ Some scholars take the importance of the *gentes* to the extreme; Franciosi (1995, 49) and Hermon (1999, 21) suppose that the domination of the *gentes* on the land was still great in the fourth century and even in the Gracchan period.

¹⁵ Twelve Tables 5.3: *Uti legassit super [familia] pecunia tutelave suae rei, ita ius esto* (*Her.* 1.13.23; *Cic. Inv.* 2.50.148; *Gaius* 2.224). See Franciosi (1995, 44).

¹⁶ Twelve Tables 5.4: *Si intestato moritur, cui suus heres nec escit, adgnatus proximus familiam habeto*. 5.5: *Si adgnatus nec escit, gentiles familiam habento* (*Cic. Inv.* 2.50.148; *Gaius* 3.17). 5.7A: *Si furiosus escit, adgnatum gentiliumque in eo pecuniaque eius potestas esto* (*Her.* 1.13.23; *Cic. Inv.* 2.50.148; *Tusc.* 3.5.11).

¹⁷ The *gens* Claudia is often cited as an example: Attus Clausus assisted Rome in the war against the Sabines, and as a reward received land which was afterwards called the *tribus* Claudia, see *Liv.* 2.16.5; *DH* 5.40.5; *App. Reg.* 12; *Suet. Tib.* 1.1–2; *Plu. Publ.* 21.6; *Serv. Aen.* 7.706. See Ross Taylor (1960, 6); Franciosi (1995, 42).

¹⁸ *Liv.* 1.43.1–8. See *DH* 4.15.6, 4.18.2; *Cic. Rep.* 2.22.40; *Vir. ill.* 7; *Gell. NA* 10.28.1; *Flor.* 1.1.6.3; *Lydus Mens.* 11.39.

heavy-armed infantry, while those without property were called *infra classem* and served as light-armed soldiers.¹⁹ Coinage did not yet exist in the sixth century, so the original census qualification must have been based on landed property; therefore, if a class of people existed owning considerable amounts of land, private ownership of land must have been possible at a very early date.

Furthermore, the Twelve Tables give plentiful evidence for the existence of private land. They speak only of private land; there is nothing in them about land belonging to *gentes*.²⁰ The *gentiles* are indeed mentioned as heirs, but only after the *agnati*, the closer relatives. The Twelve Tables also mention the possibility of *usucapio*: by this process one could obtain ownership of private land which was not used by its actual owner by using it for two consecutive years.²¹ However, *ager gentilicium* could not be acquired by *usucapio*, since the *gens* as a collective was its owner; this reference can therefore refer only to private land. However, the land in question cannot have been the *heredium*, which was inalienable. If neither the *heredium* nor the *ager gentilicium* could be subject to *usucapio*, which land did the law refer to? We can only conclude that other private land must have existed. Some adherents of the *gentes*-theory have defended their ideas by arguing that in the Twelve Tables possibilities for private possession were created which had not existed before.²² It seems, however, a more prudent course to assume that private property already existed before the Twelve Tables.²³

As for the *tribus*, it is true that the sixteen oldest have names derived from *gentes*,²⁴ but the connection between *gentes* and land remains elusive. Since there were fewer *tribus* than there were *gentes*, one *tribus* must have contained the land of more than one *gens*. Some *gentes* that were important in the politics of the regal and early Republican period, such as the Valerii and the Postumii, did not have *tribus* named after them.²⁵ All this makes it very difficult to uphold a direct relationship between the *gentes* and the *tribus*. It may be that the early *tribus* were named after *gentes*, probably those who owned most of the land in the area, but how and why this happened cannot be

¹⁹ Gell. NA 6.13. See Beloch (1926, 291); Drummond (1989, 207–8); Cornell (1995, 182–6); Forsythe (2005, 113). Lo Cascio (1988, 275–6) and Rathbone (1993a, 122) argue that the system with five classes was fully set up in the third century.

²⁰ Capogrossi Colognesi (1980, 60); Smith (1996, 192).

²¹ Cic. *Caecin.* 19.54; Gaius 2.42.

²² Hermon (1994a, 500); Franciosi (1995, 47).

²³ Kaser (1956, 234); Kauffmann (1964, 51); Gabba (1979b, 63).

²⁴ Drummond (1989, 179); Smith (1996, 204). Ten *tribus* are named after *gentes* important in the early Republic; six others are named after unknown *gentes* which are usually assumed to have been important in the regal period. The later *tribus* are not named after *gentes*; some bear a name connected to a landmark in the territory, while for others the origin is unclear.

²⁵ Smith (2006, 237, 246).

ascertained. In general it seems likely that the *tribus* were named after the element that was most characteristic for them, whether it was the *gens* whose members owned the largest amount of land in the area, or an important landmark.²⁶

Another indication of the importance of private land is that nowhere in the sources do we find the slightest indication that historians of later times were aware of collective possession of land in the early Republic. There are many descriptions of struggles for the possession of land, but the issue is always the distribution of land as private property. This shows that private ownership was known in early Republican Rome²⁷—or at least that later historians were not aware of the existence of property owned collectively by the *gentes* in the regal period and early Republic.

Yet another difficulty with the *gentes*-theory is that it is hard to reconcile with the sources for the social structure of the early Republic. According to the sources, in the earliest period of the Republic there were continuous struggles between patricians and plebeians over access to land: apparently the patricians occupied all arable land, thus excluding the plebeians (see below, Ch. 2.2.2). However, a society consisting of patricians and plebeians cannot easily be combined with a structure based on *gentes*. If all citizens belonged to a *gens* it is difficult to see how the patricians could have occupied all land. The presupposition of the existence of *gentes* therefore forms an extra complication when trying to explain the exclusion of the plebeians from the land. On the other hand, if private property had existed from the beginning, it would have been perfectly possible for there to have been a differentiation in property levels, which left some of the citizens with nothing.

Capogrossi Colognesi has offered an explanation which combines the *gentes*-theory with the possibility of private possession of land. He assumes that the land possessed by the *gentes* was assigned by the leaders of the *gentes* to the heads of individual families, the *patres familiarum*, who could then subdivide it to their family and clients. The plebeians were those who were not clients of patricians and therefore did not obtain a piece of land. Capogrossi does not fully explain the legal status of the land held by the *patres familiarum*, but thinks that the actual holders of the land were not considered full owners, and that the land therefore cannot have been considered their full property. The legal position of the land was therefore not the same as that of the later *ager divisus et adsignatus*, land assigned in full private property to citizens (see Ch. 2.3.11–12). The fact that the land held by the *patres familiarum* came to be identified with *ager publicus* was, according to Capogrossi,

²⁶ Beloch (1926, 333); Hantos (1983, 22–4); Momigliano (1989, 100).

²⁷ Capogrossi Colognesi (1980, 31–7); Drummond (1989, 238).

due to a misunderstanding by later authors: they knew only of a distinction between *ager publicus* and land in full private property. In later terms the land held by the *patres* could not be called *ager privatus*, and therefore had to be *ager publicus*. Until the fifth century *ager gentilicius* and *ager publicus* were therefore the same.

Capogrossi is most likely right that in the regal and early Republican period the distinction between public and private property was less clear than in later times. A clear idea of a public treasury may not yet have existed, and any property added to Roman territory during the regal period may have been considered the private property of the king, who could distribute it at his discretion to his followers as private property. In the early Republic conquered land may indeed have been under the control of those *gentes* who had conquered it, until the Roman state had evolved enough to claim full control over land confiscated during wars carried out on its behalf.²⁸

Smith proposes a different reconstruction, and argues that the *gentes* were a creation of the sixth century, a period of expansion for the Roman state. To protect the interests of the patricians, who exercised control over the recently conquered land, the *gentes* were created. Thus it was not those belonging to the *gentes* that had access to the land, but those who had access to land who created the *gentes* in the first place. Those who controlled the land and formed the *gentes* came to be called patricians, while those who were excluded from the possession of land became known as plebeians. This would explain why the plebeians were excluded from the land: since they did not have access to it at the moment of the creation of the *gentes*, it was impossible to get access to it later.²⁹ Smith's theory has many attractive elements, since it eliminates some of the major problems of earlier theories. However, his theory does not rule out the possibility that patricians held private land as well, while at the same time gaining control over newly conquered public land.

Notwithstanding these theories, which each have some attractive elements, there is hardly any proof of the claim that all or even most of the land was possessed collectively in archaic Rome.³⁰ The theory of collective ownership of land by the *gentes* cannot be proved. Even if something like the *heredium* existed, there was surely also other private land. The only thing we can say with any certainty is that, according to the sources, the patricians somehow gained exclusive control of the land conquered by Rome in war, thereby excluding those plebeians who did not have powerful patrons.

²⁸ Kauffmann (1964, 269–70).

²⁹ Smith (2006, 239–42, 275–9).

³⁰ Zancan (1934, 13); Kaser (1956, 234); Momigliano (1989, 99–100); Mitchell (1996, 260–1). But see, however, Terrenato (forthcoming) for new theories on landholding by *gentes*.

2.2.2. *Ager publicus* in the early Republic

From the earliest times the sources describe taking land from defeated enemies as the normal procedure after a Roman victory: the Romans win a war and take part of the land belonging to the conquered people.³¹ This practice also worked the other way around, since the Romans are similarly reported to have lost some land to their enemies.³² The confiscation of land by the Romans meant that this land became the property of the Roman state: it became *ager publicus populi Romani*, public land of the Roman people (for the exact legal status of this land, see Ch. 3.2.1). There cannot have been a large amount of such land during the regal period and the early Republic; conquests by Rome were limited to the immediate vicinity of the city.

Private land owned by Roman citizens was assigned into *tribus*, as we have seen; it is usually assumed that all land belonging to the *tribus* was private property.³³ If all land belonging to a *tribus* was private land, there was no room for *ager publicus* within the territory of the *tribus*. There may have been additional *ager publicus* outside the territory of the *tribus*, but this would have been of limited use to those owning private land within the *tribus*, since for most people this *ager publicus* would be too far away from their private land. It is impossible to reconstruct exactly where the territory of the individual *tribus* was located, but it seems as if most of the land in the possession of Rome in the early Republic was assigned to a *tribus*, and therefore not of much use to people in need of public land.

If private holdings were as small as two *iugera*, as is suggested by the sources, then *ager publicus* must have been very important, because such a small amount was not sufficient to support a family. The most likely way for people to obtain additional land was by using *ager publicus*, unless forms of tenancy already existed—which is in fact likely.³⁴ The denial of access to

³¹ Liv. 1.11.1–4, 1.15.5, 1.33.9, 1.38.1, 1.53.2; DH 3.6.1, 3.28.6, 4.27.6; Eutrop. 1.6; Cic. *Rep.* 2.14.26, 2.18.33; Festus 331 L.

³² DH 5.65.3, 8.10.2; Liv. 2.15.6.

³³ Ross Taylor (1960, 37). Sometimes Cic. *Flac.* 32.80 is adduced as evidence for this. In this passage Cicero argues that certain lands cannot be private property, because they have not been inscribed in a *tribus* (*In qua tribu denique ista praedia censuisti?*). However, this passage proves only that all private land should be inscribed in a *tribus*. If a citizen wanted land to count as his private property, he would have to declare his ownership of it at the census, in which case it would be inscribed in the *tribus* this citizen belonged to. It does *not* necessarily mean that all land located in a *tribus* was private property.

³⁴ Kauffmann (1964, 51–3) is a strong supporter of the idea that tenancy existed from a very early stage, and argues that the concept of land rented out by the state (which emerged in the third century; see Ch. 3.3) was derived from private tenancy which already existed from the regal period onwards.

public land must therefore have been a serious problem for those who had no more than a small private holding, and this seems to be reflected by the sources, which continuously mention struggles over the possession of land.

During the regal period there are continuous references to land being distributed among the landless citizens of Rome and to colonists being sent to conquered cities.³⁵ Even at this time there seem to have been problems with the rich occupying too much land, leaving nothing for poorer citizens; often the kings are presented as protecting the poor from the greed of the rich by distributing land to them.³⁶ Even though the rhetoric of these passages often resembles that found in later periods, we cannot discard them altogether. It is likely that the fair distribution of confiscated land was indeed a problem; Rome regularly subjected defeated enemies to confiscation of territory. It makes sense that the distribution of this land among the citizens led to dispute before rules for dealing with it had been devised;³⁷ at this time, there were probably no laws governing *ager publicus* and its possession. From a very early period there may already have existed some notion of *ager occupatorius*, in the sense of land owned by the state which was free for occupation by Roman citizens, even though it was not yet subject to the same legal rules as later (see for the possible legal regulations surrounding this kind of land Ch. 3.2.1). This does not mean that all individual accounts of agrarian agitation are correct, but some discussion over the distribution of conquered land is to be expected.

The poor may have received some land during the time of the kings, but after the creation of the Republic distributions seem to have ceased altogether; only some individuals received land as a reward for services to the state.³⁸ Between 509 and 396 there were only a few additional confiscations of land, to some of which colonies were sent out, while other land remained undistributed. The sources describe the monopolization of this land by the wealthy elite in the early Republic. They call these rich men the patricians, while the poor, who are deprived of access to land, are called plebeians. The sources for the early Republic are therefore characterized by

³⁵ Colonies: DH 1.9.2, 2.24.44, 2.35.7, 2.36.2, 2.53.4, 2.54.1, 4.63.1, 6.55.1; Liv. 1.11.4, 1.27.9, 1.56.3; Cic. *Rep.* 2.3.5; Plu. *Rom.* 23.6, 24.3; *Cor.* 28.2; Strab. 5.2.7; *Vir. ill.* 5. Distributions of land: DH 2.7.4, 2.28.3, 2.62.4, 3.1.5, 4.10.3, 4.13.1, 4.27.6; Cic. *Rep.* 2.14.26, 2.18.33. Even non-citizens could receive land upon moving to Rome: DH 2.55.6, 3.31.3, 3.43.2 (see Ch. 2.5.2).

³⁶ Liv. 1.46.1; DH 4.9.8, 4.11.2; Plu. *Num.* 16.3; Flor. 1.2.8.4.

³⁷ Cornell (1995, 327–9); Oakley (1997, 433); Forsythe (2005, 158). Mitchell (1996, 271) assumes that Rome conquered hardly any land before the defeat of Veii, and therefore that the distribution of land cannot have been an issue; see also Raaflaub (1986, 211). However, some land was conquered before 396, and there may have been problems in administering this.

³⁸ Horatius Cocles: Liv. 2.10.12; DH 5.25.2; *Vir. ill.* 11; Mucius Scaevola: Liv. 2.13.5; DH 5.35.1. See Plin. *HN* 18.2.9, 34.5.20; DH 5.57.3, 6.9.4.

a continuous battle between patricians and plebeians for the possession of public land.³⁹

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

A treaty [the *Foedus Cassianum*] was struck with the Hernici; two-thirds of their territory was taken from them, which Cassius proposed to split evenly between the Latins and the plebs. To this grant he tried to add some of the state-owned land that, he charged, private individuals had appropriated. Many Senators, who had occupied the land, were alarmed at the possibility of losing this property; but the general welfare concerned them as well, since the consul by his largess was building a source of personal power inimical to liberty. A land law was then proposed, the first in Rome's history, a form of legislation that has invariably been the cause of agitation and upheaval down to the present day.⁴⁰

This and other sources certainly echo later events, especially those of the Gracchi. Not only the general issues of the early Republic, such as the battle between rich and poor for the possession of public land, are reminiscent of the Gracchan period, but even many details in the sources. For example, Senatorial protest against the Gracchi was motivated by fear of their growing personal power, much like the accusations voiced against Cassius that he wished to become king.⁴¹ In the debate about Cassius' law, Appius Claudius is reported to have given the advice 'to choose ten of the most distinguished Senators to go over the public land and fix its boundaries, and if they found that any private persons were by stealth or force grazing or tilling any part of it, to take cognizance of this abuse and restore the land to the state'.⁴² The legal concept of 'force or stealth' (*vi aut clam*) was only formulated at a later date, and the whole speech is most likely an anachronism created on the basis of later developments.

Some scholars have therefore doubted the description of the agrarian struggles in the early Republic and argue that they should be discarded altogether as

³⁹ Liv. 2.61.1–4, 3.1.1–2, 3.30.1, 4.36.1–2, 4.48.2–4, 4.51.5–6, 4.58.12, 6.5.4–5; Zonar. 7.17; Cass. Dio 5.20.2; DH 5.68.1, 6.95.3–4, 7.4.5, 8.69–8.75, 10.36.2.

⁴⁰ Liv. 2.41.1–3. See below on the *Foedus Cassianum*.

⁴¹ Val. Max. 5.8.2, 5.6.1b; Cic. *Rep.* 2.35.60; Plin. *HN* 34.14.30; DH 8.77.1, 10.38.3; similarly Maelius in DH 12.2.9 and Val. Max. 5.3.2g, 5.6.1c, and Maelius and Capitolinus in Cic. *Rep.* 2.27.49. DH 7.8.1 expresses the view that promises of land distribution always lead to tyranny. For similar accusations against the Gracchi, see App. *BC* 1.15–6, Plu. *TG* 14.2. For the extent of the parallels between Cassius and the Gracchi, see Gabba (1954) and Capanelli (1981, 11–39); they include such elements of the story as the removal of a colleague and the sale and lease of *ager publicus*, which did not yet exist in the fifth century (see Ch. 3.3).

⁴² DH 8.73.3. DH 2.74.5, 9.52.4, and 10.32.2 also use the expression 'force or stealth'.

fictions created on the basis of the Gracchan events.⁴³ However, there are some indications that the story of Cassius was not entirely made up. For example, the fact that Cassius is described as a consul and not as tribune of the plebs, as were most later instigators of agrarian laws, lends some credibility to the reality of early Republican agrarian struggles. Moreover, the early Republican agitation differs markedly from those of the Gracchan period, in that the early politicians never proposed the introduction of a maximum amount of land to be held by one person. Since one of the main features of the Gracchan law was the introduction of a maximum of land that could be occupied, one would expect that an account solely based on the Gracchan period would emphasize this aspect of their legislation.⁴⁴

It is remarkable that the plebeian requests for land can be clustered in two groups, one dating between 486 and 474 and one after 424. This coincides with conquests of land by the Romans, the first period after land had been taken from the Latins and Hernici, the second after the conquest of Bola and Labici. The connection between the demands for land distribution and the conquest of territory lends a further air of plausibility to these demands.⁴⁵ However, the strongest evidence for the reality of early Republican problems over the possession of land is the passage of the *Lex Licinia* in 367, which clearly shows that even before the Gracchan period the occupation of *ager publicus* by the elite was considered a problem (see for this law Ch. 3.2.2).

In the next decades of the fifth century we continuously see *tribuni plebis* asking for the distribution of land according to Cassius' law, yet this never materialized.⁴⁶ Sometimes such requests received the support of the consuls;⁴⁷ the need for a solution to the land problem was apparently widely appreciated and not only an issue for the *tribuni plebis*. The first success of the

⁴³ Gabba (1974, 135).

⁴⁴ Cornell (1995, 269–71). He argues (1989b, 325–8; 1995, 328) that the plebeians demanded the introduction of a limit on the amount of *ager publicus* one person could possess and the number of animals he could graze on it. However, although the *Lex Licinia* introduced a limit on the amount of land to be possessed, this had never been a feature of plebeian demands before its introduction. See Capogrossi Colognesi (1980, 36–7). Moreover, not all intrusions into early history must be attributed to the Gracchan period; Basile (1978, 293–5) points out attempts by various later noble *gentes* to emphasize the importance of their forefathers, and sees Cassius Longinus, one of the land commissioners of 173 BC, as a model for Spurius Cassius. Of course, early stories can have been influenced by more than one later event.

⁴⁵ Humbert (1978, 62–4); Cornell (1989b, 327; 1995, 271). Smith (2006, 240) suggests that later writers assumed that confiscations of new lands naturally led to agitation over its distribution, and therefore mentioned this in their writings every time land was confiscated.

⁴⁶ DH 8.81.1, 8.87.3–4, 8.91.3, 9.1.3, 9.5.1, 9.17.4, 9.18.1, 9.27.4, 9.32.1, 9.37.2, 9.51.1–53.7, 9.59.1–2, 9.69.1, 10.35.5, 10.37.4, 10.42.2, 12.1.7; Zonar. 7.17; Liv. 4.44.7–10, 4.47.8–52.3, 5.12.3, 6.5.1–5; 6.6.1–2; App. *Ital.* 9.

⁴⁷ Liv. 2.48.2, 3.1.1–2.

plebeians seems to have been achieved in 456, when the *Lex Icilia de Aventino publicando* proposed that:

All the parcels of land [on the Aventine hill] held by private citizens, if justly acquired, should remain in the possession of the owners, but such parcels as had been taken by stealth or force by any persons and built upon should be turned over to the populace and the present occupants reimbursed for their expenditures according to the appraisal of the arbitrators; all the remainder, belonging to the public, the populace should receive free of cost and divide up among themselves.⁴⁸

Again, the story as it stands is heavily influenced by later sources, as appears, for example, from the reference to ‘stealth or force’. In any case, the distribution of the Aventine would have made available only a small amount of land. Dionysius of Halicarnassus states that the plebeians were satisfied with this, for ‘they would be contented with receiving a portion of the city, inasmuch as they could have no part of the land lying in the country because of the number and power of those who had appropriated it.’⁴⁹ Even though the *Lex Icilia* is presented in the sources as a success for the plebeians on a par with the later Republican agrarian laws, the practical gain from it must have been small, since the plebs did not get access to any arable land. The law plainly did not succeed in reaching its goal, namely alleviating the suffering of the plebeians; it may therefore be that this had not been the goal of the law at all, but that the sources presented it as such to fit this event into the framework of the patrician–plebeian struggle.

There are only a few records of foundations of colonies on conquered land. Colonies are sometimes presented as having been an easy way for the Senate to get rid of troublesome plebeians, without having to give up the land they themselves occupied⁵⁰—again we see that the accumulation of land by the elite, which was a stock theme in the sources for later periods, is continually attributed to the early Republic as well. The plebeians, on the other hand, are sometimes described as unwilling to go to colonies. In 467, ‘a certain amount of land had been captured from the Volsci; a colony could be established at Antium. . . . Volscian colonists were added to fill out the requisite number; the rest of the multitude preferred to demand land at Rome than to accept it elsewhere.’⁵¹ This story contains many puzzling elements: if the plebeians were really starving, it is unlikely that they would have refused an offer of land, wherever it was located. Moreover, Antium is not much further away from

⁴⁸ DH 10.32.2; see Liv. 3.31.1.

⁴⁹ DH 10.32.3.

⁵⁰ DH 6.43.1; Liv. 4.48.2–3.

⁵¹ Liv. 3.1.5, 8, see DH 7.14.4, 9.59.1–2. Velitrae was also unpopular: DH 7.13–14, 7.28.3; Plu. *Cor.* 12.2–13.2.

Rome than other colonies founded in the early Republic. It seems that for most plebeians shortage of land was not an immediate problem at this point in time, and that some other problem may have been the cause of their refusal to go to this colony. In later sources there is no indication that people were unwilling to go to colonies, so it is unlikely that the narrative is influenced by later events.

Colonization was the only way for the plebs to receive land from the state in the early Republic. However, the number of colonies was small: between 510 and 383 only thirteen ‘old Latin colonies’, *priscae Latinae coloniae*, were founded, most of them in Latium itself.⁵² It is debatable whether these colonies were established by the Latin League, or by Rome alone; Rome at this time did not have supremacy over other cities in Latium, but functioned as an ally (not a member) of the Latin League. The *Foedus Cassianum*, a treaty concluded with the Latins in 493 and later extended to the Hernici (see above), promised an equal share of any booty acquired in wars fought together to the Latins, and colonies were an easy way to give land equally to Romans and their allies.⁵³ It has been suggested that Rome played the major role in these foundations, with the Latin league only as a subordinate partner;⁵⁴ however, as can be concluded from Livy and Dionysius, Latins and other peoples were also admitted into these colonies, for example the Volsci in the case of Antium (see Ch. 2.5.2). This means that only a small number of Roman citizens can have profited from these colonization schemes. Furthermore, after the foundation of Sutrium and Nepes in 383 colonization ceased altogether.

Even if the land confiscated in war had to be shared with the Latins and Hernici, Rome acquired some *ager publicus* by itself. However, during the fifth century Rome did not conquer much land;⁵⁵ the first substantial amount of

⁵² The colonies founded in this period mentioned in the sources are Cora (501): Liv. 2.16.8; Fidenae (498 and 426): DH 5.43.2, 5.60.2, 6.55.1; Liv. 4.30.6; Signia (495): Liv. 2.21.7; Velitrae (494 and 401): DH 7.13.1; Liv. 2.31.4, 2.34.6, 6.21.2, 6.36.1, 8.14.5; Diod. Sic. 14.34.7; Norba (492): DH 7.13.5; Liv. 2.34.6, 8.1.1; Cass. Dio 4.17.9; Antium (467): Liv. 3.1.5, 3.10.8, 3.22.2; DH 9.59.1–2, 10.20.4; Ardea (442): Liv. 4.11.3–7; Diod. Sic. 12.34.5; Labici (418): DH 8.19.1; Liv. 4.47.7; Vitellia (393): Liv. 5.29.3, see Suet. *Vitell.* 1.3; Circeii (393): Diod. Sic. 14.102.28; Liv. 6.21.2; Satricum (385): Liv. 6.16.7; Nepes (c.383): Liv. 6.21.4, Vell. 1.14.2; Setia (c.382): Liv. 6.30.9, 8.1.1. For early colonization, see, Salmon (1969, 42–5).

⁵³ Indeed they sometimes received land: in 415 Ferentinum was captured by the Romans, and ‘the town and its territory were given to the Hernici’ (Liv. 4.51.8).

⁵⁴ Humbert (1978, 71); Cornell (1995, 302). For a radical new reconstruction of the relations between Rome and the Latin League, see Howarth (2006), who, however, seems to assign too much influence to the League.

⁵⁵ In 446 a conflict arose between Aricia and Ardea when these two cities asked Rome to judge in a dispute over the possession of land. A decision could not be reached, and Rome decided to take the land for itself: Liv. 3.71.7; DH 11.52.2–3. Labici in 418 and Bola in 415 were the only other additions to Roman territory, but the size of these territories was small: Liv. 4.47.6–7, 4.49.9–11. See Humbert (1978, 58).

land that was added as *ager publicus* was the land of Veii in 396. This in its turn may have created a stronger incentive finally to deal with the problems connected with the occupation of *ager publicus* (Ch. 3.2.2).

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

2.3. THE ACQUISITION OF *AGER PUBLICUS* BY THE ROMAN STATE

2.3.1. The amount of confiscated land and colony size

Since almost all *ager publicus* was taken from conquered peoples, the history of *ager publicus* is in a sense a history of the conquest of Italy. Italian communities could be forced to surrender land to Rome for various reasons; in most cases land was confiscated after a defeat in war. Armed conflict was not always necessary, however; occasionally land could be demanded upon the conclusion of a treaty with Rome.⁵⁶ Roman citizens could acquire private rights to the use of this land through various methods: by the establishment of colonies, by individual ('viritate') distributions of land, by gifts, sale, or lease of the land, or by a grant to specific communities or groups (see Ch. 2.3.11–12).

The amount of land taken from defeated enemies was often considerable. Livy records that two-thirds of the land of Privernum were taken in 340 BC.⁵⁷ Only in a few cases do we possess any information about how much land was confiscated, at least as a percentage of the total possessed by the enemy. One-third or one-half of the land of the defeated party is often considered the standard amount taken by the Romans,⁵⁸ but the case of Frusino in 303 is actually the only one in which one-third is specified as the amount seized,

⁵⁶ See Appendix items 4 and 7.

⁵⁷ Liv. 8.1.3; Appendix item 9.

⁵⁸ This is believed almost universally, e.g. by Tibiletti (1955, 40); Salmon (1969, 165 n. 2); Hopkins (1978, 60); Gabba (1979b, 39). Doubts have been raised by several scholars, e.g. Göhler (1939, 10); Hantos (1983, 42 and n. 90), but to no avail.

while the confiscation of one-half is attested only in the case of the Boii in 191.⁵⁹ However, there were no standard rules; variations occurred in the treatment of defeated peoples. The amount of land taken seems to have varied according to the circumstances: peoples who had fiercely resisted the Romans were punished with the loss of a larger quantity of land than those who had surrendered quickly (Ch. 2.5.2). However, even if we know, for example, that one-third of the land was taken, we still do not know exactly how large the actual amount of confiscated land was, since we do not know how much the community possessed in the first place. If no percentage is specified, we sometimes at least have evidence that land was confiscated. For instance, Livy describes how in 302 the Marsi were punished by the confiscation of some of their territory.⁶⁰ However, confiscation of land was often not recorded at all, and we can only conclude that land was taken because *ager publicus* in the area is mentioned at some later moment. Livy frequently reports that a colony was established without any reference to the previous confiscation of land in the area. Since colonies could be founded only on *ager publicus*,⁶¹ we must assume that the land on which they were established had been confiscated as *ager publicus* previously.

The inadequate nature of the evidence makes it impossible to establish any absolute figure for the size of *ager publicus*. It is even more difficult to establish the amount of land that was privatized by colonization or distribution to citizens, because it is hardly ever possible to establish the size of the territory of a colony or viritane distribution. The works of Beloch and Afzelius from the early twentieth century show great confidence in their ability to establish the boundaries of such territories, but I do not share their optimism. Their main sources are inscriptions mentioning *tribus*: if an inscription showing a certain *tribus* is found, it can be assumed that the location where it was found fell within the territory of the nearest city belonging to this *tribus*. Further information is deduced from the boundaries of medieval dioceses and modern cities. Natural boundaries, especially mountain ranges and rivers, also play an important role in their reconstructions.⁶²

However, it is clear that all these sources have severe limitations. For each town there are only a limited number of *tribus* inscriptions. They serve to show only that a certain location may have belonged to a certain community,

⁵⁹ Liv. 10.1.3, 36.39.3. One-third is also stated for the confiscation of land from Cameria, Caenina, and Antemnae by Romulus, DH 2.35.5 and 2.50.4; one-half is attested for a second confiscation from Cameria in DH 2.54.2. These accounts, however, are most likely anachronistic.

⁶⁰ Liv. 10.3.5.

⁶¹ Cic. *Agr.* 2.25.65.

⁶² Beloch (1926); Afzelius (1942). Dyson (1978, 255) also states confidently: 'The political boundaries of the original territory can be reconstructed with reasonable certainty.'

and they do not allow us to establish the boundaries in detail. Moreover, when a Roman citizen moved to another location, he sometimes retained membership of his old *tribus*, and it may therefore be that not all inscriptions show the tribal affiliation of a certain location, but only that of an individual citizen.

To establish the size of colonies, the only thing we can do is look at the records on the privatization of confiscated land. Sometimes we have information about the number of people settled in a colony and the amount of land each settler received as private property, which allows us to arrive at a minimum amount of assigned land. However, whenever such figures are known, they are invariably lower than the size of the territories of the colonies reconstructed by Beloch and Afzelius. As we shall see (Ch. 3.5), most colonies received some additional land for communal use, which may explain the difference. Unfortunately, in many cases we do not even have information about the amount of land received by the colonists. In the case of *viritane* assignments we sometimes have information on the amount of land granted to each settler, but never on how many people were involved. Since it is impossible to calculate the amount thus privatized, it is only possible to establish a range within which the distributed amount of land may have fallen. For example, if a colony was settled with 2,500 colonists who each received five *iugera* of land, how much land would that be? And if there were 6,000 colonists who each received ten or even twenty *iugera*, what then?

If we have a record that, for example, one-third of the land was confiscated, then we should ideally also have information about the amount of land held by the Italian population from which it was taken. However, it is even harder to establish the territories of Italian peoples than of Roman colonies. *Tribus* were not assigned to a town until it acquired Roman citizenship, which for most of Italy did not happen until the Social War. It is unlikely that the borders between towns were the same in 89 BC as they were in the fourth to second centuries BC. The only other evidence to go by is natural boundaries. However, it is likely that in many cases there were no clear-cut boundaries between Italian peoples during this period, or that the boundaries shifted regularly as a result of wars.⁶³

Even more importantly, there is a fundamental flaw in the reasoning of Beloch and Afzelius, namely the idea that all land in Italy should belong to one community or other. The maps in their books show the whole of Italy neatly distributed among the various communities, with no land not belonging to a specific town. Several times Beloch assumes that two cities border on each other, because there was no other town between them. For example, between Alba and the Marsic territory 'bildet der Kamm des Gebirges die

⁶³ Oakley (2005b, 39), for the border between Marsi and Aequi; in general, Van Dooren (2008, 38).

natürliche Grenzscheide'.⁶⁴ However, it is far more likely that communities did not always border on each other directly. Especially in the Apennines the mountains constitute formidable boundaries between the isolated fertile valleys in which the towns are situated, and it is not to be expected that all mountain ranges would have been considered part of a specific community. For example, Beloch assumes that all land between Sora and Antinum had been assigned to one of those communities,⁶⁵ however, considering the steep and wooded mountains separating these two cities it is likely that much land located between them was not considered to belong to either city.

It is far more likely that only arable land and easily accessible pasture lands were considered the territory of a specific city, and that there was much land that remained unclaimed.⁶⁶ Only in the Imperial period did all land in Italy come to be assigned to specific communities.⁶⁷ Therefore it is impossible to



Figure 2.1. The Liris valley as seen from Altinum

⁶⁴ Beloch (1926, 552).

⁶⁵ Beloch (1926, 527).

⁶⁶ Wightman and Hayes (1995, 34–5) point out that such lands could either be unclaimed, or be public pasture lands belonging to one of the neighbouring communities (see Ch. 3.5).

⁶⁷ Kahrstedt (1959, 176–7); Bispham (2008, 80).

maintain, as Beloch and Afzelius do, that the top of a mountain range or another inaccessible location could have been considered the natural boundary between one city's territory and another. As a result of this, the territories assigned to the various communities by Beloch and Afzelius are usually too large, since they include more land than can be securely ascribed to a community. This also means that medieval and modern boundaries are a very unreliable source for reconstructing the ancient situation,⁶⁸ since they were usually based on natural boundaries, and belonged to a period when all land in Italy had been assigned to a diocese or community.

Therefore it is quite impossible to make estimates about the size of Italian territories or Roman colonies. When Afzelius states confidently, for example, that the territory of Brundisium measured 375 km²,⁶⁹ this might just as well be 250 or 600, depending on where one draws the boundary. Beloch does not even round off his figures to multiples of five, but states, for example, that the land of the Praetuttii measured 1,089 km². He estimates his margin of error at only 5 per cent, 'weil es sich um absolut kleine Zahlen handelt'.⁷⁰ Such semi-scientific estimations are in fact quite dangerous, since they give us an entirely false impression of the political reality of Republican Italy, and grossly overestimate our ability to calculate the size of Italian territories. The figures given by Beloch and Afzelius should therefore be treated with much more caution than is usually done. Modern scholars still use their figures with a confidence that is not at all justified.⁷¹ This is not to say that all individual figures provided by these scholars are wrong; I think that most of them are at least in the right order of magnitude. We can be sure that some territories were larger than others, and we can usually make some estimation of whether they measured 100 or 1,000 km². More precise figures are, however, impossible; those given by many modern scholars cannot therefore be taken seriously.

Another problem in establishing the size of the *ager publicus* is that the figures provided by Beloch and Afzelius distinguish only between *Ager Romanus*, *Ager Latinus*, and land belonging to the allies; *ager publicus* is not a separate category in their calculations.⁷² The *Ager Romanus* consisted of

⁶⁸ Wightman and Hayes (1995, 34); Corti (2004, 88).

⁶⁹ Afzelius (1942, 191).

⁷⁰ Beloch (1926, 621). Similar optimism is shown by La Regina (1971–2).

⁷¹ e.g. Cornell (1995, 381).

⁷² The calculations can be found in Beloch (1880, 69–76, and 1926, 620–1) and Afzelius (1942). It is remarkable that Beloch in his earlier work makes different calculations for the size of the *Ager Romanus* from his later work. In (1880, 71) he estimates the size of the *Ager Romanus* after 358 at 3,096 km², while in (1926, 620) he sets it at 1,902 km². His earlier estimates for the *Ager Romanus* are 6,039 km² after the Latin War, 7,688 km² in 300 bc, and 28,244 km² in 263 bc, while in his later work he sets these at 5,289, 7,512, and 23,226 km² respectively. He explains the differences (1926, 575–6) as being caused by the better availability

both private land held by Roman citizens and *ager publicus* of the Roman state; much of it, therefore, was in private hands. Many of the additions to it were made by granting Roman citizenship to communities which had not held it before. This automatically made their land Ager Romanus, while of course they retained private rights of ownership on it, and therefore no land was turned into public land. *Ager publicus* was therefore only a category of land within the Ager Romanus, but Beloch and Afzelius do not make separate calculations to establish its size. There can be no doubt, then, that the amount of land that was privatized by colonization and virgane distribution, and therefore also of land that was left as *ager publicus*, cannot be calculated in absolute figures. The often-quoted estimate that the amount of *ager publicus* confiscated after the Second Punic War was 10,000 km² is no more than a guess, and an unfounded one at that.⁷³

Nevertheless, a more detailed estimation of the amount of *ager publicus* is necessary if we want to say anything with confidence about its extent and importance in the Republic. This estimation is carried out in the Appendix and Ch. 2.3.2–10. For each acquisition of land by the Roman state, I give the circumstances of the conquest (since this may have influenced the amount of land taken, see Ch. 2.5.2), the privatizations occurring immediately afterwards and those that happened later, and the possible location of land that was left as *ager publicus*. No matter how unsatisfactory this method is, it will at least allow us to conclude that there was indeed a considerable amount of *ager publicus* at any given time during the Republic. This conclusion is supported by further evidence: in many cases *ager publicus* is mentioned long after the conquest of the area in which it was located. I shall discuss the examples known to us in order to show that it was a routine procedure of the Roman state to retain *ager publicus* for long periods of time after its confiscation.

If there was indeed so much *ager publicus* in the Roman Republic, an obvious question presents itself: why did the Romans confiscate so much

of evidence, for example by the publication of inscriptions in the CIL, which led to revisions of the territory size of many colonies and other political entities. Afzelius usually gives different figures; his figures for the size of the Ager Romanus are 5,525 km² in 338, 6,285 km² in 300, 15,295 km² in 290, and 26,805 km² in 264. Others have made different calculations; for example Toynbee (1965, i. 116) thinks the Ager Romanus measured 822 km² at the end of the fifth century. He states (1965, i. 165) that the total amount of *ager publicus* confiscated between 500 and 241 measured 25,260 km². Bozza (1939, 166) estimates the size of the Ager Romanus at 2,220 km² after the conquest of Veii.

⁷³ Beloch (1880, 73). It is still often quoted, e.g. Gabba (1989, 198). However, see Brunt (1971, 278). Frederiksen (1981, 267) states that the total amount of public land after the Second Punic War was three million *iugera* (7,500 km²), another figure that is often quoted.

land from their defeated enemies if they did not immediately distribute it? Who used all this land? Conventional scholarship holds that excess *ager publicus* was occupied mainly by the Roman elite, who established large slave-staffed estates on it. However, new research has made this position increasingly difficult to maintain. In the first place, the size of the market for agricultural products is now known to have been quite small, and the need to have a great number of commercial estates was therefore much smaller than was previously thought. Moreover, market production was limited mainly to central Italy, while much of the *ager publicus* was located in the periphery (Ch. 4.3.3–6). It is therefore very difficult to maintain that all *ager publicus* was occupied by the Roman elite. Who then were the occupants of *ager publicus* not distributed by the Roman state?

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

2.3.2. Latium

The history of the *ager publicus* in Latium is complicated, because many conquests in this region took place very early in Roman history and are not well documented. Already in the regal period wars are recorded with Rome's neighbours in Latium, the Hernici, Volsci, and Aequi. According to Livy, Rome had expanded its territory during the regal period to include twenty-one *tribus* by 495, which were all situated in close proximity to Rome. This land was probably all private, but there may have been *ager publicus* between the territories of the *tribus* or outside them.⁷⁴ However, this was probably only a limited amount of land, judging from the fact that all Rome's wars had been fought in close proximity to the city and there had been no opportunity to confiscate large tracts of land elsewhere. As we have seen, Rome during the

⁷⁴ Liv. 2.21.7. The nature of this land is bound up with the discussion about landholding by the *gentes* (see above, Ch. 2.2.1): if the *gentes* possessed land, the land in the *tribus* can be seen as *ager gentilicium* and therefore as public land in a sense, whereas if most land was held privately, as I believe, the *tribus*-land will mostly have consisted of private land. See Smith (1996, 208).

fifth century had shared most of its land with the Latin League, and acquired only small tracts of *ager publicus* for itself.⁷⁵

The Ager Pomptinus (see Figure 2.2), conquered in 387, was the first large tract of land that the Romans acquired as *ager publicus* in Latium.⁷⁶ Initially, however, no distributions of land seem to have taken place; between 385 and 358 no attempts at virgane distribution or colonization succeeded. The tribunes of the plebs wanted to give the land to the people, and argued, according to Livy, that ‘the nobles were grabbing possession of the public land, and there would be no room left there for the common people unless it was shared out before they seized it all’.⁷⁷ In 385 a commission for the division of the Ager Pomptinus was actually created; however, the *tribus* Pomptina was not created until 358, and this may indicate that it had taken a long time



Figure 2.2. The Ager Pomptinus as seen from Circeii, towards Terracina

⁷⁵ It may be that at the conclusion of the *Foedus Cassianum* in 493 the Latins were deprived of some of their territory, see Humbert (1978, 73–6). However, since the *Foedus* is presented as a treaty between equal parties, this is not very likely. In 486 the Hernici were included in the treaty, but according to Liv. 2.41.1 they were first stripped of two-thirds of their territory. Dionysius, however, expressly states that the Hernici did not lose any land (DH 8.71.5, 8.77.2), and this is believed by Oakley (1998, 396).

⁷⁶ Appendix item 2.

⁷⁷ Liv. 6.5.3–4.

before the confiscated land was distributed. On the other hand, it is also possible that the *tribus* was created much later than the actual distribution of the land (see Appendix item 2).

During the Latin War (341–338) the Romans finally established their authority over the Latins, who were punished for their rebellion with loss of land. The Romans thus acquired more *ager publicus*, although it is hard to establish exactly which land was taken. Many Latin communities retained their independence, and probably also their land, or at least most of it.⁷⁸ After the Latin War the Romans faced the Samnites, and in the course of the wars against them the Latini and the surrounding peoples were finally defeated. The Volsci, Hernici, and Aequi were ultimately vanquished between 306 and 303.⁷⁹ These conquests were secured by a number of colonies and viritane distributions in their territories.

Most of the confiscated land in Latium was made into private land, either through viritane distributions to Roman citizens—as can be deduced from the large number of *tribus* that were created (Ch. 2.3.11)—or by the foundation of colonies, the number of which was quite large. This is shown by the relative dearth of references to *ager publicus* in Latium in later periods. Nevertheless, there are indications that some *ager publicus* may have remained in the possession of the state long after the conquest. In 200 BC the state proved unable to repay loans which had been made by rich citizens during the Second Punic War. As a result ‘the Senate decided that they should be granted the opportunity of using public lands within a fifty-mile radius of Rome.’⁸⁰ This land became known as the *ager in trientabulis* (for the legal conditions pertaining to this land see Ch. 3.3.2).

The fifty-mile radius runs in a circle from Graviscae via Narnia, Alba Fucens, and Frusino to Circeii (See Figure 2.3). Thus it contains parts of Latium which had fallen under undisputed Roman control after the Latin War in 338 at the latest. Much of the land in this area is very fertile and must have been highly desirable among agricultural producers.⁸¹ It may be that most of the *ager in trientabulis* was situated in Etruria or Sabinum, but the area indicated in the text clearly includes Latium. The Roman state had apparently managed to hold on to *ager publicus* for a long time.⁸²

⁷⁸ Appendix items 4, 6, 7.

⁷⁹ Appendix items 10, 14, 15, 18.

⁸⁰ Liv. 31.13.6.

⁸¹ De Neeve (1984, 19).

⁸² Castagnoli et al. (1985, 38) attribute the availability of land near Rome to decline in population having occurred in the Second Punic War, but it is unlikely that the war would have had such serious effects specifically in the area close to Rome. Göhler (1939, 11) argues that the land sold in 200 must have been confiscated in the Second Punic War, because otherwise it would have been used earlier, but this is not necessarily true. There is, moreover, no reason why land in this region should have been confiscated in the Second Punic War.

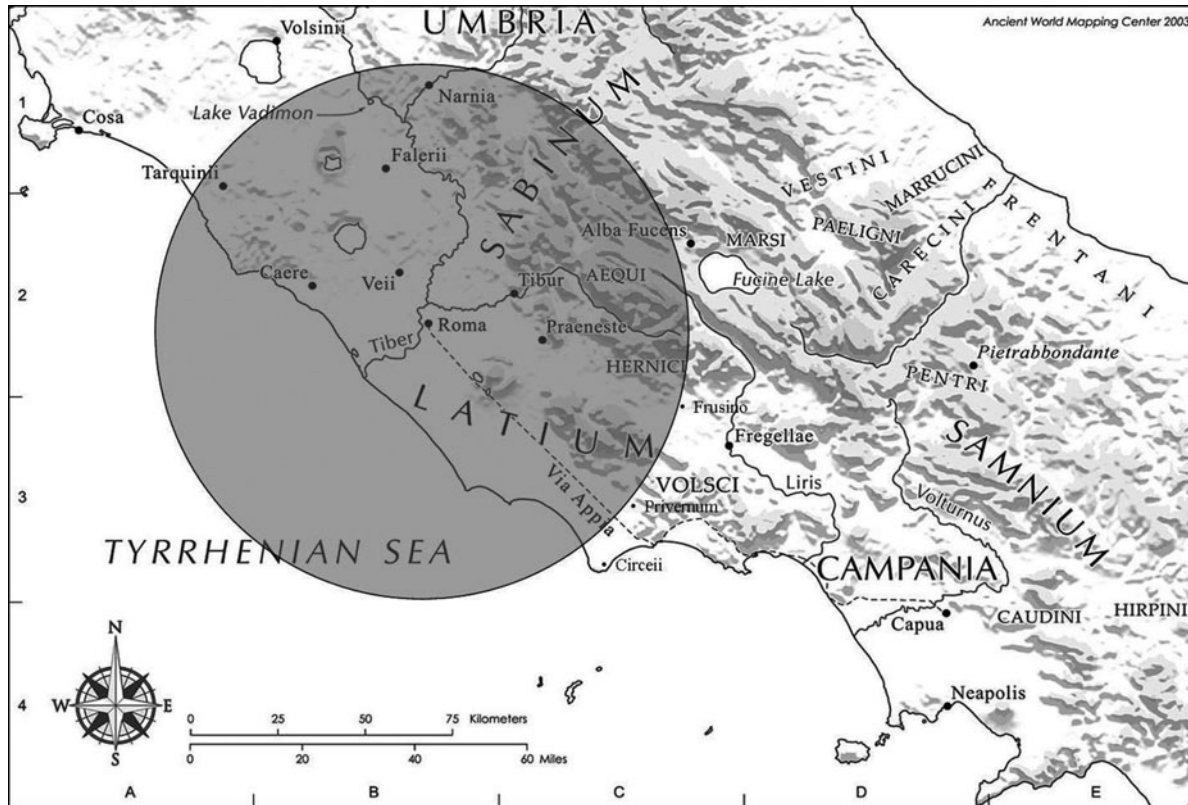


Figure 2.3. The 50-mile boundary within which *ager in trientibus* may have been located

In the first century BC extensive distributions of land took place in Latium, especially by Sulla.⁸³ It may be that some *ager in trientabulis* was still in existence—the *Lex agraria* of 111 mentions it as an existing form of public land (see Ch. 5.3.3)—and that this was used to settle veterans. However, Sulla also confiscated land from his political enemies, making it impossible to see all of his distributions as evidence for the survival of *ager publicus* dating back to the conquest of Latium.

2.3.3. Etruria and Umbria

Rome had a long history of war with the Etruscan city of Veii. Already in the time of Romulus a war is mentioned, and references to wars with Veii occur regularly during the regal and early Republican period.⁸⁴ However, definitive victory was not achieved until 396, when the city and its neighbour Capena were finally conquered.⁸⁵

After the conquest of Veii in 396 there was for the first time a large quantity of *ager publicus* available to the Romans. The plebeians received a substantial amount of land as private property: each citizen, apparently including all children of both sexes, received seven *iugera* of the Veientane territory. A few years later some of the original inhabitants of Veii received land as well. However, there are many references to the availability of land in the area in periods long after the conquest of Veii, and the remaining amount of *ager publicus* in southern Etruria must therefore have been great.

When Velitrae was captured in 340 its leaders were banished to the other side of the Tiber, an area which had belonged to Veii until 396: ‘Their Senate [was] deported and its members ordered to live on the far side of the Tiber.’⁸⁶ The same happened to the Senators of Privernum in 329.⁸⁷ It is not said that the state actually provided these people with land by distributing *ager publicus* (or indeed any land) to them. However, Roman citizens and others had received land here in the early fourth century, and it would be strange if the state assumed that the deported would take over land that was privately owned. Simply deporting them without assigning any land at all would be even more problematic, because in that case the former leaders of Privernum

⁸³ Chouquer et al. (1987, 248–9) mention ‘Sullan distributions’—most of them, however, without secure evidence—in Gabii, Tusculum, Castrimoenium, Collatia, Bovillae, Casinum, Aricia, and Capitulum.

⁸⁴ Liv. 1.15.1–5, 1.33.9.

⁸⁵ Appendix item 1.

⁸⁶ Liv. 8.14.5. Appendix item 6. See Liverani (1984, 41).

⁸⁷ Liv. 8.20.9; *Fasti Triumphales* 329/328. Appendix item 9.

would have no way of surviving and might have been expected to form a danger to the state. The only land that was available was *ager publicus* and the only time when it could have become so was in 396.

The rest of southern and central Etruria was conquered during the late fourth and early third centuries; the last war with Etruria ended in 281.⁸⁸ It is usually assumed that on this occasion the cities of Caere, Vulci, Volsinii, and Tarquinii lost part of their land. Yet only one large colony, Cosa, was founded after the war, and during the First Punic War some small maritime colonies were established.

The history of Umbrian relations with Rome is much like that of Etruria, with whom the Umbrians were often associated. The southern part of Umbria was conquered in 300 and the colony Narnia founded in 299. The conquest of northern Umbria was completed in the 260s. The colony Spoletium was founded, and some virgane distributions probably took place.⁸⁹ Nevertheless, several sources indicate that in both Etruria and Umbria some *ager publicus* remained in the hands of the Roman state for a very long time. Judging from the availability of *ager publicus* here in later periods, this may have been a substantial area.

In the Second Punic War the inhabitants of rebellious Capua were punished with banishment. Livy describes their punishment in detail: ‘Those moved across the Tiber were—their selves and their descendants— forbidden to acquire or possess land anywhere other than in the territory of Veii, Sutrium, and Nepes, and their holdings there were restricted to a maximum of fifty *iugera* per person.’⁹⁰ As in the case of the leaders of Velitiae and Privernum, the territory of Veii was not vacant at this time, and the state could therefore not simply turn the Capuans loose in the territory of Veii. It was at least necessary to point out the place where they could live. There must have been land available where they could settle without disturbing those already living there. Livy says that the Romans gave them ‘some land and a place to live’;⁹¹ however, this does not mean that the state assigned each individual an allotment, and certainly not that they each received fifty *iugera*, which would be a nice reward for their infidelity. The places mentioned were precisely those where much *ager publicus* had been confiscated after the capture of Veii in 396, and it seems that some of these areas were still public land (but see Ch. 3.5).⁹²

⁸⁸ Appendix item 26.

⁸⁹ Appendix items 19–20.

⁹⁰ Liv. 26.34.7–10. See also App. Hann. 43.

⁹¹ Liv. 31.31.15: *Agrum locumque ad habitandum daremus*.

⁹² Liverani (1984, 39) thinks the Campanians were not actually set up with plots of land. Rathbone (2003, 142 n. 25), however, alludes to a ‘plan to give displaced Campanians 50-*iugera*

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

In the second century BC the colonies of Saturnia, Graviscae, and probably Heba were founded in southern Etruria, on land which must have been *ager publicus* since 281 at the latest. Livy in fact indicates that Graviscae was founded 'on land that had earlier been captured from the people of Tarquinii'.⁹³ His use of the word *quondam* implies that this had occurred a long time ago.

Another clue pointing to the continuing availability of *ager publicus* in Etruria and Umbria can be found in the proposal, in 91 BC, to give all Italians Roman citizenship. From Appian's *Civil Wars*, it appears that many Italians opposed this plan:

Even the Italians . . . were apprehensive about the colonial law, because they expected that the land belonging to the Roman state which was still unallocated, and which was farmed either clandestinely or after forcible seizure, would at once be taken away from them, and that trouble might even occur over their own land. The Etruscans and the Umbrians, who shared the same fears as the Italians, were brought—it seems by the consuls—into the city.⁹⁴

Apparently there were many Etruscans and Umbrians holding *ager publicus*. This land must have been public since the conquests of Etruria and Umbria in the early third century, since there was no other possible date for the confiscation of land in the area (see Ch. 5.4.2).

Cicero mentions land being measured for distribution in the territory of Veii and Capena in 46 BC, which has been seen by some as evidence for the continued presence of *ager publicus* in Etruria: 'They are surveying land at Veii and Capena. That is not so far from Tusculum. But I have no fears.'⁹⁵ However, Cicero alludes to the possibility that his own land in Tusculum

allotments in the territory of Veii'. It is unclear to me how he means to reconcile this with his theory that all land became *ager privatus*; if land had remained public in the territory of Veii, then why not in other places as well? Tibiletti (1950, 189) also thinks the Campanians were given plots of land. However, there is no clear reference to the distribution of plots of land to the Campanians.

⁹³ Liv. 40.29.1: *de Tarquiniensibus quondam captum*. See Beloch (1926, 456); Ross Taylor (1960, 89); Mansuelli (1988, 46–8). For Saturnia, see Stockton (1979, 207–8). Gracchan activity in Etruria seems to be indicated in the *Liber Colonialium*, see Harris (1971, 205) and Roselaar (2009c); Campbell (2000, 407, 409), however, doubts these entries.

⁹⁴ App. BC 1.36. Bradley (2000, 139) states that the land had been leased out to them, but this is not what Appian says.

⁹⁵ Cic. Fam. 9.17.2: *Veientem quidem agrum et Capenatem metiuntur; hoc non longe abest a Tusculano; nihil tamen timeo*. Liverani (1984, 43) and Keppie (1983, 52) assume this land was old *ager publicus*, but this seems unlikely.

might be in danger of confiscation, which indicates that the land in Veii and Capena had also been acquired by confiscation shortly before. It is possible that some *ager in trientabulis* had continued to exist here, since Tusculum was located within the fifty-mile radius, but there is no evidence for this. We cannot therefore use this passage as proof for the continued existence of *ager publicus* in southern Etruria since 396. The same goes for the settlements by Caesar and Octavian in the colony of Lucus Feroniae (Ch. 5.4.3).⁹⁶ In any case, we may conclude that a great part of the *ager publicus* in Etruria and Umbria had remained public for a very long time.

2.3.4. Sabinum

Wars with the cities of south-western Sabinum are reported from the time of Romulus.⁹⁷ However, these early wars were only skirmishes in the part of Sabinum which was closest to Rome. The first great involvement of Rome with the Sabines came in 299, when the southern parts of Sabinum and Umbria were conquered.⁹⁸

In 290 M. Curius Dentatus conquered the rest of Sabinum; some of the land was distributed to the soldiers of his army.⁹⁹ The territory around the city of Cures seems to have been sold as *ager quaestorius*, a form of sale by the state by which security of possession was granted to individual Roman citizens (see Ch. 3.3.1). However, a sizeable amount of land must have been turned into *ager publicus*, because in 241 the *tribus* Quirina was established, the territory of which comprised a large part of Sabinum. Some of the inhabitants of this *tribus* must have been local Sabines who had been granted citizenship,¹⁰⁰ but it is possible that some of the inhabitants of the *tribus* Quirina were Romans who had received grants of land in Sabinum, for example former soldiers in Dentatus' service.

⁹⁶ Keppie (1983, 79).

⁹⁷ Liv. 1.38.1. The statement in DH 5.49.2 that in 500 the Sabines were forced to concede 10,000 *iugera* of arable land seems anachronistic.

⁹⁸ Appendix item 19.

⁹⁹ Appendix item 22.

¹⁰⁰ Some of the original inhabitants of Sabinum became Roman citizens, receiving the *civitas sine suffragio* in 290 and the *civitas optimo iure* in 268: Vell. 1.14.6. However, this probably refers only to the Sabines of Cures and not to the whole population, so only they could have been admitted into the *tribus*. Most of the Sabines were still *cives sine suffragio* in 225, since they are mentioned as a separate group in the list of Polyb. 2.24. See Ross Taylor (1960, 60–5). On the other hand, Brunt (1969) assumes that local inhabitants as well had received citizenship before 241 and were admitted into the *tribus*.

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

2.3.5. Picenum

In 290 Dentatus conquered not only Sabinum, but also the southern part of Picenum, inhabited by the Praetuttii. In 283, moreover, he defeated the Senones, a tribe living in the Ager Gallicus, and in 268 the rest of Picenum was conquered; some of this land was turned into *ager publicus*.¹⁰¹ Some colonies were founded in Picenum and the Ager Gallicus: Sena Gallica, Ariminum, Firmum, and Castrum Novum. In 241 the *tribus* Velina was established for those Roman citizens who had been settled in the territory of the Praetuttii and local Picentes who had received citizenship.¹⁰² Apart from the colonies, which did not require a very large amount of land compared to the total area conquered, and the land granted in viritane distributions, much land must have remained public.

In 232 the tribune of the plebs C. Flaminius proposed the *Lex Flaminia de Agro Gallico et Piceno viritim dividundo*, a law to distribute land—probably only the Ager Gallicus (see Appendix item 25)—among the people. Again, the state could distribute only *ager publicus*, so this land must have been public since it had been conquered. After the distribution by Flaminius there was still *ager publicus* left in the Ager Gallicus, on which the colony Pisaurum (184) was founded in the second century. In Picenum itself some land had remained public as well, on which the colony Potentia was founded in 184, and probably Auximum at some date in the second century. A boundary stone referring to Gracchan activities has been found in Fanum Fortunae in the Ager Gallicus, which makes it likely that some land was distributed here by the Gracchi. This is also suggested by the name of Forum Sempronii, a town close to Fanum. The land distributed in the Gracchan period must have been *ager publicus* since its conquest in the third century.

¹⁰¹ Appendix items 23, 25, 31.

¹⁰² It is again unclear who exactly had received citizenship; Brunt (1969, 124) and Guidobaldi (1995, 183) assume that local inhabitants had received citizenship and were included in this *tribus*, while Ross Taylor (1960, 64–6) argues the Picentes had not yet been admitted as citizens in 241.

2.3.6. Campania

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

Capua had submitted itself to Roman rule in the fourth century, but it proved an unfaithful ally and in the Latin War joined the Latins against the Romans. Therefore, after the Latin War and First Samnite War Rome confiscated the Ager Falernus in northern Campania and distributed it to Roman citizens. In 329 the city of Privernum rose against Rome rule and was defeated. The private land of its leaders was confiscated as *ager publicus*, as we have seen. Further confiscations of land were carried out in 314, after a victory against the Aurunci, which were followed up by extensive colonization.¹⁰³

After its defection in the Second Punic War, Capua lost its political autonomy and all of its land, which now became *ager publicus*, except for the land belonging to those individuals who had been loyal to Rome. Some of this land was used for the foundation of a number of small colonies and for sale as *ager quaestorius*, but most of it remained in the hands of the state, the most important area being the Ager Campanus proper, which became *ager censorius*; this meant that it was leased out by the state and thereby assigned to individual citizens (see Ch. 3.3.3).¹⁰⁴

It has long been debated whether the Gracchi distributed land in the Ager Campanus. Three boundary stones set up by the Gracchan land commission have been found in various locations in Campania, which has led some scholars to assume that the Gracchi distributed part of the Ager Campanus. Moreover, Plutarch states that Gaius Gracchus wanted to establish a colony in Capua.¹⁰⁵ On the other hand, doubts have been raised by a statement of Cicero, made in his speech of 63 BC against the plan of the tribune Rullus to distribute the Ager Campanus, which at this time was still *ager publicus*. Cicero argues that ‘neither the two Gracchi . . . nor Lucius Sulla . . . ever ventured to touch the Campanian territory. Rullus was the first man to venture to remove the Republic from that property, of which neither the liberality of the

¹⁰³ Appendix items 3, 5, 9, 13.

¹⁰⁴ Appendix item 36.

¹⁰⁵ Plu. CG 8.3; however, he immediately says that this plan came to nothing. Many scholars accept Gracchan activity in the Ager Campanus itself: Curreri (1971, 43–6), Frederiksen (1984, 275); Chouquer et al. (1987, 382). Contra: Vallat (1979, 984). G. Franciosi (2002, 242–3) proposes that ‘Ager Campanus’ should be read as ‘Ager Clampetinus’, an area in Bruttium, and that therefore the Gracchi did not distribute land in Capua.

Gracchi nor the uncontrolled power of Sulla had deprived it'.¹⁰⁶ Moreover, Granius Licinianus maintains that a *forma* (a map showing the boundaries of public and private lands, see Ch. 3.2.3) drawn up in 165 BC remained inviolate until Sulla changed it.¹⁰⁷ There seems therefore to be a discrepancy between the literary sources and the archaeological evidence. Some have tried to solve this problem by arguing that the Gracchi did not distribute any land in Campania, but only measured the land in order to clear up the confusion between *ager publicus* and private land.¹⁰⁸ However, in the Ager Campanus itself this was not necessary, since this had been done in 165 BC and Granius Licinianus states that the *forma* of these measurements had remained unchanged.

In fact, the contradiction is only apparent. Cicero is speaking explicitly of the Ager Campanus proper, meaning the territory which until 210 had belonged to the city of Capua, and this is not the same as Campania in general. There is actually no evidence pointing to the distribution of the Ager Campanus itself by the Gracchi. Two Gracchan boundary stones have been found, one in Arienzo between Saticula and Nola, and one in Sant'Angelo in Formis, very close to ancient Capua; however, neither place is located in the Ager Campanus itself.¹⁰⁹

The *Liber Coloniarum* mentions deductions having taken place *lege Semproniana* or *lege Graccana* in several Campanian towns (Abellinum, Aefulae, Suessa Aurunca, and Caiatia). Chouquer et al. have identified various centuriation grids in these areas, which they ascribe to Gracchan activity.¹¹⁰ However, it is very difficult to date centuriations by their size without any corroborating evidence, so we cannot accept Chouquer's dates for the grids in Campania. It is likely that the Gracchi distributed land in Campania close to the places where the boundary stones have been found, and possibly also in the locations mentioned by the *Liber*, but outside the Ager Campanus proper.¹¹¹

¹⁰⁶ Cic. Agr. 2.29.81: *Qua de causa nec duo Gracchi... nec L. Sulla... agrum Campanum attingere ausus est; Rullus exstitit qui ex ea possessione rem publicam demoveret ex qua nec Gracchorum benignitas eam nec Sullae dominatio deiecisset.*

¹⁰⁷ Gran. Lic. 28.36. Cass. Dio 38.7.3 states that by Caesar's distribution Capua became a Roman colony for the first time.

¹⁰⁸ G. Franciosi (2002, 235–8); Rathbone (2003, 156); Sacchi (2006, 146).

¹⁰⁹ Crawford (1996, 157). Chouquer et al. (1987, 225) connect the boundary stone in Sant'Angelo to a general distribution of the whole Ager Campanus by the Gracchi, and relate this to a centuriation grid visible in the area. However, the stone may be related to the territory of Cales, since it is located at the southern edge of a centuriation around this town, see Campbell (2000, 417); Roselaar (2009c). What Sulla's changes in the *forma*, mentioned by Granius Licinianus, amounted to is uncertain; there is no evidence that he distributed land in the Ager Campanus.

¹¹⁰ Chouquer et al. (1987, 245–53).

¹¹¹ Molthagen (1973, 452); Compatangelo (1989, 236).

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

2.3.7. Samnium

The Samnites lost much land to the Romans during the fourth and third centuries. In the Latin War the Romans for the first time conquered some Samnite territory and started to contain the Samnite threat by means of the colonies Cales and Fregellae.¹¹² After the Second Samnite War the Romans took more land and established new colonies, clearly with the purpose of isolating Samnium from possible allies.¹¹³ After the Third Samnite War even more land was taken by the Romans. The most important territory they lost was the Ager Taurasinus, in the mountainous region of central Samnium.¹¹⁴

In 268 the Samnites rebelled against Rome, but failed. A large part of western Samnium was now incorporated into the Roman state as *praefecturae*. To emphasize the Roman presence, the colonies of Beneventum and Aesernia were founded.¹¹⁵

The large amount of *ager publicus* the Romans had appropriated in Samnium could not all be distributed among Roman citizens. Some of it was used for the establishment of colonies, but much *ager publicus* in Samnium remained undistributed for a long time after its confiscation; the most important single part was the Ager Taurasinus, which remained undistributed until 180. In the mountainous region of Samnium there were not many continuous tracts of arable land, so the foundation of colonies was not always possible. Much of this land may therefore have been used as *ager scripturarius*, public pasture lands accessible against payment of a rent (see Ch. 3.4).

Further confiscations took place after the Second Punic War.¹¹⁶ According to Livy all Samnite tribes except the Pentri had joined Hannibal, and were therefore punished with confiscations of land. It was not until the second century that land in Samnium was distributed on a large scale. Some land was

¹¹² Appendix items 8, 10.

¹¹⁴ Appendix item 24.

¹¹⁶ Appendix item 40.

¹¹³ Appendix items 11, 16.

¹¹⁵ Appendix item 30.

distributed among veterans of Scipio who had served in Spain and Africa. In 180 some 40,000 Ligurians were forcibly resettled in the Ager Taurasinus; later they were supplemented with a further 7,000 people.

The Gracchi were especially active in the territory of the Hirpini.¹¹⁷ Since between the Second Punic War and the Gracchan period no land in Samnium had been appropriated in these areas, the land must have been public at least since the Second Punic War. However, with the enormous amount of land taken after the Samnite wars, it is also possible that this land had already been taken in the third century.

2.3.8. Lucania and Bruttium

The Romans first came into contact with Lucania during the Third Samnite War. The epitaph of L. Cornelius Scipio Barbatus, consul in 298, says that he ‘conquered the whole of Lucania and took hostages’.¹¹⁸ Although it is unlikely that Scipio conquered the whole of Lucania,¹¹⁹ at least part of it was in Roman hands by 291. In this year the colony of Venusia was founded on the border between Samnium, Apulia, and Lucania.¹²⁰

After the Pyrrhic War the Romans gained complete control over the south of Italy. However, their interference in the area seems to have been limited. In Lucania the Romans confiscated the land on which the colony of Paestum was founded in 273, and the Ager Picentinus, a strip of coastland between Salernum and Paestum. Moreover, half of the Silva Sila, the great forest on the Bruttian mountains, was turned into *ager publicus*.¹²¹

Most of Lucania and Bruttium joined Hannibal, and for this the inhabitants were punished with the loss of a very large amount of land.¹²² Some colonies were established soon after the Second Punic War, especially in Bruttium. However, the Roman colonies occupied only a small amount of land, and with the amount of land confiscated in Lucania and Bruttium after the Second Punic War there must have been much unused *ager publicus*, which was left over to the initiative of private individuals or in the hands of its former owners. In the Latin colony of Thurii (Copia), for example, ‘a third of

¹¹⁷ This is attested by the finds of three Gracchan *cippi* close to Rocca San Felice. Moreover, archaeological evidence shows that a village excavated near modern Fiocaglia dei Flumeri may be dated to the late second century BC: Johannowsky (1991).

¹¹⁸ CIL I².7: *Subigit omne Loucanam opsidisque abducit*.

¹¹⁹ Ferone (2005) argues that Scipio was not active in Lucania, but in the Hirpinian territory, which was sometimes also referred to as Lucania. See Appendix item 24.

¹²⁰ Appendix item 21.

¹²¹ Appendix item 28.

¹²² Appendix items 37–8. See Toynbee (1965, ii. 27).

the land was set aside to be used to enlist new colonists if that was wanted'.¹²³ Apparently the amount of *ager publicus* available was far greater than necessary for the colony, so a large part must have remained public, either in the territory of the colony or outside of it.

That there was much *ager publicus* available here can be concluded from the fact that many assignments carried out by the Gracchi were situated in Lucania. Nine boundary stones of the Gracchan land commission have been found in various places in Lucania, and their activity is also attested in the *Liber Coloniarum* and by some centuriation grids with a possible Gracchan date.¹²⁴ Most of the *ager publicus* used by them had probably been confiscated after the Second Punic War, although some may have remained from earlier confiscations.

Other *ager publicus* in Lucania and Bruttium was not suitable for agriculture, such as the Sila forest, which had already been made public after the Pyrrhic War. We know that this remained the property of the state at least until Cicero's time, because he refers to pitch production there being contracted out by the censors.¹²⁵ It is also possible that part of the forest was made available to Roman citizens as *ager scripturarius*, which may be attested by the growth of stockbreeding in this area in the second century (see Ch. 4.3.3).

2.3.9. Apulia and Calabria

Rome first came into contact with Apulia during the Second Samnite War. The Apulian cities asked Roman help against the Samnite threat, but were instead themselves conquered by the Romans. The colony of Luceria was founded in 314 as a tool to contain the Samnites and a bridgehead for further conquests in Apulia.¹²⁶

During the Pyrrhic War the Romans conquered the rest of Apulia. In 267 the Sallentini and Messapi in Calabria were defeated and the colony Brundisium was founded shortly thereafter.¹²⁷

In the Second Punic War, according to Livy, 'some of the Apulians' and 'the Uzentini, practically all the Greeks on the coast—the peoples of Tarentum, Metapontum, Croton and Locri' joined Hannibal,¹²⁸ and so were punished

¹²³ Liv. 35.9.9.

¹²⁴ Simelon (1993, 58–67); Roselaar (2009c).

¹²⁵ Cic. *Brut.* 21.85.

¹²⁶ Appendix item 12.

¹²⁷ Appendix items 29, 32.

¹²⁸ Liv. 22.61.11–12. Appendix item 41.



Figure 2.4. View towards Luceria, with sheep and goat herd

with the loss of a considerable amount of land. The only colony founded in Apulia after the war was Sipontum: a small citizen colony with 300 settlers. Some land in Apulia, moreover, was distributed to Scipio's veterans.¹²⁹ The other *ager publicus* in Apulia remained in state hands for a long time.

The *Liber Coloniarum* mentions distributions of land by the Gracchi in numerous places in Apulia and Calabria. Gaius Gracchus founded the colony of Neptunia on land that had belonged to Tarentum. Several centuriation grids are visible in Apulia and Calabria; the coincidence of most of these grids with the references in the *Liber Coloniarum* makes a Gracchan date likely. Moreover, two Gracchan boundary stones have been found in Apulia, both in Celenza Valfortore near the border with Samnium.¹³⁰ We have therefore enough evidence to maintain that the Gracchi were active in Apulia and Calabria. Since there had been no confiscation of land in these areas between the Second Punic War and the Gracchan period, these lands must have remained *ager publicus* for almost seventy years.

¹²⁹ Grelle (1981, 193); Desy (1993, 77).

¹³⁰ Campbell (2000, 452); Roselaar (2009c).

2.3.10. Cisalpine Gaul

The Romans first conquered a part of the Po basin shortly before the Second Punic War. They confiscated a large part of the Gallic territory and proceeded to found the colonies of Placentia and Cremona.¹³¹ However, the arrival of Hannibal in Italy largely cancelled the Roman efforts. The Gauls joined Hannibal and rebelled against the newly established colonies, taking prisoner the commissioners for founding the new colony of Mutina.¹³² After the Second Punic War control of Cisalpine Gaul therefore had to be re-established. This was done by a series of campaigns against the various tribes of Gaul. The Boii lost half of their lands in 191, and on this several colonies were established.¹³³

In the western part of Cisalpine Gaul the most important enemies of the Romans were the Ligurians. After a Roman victory in 179 some tribes were moved from the mountains to the plains, where land must have been available.¹³⁴ C. Claudius defeated the Ligurians again in 177, and 'sent a despatch to Rome in which he gave an account of his operations and boasted that owing to his good fortune and ability there was no longer any enemy to Rome on this side of the Alps, and that a considerable quantity of land had been acquired which could be distributed amongst many thousands of colonists'.¹³⁵ Indeed, after this victory the Ligurians seem to have been mostly pacified. However, in this case the Senate judged that Claudius had treated the Ligurians too harshly, and in 172 some of them received land across the Po as compensation for the land that they had lost.¹³⁶ In 179 it might have been the case that the Ligurians were simply transported to other land in Ligurian territory, but in 172 the land assigned was clearly *ager publicus*, because otherwise the state could not have assigned the land in question.

In 180 the town of Pisae offered the Romans land to found a colony, since it was suffering from Ligurian attacks and hoped a colony would protect them. Accordingly, the Roman colony of Luna was founded in 177.¹³⁷ More land was confiscated later in the second century.¹³⁸

It is clear that the Romans conquered huge amounts of territory in Cisalpine Gaul and made it *ager publicus*. The local inhabitants were apparently treated more harshly than had happened in other cases: the sources boast that many were killed or expelled. In fact, many Gauls seem not to have

¹³¹ Appendix item 35.

¹³² Liv. 21.25.3–7; Polyb. 3.40.5; they were not freed until 203; Liv. 30.19.7.

¹³³ Appendix item 42. ¹³⁴ Appendix item 43. ¹³⁵ Liv. 41.16.8.

¹³⁶ Appendix item 45. See Toynbee (1965, ii. 183, 272).

¹³⁷ Appendix item 44. ¹³⁸ Appendix item 46.

been expelled at all (see Ch. 2.5.2). Nevertheless, there appear to have been some remarkable differences between the treatment of *ager publicus* in Cisalpine Gaul as compared to that in other parts of Italy. The amount of land conquered in Cisalpina was so large that not all of it can have been distributed to Roman settlers, and some other use had to be found for it. Moreover, in the period after the Second Punic War the Romans already had so much *ager publicus* in other parts of Italy that they hardly knew what to do with their land. Therefore in Latin colonies in Gaul the colonists received far more land than had been normal in earlier periods. Moreover, the state even gave land to Latins and allies: *ager publicus* was assigned to Ligurians on two occasions, and in 173 land was distributed to Roman and Latin settlers.¹³⁹ Furthermore, the centuriations around most colonies in Cisalpina are enormous, and usually much larger than the amount of land that was needed for the colonists. Apparently the colonies received these lands as communal lands to be administered or rented out by the city. It is not always certain that these centuriations date back to the foundation of the colonies, but if they do, the state centuriated much more land here than in the southern Italian colonies.

There are several possible reasons for this peculiar treatment of the land in Gaul. First, allocating the land to towns and individuals reduced the amount of land that had to be controlled from Rome, but at the same time kept the land securely under Roman control. Administration of these lands by magistrates from Rome would be difficult, since Gaul was too far away from Rome. However, the land must be controlled by some authority, since it was at risk of being retaken by the Gauls. Even though not all land was occupied directly by colonists, the creation of a Roman centuriation constituted a clear break with the past and made it clear that these areas were now under Roman control. Moreover, since many original inhabitants were apparently not executed or expelled, there were many native people who needed land. In other parts of Italy these people were allowed to live on *ager publicus* without being actively controlled by the Romans. It may be that the Gauls were considered a greater threat to Italian safety than other peoples; in that case, leaving them on *ager publicus* without any official arrangements would have been too dangerous.¹⁴⁰ Instead, for all the confiscated land assignment to an official organization, such as a colony or viritane settlement, was preferred, and many of the local inhabitants were allowed to live in the colonies' territory. Therefore many colonies were assigned larger territories than those in peninsular Italy, and this may have been rented out to local inhabitants or colonists. Stricter

¹³⁹ Appendix item 42.

¹⁴⁰ Ewins (1952, 61) agrees that every town received a well-defined territory and that the rest remained under direct control from Rome.

supervision was possible for people living in a regulated landscape, and therefore a large number of Gauls may have been settled within the centuriated area. The presence of place names such as Forum Gallorum and Forum Druentinarum shows that many non-Roman people still lived in the area; these *fora* were most likely administered by the colonies nearby.¹⁴¹

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

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

2.3.11. Viritate distributions

There were two basic methods by which the Roman state could alienate *ager publicus* to its citizens: viritate distribution and colonization. In the case of

¹⁴¹ Brunt (1971, 571); Pasquinucci (1985, 35). On the *fora* in Gallia and their territories, see Ewins (152, 57–9).

viritane distribution (*assignatio viritana*) an amount of land was measured and divided into equal shares.¹⁴² Each of the citizens taking part in the distribution received one of the shares, which then became his private property; the land thus passed from being *ager publicus* to *ager privatus*, land held in full ownership by an individual.¹⁴³ Usually *fora* were set up in such districts, towns which could serve as marketplaces and administrative centres for the settlers, but without independent administration. They were governed by a *praefectus* sent from Rome, and the areas where such distribution had taken place were therefore known as *praefecturae*.¹⁴⁴

In many viritane distributions the amount of land handed out to each settler was remarkably small. In the distribution of the Ager Falernus, Latium, and Privernum in 340 the settlers received two to three *iugera*. In the Ager Veientanus in 393 and in Sabinum in 290 they received seven *iugera*, and in Cisalpine Gaul in 173 Romans received ten *iugera*, but Latins only three. Moreover, not many viritane distributions are recorded. Apart from those just mentioned, we only know of the distribution of the Ager Gallicus in 232 and of the land in Samnium and Apulia for Scipio's veterans in 200.

An indication of the execution of viritane distributions, however, is found in the creation of new *tribus*. People assigned to a *tribus* were Roman citizens, and therefore the whole area covered by the *tribus* must have belonged to Roman citizens. These may have been old Roman citizens who had received land by distribution, or people who had recently received citizenship. New *tribus* were created in 386 (Stellatina, Tromentina, Sabatina, and Arnensis),¹⁴⁵ 358 (Pomptina and Publilia),¹⁴⁶ 332 (Maecia and Saptia),¹⁴⁷ 318 (Falerna and Oufentina),¹⁴⁸ 299 (Aniensis and Teretina),¹⁴⁹ and 241 (Velina

¹⁴² As Nonius 61 L explains: '*Viritim* means separately and to individual men' (*Viritim dictum est separatim et per singulos viros*).

¹⁴³ It is generally assumed that the land became the private property of its recipients, e.g. Bove (1960, 4); Salmon (1969, 13); and Rathbone (2003, 141), although he points out that there is in fact not much explicit evidence for its privatization. Nicolet (1994, 621), however, states that the land remained public even after it had been distributed, but this is unlikely.

¹⁴⁴ Festus 262 L: '*Praefecturae* were locations in Italy, in which lawsuits and markets took place; they were in some way public entities, but did not have their own magistrates' (*Praefecturae eae appellabantur in Italia, in quibus et ius dicebatur, et nundinae agebantur; et erat quaedam r(es) p(ublica), neque tamen magistratus suos habebant*). See Campbell (2000, 380). *Praefecturae* could also be set up to govern tracts of land that had become *ager publicus*, but were still inhabited by the local population, who had become *cives sine suffragio*; a reference to a *praefectura* therefore does not automatically mean that *ager publicus* existed there.

¹⁴⁵ Liv. 6.5.8. Galsterer (1976, 29) thinks that these also included loyal Veintines, Falerians, and Capenians, which is possible.

¹⁴⁶ Liv. 7.15.12.

¹⁴⁷ Liv. 8.17.11.

¹⁴⁸ Liv. 9.20.6; Diod. Sic. 19.10.1.

¹⁴⁹ Liv. 10.9.14.

and Quirina).¹⁵⁰ It is likely that in most cases their creation means that land had been distributed in these areas.¹⁵¹ Only the *tribus* Maecia and Scaptia are stated to have been created to accommodate people who had received Roman citizenship after the Latin War, as Livy attests: ‘The new citizens were assessed and formed into two additional tribes, Maecia and Scaptia.’¹⁵² There were of course more defeated enemies who received Roman citizenship, but they were usually assigned to existing *tribus*.

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

This does not explain why the *tribus* Falerna and Oufentina were established twenty years after being settled, or why the Velina and Quirina took an unprecedented fifty years to be created. In the latter case it may be that the Senate opposed the settlement of these *tribus* because it would have given Dentatus, the conqueror of these areas, too much personal influence in the voting assemblies. He had settled his own soldiers in the territory, and could therefore practically control the way these *tribus* voted.¹⁵³

The proposal in 232 to distribute the Ager Gallicus likewise provoked much opposition. Cicero is fond of emphasizing this, and uses Flaminius as an example of a demagogue bent on wooing the people with land distributions: ‘Gaius Flaminius . . . when tribune of the people seditiously proposed an agrarian law against the wishes of the Senate and in general contrary to the

¹⁵⁰ Liv. *Per.* 19.15.

¹⁵¹ Burdese (1985, 65); Rosenstein (2004, 223 n. 196). Nicolet (1967, 98), however, thinks that all records of viritate distribution prior to 232 are anachronistic.

¹⁵² Liv. 8.17.11. According to Liv. 8.14.2–3, the inhabitants of Lanuvium, Aricia, Nomentum, Pedum, and Antium had received the Roman citizenship. See Humbert (1978, 178).

¹⁵³ *Vir. ill.* 33. See Ross Taylor (1960, 64).

desires of all the upper classes.¹⁵⁴ Various reasons have been suggested for the fierce opposition of the Senate in 232, most often that the Senators had themselves occupied this land; it had been conquered by the Romans fifty years before and it is hardly likely that the *ager publicus* would have remained untouched all this time.¹⁵⁵ On the other hand, it is difficult to imagine that the involvement of Senators in this area was widespread, since northern Picenum was far away from profitable markets, and large estates were not common in Picenum in the third and second centuries (see Ch. 4.3.2). Another reason for opposition may have been that the land was still mostly inhabited by the original inhabitants, the Senones, who were probably not as completely wiped out as described in the sources (see Ch. 2.5.2). It is also possible that the Senate was afraid that the Gauls would resent the settlement of Roman citizens here, and that they feared for the safety of the citizens who were to be sent to this region. Indeed, Polybius 2.21.7–9 adduces the distribution of land by Flaminius as the main reason for the Gallic rebellion in 225. However, it cannot be ascertained that fear of resentful Gauls was used as an argument by the Senate already in 232.

It is likely that the opposition against Flaminius was motivated mostly by fear of the personal influence he would gain by binding to him as clients the people who received land. Especially after the restructuring of the *comitia centuriata*, sometime after 240, a *homo novus* with a large clientele in one *tribus* would have too much power. The distributions in the Ager Gallicus therefore took place without the establishment of new *tribus*.¹⁵⁶

Another reason for the relative scarcity of viritane distributions after the early third century is that they required the land to be safe from enemy incursions. The settlers had no fortified town at their disposal to which to flee if they were attacked, and, moreover, they were probably proletarians instead of veterans.¹⁵⁷ Viritane distributions could therefore only take place in land that was not exposed to attacks. All fourth-century distributions were situated in areas close to Rome, and those in later periods were also located in areas where enemy activity was unlikely. The Ager Gallicus, however, was located far from Rome, and relatively close to Cisalpine Gaul, which in this period was not securely pacified.

The amount of land privatized by viritane distributions is hard to determine. It is impossible to calculate the size of each *tribus*, of which we sometimes know

¹⁵⁴ Cic. *Inv.* 2.52. See also *Sen.* 4.11, *Acad. Pr.* 5.13, *Brut.* 14.57; Val. Max. 5.4.5. See Oebel (1993, 40).

¹⁵⁵ Humbert (1978, 237); Oebel (1993, 39).

¹⁵⁶ Hackl (1972, 155–61), but see Hantos (1983, 46).

¹⁵⁷ For the status of settlers in mid-Republican colonies, see Càssola (1988, 8); Rosenstein (2004, 82–8); Roselaar (2009b); Erdkamp (forthcoming).

nothing more than an approximate location. For some of the *viritane* distributions carried out after 241 we know the amount of land granted to each settler, but not the total number of people involved. If we assume, purely for the sake of argument, that in 232 10,000 Romans received seven *iugera* each, that Scipio had 40,000 veterans who each received ten *iugera*, and that in 173 there were 10,000 Romans who received ten *iugera* and the same number of Latins who got three, the total amount of land privatized in these distributions was 600,000 *iugera* or 1,500 km². In fact, the territory distributed in this way after 241 may have been much smaller or larger than this, but there is no way to reconstruct the exact amount.

2.3.12. Colonization

Another way of allotting *ager publicus* to Roman citizens was by colonization. Sometimes a new city was built on conquered territory; in other cases a captured city was colonized by Roman citizens. Each settler received a piece of land in private ownership.¹⁵⁸ Under the Empire each individual plot had its own pasture or woodland assigned to it, according to Hyginus, writing during the reign of Trajan: 'A man who receives cultivable land as the larger part of his allocation, will, according to the law, properly receive some woodland to make up the area. So, it will happen that some receive woodland adjoining their allocation, while others receive woodland situated in mountains, perhaps more than four neighbouring properties away.'¹⁵⁹ Unfortunately, we do not know whether colonists in the Republic also received private plots of wood or pasture land. It is, however, likely that some land was granted as common land to the colony, to be used by all inhabitants (see Ch. 3.5). If the distributed land covered a large area, villages may have been established away from the town, so that not every colonist lived in the city.¹⁶⁰

¹⁵⁸ Bove (1960, 4); Nicolet (1977, 121); Gabba (1989, 215); Rathbone (2003, 141). Again, it is not explicitly attested that the land became the private property of the settlers.

¹⁵⁹ Hyginus (2) 160.10–12. See Frontinus 4.34–5; Agennius Urbicus 36.6–8; *Commentum* 62.30–1. Bonetto (2004, 59) draws attention to this possibility, which is often neglected.

¹⁶⁰ In many colonies the number of colonists was too large fit into the town, so that they must have lived elsewhere. Many colonies had such large plots per person that it would be impossible for all settlers to live in the town, because they would have to travel too far to their plots. See Salmon (1969, 28); Gabba (1979b, 34). Halstead (1987, 82) and Pelgrom (2008, 342–54) suggest that people usually lived in villages, not on their own plots of land. This means that the idea of Roman colonists living spread out over the territory should be abandoned. The 'problem of the missing sites', so widely discussed by archaeologists, e.g. Dyson (1978, 259), may then be explained by the fact that most colonists lived in villages, which were located under modern villages and therefore not attested in the archaeological record.

It is often assumed that the settlement of a colony was a strictly regulated project, in which everything was arranged by the settlement commissioners, usually a board of three men: the selection of the colonists, the measuring and allotment of the land, the building of a city, the establishment of boundaries, the creation of roads, etc.¹⁶¹ However, there is actually very little evidence for the intensive involvement of the state with colonization during the Republican era. It may be that the colonists were assigned some land without the creation of any of the other traditionally postulated elements of a colonial landscape.¹⁶² This is not the place to discuss this problem in detail; however, it is necessary to keep in mind that the traditional image of colonization may not be accurate for mid-Republican colonies.

From the Latin War onwards two kinds of colonies existed: Roman and Latin. Latin colonies were independent of the city of Rome and had their own government. Roman citizens who moved to Latin colonies lost their Roman citizenship and instead received Latin rights. This meant that they had certain privileges in their contacts with Rome: the *ius commercii*, the right to acquire property in Roman territory and conduct trade with Romans; the *ius conubii*, the right to marry Roman citizens; and the *ius migrationis*, the right to move to Rome and receive Roman citizenship there. They had limited voting rights in the Roman assemblies: all Latins were gathered in one *tribus*, so their actual influence was negligible. It is usually assumed that the colonists in Latin colonies were both Roman citizens and Latins (but see Ch. 2.5.2).

In Roman colonies the inhabitants retained the Roman citizenship. They were entitled to all rights that citizens living in Rome itself had, including suffrage and the right to hold magistracies at Rome. Sometimes Latins and allies could also receive land in such colonies, and thereby gain the Roman citizenship, but this happened only in the colonies founded after the Second Punic War (Ch. 2.5.2). It is generally assumed that in Roman colonies each settler received only two *iugera* of land. However, the sources do not often mention plots of two *iugera*; in fact, only in the case of Terracina is this explicitly stated.¹⁶³ It is possible that colonists received more land in other colonies, but this is not attested.

¹⁶¹ For such traditional reconstructions, see Brown (1980, 16–17); Chouquer et al. (1987, 3–20); Moatti (1993, 7–28); and Gargola (1995, 46–80).

¹⁶² Bispham (2006, 124–5); Pelgrom (2008, 358–66). Crawford (1995) points to the confusion existing already in the ancient period concerning the number of colonies founded by the Romans; it may be that a clear definition of what a colony was did not appear until the second century BC. On the other hand, it is likely that the references to colonial foundations are at least correct, even if colonies did not always take the same form (Bradley 2006, 164).

¹⁶³ Liv. 8.21.11. See Salmon (1969, 22, 71).

It is usually assumed that in Latin colonies the amount of land received was greater. Unfortunately, for the Latin colonies founded prior to the Second Punic War we have no information on the amount of land allotted; it has been suggested that in Cosa eight or sixteen *iugera* were assigned, but this is not certain.¹⁶⁴ After the Second Punic War the allotments were extremely large, ranging from fifteen *iugera* to as much as 140; however, this seems to be a reflection of the availability of land in this period, and it is unlikely that this was the case before the war.

The number of people sent out to Roman colonies was small; when we know a number, this is always 300. However, this is reported only for Fidenae in the regal period, Terracina in 329, and the eight colonies founded in 194.¹⁶⁵ We cannot therefore assume that this was a standard number for Roman colonies before the Second Punic War.¹⁶⁶ In Latin colonies the number of settlers, when attested, was much greater: 2,500 (at Cales and Luceria), 4,000 (at Interamna, Sora, and Vibo), or 6,000 (at Alba Fucens, Placentia, and Cremona).

Several considerations were important in the foundation of colonies. The most important was no doubt the stabilization of newly conquered territory in order to discourage hostile peoples from warring against the Romans and to serve as bridgeheads for further conquests.¹⁶⁷ Apart from military purposes, colonies also served to reduce the pressure on Roman arable land by providing additional land for Rome's ever-growing population.¹⁶⁸ When colonization ceased in the second century, economic and social problems occurred only a few decades later (Ch. 4.2).

After the Second Punic War a new wave of colonization occurred: new colonies were founded and old ones received new settlers. It was necessary to emphasize the Roman presence in the whole of Italy in order to prevent new defections such as those that had taken place in the war, and to secure the newly conquered territory in Gaul. However, at this moment the population was low due to the casualties of war (Ch. 4.3.5), making it difficult to find enough colonists for the new colonies. At least 40,000 men received land

¹⁶⁴ Vallat (1981, 82); Celuzza and Regoli (1985, 38).

¹⁶⁵ DH 2.53.4; Liv. 8.21.11, 32.7.3, 32.29.4. See Salmon (1963, 25); Càssola (1988, 5); Cornell (1989a, 365).

¹⁶⁶ Bispham (2006, 122–3).

¹⁶⁷ Hantos (1983, 136); Patterson (2006, 191). Others have assumed that the colonies played an important role in the Romanization of Italy, since they were 'strongholds of civilization' within non-Romanized territory, e.g. Gabba (1979b, 32–3). However, many scholars have pointed to the limited influence of colonies on the surrounding non-Roman territory. Many areas in which colonies were settled show no marked Romanization in the years after colonization: see Morel (1991, 129–38); Bispham (2006, 81–4, 118–20).

¹⁶⁸ Linke (2005, 9).

between 200 and 170 BC, including reinforcements for earlier colonies. However, there were also colonies and *viridane* distributions for which we do not know the number of beneficiaries, so the number of men receiving land in this period must be at least 50,000.¹⁶⁹ The Roman citizen population most likely was not large enough to provide so many colonists immediately after the Second Punic War, which may explain why in many colonies Latins and even allies were admitted (Ch. 2.5.2).

Some colonies in this period proved unsuccessful and needed new settlers within a few years. The small Roman colonies in particular suffered this fate. Latins or allies who received land here may have seen this as an easy way to receive Roman citizenship, and left the colony after a few years. The Roman Senate discovered by accident that two of them, Sipontum and Buxentum, had been abandoned in 186, only eight years after their foundation.¹⁷⁰



Figure 2.5. The territory of Buxentum

¹⁶⁹ The attested number in the sources between 200 and 173 is 40,160. See Brunt (1988, 70). Other estimates have been made, sometimes putting the number of colonists in the second century as high as 200,000, e.g. Nicolet (1977, 125), Hopkins (1978, 57), and Bandelli (1999, 207), but this is not supported by any evidence.

¹⁷⁰ Liv. 39.23.3–4. See Salmon (1969, 99).

The abundance of land available in this period makes it likely that people who received land in unfavourable places could easily move away and acquire better land elsewhere.

The combined problems of the unpopularity of the small Roman colonies and the need to give enormous amounts of land in Latin colonies in order to attract enough settlers led to the establishment of a new kind of colony from 184 BC onward. These were Roman colonies, in the sense that the settlers retained their Roman citizenship, but instead of being small outposts they were much larger. It is assumed that not 300, but 2,000 colonists received land in each Roman colony from now on.¹⁷¹ The allotments distributed here were much smaller than in contemporary Latin colonies: at Mutina and Graviscae they measured five *iugera*, at Potentia and Pisaurum six, at Parma eight, and at Saturnia ten.¹⁷² The small size of the allotments was compensated by the fact that the settlers retained their Roman citizenship. In this period the importance of Roman citizenship seems to have increased, and therefore to have become more exclusive; this is also shown by the fact that those Latins and allies who had wrongfully acquired Roman citizenship were deprived of it and expelled from Rome (Ch. 4.3.5). Even if the assigned plots were barely sufficient to support a family (for which see Ch. 4.3.7), the fact that the colonists retained their citizenship must have been considered an important advantage over the earlier Latin colonies.

It is impossible to calculate exactly the amount of land that was privatized by colonization, since for many colonies the number of colonists and the size of their allotments are unknown. A very conjectural calculation would be as shown in Table 2.1.

This makes a total of at least 3,841 km² privatized in colonies; we have seen above (Ch. 2.3.11) that 1,500 km² may have been privatized by *viridane* assignation.¹⁷³ Moreover, colonies may also have received a substantial amount of land as public land of the colony (Ch. 3.5); however, it is impossible to give any figures for this. From the fact that we have many references to *ager publicus* many years after the conquest of land, we may conclude that the amount of land originally confiscated as public land exceeded 5,500 km². Unfortunately, the nature of the sources does not allow us to give a more exact figure for the amount of *ager publicus*.

¹⁷¹ The number 2,000 is reported in fact only for Mutina and Parma, Liv. 39.55.6.

¹⁷² Liv. 39.44.10, 39.55.6, 40.29.1.

¹⁷³ Toynbee (1965, i. 163–5) estimates that between 493 and 241 12,630 km² were privatized in colonies and *viridane* distributions, but this amount seems too large.

Table 2.1. The amount of land privatized as a result of colonization

Colonies (place, period, number of settlers, and size of allotments)	Amount of <i>iugera</i> distributed
Twenty-three Latin colonies between 338 and the Second Punic War with an assumed average of 3,500 colonists who received ten <i>iugera</i> of land each ^a	805,000 <i>iugera</i>
Nineteen Roman colonies with 300 colonists who received two <i>iugera</i> ^b	11,400 <i>iugera</i>
Four Latin colonies after the Second Punic War whose number of colonists and allotments are known ^c	597,900 <i>iugera</i>
Seven Roman colonies after the Second Punic War with an assumed 2,000 colonists and known allotments ^d	93,000 <i>iugera</i>
Three Roman colonies after the Second Punic War with an assumed 2,000 colonists, and assumed allotments of at least five <i>iugera</i> ^e	>30,000 <i>iugera</i>
Total	>1,536,300 <i>iugera</i>

^a This assumption is made purely for the sake of argument. The colonies concerned are Cales, Fregellae, Luceria, Saticula, Suessa, Pontiae, Interamna, Sora, Alba, Narnia, Carseoli, Venusia, Hadria, Cosa, Paestum, Ariminum, Beneventum, Firmum, Aesernia, Brundisium, Spoletium, Placentia, and Cremona.

^b Antium, Ostia, Terracina, Minturnae, Sinuessa, Sena Gallica, Castrum Novum, Pyrgi, Alsium, Fregenae, Castra Hannibalis, Salernum, Puteoli, Liternum, Volturnum, Sipontum, Buxentum, Croton, and Tempsa.

^c Thurii, Vibo, Bononia, and Aquileia.

^d Potentia, Pisaurum, Mutina, Parma, Saturnia, Graviscae, and Luna. Allotments in Luna are assumed to have measured 6.5 *iugera*: Appendix item 44.

^e Luca, Auximum, and Heba.

2.3.13. Conclusion

We have seen that throughout Italy there were substantial tracts of arable *ager publicus* that were not used in any official way by the state for very long periods of time. From the data on the number of colonists and the size of the allotments granted to them, we can conclude that between 338 and 170 a minimum of 5,500 km² of land was privatized in colonies and *virgatae* distributions; moreover, an indeterminate amount of land was granted to colonies as communal land. The amount of *ager publicus* confiscated, however, was larger, and we must therefore conclude that much land remained officially in the hands of the state long after its confiscation. Rathbone's thesis that most of the arable public land was privatized before the Second Punic War is therefore untenable.

However, it can be assumed that the presence of land which officially belonged to the state, but was often neglected by the authorities for long periods, may have caused various problems. Although this land was *ager occupatorius*, and therefore in theory open to occupation by any Roman

citizen who wished to use it, in practice some had better chances of occupying land than others. Moreover, not only Romans, but also Latins and allies had access to *ager publicus*, if not by legal right then at least in practice (Ch. 2.5.2). The fact that *ager publicus* existed therefore does not mean that land was available for everyone who needed it. The only period for which we can be reasonably sure that the amount of land available was sufficient is shortly after the Second Punic War. In this period the amount of *ager publicus* was very large, while the population had decreased due to war casualties. However, as soon as the population started to increase again, the struggle for land broke out with greater intensity than ever before. Already during the time of the Gracchi it was difficult to find enough land to allocate.

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

2.4. CONFISCATION OF ARABLE AND PASTURE

There has been much discussion as to which part of defeated enemies' land was declared *ager publicus*: either the lands best suited for agriculture, or the lands which had been used as common lands by the defeated community. Some scholars think that the lands that were taken were the common lands of the conquered cities.¹⁷⁴ They assume that most Italian communities possessed common lands which were used as pasture, and that these were taken by the Romans as *ager publicus*. This theory is influenced by the idea that most of the

¹⁷⁴ Gabba (1977, 277; 1979b, 41–2); Corbier (1991, 153).

ager publicus taken by the Romans was used as pasture; if this was the case, it would of course be strange to confiscate the best arable land. Many believe that especially after the Second Punic War most of the *ager publicus* was used for the establishment of large cattle farms (Ch. 4.3.3). However, this completely ignores the fact that not only pasture and lands unsuitable for agriculture were turned into *ager publicus*; much public land was used for agriculture, or could at least be used for that purpose.

In fact, there are several reasons for thinking that *ager publicus* was often arable land of good quality.¹⁷⁵ In the first place, Roman colonists each received a part of the *ager publicus* as their private property. It would have been useless if this land had been unsuitable for agriculture: the colonists were supposed to be able to feed themselves and therefore needed good agricultural land. Of course, turning pasture into arable land was not impossible (in the *Elogium Pollae*, for example, it is said that graziers were removed in favour of farmers, see Ch. 4.3.3). But when founding a colony it would have been preferable to assign land that was already used for agriculture, since the colonists could not wait for many years before their land would produce crops. It is therefore probable that the land distributed to colonists was already in use for agriculture.¹⁷⁶ It is possible that the colonists reclaimed more land once they were settled in their colonies, but for the first few years they needed land which was ready to use.

Moreover, colonies were often founded within existing cities. When choosing the site for a colony, the Roman state used the land which was located most favourably from a strategic point of view: many colonies had an *arx* situated on a hill, with at least part of the population living inside the wall surrounding this hill. The flat land around the hill was used as arable land for the colonists. Colonies such as Sora, Carseoli, and Alba Fucens are good examples of this kind of settlement. In such cases the colonists sometimes took over the actual houses of the former population,¹⁷⁷ so they could not choose where the new colony would be situated. It would of course have been most convenient to exploit the arable land close to the city formerly worked by the indigenous population.

At other times a colony was established further away from the pre-Roman town; the original town then remained in existence as a separate community. The Roman colony of Cosa, for example, was a new town, built on *ager publicus* confiscated from the Etruscan town of Vulci, which remained inde-

¹⁷⁵ Toynbee (1965, ii. 272); Salmon (1967, 277); Brunt (1971, 282); Torelli (1999b, 5).

¹⁷⁶ Gabba (1989, 201) assumes that only in the Gracchan period good arable land was distributed, but there is no reason why this should not have been the case earlier.

¹⁷⁷ Moatti (1993, 40).



Figure 2.6. The *arx* at Sora



Figure 2.7. The colony of Alba Fucens

pendent. However, Cosa was situated on good arable land, and it is unlikely that this had previously been used only as pasture by the inhabitants of Vulci.

There are few statements in the sources about which lands were actually taken from the conquered peoples. Sometimes a city lost all its lands, both the private lands of the inhabitants and the common lands, if there were any. In some cases it is expressly stated that the private lands of the nobility were taken, as for instance at Privernum and Velitrae (Ch. 2.3.3). In the Second Punic War, a Syracusan by the name of Sosis was granted land as a reward for services to the Roman state, according to Livy: ‘Sosis’ grant was in Syracusan territory that had belonged either to the king or to men who had been enemies of Rome.¹⁷⁸ Apparently this land had been taken from the leaders of the Sicilians; it is to be expected that the individuals who had previously owned this land had not held pasture lands only. The leaders of a defeated town in particular must have owned land of good quality, and the newly created *ager publicus* must have included many holdings of arable land.

¹⁷⁸ Liv. 26.21.10.

By looking at the centuriation patterns visible in the Italian landscape it may be possible to determine which lands were turned into *ager publicus*. Centuriation during the Republic usually occurred in connection with the distribution of land, and the only land to be distributed was *ager publicus*, so most land that was centuriated must have been public land.¹⁷⁹ Only under the Empire were other lands centuriated; much land in Cisalpine Gaul, for example, is thought to have been centuriated under Augustus for administrative purposes without it being *ager publicus*.¹⁸⁰ The visible remains of land measurement from the fourth to second centuries BC are usually situated on fertile soil immediately around cities that were established as colonies, not in marginal areas. Similarly, the land centuriated by the Gracchan land commission was situated in relatively good agricultural terrain.

Of course, lands not suitable for agriculture, such as mountains and forests, were also made into *ager publicus*, for instance the Silva Sila in Bruttium. However, these were not distributed to citizens, but remained *ager publicus* under the control of the Roman state, and may have been used as public pasture lands, *ager scripturarius*. Since there is no way of discerning which pasture lands were public, the amount or location of these lands cannot be ascertained. It may be that after the Second Punic War the *ager publicus* in the south was used partially for cattle farming, and that some good arable lands were turned into pasture land. However, not all land became pasture; a notable diversification of crops has been attested in the south in the second century, and there is no reason to assume that this could not have taken place on arable *ager publicus*. The land distributed by the Gracchi in the south was apparently still suitable for agriculture seventy years after its confiscation, and it cannot have been used as pasture all this time, since in that case it would have taken a great deal of effort to turn it back into arable land. It is therefore unlikely that all *ager publicus* was used for pasture, even in the south (see Ch. 4.3.2–4).

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

¹⁷⁹ Kron (2005, 479) and Pelgrom (2008, 366) point out, however, that not all centuriated land was *ager publicus*; centuriation grids may also have been created for purposes of drainage.

¹⁸⁰ Gabba (1985, 192; 1986, 245). Van Dooren (2008, 113) states that the grant of citizenship to the Transpadani in 49 was accompanied by a programme of centuriation, but the centuriations here were not linked to the grant of citizenship, but to triumviral and Augustan distribution programmes.

2.5. *AGER PUBLICUS* AND THE ITALIAN ALLIES

2.5.1. Reactions of defeated populations to the creation of *ager publicus*

It is to be expected that the confiscation of extensive tracts of land raised protests from its previous possessors. There are indeed many references to defeated people protesting against the fact that land was taken from them. Already in the early Republic there are examples of allied resentment at confiscation of land. In 492 Coriolanus already encouraged the Volsci to demand back from the Romans the land that had been confiscated: 'If each of the injured nations should demand the return of the land that is theirs, nothing would be so insignificant, so weak, and so helpless as the city of Rome.'¹⁸¹

Although this is probably no more than a legend, several cases of allied objections against confiscation of land are available from later periods, as attested by Livy and Dionysius of Halicarnassus. The Latin War in 338 allegedly was caused partly by 'resentment for the loss of land'.¹⁸² In 321, when the Romans were defeated by the Samnites at the *Furcae Caudinae*, the Samnites demanded that the Romans remove the colonies of Cales and Fregellae. These had been founded in territory taken from the Samnites, contrary to a treaty made in 354 which had established the Liris as the border between Romans and Samnites.¹⁸³ The Aequi in 303 'resented the colony [Alba Fucens] planted like a fortress in their midst and launched a violent attack on it, only to be repelled by the colonists themselves'.¹⁸⁴ The Gauls in 236 'demanded back the land surrounding Ariminum and commanded the Romans to vacate the city, since it belonged to them'.¹⁸⁵

When Capua defected from the Romans during the Second Punic War, one of the things it claimed was the return of the land that the Romans had taken away. This had been done in 338, well over a hundred years previously, yet apparently the Capuans were still upset about it.¹⁸⁶ Hannibal used this dissatisfaction to gain the support of the Italians, by promising them the

¹⁸¹ DH 8.8.2, see 5.21.2, 5.31.3, 5.62.3, 6.32.1, 6.36.2, 8.9.3, 8.35.2; Zonar. 7.16; App. *Ital.* 5.1; Liv. 2.6.3. Liv. 4.1.4, 4.7.4 and DH 11.52.2–3 report protests from Ardea against the confiscation of land taken in a boundary dispute (see n. 55).

¹⁸² Liv. 8.12.5: *Ob iram agri amissi.*

¹⁸³ Liv. 9.4.4. See 8.23.6–7; App. *Samn.* 4.4–5; DH 15.8.4.

¹⁸⁴ Liv. 10.1.7. ¹⁸⁵ Zonar. 8.18. ¹⁸⁶ Liv. 23.6.1.

return of the land taken away by the Romans. The Boii in particular were angry over the recent foundation of Cremona and Placentia.¹⁸⁷ The offer by the Pisani to give the Romans land for a colony (see Ch. 2.3.3) also caused problems, since in 167 ‘the Pisani complained that they had been expelled from their territory by the Roman colonists; those from Luna asseverated that the land in question had been assigned to them by the commissioners who settled the colony’.¹⁸⁸

However, these are all the records provided by the literary sources of protest against Roman confiscations of land; a remarkably small number taking into consideration the huge amount of land which had been taken.¹⁸⁹ Furthermore, not all of these need be historical; it may be that Roman authors expected the allies to protest against confiscations, and therefore included this in accounts of rebellions against the Romans. Most claims for the return of land were apparently made at times when the injured party felt it had some chance of winning, such as in the case of the Samnites in 321 and Capua in 216. Those who knew they could not win thought it a better strategy to cooperate with the Romans and try to minimize the damage.¹⁹⁰

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

¹⁸⁷ Polyb. 3.77.6; Liv. 21.25.2.

¹⁸⁸ Liv. 45.13.10. See Appendix item 44.

¹⁸⁹ Oakley (1993, 33) states that the allies raised ‘much protest’, but in view of the large number of confiscations the amount of protest seems limited.

¹⁹⁰ This ties in with the discussion as to how the Romans managed to control their Italian allies, and the debate about the degree of (forced or voluntary) Romanization. Unfortunately, we cannot go into this discussion here; the question as to why so little effort was made to throw off the Roman yoke is extremely interesting, and a further study into this topic may shed light on the role of *ager publicus* in this respect.

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

2.5.2. The colonial landscape and the original population

I have already suggested that the original inhabitants of confiscated land continued to play an important role even after its confiscation. It is now time to investigate in more detail how the Italian population was treated by the Romans. It is often suggested that the population of conquered areas was usually killed or deported.¹⁹¹ However, this seems in fact to have happened only rarely; the treatment of defeated enemies depended on the way they had behaved toward the Romans. Those who had rebelled against Rome or in some other way incurred Rome's wrath were punished severely, while those who had simply been on the losing side in a war could count on some measure of leniency.

For the regal period there are many stories of people who had resisted the Romans fiercely, or had rebelled against Rome after having been previously defeated, and were punished with death or enslavement.¹⁹² In the same period, however, the Romans are often described as being remarkably lenient towards the people they had just conquered. This alleged clemency became an important part of Roman ideology with respect to the integration of defeated

¹⁹¹ Salmon (1969, 15); Cornell (1989a, 403); Moatti (1992, 60; 1993, 10). Contra: Toynbee (1965, i. 166–7).

¹⁹² DH 3.49.3, 5.49.5, 6.29.5; Liv. 2.17.6; Plu. *Cor.* 28.2; Val. Max. 6.5.1c.

enemies, as attested by Dionysius of Halicarnassus: '[Their policy] was this: not to slay all the men of military age or to enslave the rest of the population of the cities captured in war or to allow their land to go back to pasturage for sheep, but rather to send settlers thither to possess some part of the country by lot and to make the conquered cities Roman colonies, and even to grant citizenship to some of them. By these and other like measures he (Romulus) made the colony great from a small beginning.'¹⁹³ Of course this positive judgement does not date back to the early Republic, but it shows that this inclusivity was something on which the Romans prided themselves, and which they considered a standard part of Roman treatment of enemies. The sources indeed report several examples of the lenient treatment of Italian peoples in the regal and early Republican period.¹⁹⁴

From later periods there are some references to the execution, enslavement, or forced expulsion of defeated enemies. This occurred especially when the enemy had in some way offended the Romans. After the victory over Veii, an especially stubborn foe, the leaders were described as being executed and the inhabitants sold into slavery.¹⁹⁵ The town of Privernum had attacked the nearby Roman colonies of Setia and Norba in 340, and was punished with the loss of two-thirds of its land; when it rose against the Romans in 329 its leaders were banished (but not executed, as we have seen). The Senones, who had killed Roman ambassadors, are described as being killed or enslaved en masse, and lost apparently all their land, since the whole Ager Gallicus was later the property of the Roman state. However, even in this case the actual treatment of the Senones seems to have been less severe than the sources would have it.¹⁹⁶ The inhabitants of Tarquinii had

¹⁹³ DH 2.16.1–2, see also 6.19.4, 14.6.2–3. The liberality of the Romans with respect to granting citizenship to others is also expressed in a letter of Philip of Macedon dating to 217 (SIG 543) in which he admires the Romans' tendency to grant citizenship to their slaves. See Humbert (1978, 76–80).

¹⁹⁴ Sometimes defeated enemies were removed to Rome and incorporated into the city: see Liv. 1.29.1, 1.33.1, 3.29.6, 40.46.11; DH 2.55.6, 3.38.2, 3.50.3, 5.36.4, 6.20.5, 6.32.1, 6.55.1, 6.91.4; Plu. *Rom.* 17.1; Cic. *Balb.* 13.31.

¹⁹⁵ Liv. 5.22.1, 6.4.2; Diod. Sic. 14.93.2. However, those who had been loyal to Rome received land and citizenship: see Liverani (1984, 39). In many cases only those responsible for the rebellion were executed, e.g. at Nepes, Liv. 6.10.5.

¹⁹⁶ Liv. *Per.* 12.1; Polyb. 2.19.9–12, 2.21.7–9; DH 19.13.1; Oros. 3.22.13; App. *Gall.* 11, *Samn.* 6.1. The expulsion of the Senones is accepted by many scholars: Gabba (1986, 241); Grassi (1991, 27–8); Foraboschi (1992, 76); Delplace (1993, 30); Oebel (1993, 22–4); Sisani (2007, 192–7). On the other hand, it has been suggested that the Senones were not all ejected from their lands: there are strong influences of Senonic culture after the date of their supposed ejection, see Galsterer (1976, 53); Broadhead (2000, 151); Hermon (2001, 256–7). That does not mean that their land cannot have been made *ager publicus*; in fact, it happened often that land was made *ager publicus* without the previous inhabitants being driven off.

killed Roman prisoners of war in 355; as retribution ‘8,000 prisoners were taken, the rest were either killed or hunted out of the Roman territory’; the prisoners were later executed as well, according to Livy.¹⁹⁷ At Sora in 314 some of the local inhabitants had killed the colonists that were sent there; they were captured and taken to Rome and ‘all those who were sent to Rome were flogged and beheaded in the Forum, to the vast delight of the common people, who were the most closely concerned for the general safety of the numbers sent out to one or other of the colonies’.¹⁹⁸ The Aequi, defeated in 304, also seem to have been harshly punished: their towns were destroyed and the people slaughtered.¹⁹⁹ The Aurunci were reportedly ‘wiped out, as if they had been fighting a war to the death’, even though, as Livy expressly states, ‘it was not even quite certain that they were guilty of revolt’.²⁰⁰ In the case of the Senones it is quite clear that in fact not the whole defeated population was executed, and the same is likely for the other cases quoted here. The references to the total disappearance of, for example, the Aurunci may refer to their disappearance as an independent political unit and their administrative integration in the Roman framework, rather than their physical disappearance.

References to the sale of defeated people into slavery are rare for the early Republic; Veii is the only example. In the early Republic it may have been impossible for the Romans to sell large numbers of people into slavery, since at this time Rome did not have as much use for slaves as in later periods. Its territory was as yet small and the use of slaves in agriculture was not as widespread as it would become later. However, the number of slaves acquired in war would rise quickly; already in the Samnite wars great numbers of people were enslaved, attesting the quick spread of the use of slaves already in the late fourth century (Ch. 4.3.4). A notorious later case is Tarentum, which was retaken by the Romans in 209 after it had joined Hannibal: ‘There was indiscriminate slaughter of the armed and unarmed in every quarter. . . . It is said that 30,000 slaves were captured.’²⁰¹

In a number of cases defeated groups were deported to other areas of Italy; we have already seen that the leaders of Velitiae and Privernum were banished after the Latin War, just like the Capuan population after

¹⁹⁷ Liv. 7.17.9, 7.19.2.

¹⁹⁸ Liv. 9.24.14–15. However, the ‘colonists’ may also have been a garrison, since a real colony was apparently not founded until 303 (see Appendix item 14).

¹⁹⁹ Liv. 9.45.17: *Nomen Aeqorum prope ad interneccionem deletum*. However, Cic. *Off.* 1.11.35 records that they received citizenship. See Humbert (1978, 210); Cornell (1989a, 376).

²⁰⁰ Liv. 9.25.9: *Deletaque Ausonum gens vix certo defectionis crimine perinde ac si interneccio bello certasset*.

²⁰¹ Liv. 27.16.6–7; see Oros. 4.1.1; Plu. *Fab.* 22.4.

210.²⁰² However, people who were removed from their original territory were always in some way provided with land on which to live. Thus we see the Picentes and the Ligurian Apuani being moved to Samnium and settled on *ager publicus* there (Appendix items 24, 27). The same happened when Falerii rebelled in 241: the population was moved to a new town, Falerii Novi.²⁰³ When Fregellae rebelled in 125 its people were given a new place to live in Fabrateria Nova.²⁰⁴ In these cases the expulsion was arranged by the Romans, who made sure the people were properly installed in their new environment. Not providing the means to live would have led to large groups of dissatisfied and potentially hostile people roaming through Italy. The Romans wanted to keep a tight control on the displaced people and therefore assigned them specific areas to live. The expulsion of defeated enemies therefore seems to have taken place only in the case of especially stubborn enemies such as the Ligurians, but it was always followed by the assignment of land somewhere else.

There are only a few cases of total expulsion from Italy of conquered peoples. Not only the Senones, but the Boii and Insubres as well are described as being driven out of Italy completely.²⁰⁵ There was indeed a large amount of *ager publicus* created in Cisalpine Gaul, which seems to suggest that the Gauls were treated more harshly than other peoples. However, we have already seen (Ch. 2.3.10) that the confiscation of large amounts of *ager publicus* here may

²⁰² Some assume that the deportation of the Capuans was only a threat that was never executed, e.g. Galsterer (1976, 76–7); Gabba (1989, 197). However, the state actually made efforts to make sure the Capuans were moved to their new residences and made provisions for their assessment in the census: Liv. 28.46.6, 38.28.4. Frederiksen (1984, 248–9) argues, on the other hand, that this was necessary because the Capuans no longer had their own magistrates. Some have argued that those Capuans who had been faithful to Rome retained their land: Frederiksen (1981, 273); Manzo (2002, 132). However, Liv. 26.16.8 states explicitly that only those people living on the Campanian land who were not of Capuan descent were allowed to remain.

²⁰³ Eutrop. 2.28.1; Polyb. 1.65.2; Zonar. 8.18; Liv. *Per.* 20.1; Val. Max. 6.5.1; Oros. 4.11.10.

²⁰⁴ Plu. *CG* 3.1; Liv. *Per.* 60.3; Obs. 30; *Vir. ill.* 65.2.

²⁰⁵ Polyb. 2.35.4 states that in 222 they were ‘completely expelled from the valley of the Po, except for a few districts at the foot of the Alps’. See Plin. *HN* 3.15.115; Strab. 5.1.6. This is believed by e.g. Pasquinucci (1985, 21); Gabba (1986, 241); Arslan (1991, 461); Denti (1991, 34). However, in the Second Punic War there were still many Gauls in Cisalpina, see Polyb. 3.34.2–4, so this must be an exaggeration, see Galsterer (1976, 29); Chevallier (1980, 59); Williams (2001, 211–13). Cato *Orig.* 2.9 = 39 P (Var. *R.* 2.4.11) mentions Insubres as traders in pork, and therefore clearly still able to make a living in Cisalpine Gaul. Liv. 37.2.5 states how ‘Cornelius was at that time [190] conducting the Boii from the lands which he had confiscated from them after their defeat in the war’. However, only one-half of the land of the Boii was confiscated; it makes sense that the other half would have been left for them to live on. It may be to this land that the proconsul was moving them. On the survival of local inhabitants in Cisalpine Gaul in general see Baldacci (1986).

have been intended to keep the Gauls under control, and that in fact many of them were left in the territory.

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

Basically there were four possibilities to deal with the original inhabitants of conquered lands. The old inhabitants could be allowed to remain where they had always lived, and be admitted as official colonists into the new colony settled by the Romans.²⁰⁶ This often seems to have happened in early Republican colonies, for example Antium, where some of the local Volsci were admitted: 'Volscian colonists were added to fill out the requisite number.'²⁰⁷ In the colony of Ardea 'none of [the land] would be assigned to any Roman until all the Rutulian [Ardeatine] applicants had been given their plots.'²⁰⁸ Sometimes this mixing of Romans and locals led to trouble, when the native inhabitants killed the colonists and rebelled against Rome. The colony at Antium repeatedly rose in rebellion against the Romans, and even became the leading city of the Volsci in their war against Rome.²⁰⁹

References to the inclusion of non-Romans in colonies disappear from the sources after the early Republican period, only to reappear after the Second Punic War. In the intervening period Livy often says that so many were sent out to a colony, suggesting that only Roman citizens and, in the case of Latin colonies, people of Latin status were sent to a colony.²¹⁰ In this period there were enough Romans and Latins to fill them; therefore, there was no reason to be generous to Italian allies. We cannot therefore conclude that in the number of colonists mentioned for such colonies local inhabitants were included as

²⁰⁶ Afzelius (1942, 156); Càssola (1988, 5–6); Cornell (1995, 302).

²⁰⁷ See n. 51.

²⁰⁸ Liv. 4.11.3–4.

²⁰⁹ Liv. 3.1.7, 3.4.3–5, 3.10.8, 3.22.2, 4.56.5, 6.6.4; DH 9.59.2–60.2, 10.20.4. Many colonists from other towns also rebelled against Rome: Fidenae (Liv. 1.27.3, 4.17.1, 4.30.1, 4.31.7; *Vir. ill.* 25), Sora (Liv. 9.23.1–2), Velitrae and Circeii (Liv. 6.12.6, 6.13.8, 6.17.7, 6.21.2, 6.36.1, 8.13.5; DH 2.54.1, 8.14.1), Satricum (Liv. 9.12.5, 9.16.2), Pometia and Cora (Liv. 2.16.8), Crustumium (DH 3.49.4), Fundi and Formiae (although not Romans, but locals who had received the Roman citizenship: DH 15.6.3–4, 15.7.4). See Salmon (1969, 44–5); Humbert (1978, 157); Bradley (2006, 167).

²¹⁰ Latins were most likely accepted in Latin colonies in all periods: Sherwin-White (1973, 27). Badian (1970–1, 386) and Richardson (1980, 4) assume Latins were regularly admitted also in viritane distributions. One of the arguments in favour of the inclusion of Latins and allies is that the Roman population on its own would not have been able to supply the large numbers of colonists mentioned in the sources, see Hopkins (1978, 21); Cornell (1989a, 388).

well.²¹¹ Latins were most likely not admitted into Roman colonies, although some think that Latins were eligible if not enough Romans were available.²¹² Italian allies are therefore likely to have been admitted as official colonists into any kind of colony only after the Second Punic War.²¹³

For some Latin colonies there is archaeological evidence that locals were still living in the colony's territory, e.g. Paestum, Ariminum, and Hadria. This is accepted by some as proof that local inhabitants were official colonists in such colonies already in the mid-Republican period.²¹⁴ However, it is not necessary that these people were admitted as official colonists with the same rights as the Romans; we have seen that there may not have existed a strict geographical boundary between colonists and locals in the colonial landscape, but it is likely that there existed a legal separation between the two groups.

It is only after the Second Punic War that the official admission of Italian allies into colonies is attested. At this time the Roman state was unable to find enough colonists due to the decline of the Roman population as a result of the war. At the same time a large amount of *ager publicus* was available and colonies were necessary to strengthen Rome's hold over the newly conquered territories. In these circumstances there were not enough Romans to fill the colonies, and they were partially filled by people with allied status. For Cosa in 197 Livy states that 'the enrolment of a thousand was authorized, with the condition that none be included who had been an enemy of Rome in the period following the consulship of P. Cornelius and Tiberius Sempronius [218 BC]'.²¹⁵ In 197 an incident occurred with some colonists for the new Roman colonies:

The people of Ferentinum attempted to secure a new legal prerogative: the awarding of Roman citizenship to Latins who had merely submitted their names for membership in a Roman colony. Those who had submitted their names for Puteoli, Salernum,

²¹¹ Sherwin-White (1972, 25–7). Contra: Scheidel (2004, 10); Forsythe (2005, 308).

²¹² Salmon (1969, 24); Bringmann (1985, 13). However, Roman colonies were small, so that it is unlikely that finding the requisite number of colonists would have been a problem.

²¹³ Salmon (1969, 117); Cassola (1988, 12); Wulff Alonso (1991, 244); Patterson (2006, 201). However, Salmon (1969, 79–80) argues that Roman colonies were unpopular and therefore included allies even before the war. The presence of allies in Latin colonies is assumed by Ross Taylor (1960, 49); Cornell (1989a, 368; 1995, 367); Bispham (2006, 91–2, 106–18); Patterson (2006, 199); Erdkamp (forthcoming). Serv. *Aen.* 1.12 defines colonies as places where 'a part of the citizens or of the allies was sent, and where they have a *res publica*' (*Est autem pars civium aut sociorum missa, ubi rem publicam habeant*). He thus indicates that allies were also admitted in colonies, but it is not clear to which period this statement refers.

²¹⁴ Kahrstedt (1959, 187); Torelli (1999b, 4); Gualtieri and Fracchia (2001, 79); Celuzza (2002a, 105); Bradley (2006, 172–6). Many scholars point to the presence of local inhabitants of colonies, but they unfortunately do not discuss the legal position of these people: Salmon (1967, 317–21); Galsterer (1976, 49–53); Humbert (1978, 77–8); Bispham (2006, 91–2, 103).

²¹⁵ Liv. 33.24.8–9.

and Buxentum were enrolled as colonists, and because of this they comported themselves as Roman citizens. The Senate adjudged that they were not Roman citizens.²¹⁶

The problem, most likely, was not that the Ferentinates had claimed Roman citizenship, but that they had done so before the actual establishment of the colonies; these were not founded until 194, and the new citizens therefore had to wait until the next census after that before they could actually claim the citizenship. In this case, and also that of the viritane distributions in 173,²¹⁷ those receiving land are reported as Latins, who already enjoyed many rights as a result of their Latin status, but in the case of Cosa it seems as if anyone was allowed as a settler, whether Roman, Latin, or ally.

A second possibility would have been to allow the former inhabitants to remain in the town which had been turned into a colony, without granting them the rights the Roman colonists received. These people were then known as *incolae*. This term was also used for people who simply took up residence in a colony.²¹⁸ According to the sources, colonists and Roman settlers often lived together in the regal period, as we have seen, and this continued in the Republic. In Luceria, for example, the first Roman settlement was a garrison, which was only later replaced by a full colony.²¹⁹ Under the Empire, native inhabitants often formed a *municipium sine suffragio* next to the colony that possessed Latin or Roman citizenship.²²⁰ In this case the colonists and the original inhabitants lived alongside each other, in separate communities in the same territory or even in the same towns, each with their own rights.

²¹⁶ Liv. 34.42.5–6: *Novum ius eo anno a Ferentinatibus temptatum, ut Latini qui in coloniam Romanam nomina dedissent cives Romani essent: Puteolos Salernumque et Buxentum adscripti coloni qui nomina dederant, et, cum ob id se pro civibus Romanis ferrent, senatus iudicavit non esse eos cives Romanos*. Some use this passage as proof that Latins and allies did *not* receive citizenship in Roman colonies, e.g. Ilari (1974, 29); Wulff Alonso (1991, 87); but see Smith (1954) and Badian (1970–1, 386), who convincingly argue that the Ferentinates would have been admitted to the citizenship once they had been counted in the census.

²¹⁷ Ilari (1974, 14–17). Gabba (1989, 213) thinks Italian allies also benefited from the distribution in 173, but this is not attested. In 172 land, apparently Roman *ager publicus*, was distributed to the Statielli, see Càssola (1991, 17) and Appendix item 45.

²¹⁸ D.50.16.239.2 (Pomponius) defines an *incola* as ‘someone who has established his domicile in any region; the Greeks call such a person a *paroikos*. Nor are those who stay in a town the only people who are *incolae*, but also those who hold land within the territory of any town in such a way that they establish themselves there as if in a fixed abode’. See *Comm. Bern. in Lucan.* 4.397: ‘*Incolae* are those who came to a colony which had already been settled; *accolae* are those who work land next to a colony’ (*Incolae qui ad coloniam paratam veniunt: acolae qui iuxta coloniam agros acolunt*). For a comprehensive discussion of the definition and rights of *incolae* and *accolae* see Laffi (1966, 76–83); Gagliardi (2006). An inscription from Aesernia (CIL I².3201) records the presence of *Saunites iniquolae*: see La Regina (1970–1, 452–3).

²¹⁹ Liv. 9.26.2. See DH 2.54.1, 5.20.1, 5.43.2, 5.60.2, 7.28.3, 8.14.1.

²²⁰ Salmon (1969, 76); Càssola (1988, 6). Humbert (1978, 78) thinks the allies lost their autonomy, but this does not need to have been the case.

Hyginus in the early second century AD describes how *incolae* gained their status: ‘When the founder was expelling the other landholders and preparing the lands for division, he does not seem to have changed the legal status of those owners whom he permitted to remain on their holdings; for he did not order them to become citizens of the colony.’²²¹ Although this is not explicitly attested for the Republic, a similar process may explain the attested local presence in colonies founded by the Romans.

If not all confiscated lands were needed for allocation to colonists, some could be returned to the original inhabitants (*agri redditi*), or they could receive land in exchange for confiscated land in another part of the colony (*agri commutati*), as is stated in the *Lex agraria* of 111 (see Ch. 5.3.3). However, it is not clear whether they always received the same amount they had held before.²²² In any case, we may conclude that it was quite common for the original inhabitants to remain in a colony.

Another possibility conforms to the standard picture of the fate of local inhabitants: the Romans occupied the town of the former inhabitants and distributed the land around it to the colonists. The locals were pushed to the lands on the edge of the colony, usually into the mountains or other infertile lands the Romans did not want to use themselves.²²³ However, this reconstruction is much too simple; it may be valid in some cases, but there were many other possibilities for the distribution of land between Romans and local inhabitants. Siculus Flaccus describes how during the confiscations in the first century BC ‘some people, as instructed, made their property returns on the basis of a valuation; money was given to them in accordance with the valuation, they were removed from their land, and the victorious veteran soldiery was settled there.’²²⁴ Unfortunately, we do not know of any earlier Republican cases of people receiving money in exchange for their land. The *Lex agraria* mentions only grants of new land to allies who had to move from their old holdings.

People who were expelled from their original lands did not usually receive any rights of citizenship in the colony around which they lived, though they may have retained administrative independence. It is possible that in some cases local inhabitants were employed as labourers on the land granted to the

²²¹ Hyginus (1) 86.18–21: *Alioqui<n>, cum ceteros possessores expelleret et pararet agros quos divideret, quos dominos in possessionibus suis remanere passus est, eorum condicionem mutasse non videtur: nam neque cives coloniae accedere iussit.*

²²² Gagliardi (2006, 285) assumes that the land granted to *incolae* was *ager publicus populi Romani*, and that they therefore had to pay a rent for this land. However, it can also have been their own ancestral land.

²²³ See e.g. Brown (1980) and Celuzza (2002a, 110) for Cosa.

²²⁴ Siculus Flaccus 128.3–5. See Nagle (1973, 376–7); Gabba (1979b, 52); Campbell (2000, 395–6).

colonists. In some colonies after the Second Punic War the amount of land granted was too large for one family to work, sometimes fifty *iugera* or more. It may be that the colonists used slaves as labourers, but it is also possible that they employed the defeated local population as wage labourers or tenants.²²⁵ This practice is not securely attested until the first-century-BC distributions,²²⁶ but it is a possibility we should keep in mind when reconstructing the Republican colonial landscape.

A fourth possibility was in my view by far the most common. Much of the *ager publicus* was not used for colonization or virginate distribution at all. Such land was in theory open for occupation by Roman citizens as *ager occupatorius*. However, it is likely that much of this land remained in the hands of its original owners, who possessed it without any legal title. In my view this happened much more often than is generally thought. There was only a limited number of Romans who could have made use of *ager occupatorius*; for most of the poorer citizens this land was largely inaccessible (see Ch. 4.3.7). The elite may have had better possibilities of occupying and exploiting *ager occupatorius*, but this does not mean that they would have indiscriminately occupied all land they could lay their hands on. In the fourth and third centuries the market for agricultural products was small, and it would have been useless to exploit large tracts of land. In the second century the market grew considerably, although it still did not become as large as is sometimes assumed, and large-scale commercial production occurred mainly in central Italy. Accumulation of large tracts of land in the Italian periphery therefore was still not necessary for Roman producers. The amount of *ager occupatorius* available in the second century was simply so large that not all of it could be occupied by Roman citizens. This land was, moreover, not located in areas where the largest spread of commercial production took place (see Ch. 4.3.6). It is likely therefore that much of it remained in use by Italians until the Gracchan period, when the allies launched protests against the confiscation of *ager publicus* they had been working.²²⁷ The most common thing to happen therefore may have been the total absence of Roman interference after the creation of *ager publicus*.²²⁸ Rome declared a certain part of the land to be *ager publicus*,

²²⁵ Arslan (1991, 461) and Grassi (1991, 38) for the Boii; Celuzza and Regoli (1985, 51) for Cosa. Contra: Mouritsen (1998, 15).

²²⁶ For which see Osgood (2006).

²²⁷ Rathbone (2003, 150) states that lands conquered after the Second Punic War 'are normally, and plausibly, assumed to have remained occupied by their previous owners or possessors'. However, in my view this was not only the case after, but already before the Second Punic War.

²²⁸ This is accepted by many, e.g. Beloch (1926, 335); Kaser (1942, 26); Tibiletti (1948–9, 181); Gabba (1956, 46; 1979b, 40); Toynbee (1965, ii, 253); Salmon (1967, 317; 1969, 162 n. 2);

but then took no further action, at least for some time. This of course left the previous owners completely free to keep their lands. Some assume a rent had to be paid for the use of this land,²²⁹ but this is unlikely (see Ch. 3.2.1).

It is sometimes assumed that it was possible for allies to acquire rights to use *ager publicus* by treaty. This idea is inspired by a statement of Cicero, who suggests that Tiberius Gracchus neglected treaties concluded with the Latins and allies: ‘Tiberius Gracchus continued [to act properly] in the case of Roman citizens, but he ignored the rights which had been guaranteed by treaty to the allies and to those with Latin status.’²³⁰ The *Lex agraria* of 111, moreover, stipulates:

Whatever according to this statute, just as written above, in the lands which are in Italy, which were the public property of the Roman people in the consulship of P. Mucius and L. Calpurnius (133), it shall be lawful for a Roman citizen to do, it is likewise to be lawful for a Latin and a foreigner to do without personal liability, for whom it was lawful to do it in the consulship of M. Livius and L. Calpurnius (112) in those lands which are written down above, according to statute or plebiscite or *treaty*.²³¹

This has led some scholars to believe that there were treaties allowing the allies access to the *ager publicus*: after the conquest of a certain town a treaty was drawn up that allowed the allied population to occupy a part of the *ager publicus* which was confiscated by Rome, with the security that they would not be driven off this land.²³²

The sources referring to treaties with the allies are unfortunately very vague. In Cicero’s passage the reference is expressly to *iura ac foedera* of the *sociorum nominisque Latini*. However, the passage is transmitted fragmentarily and the context is unclear. Moreover, it does not say that the rights and treaties had anything to do with *ager publicus*. On the other hand, the *Lex agraria* specifically refers to ‘statutes, plebiscites, or treaties’ which had granted

²²⁹ Laffi (1966, 57); Brunt (1971, 283); Gabba (1989, 199, 230); Manzo (2002, 138).

²³⁰ Cic. *Rep.* 3.29.41: . . . *Asia Ti. Gracchus perseveravit in civibus, sociorum nominisque Latini iura neglexit ac foedera*. Badian (1972, 681) optimistically states: ‘The sense of the fragment is made clear beyond serious doubt by comparison with 1.31’, but matters are not so simple; it is not clear to which treaties the passage refers, nor how it is related to Asia. In *Rep.* 1.19.31 Cicero states: ‘They [the Gracchi] have stirred up the allies and our Latin comrades; they have broken treaties.’ However, *foederibus violatis* does not necessarily refer to the Gracchi; it may be that the allies were breaking treaties, not the Romans.

²³¹ *Lex agraria* l. 29: [*Quod ex h. l. it] a utei s. s. est, in agreis qu[ei in Ita]lia sunt, quei P. Mucio L. Calpurnio cos. publicis populi Ro[manei] fuerunt c[eivi] Romano facere licebit, item Latino peregrinoque, quibus M. Livio L. Calpurnio [cos in eis agreis quei s. s. sunt id facere ex lege pleb]eive sc[isto] exve <f>oedere licuit, sed <f>raude sua <f>acere liceto.*

²³² Ilari (1974, 20–2); Gabba (1989, 199; 1994, 104); Bleicken (1990, 122); Wulff Alonso (1991, 203). If such treaties existed, however, it is possible that they concerned only pasture land, since Italian peoples needed access to land if they were to carry out transhumant stockbreeding.

‘Latins and *peregrini*’ access to *ager publicus* before the passage of the law of 111. There were apparently people who before the passage of this law had rights to *ager publicus*, whether by earlier laws or by treaties. However, this may have been granted as a privilege to a specific person or community, and does not necessarily refer to a general right applying to all allies.²³³

Many scholars have doubted the allies’ rights to *ager publicus* by treaty. The most important problem is that the *ager publicus populi Romani* was legally the property of the Roman citizens. Many have therefore assumed that it was impossible to give security of possession of land to allies in a formal treaty, unless they were also granted citizenship.²³⁴ There indeed appears to have been no legal basis for granting land to non-citizens. Land was a *res Mancipi*, and therefore could only be legally transferred to people with the *ius commercii*.²³⁵ Latin allies possessed this right, so they may have received land. To solve the problem of grants of land to Italians scholars often assume that many Italians possessed the *ius commercii* as well. A passage often quoted as proof is Livy 35.7.2–3, dating to 193 BC: ‘Although profiteering had been checked by numerous laws relating to interest on loans, a loophole had been used to circumvent the rules, by the transfer of debts to allies not covered by these statutes.’ It was decided that ‘allies and members of the Latin name be subject to the same laws dealing with loans as Roman citizens’. This episode suggests that it was possible to transfer property from Roman citizens to allies, which would mean they possessed the *ius commercii*.²³⁶ However, this is by no means certain, and many scholars have argued that this right was not normally extended to Italians in the second century.²³⁷

In reality, the problem is only apparent: it was legally not impossible to give land to allies, even if they did not possess the *ius commercii*.²³⁸ Since *ager*

²³³ Lintott (1994, 64); Sacchi (2006, 113).

²³⁴ Kontchalovsky (1926, 169–70); Flach (1974, 267–70); Richardson (1980, 8–9); Keaveney (1987, 15); Kukofka (1990, 50).

²³⁵ The exact rights conferred by the *ius commercii* and its importance for landholding are extremely unclear. I hope to carry out further research into this topic in the near future.

²³⁶ Liv. 35.7.2–4: *Cum multis faenebribus legibus constricta avaritia esset, via fraudis inita erat ut in socios, qui non tenerentur iis legibus, nomina transcriberent. . . . Ut cum sociis ac nomine Latino creditae pecuniae ius idem quod cum civibus Romanis esset.* See Diod. Sic. 37.15.2. See for this interpretation Ilari (1974, 13–29); Galsterer (1976, 103); Keaveney (1987, 48–9); Mouritsen (1998, 92); Bispham (2008, 72 n. 84).

²³⁷ Sherwin-White (1973, 125–6) is doubtful; Lintott (1992, 208, 224) assumes Italians did not usually possess the *ius commercii*. In my view, the passage in Livy suggests exactly the opposite to what is assumed by most scholars: it shows that transactions between Romans and allies had not been subject to any Roman laws before 193, and that only afterwards did they become subject to such laws. This shows that 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.

²³⁸ Ilari (1974, 19 n. 34) points out that the *Foedus Cassianum* of 486 BC granted a part of the land conquered in war to the Latins and Hernici, and assumes that this was the basis of holdings

publicus was the property of the Roman citizens, its alienation required a law that was ratified by the popular assembly.²³⁹ The assembly could decide to give land to non-citizens as reward for services rendered. A certain Onesimus, who had helped the Romans in the Macedonian wars, received 200 *iugera* of *ager publicus* in Tarentum, without receiving citizenship; indeed, it is expressly stated that he was ‘enrolled in the category of allies’ (*formula sociorum*).²⁴⁰ By such distributions the land became private, and it was apparently perfectly possible to grant land as private property to people not in possession of the *ius commercii* or the Roman citizenship, as long as the popular assembly was in favour of such a grant.

Furthermore, these cases all discuss the granting of land in private ownership. The situation is fundamentally different from the holding of *ager publicus*. Appian says that ‘[the Romans] announced that this could for the moment be worked by anyone who wished’.²⁴¹ Apparently not only Romans, but also Latins and allies were allowed to work *ager publicus*, and it seems entirely possible that some, especially richer allies, took this opportunity.²⁴² The permission to work land for as long as the state did not need it presupposes that the land did not become private property, and that therefore the state could retake it whenever this was necessary; the state could thus also grant land to allies without the approval of the popular assembly, as long as the land was not permanently alienated. Whether or not the allies possessed the *ius commercii* is therefore irrelevant to the question of whether they could occupy *ager publicus* and whether they needed a treaty for this.

In any case, it was impossible for Roman citizens to acquire security of tenure on *ager occupatorius* (Ch. 4.3.1), and this makes it unlikely that this possibility can have been granted to Latins and allies. Some assume the allies also had the right to buy *ager publicus* when it was sold as *ager quaestorius* or

of *ager publicus* by Latins. However, this only allowed Latins and Hernici an equal share of the booty; it gave them no right to the lands the Romans had conquered independently, and did not include other allies. Badian (1970–1, 398–9) assumes the *Foedus* was still valid in the second century and that because of this treaty the Latins held more *ager publicus* than the other allies. However, this is unlikely, because most *ager publicus* was located in areas where Latin citizenship was not common.

²³⁹ Richardson (1980, 4–5); Keaveney (1987, 48).

²⁴⁰ Liv. 44.16.7. Plin. *HN* 3.5.46 remarks that the Ligurian Ingauni ‘received grants of land on thirty occasions’, unfortunately without any indication of time, circumstances, and legal status. Citizens could also receive land as a reward, e.g. Vatinius, see Cic. *Nat. D.* 2.2.6.

²⁴¹ App. *BC* 1.7.

²⁴² Salmon (1962, 109); Bleicken (1990, 122); Van Dooren (2008, 189). Unfortunately, they do not say anything about the exact legal position of the allies.

rented out as *ager censorius*,²⁴³ but there is no evidence for this, and these two forms of alienation were rare in any case (Ch. 3.3.1–3).

This has led to the suggestion that the reference in Cicero is to other rights of the allies which Tiberius Gracchus violated, for example that he distributed land which belonged to the allied cities, or that he threatened to distribute private land of the allies. However, this still does not explain the statement that the *foedera* of the allies were damaged by the actions of Tiberius Gracchus. In my view there is another possibility that would explain this passage. After conquering a people a treaty was usually concluded that specified the relations between the Romans and their defeated enemy, including a statement on which land became *ager publicus*.²⁴⁴ It may be that the continued use of land that became *ager publicus* was acknowledged in these treaties, with the express stipulation that this was only allowed for as long as the state did not need it. In this case the Roman state would not give the allies security of possession of the *ager publicus*, but only allow them to use the land until the state needed it.

This would have important advantages for the Roman state: the state still had the power to take away the land from the allies whenever this became necessary, but at the same time the allies were able to provide an income for themselves. Moreover, the allies were now forced to acknowledge Roman overlordship over their land, and this gave the state a tool to ensure the allies' loyalty. The continued use of *ager publicus* was a *beneficium* from the Romans, and if the allies did not remain loyal, it could be taken away from them. Especially after the Second Punic War the state often did not immediately need the land, and many allies will have occupied public land in undisturbed possession for a very long time.²⁴⁵ We may therefore conclude that the allies were not granted security of possession by treaties with the Romans, since in that case they would have received more rights than Roman citizens had. However, it is possible that there were treaties which allowed them to work the land for as long as the Romans did not want to use it.

Some scholars have suggested that both the Romans and their allies forgot that they were in fact working Roman *ager publicus*.²⁴⁶ Although this may have been the case with the allies, the Romans certainly did not forget they owned large amounts of *ager publicus*. They may have been unaware exactly which land was public, as became clear in the Gracchan period (see Ch. 5.2.5),

²⁴³ Castagnoli et al. (1985, 52); Lintott (1994, 64). In Africa in 111 only Roman citizens were allowed to buy land that was sold as *ager privatus vectigalisque*, see De Ligt (2001b, 208).

²⁴⁴ Hantos (1983, 153).

²⁴⁵ Tibiletti (1948–9, 30); Toynbee (1965, ii. 243–4).

²⁴⁶ Tibiletti (1974, 91); Galsterer (2006, 296 n. 11).

but they certainly knew that their holdings of public land were extensive. The state legally still had the right to take back the land, but the absence of any involvement during the second century had led the allies to believe that they would never be deprived of their holdings of *ager publicus*. By the time of the Gracchi the allies would have held the land for more than half a century. The actions of the Gracchi therefore came as a shock to them: after a long period of Roman lack of interest the allies had not expected to lose the land, because they had not rebelled or protested against the Romans in any way. Thus they had every right to feel threatened by the Gracchan distributions, as did the Romans who held *ager occupatorius*, and it is therefore possible that Cicero refers to such treaties laid down at the moment of conquest by the Romans. It is likely that the Gracchi were in fact forced to acknowledge the rights of allied holders of *ager publicus*, and their grant of secure possession of a maximum of 500 *iugera* of *ager publicus* may have extended to the allies (see Ch. 5.2.4).

2.6. CONCLUSION

In this chapter we have seen that the amount of *ager publicus* remaining in the hands of the state was considerable. Often the land was not used for colonization or virgane distribution until several decades after its confiscation; in some cases this could take 200 years. Rathbone's thesis that 'most land in Italy annexed by Republican Rome was distributed as private property' and that '*ager publicus* was essentially a transient category in which conquered and annexed land rested pending its transfer to private ownership' therefore cannot be maintained. Moreover, not only pasture land, but arable land as well could remain public for a very long time. Especially after the Second Punic War much *ager publicus* was not distributed.

However, the *ager publicus* which was left in state hands was spread unevenly over the Italian peninsula. Whereas most of the public land in central Italy—Latium, Campania, southern Etruria, and Sabinum—had been privatized at a relatively early date, this was not the case with the land in the more peripheral regions, such as Cisalpine Gaul, Picenum, Samnium, and southern Italy. As we shall see in Chapter 4, this has important implications for the role of the *ager publicus* in the economic and social developments of the second century.

Ager publicus which remained in state hands played an important role in the relation between Rome and its Italian allies. Many allies were allowed to continue working the lands they had previously owned, although it is unlikely that they were granted security of tenure on such lands. One reason for this

may have been to keep the allies under control; as long as they obeyed the Romans, the allies could be relatively sure that they could keep their lands. However, as the second century progressed, the Romans experienced an increasing shortage of land, especially in central Italy. As a result, they were forced to use the *ager publicus* they had confiscated decades and sometimes even centuries earlier, and this development threatened to have serious consequences for the interests of the allies.

The Legal Conditions of *Ager Publicus*

3.1. INTRODUCTION

Ager publicus confiscated by the Romans could be administered in various ways. As we have seen, much of it was assigned as private land soon after confiscation.¹ The Roman state had only limited authority over private land; *tributum*, for example, was levied on the basis of a person's private property as it was declared in the census. Moreover, the state apparently could punish those who failed to register in the census or evaded military service by depriving them of their land.² Overall, however, private land was completely under the control of its owner, who could do with it as he pleased.

In the previous chapter we have seen that a large part of the confiscated land remained in the hands of the state as *ager publicus*. As long as ownership remained with the Roman state, this land was known as *ager publicus populi Romani*. Only the assembly of Roman citizens could act as its owner and exercise the privileges of ownership, namely the right to alienate it or give it out in perpetual rent to an individual or community.³ In practice, however, the actual control over *ager publicus* rested largely with the elite, since the influence of the poor in the assemblies was limited. Most initiatives for colonization were in fact taken by the Senate and the popular assembly simply ratified this.⁴ However, even though the state owned the *ager publicus*, it often

¹ The legal basis of alienation by the state is never made clear. In Imperial times *res publicae*, lands owned by the state or by communities, could not be privatized (e.g. Gaius 2.11). However, in the Republic *ager publicus* did in fact have an owner, namely the state. The state was considered to have the same powers of alienation over its property as a private citizen had, and could, in the form of the popular assembly, decide to alienate state-owned property in full ownership to private individuals.

² Liv. Per. 14.3; DH 8.81.3. D.49.16.4.10–12 (Menenius) mentions that 'in earlier times' people could be enslaved if they did not serve, and that those who did not register their sons were punished by loss of property and exile. The Republican *Lex Osca Tabulae Bantinae* ll. 9–10 gives loss of property and flogging as punishment for not registering in the census. Later sources confirm this: D.10.3.20 (Pomponius, in the second century AD) mentions the loss of property; Val. Max. 6.3.4 and Tit. Ulp. 11.11 loss of property and enslavement.

³ Bove (1960, 42); see Ch. 2.5.2.

⁴ Laffi (1988); see Oakley (1997, 572).

did not exercise as much control over it as an owner might have been expected to have done.

In this chapter, I will discuss the various legal categories of *ager publicus* which existed in the Republican period. Management of *ager publicus* was not static; new legal categories of land could be created whenever this was deemed necessary. The flexibility of Roman Republican law in regard to public land is often overlooked by legal historians; the Roman juridical system is considered rigid, with a certain number of categories of land into which all land should fit. This is mostly the result of the application of legal sources from the Imperial period, such as Gaius and the Digest, onto the Republican era. Under the Empire, law was much more strictly defined; objects such as land—as well as people—were divided into specific categories, each with their own conditions attached to them. Therefore, reconstructions based too heavily on Imperial legal writings tend to neglect the ad hoc nature of many Republican laws, which were created as circumstances demanded.⁵

The rigidity of conceptions about *ager publicus* is shown by the use of set terms for specific kinds of public land. Legal historians often discuss categories such as *ager quaestorius*, *ager censorius*, and *ager occupatorius* as if they existed throughout the whole Republican period, and the conditions applying to them were fixed and immutable. However, it should be noted that these terms actually do not appear at all in Republican sources, but only in the works of the *Agrimensores* from the Imperial period.⁶ It is likely that the *Agrimensores* applied these terms to lands with certain characteristics which existed in their own time. However, it is possible that land which the *Agrimensores* called, for example, *ager quaestorius* was not subject to the same legal conditions as the Republican land normally called *ager quaestorius* by modern scholars. Therefore not all characteristics of its administration as described by the *Agrimensores*—and by many modern scholars—may have been in place under the Republic. Such strict legal categories were probably not yet defined in the Republican period.⁷ However, it seems possible to recognize various types of land in the Republican period, and we are usually able to reconstruct the legal conditions attached to them. Therefore it appears justified to use

⁵ This flexibility is emphasized by De Martino (1956, 562); Capogrossi Colognesi (1988, 641).

⁶ Crawford (1996, 53) therefore argues that we cannot use such terms at all when discussing the Republic.

⁷ Badian (1962, 213) and Botteri (1992, 52–4) maintain that there was no strict separation between the various legal categories of land, but this seems too pessimistic. Even if land could be transferred from one category to another quite easily, for example from *ager quaestorius* to *ager occupatorius*, as long as it remained in one category the conditions applying to it were clear enough.

such terms as *ager occupatorius* and so forth even for this period, as long as we state clearly what we mean by this, and take into account that not all statements by the *Agrimensores* may be valid for the Republican period.

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

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

3.2. *AGER OCCUPATORIUS*

From the regal period onwards Rome defeated surrounding peoples and penalized them by confiscation of land. In this way it acquired a large amount of land which became the property of the state.⁸ In the regal and early

⁸ There were other possibilities for the state to acquire *ager publicus*: Cic. *Off.* 1.10.33 and Val. Max. 7.3.4a record a case in which the jurist Labeo was asked to judge a land dispute between Nola and Naples, and decided that the land was to belong to the Roman state, in other words would become *ager publicus*. A similar story is recorded of a dispute between Aricia and Ardea in the archaic period (Ch. 1 n. 55). Roman magistrates were called upon more often to set the boundaries of territories, and could then decide to make the disputed land public: CIL 1².2516 records a boundary stone with five sides, on four of which is stated *C. Caninius C. f. pr. urb. de sen. sent. poplic. ioudic.*, and on one side *privatum ad Tiberim usque ad aquam*. See also Liv. 41.27.3–4; CIL 1².636 and 663 for two other second-century cases of Roman judgement in land disputes, although no land was declared public on these occasions. Under a *Lex Cornelia* of 82 BC private land could be sold by the state when the previous owner was proscribed or had died in battle (presumably if there were no heirs): Cic. *Rosc. Am.* 43.125–6. Front. *Strat.* 1.8.2

Republican period not much legal theory surrounded such land (Ch. 2.1.1–2), but as the Roman state developed *ager publicus* became more strictly controlled by the state, and its use became subject to more regulation. In the early Republic the only kind of *ager publicus* was *ager occupatorius*: this was land owned by the state, but which the state did not use for the moment. This land could be used by anyone—Roman citizens, and, as we will see, Latins and Italians as well—who wanted to work it. It could only be held without a legal title, and the state could, at least in theory, take the land away from the occupier whenever it was needed.⁹

3.2.1. *Ager occupatorius* before the *Lex Licinia*

As we have seen, the state acquired *ager publicus* by confiscating it from defeated enemies. It is unclear, however, which was the exact legal position of the state in regard to this land. In later legal theory the concept of *res nullius* was created: an object which belonged to no one and was therefore free for occupation by everyone. If someone had held undisturbed possession of such an item for a number of years, he became its legal owner, a process known as *usucapio* ('to take by use', see below). It may be that the Roman state used the fiction of *res nullius* for the confiscated land: it stated that the land which had been taken had belonged to no one, and therefore the Roman state became its owner by right of possession. However, it is unlikely that the idea of *res nullius*, free for occupation, had already been defined in the early Republic; for example, it does not appear in what we have left of the Twelve Tables. It is more likely that the Roman state simply declared itself to

recounts how 'when Hannibal had proved no match for Fabius either in character or in generalship, in order to smirch him with dishonour, he spared his lands, when he ravaged all others. To meet this assault, Fabius transferred the title to his property to the State'. Thus the state could also receive land from citizens.

⁹ *Ager occupatorius* is often equated with *ager arcifinius*, a term appearing in the Agrimensores, who explain that *ager arcifinius* or *arcifinalis* 'has been given its name from the idea of driving away (*arcere*) the enemy': Frontinus 2.20–1; see Hyginus (1) 82.13–16; Siculus Flaccus 104.28. Therefore *ager arcifinius* and *occupatorius* were essentially the same, *Commentum* 50.27–8 and 54.14–15; Siculus Flaccus 104.24–5. See Burdese (1952, 17–8) and Botteri (1992, 45–51). This interpretation is also followed by Gargola (2008, 505–10), who argues that *ager occupatorius* was named from being acquired by conquest. However, it is more likely that it was named after the possibility of occupation of land by citizens, and the land acquired by conquest was not necessarily the same land as that which was open for occupation. Some scholars see a difference between the two kinds of land, e.g. Castillo Pascual (1993, 149–50). Burdese (1952, 22) argues that the use of the term *ager occupatorius* for land being available for occupation by all citizens did not originate until the second century. This may be the case, but I will use it here to denote all undistributed state-owned land throughout the Republic.

be the owner of land taken from its enemies, without any further legal conditions being applied to it.

Some land was distributed to citizens, but there does not seem to have been any clear idea of the purpose or legal conditions of the remaining *ager publicus*. From the sources on the early Republic, it seems as if this land was free for use by all citizens, and thus can be classified *ager occupatorius*—even if the elite took most of it. Therefore, the actual functioning of *ager occupatorius* is still surrounded by a great deal of obscurity, especially in the fourth and third centuries. In a much-quoted passage Appian writes:

As they subdued successive parts of Italy by war, the Romans confiscated a portion of the land and founded towns, or chose settlers from their own people to go to existing towns—this being the alternative they devised to garrisons. In the case of captured land which became theirs on each occasion, they distributed the cultivated area at once to settlers, or sold or leased it; but since they did not have time to allocate the very large quantity that was then lying uncultivated as a result of hostilities, they announced that this could for the moment be worked by anyone who wished at a rent of one tenth of the produce for arable land and one fifth for orchards. Rents were also set for those who pastured larger and smaller beasts.¹⁰

There are several intriguing points in this description. First of all, Appian mentions that a rent (*vectigal*) was due on *ager occupatorius*. Many modern scholars have accepted this statement without question.¹¹ In fact, the statement is extremely puzzling. If a rent was asked for occupied land, this implies that an administration was required to keep track of who had occupied land, or at least of the amounts of produce harvested from this land. However, one of the characteristics of *ager occupatorius* was that it was not measured in any way; Appian describes how the state ‘did not have time’ to allot it. Usually land was not measured until it was used by the state for colonies or viritate distributions or as *ager quaestorius* or *ensorius*. Measurement simply for the

¹⁰ App. BC 1.7: Ῥωμαῖοι τὴν Ἰταλίαν πολέμῳ κατὰ μέρη χειρούμενοι γῆς μέρος ἐλάμβανον καὶ πόλεις ἐνέκλιζον ἢ ἐς τὰς πρότερον οὐσας κληρούχους ἀπὸ σφῶν κατέλεγον. καὶ τότε μὲν ἀντὶ φρουρίων ἐπενούον, τῆς δὲ γῆς τῆς δορικτήτου σφίσις ἐκάστοτε γιγνομένης τὴν μὲν ἐξειργασμένην αὐτίκα τοῖς οἰκιστομένοις ἐπιδήρουν ἢ ἐπίπρασσον ἢ ἐξεμίθουν, τὴν δ' ἄργον ἐκ τοῦ πολέμου τότε οὐσαν, ἢ δὴ καὶ μάλιστα ἐπλήθυνεν, οὐκ ἄγοντές πω σχολὴν διαλαχεῖν ἐπεκλήρυττον ἐν τοσῶδε τοῖς ἐθέλουσαν ἐκπονεῖν ἐπὶ τέλει τῶν ἔτησίων καρπῶν, δεκάτη μὲν τῶν σπειρομένων, πέμπτη δὲ τῶν φυτευομένων. ὠριστο δὲ καὶ τοῖς προβατεύουσι τέλη μειζόνων τε καὶ ἐλαττόνων ζώων.

¹¹ Tibiletti (1948–9, 182–9); Hermon (1976, 180); Moatti (1992, 62); Lintott (1994, 54); Nicolet (1994, 622); Uggeri (2001, 34). Often a distinction between *ager occupatorius* and other forms of public land is not made; there were some forms of public land which were subject to rent, but *ager occupatorius* may not have been one of them. The amounts stated by Appian are often accepted as applying to all *ager publicus*, e.g. Gabba (1992, 401), but this is problematic, see below (Ch. 3.3.3).

sake of collecting a rent is unlikely, since if the state had no time to distribute the land, as stated by Appian, it would have had no time to measure it either.¹²

On the *Ager Campanus*, for example, no *forma*—a map showing the boundaries of *ager publicus*—was set up until 165 (see Ch. 3.2.3),¹³ and this suggests that *ager occupatorius* was not measured in any way until it was used for some purpose by the state. The only demarcation consisted of markers set up by the individual occupiers, as Siculus Flaccus explains for a later period:

There is no bronze record, no map of these lands which could provide any officially recognized proof for landholders, since each of them acquired a quantity of land not by virtue of any survey, but simply what he cultivated, or occupied in the hope of cultivating. Indeed some privately made maps of their holdings, which are not binding on them in respect of their neighbours, or on their neighbours in respect of them, since the matter is voluntary.¹⁴

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

Appian states that the rent was paid in kind, which means that the land was not necessarily measured. Still, it would have been necessary to keep track of how much each farmer produced. Thus the administration of a rent levied from *ager occupatorius* would have burdened the state with a huge amount of work, and it would probably have been less work to distribute the land than to keep track of its possessors. Even if the collection of rents was delegated to *publicani*, the state would have needed some sort of administration of who possessed which land, in order to make it possible for the *publicani* to do their job properly. However, *publicani* are not mentioned in the sources until the Second Punic War (see Ch. 3.3.3), and there was therefore no institution which could have arranged the collection of such rents in earlier periods. Collection by local magistrates is another possible solution, but we hear nothing of this. Therefore it is likely that no record of who possessed *ager publicus* existed, or at least was kept up to date. The *Agrimensores* tell us that in the case of *ager quaestorius*, the state was unable to keep track of this land. Because of difficulties in its administration ‘it happens that they revert virtually to the category of occupied land (*ager occupatorius*)’.¹⁵ Apparently,

¹² Bozza (1939, 33), who even argues that until the Gracchan period no *vectigal* at all was asked, because the land remained unmeasured; Burdese (1952, 65); Gabba (1989, 198); Crawford (1996, 180). On the other hand, G. Franciosi (2002, 234), Van Dooren (2008, 198–9), and Bispham (2008, 71) argue that *ager publicus* was usually measured immediately after its conquest.

¹³ Bozza (1939, 33); Gabba (1989, 199). Contra: Van Dooren (2008, 205).

¹⁴ Siculus Flaccus 104.29–33. See Frontinus 2.18–22; Agennius Urbicus 28.17–20.

¹⁵ Siculus Flaccus 118.33–4: *Paene iam itaque fit, ut occupatoria condicione recidant.*

one characteristic of *ager occupatorius* was that it was usually not administered meticulously. If *ager occupatorius* was not administered with any degree of circumspection, it must have been impossible to collect rents.¹⁶

Many therefore believe that *vectigalia* may have been due in theory, but that in practice they were never collected.¹⁷ It is to be expected that it was relatively easy for the rich to avoid paying *vectigalia* and that those due by the poor were never collected, since it was not worth the effort to collect small amounts of rent. Especially after the Second Punic War there was so much *ager publicus* that the state did not have either the capability or the motivation to keep track of *ager occupatorius*; there was simply too much to control and no pressing need for it to be used immediately.¹⁸ It may have been that the situation was less complicated and therefore easier to control in earlier centuries, when the state owned less *ager occupatorius*, but the sources do not mention the collection of rents in earlier periods.

Nevertheless, Appian's statement concerning the payment of a rent must be based on something. One possible solution is that the state at some point planned to demand a rent on the land, but was unable to execute this plan. It is very possible that the state wished to lease out its public land against the payment of a rent. We only have evidence for this from the Second Punic War onwards, when land was rented out as *ager censorius* (see Ch. 3.3.3), but it may be that the state considered doing something similar in an earlier period.

In this context we must consider the problem of the dating of the developments described by Appian BC 1.7–8. Some believe that Appian's account pertains specifically to the early second century, since the situation he describes—a large amount of available public land, accumulation of this

¹⁶ Some argue that the payment of a rent would give someone a stronger claim on the land than someone who had used it without payment, see Göhler (1939, 92); Tibiletti (1948–9, 183–4). This is thought to have been especially the case if there had been a proclamation which allowed people secure possession of the land: Zancan (1934, 11); Bozza (1939, 11–13). They argue that in theory the state could have reclaimed the occupied land whenever it was needed, but this would have been much more difficult if someone had paid a rent for it. Such land would legally have had the same status as land which had been rented out by contract (*locatio*). Even if the rent on *ager occupatorius* was only meant to acknowledge that the land was public and that the state could take it away, the long-term payment of a rent would have made it more difficult to confiscate. However, although it indeed proved difficult to take *ager occupatorius* away from its possessors, this was not because they claimed that they had paid rents, but only because they had occupied it for a very long time (App. BC 1.10). There is no reference at all to rents, which had apparently not been paid.

¹⁷ Kaser (1942, 28–9); Tibiletti (1948–9, 183); Toynbee (1965, ii. 244); Laffi (1998, 115); Rathbone (2003, 153). Stockton (1979, 214–15) argues that only the rents of the rich were regularly collected. Rosenstein (2004, 78) argues that the rent on *ager occupatorius* as mentioned by Appian was high enough to be worth collecting, and was therefore regularly collected. However, in view of the practical difficulties referred to, this seems unlikely.

¹⁸ Galsterer (1976, 175).

land by the rich, an increase in slave-staffed estates, and expulsion of the poor—fits the second century much better than any earlier period. It is likely, moreover, that the first occasion of leasing out land as *ager censorius* can be dated to the Second Punic War. It may well be that when the Roman state acquired large tracts of *ager publicus* after this war, it wanted to lease all land out as *ager censorius*; however, since there was so much of it and the machinery to administer it so inadequate, this idea came to nothing. However, if the state proved unable actually to collect a rent, this does not mean that it did not intend to impose it. The rent mentioned by Appian may therefore refer to an innovation attempted by the Roman state which in the end came to nothing.

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

Something similar may have been the case with the proclamation in which the state announced that *ager publicus* was open for occupation, apparently in some way granting permission to occupy the land. Appian mentions 'the original proclamation' as if it were some sort of public announcement promulgated at a specific moment,¹⁹ but this moment is not indicated. Some scholars assume that this proclamation was issued in the second century. Moreover, they think it granted the possessors security of tenure over the land, in which case it would have been extremely difficult for the state to reclaim the land.²⁰

However, this theory raises more questions than it answers. What, for instance, happened to *ager occupatorius* which had been occupied before the proclamation was issued? Did possession of that land remain insecure? There is in fact no evidence for the passage of a specific proclamation at any one

¹⁹ App. BC 1.18: τὸ κήρυγμα.

²⁰ Bringmann (1985, 12) dates the granting of permission to between 180 and 167, followed by Flach (1994, 288). Moatti (1992, 72) takes the proclamation very literally; he assumes that every time land was confiscated a proclamation was made announcing the land free for occupation; then everybody who was interested could intimate this, and the state installed the individuals on the *ager publicus*. Although this procedure may have been used for viritate distributions (Ch. 2.2.11), it is far too elaborate to have been used for *ager publicus*. Cf. Kaser (1942, 28), who also postulates a rather elaborate involvement by the state.

time, or for any difference in the level of security of holdings on different tracts of *ager occupatorius*. In fact, there is no evidence at all suggesting that security of tenure on *ager occupatorius* ever existed. Appian's account says that the land was free for occupation 'for the moment' (ἐπὶ τέλει), suggesting that it was to be assigned later. This means that the land was not going to be used for any purpose immediately, but not that the state could not take the land away in the future. In practice, it turned out to be difficult to reclaim *ager occupatorius* when the Gracchi finally attempted to do so, but not because people claimed that they had been awarded security of possession. Appian himself says only: 'It seemed neither easy nor altogether fair to take away from so many men so much property that they had held for so long, including their own trees and buildings and equipment.'²¹ It seems more likely therefore that Appian does not refer to an official announcement issued at a specific moment, but that he merely describes the conditions usually applying to *ager publicus*. It may have been that the state issued a proclamation which allowed free occupation of public land each time land was confiscated and not distributed, but this would not have given the occupiers any kind of security of possession. There was no such thing as a secure title to *ager occupatorius* confirmed by a proclamation of any kind.

Occupatio lasted only for as long as the state did not need the land, and this means that the possessor of *ager publicus* had no legal title to his land, nor any way of obtaining security of tenure. Possession of *ager occupatorius* was always precarious: the person who worked it held as a *precarium*, a holding on sufferance which could be taken back at any time by its real owner, the state.²² The possessor of *ager occupatorius* could only take the land and work it as it was; Festus says: 'Possessiones are lands . . . which are held not by *mancipatio*, but by use, and which were possessed by everyone in whatever way he occupied them.'²³ The possessor had no right to any protection in the

²¹ App. BC1.8: ὡς οὐδὲ βράδιον ὄν οὐδὲ πάντη δίκαιον ἄνδρας τοσοῦσδε ἐκ τοσοῦδε χρόνου κτήσιν τοσσηνδε ἀφελέσθαι φυτῶν τε ἰδίων καὶ οἰκοδομημάτων καὶ κατασκευῆς.

²² See D.43.26.1.pr for the definition of *precarium*: 'Precarium is what is conceded to one who asks for it for his use for as long as the person who made the concession suffers it.' Paul. Sent. 5.6.11 defines it as *qui nullo voluntatis indicio, patiente tamen domino possidet*. See Kaser (1956, 240); Rathbone (2003, 143). Frank (1979, 48) states that the censors could confiscate public land if it was not worked efficiently, but it is unlikely that the censors already had such powers in the mid-Republican period. Zancan (1931–2, 85; 1934, 10–11) maintains that occupation of *ager publicus* was not precarious, but what he calls *privata possessio*, a form of possession with extensive rights, because it depended on a concession by the state. However, I do not think there was any proclamation or concession by the state which could have given a person such rights to *ager occupatorius*.

²³ Festus 277 L: *Possessiones appellabantur agri . . . qui[a] non mancipatione, sed usu tenebantur, et ut quisque occupaverat, possidebat*. See Zancan (1934, 7); Bozza (1939, 44, 74); Kaser (1942, 3; 1956, 240).

event of a disaster, as was the case with land which was leased out: ‘The following is the practice with regard to alluvial land, if this dispute is conducted in *agri occupatorii*. No one has any legal redress in respect of whatever the force of the water has removed.’²⁴ In the case of private land it was possible for a possessor to become the owner by *usucapio*: if someone used the land for an unbroken period of two years, he became the full owner of the land.²⁵ However, *usucapio* was only possible with *res nullius* or *res derelictae*, that is, objects deliberately relinquished by their owner or having no owner at all. *Ager publicus* could never become someone’s private property by *usucapio*, since it belonged to the state, even if the state had not used it for a long time: ‘Legal experts . . . argue that in no circumstances can that land that has become the land of the Roman people be acquired by *usucapio* by any mortal man.’²⁶

Some have claimed a concept of ‘illegal occupation’ existed, and use this phrase especially to refer to the occupation of large tracts of land and the establishment of large estates on it.²⁷ However, all occupation was legal, as long as the land was not acquired ‘by stealth or force’, and even then the possessor was protected in some cases (see Ch. 3.2.3). There were of course illegal acts which could be performed while occupying *ager publicus*, for example claiming it to be private property, refusing to give it back when required to do so by the state, or occupying the possessions of others. These acts were punishable by law, but in itself possession of public land unused by the state was not illegal. As long as the state did not demand back the land, a person was fully allowed to occupy *ager publicus*.

3.2.2. The *Lex Licinia de modo agrorum*

As the Roman state acquired more *ager publicus*, the occupation of this land became increasingly problematic: Livy and Dionysius report how in the early Republic it had been mainly occupied by the rich, causing problems for the poor who had no access to land. Although these works are heavily influenced by later (especially Gracchan) accounts, we must assume that some problems caused by the occupation of *ager publicus* arose in the early Republic as well

²⁴ *Commentum* 64.25–7. See also Hyginus (1) 90.18–20.

²⁵ Gaius 2.42; *Inst.* 2.6.pr; Cic. *Top.* 4.23, *Off.* 1.7.21. Cf. the joke in Liv. 22.44.6: when Hannibal had been in Italy for two years it was said *quod Hannibal iam vel[ut] usu cepisset Italiam*. The joke may not be contemporary, however.

²⁶ Agennius Urbicus 40.1–2. See Hyginus (1) 96.4–5; D.41.3.9; Sen. *Ep. Mor.* 88.12. See Tibiletti (1948–9, 176); Moatti (1993, 62).

²⁷ Zancan (1931–2, 91); Burdese (1952, 29); Bove (1960, 4); Mitchell (1996, 274); Sacchi (2006, 168). Frederiksen (1981, 267) seems to consider all *occupatio* of *ager publicus* illegal, as if it was impossible to legally occupy *ager publicus*.

(Ch. 2.1.2). Such problems led the Roman state to issue laws limiting the amount of land one person could possess, known as *leges de modo agrorum*. The first of these is usually dated to 367 and was one of the *Leges Liciniae* (*Sextiae*); we do not know of any earlier laws limiting the possession of *ager publicus*.²⁸

The *Agrimensores* say with reference to *ager occupatorius*: ‘Each person occupied not only as much land as he could currently cultivate, but coveted as much as he had the hope of cultivating.’²⁹ This has led many scholars to assume that there was some sort of development in the rights to the possession of land: at first people could only keep the land they could cultivate; later also the land they ‘hoped to cultivate’ (*in spem colendi*), this being of course equivalent to as much as they wanted. They assume that after these informal regulations the *Lex Licinia* was the first to lay down a specific amount of land which could be occupied.³⁰ However, such a chronological development seems unlikely and stems from a desire to reconcile the information found in the *Agrimensores* with the information on the *Lex Licinia*. In the sources concerning the early Republic there are references only to people occupying as much as they wanted, but nothing about there being any legal limitation on the land which could be worked (Ch. 2.2.2). The *Agrimensores* do not indicate that initially it was allowed to hold only as much land as could be worked and later as much as one hoped to work; they state only that people occupied more than they could cultivate. Consequently, we should not consider their statement to be a summary of rules governing *ager occupatorius* before the *Lex Licinia*.

The first law about which we have information is the *Lex Licinia de modo agrorum*, which according to the ancient sources was issued in 367 bc. This law contained regulations about the amount of land which could be used;³¹ the sources are virtually united in stating that the maximum amount of land to be occupied by one individual was 500 *iugera* (125 hectares). Livy writes:

²⁸ Burdese (1952, 50) and Bignardi (1984, 77) state the *Lex Licinia* was based on an older law, but do not say when this was issued.

²⁹ *Commentum* 50.28–30: *Quia non solum tantum occupabat unus quisque, quantum colere praesenti tempore poterat, sed quantum in spe colendi habuerat ambiebat*. See also Siculus Flaccus 104.30–1.

³⁰ Tibiletti (1948–9, 173–4, 222–3; 26–7); Hermon (1994a, 496). See discussion in Mantovani (1997), who concludes there was no limit on the land *in spem colendi*.

³¹ Some have argued that the *Lex Licinia* also contained other regulations, for example, that it allowed the plebeians access to *ager publicus*: see Tibiletti (1948–9, 216); Burdese (1985, 53); Carsana (2001, 271). However, plebeians probably always had the right to use the *ager publicus*. It was only because the land was occupied by ‘the rich’ (the patricians) that they were in practice excluded from it, a situation which the set maximum amount was supposed to remedy (Ch. 2.1.1–2): see Capogrossi Colognesi (1979, 319); Manzo (2001, 44).

‘The second [law], about the occupation of land, prohibited anyone from possessing more than five hundred *iugera*, and the other sources agree with him.’³²

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

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

Under these circumstances the Roman people became concerned that they might no longer have a ready supply of allies from Italy, and that their supremacy might be at risk from such large numbers of slaves. They did not consider reform, as it seemed neither easy nor altogether fair to take away from so many men so much property that they had held for so long, including their own trees and buildings and equipment, and

³² Liv. 6.35.5: *Alteram de modo agrorum, ne quis plus quingenta iugera agri possideret.*

Val. Max. 8.6.3: *Licinius Stolo . . . cum lege sanxisset ne quis amplius quingenta agri iugera possideret.*

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

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

Vir. ill. 20: *Idem lege cavuit, ne cui plus quingenta iugera agri habere liceret* (the word *quingenta* is not actually in the manuscripts; some have *quinquaginta* (fifty), others *centum* (100), others a lacuna). See Forsén (1991, 69–73).

Var. R. 1.2.9: *Stolonis illa lex, quae vetat plus D iugera habere civem R.*

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

Tiro ap. Gell. NA 6.3.40: *Plus quingenta iugera habere velle, quod plebiscito Stolonis prohibitum fuit.* Gell. 20.1.23: *Quid salubrius visum est rogatione illa Stolonis iugerum de numero praefinito?*

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

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

Siculus Flaccus 102.31–3 says that Gaius Gracchus ‘passed a law to prevent anyone in Italy from possessing more than 200 *iugera*’ (*legem tulit, nequis in Italia amplius quam ducenta iugera possideret*). Campbell (2000, 369) argues that Flaccus confused the size of the allotments in Gaius’ colony Iunonia with the maximum size mentioned in the Gracchan land law.

eventually they reluctantly decided, on the proposal of the tribunes, that no one was to hold (*ἔχειν*) more than 500 *iugera* of this land, nor pasture on it more than one hundred larger or 500 smaller beasts. In addition it was stipulated that a fixed number of free men should be employed, who would watch and report on what was being done.³³

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

Of the territory which the Romans won in war from their neighbours, a part they sold, and a part they made common land, and assigned it for occupation to the poor and indigent among the citizens, on payment of a small rent into the public treasury. And when the rich began to offer larger rents and drove out the poor, a law was enacted forbidding the holding (*ἔχειν*) by one person of more than five hundred acres of land. For a short time this enactment gave a check to the rapacity of the rich, and was of assistance to the poor, who remained in their places on the land which they had rented and occupied the allotment which each had held from the outset. But later on the neighbouring rich men, by means of fictitious personages, transferred these rentals to themselves, and finally held most of the land openly in their own names. Then the poor, who had been ejected from their land, no longer showed themselves eager for military service, and neglected the bringing up of children, so that soon all Italy was conscious of a dearth of freemen, and was filled with gangs of foreign slaves, by whose aid the rich cultivated their estates, from which they had driven away the free citizens.³⁴

³³ App. BC 1.7–8: οἱ γὰρ πλούσιοι τῆσδε τῆς ἀνεμήτου γῆς τὴν πολλὴν καταλαβόντες καὶ χρόνῳ θαρροῦντες οὐ τινα σφᾶς ἔτι ἀφαιρήσασθαι τὰ τε ἀγχοῦ σφίσιν ὅσα τε ἦν ἄλλα βραχέα πενήτων, τὰ μὲν ἠνούμενοι πειθοί, τὰ δὲ βία λαμβάνοντες πεδία μακρὰ ἀντὶ χωρίων ἐγεώργουν, ὠνητοῖς ἐς αὐτὰ γεωργοῖς καὶ ποιμέσι χρωόμενοι τοῦ μὴ τοὺς ἐλευθέρους ἐς τὰς στρατείας ἀπὸ τῆς γεωργίας περισπᾶν, φεροῦσης αἴμα καὶ τῆσδε τῆς κτήσεως αὐτοῖς πολὺ κέρδος ἕκ πολυμαθιδίως θεραπόντων ἀκινδύνως ἀξιομένων διὰ τὰς ἀστρατείας.

ἀπὸ δὲ τούτων οἱ μὲν δυνατοὶ πάμπαν ἐπλουτου, καὶ τὸ τῶν θεραπόντων γένος ἀνὰ τὴν χώραν ἐπλήθυε, τοὺς δ' Ἰταλιώτας ὀλιγότες καὶ δυσανδρία κατελάμβανε, τρυχομένους πενία τε καὶ ἐσφοραῖς καὶ στρατείαις. εἰ δὲ καὶ σχολάσειαν ἀπὸ τούτων, ἐπὶ ἀργίας διετίθεντο, τῆς γῆς ὑπὸ τῶν πλουσίων ἐχομένων καὶ γεωργοῖς χρωμένων θεραπουσιν ἀντὶ ἐλευθέρων.

Ἐφ' οἷς ὁ δῆμος ἐδυσφόρει μὲν ὡς οὔτε συμμάχων ἐξ Ἰταλίας ἔτι εὐπορήσων οὔτε τῆς ἡγεμονίας οἱ γενησομένης ἀκινδύνου διὰ πλῆθος τοσονδε θεραπόντων· διόρθωσιν δ' οὐκ ἐπινοοῦντες, ὡς οὐδὲ ῥάδιον ὄν οὐδὲ πάντῃ δίκαιον ἄνδρας τοσοῦδε ἐκ τοσοῦδε χρόνου κτήσων τοσήνδε ἀφελῆσθαι φυτῶν τε ἰδίων καὶ οἰκοδομημάτων καὶ κατασκευῆς, μόλις ποτὲ τῶν δημάρχων εἰσηγουμένων ἔκριναν μηδένα ἔχειν τῆσδε τῆς γῆς πλέθρα πεντακοσίων πλείονα μηδὲ προβατεῖν ἑκατὸν πλείω τὰ μείζονα καὶ πεντακοσίων τὰ ἐλάσσονα. καὶ ἐς ταῦτα δ' αὐτοῖς ἀριθμὸν ἐλευθέρων ἔχειν ἐπέταξαν, οἱ τὰ γιννόμενα φυλάξειν τε καὶ μνηύσειν ἔμελλον.

³⁴ Plu. TG 8.1–3: Ῥωμαῖοι τῆς τῶν ἀτυγεϊτόνων χώρας ὅσῃν ἀπετέμοντο πολέμῳ, τὴν μὲν ἐπίπρασκον, τὴν δὲ ποιούμενοι δημοσίαν ἐδίδουσαν νέμεσθαι τοῖς ἀκτῆμοσι καὶ ἀπόροις τῶν πολιτῶν, ἀποφορὰν οὐ πολλὴν εἰς τὸ δημόσιον τελοῦσιν. ἀρξαιμένων δὲ τῶν πλουσίων ὑπερβάλλειν τὰς ἀποφορὰς καὶ τοὺς πένητας ἐξελαυνόντων, ἐγράφη νόμος οὐκ ἔων πλέθρα γῆς ἔχειν πλείονα τῶν πεντακοσίων. καὶ βραχὺν μὲν χρόνον ἐπέσχε τὴν πλεονεξίαν τὸ γράμμα τοῦτο, καὶ τοῖς πένητον ἐβοήθησε, κατὰ χώραν μένουσιν ἐπὶ τῶν μεμισθωμένων καὶ νεμομένων ἦν ἕκαστος ἐξ ἀρχῆς εἶχε μοῖραν. ὕστερον δὲ τῶν γειτνιώντων πλουσίων ὑποβλήτους προσώποις μεταφερόντων τὰς μισθώσεις εἰς ἑαυτοῦς, τέλος δὲ φανερώς ἦδη δι' ἑαυτὸν τὰ πλείεστα κατεχόντων, ἐξωσθέντες

Although neither account dates the law specifically, it is often assumed that both refer to the *Lex Licinia* of 367.³⁵

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

Niese was the first to question the amount of 500 *iugera* mentioned in the sources. He argued that this was an unrealistic figure for the fourth century: at this time there was simply not enough *ager publicus* to allow every rich Roman to occupy 500 *iugera* of arable land.³⁶ Those who believe that the stipulation about the number of animals mentioned by Appian also belongs to the fourth century have even more problems with the date of the law. As Tibiletti calculated, this number of animals would require 1,800 *iugera* of land. Of course, animals were also grazed on common pasture lands, so that not every individual had to occupy 1,800 *iugera* of his own. However, if every Roman owned 600 animals, each would need 1,800 *iugera* of public pasture land, an amount of *ager publicus* which Rome did not possess at this time.³⁷

It has been calculated that the *Ager Romanus* measured 1,900 km² after the conquest of Veii, of which about 150 km² was not suitable for occupation, leaving 700,000 *iugera*.³⁸ Of this, much was private land; the remaining *ager publicus* may have just been sufficient to grant 300 Senators 500 *iugera* of public land each, but not to provide land for their animals as well. Even if there were enough land for each Senator to occupy 500 *iugera*, it is unlikely that Senators would have been rich enough to work 500 *iugera* at this time. Working so much land would require a large amount of capital in the form of slaves and equipment, and the Roman state had not at this stage conquered large territories from which money and slaves could be brought to Rome; besides, the market was not large enough to absorb the products of such large estates.

οἱ πένητες οὔτε ταῖς στρατείαις ἔτι προθύμους παρείχον ἑάντους, ἡμέλων τε παίδων ἀνατροφῆς, ὥστε ταχὺ τὴν Ἰταλίαν ἅπασαν ὀλιγανδρίας ἐλευθέρων αἰσθέσθαι, δεσμοτηρίων δὲ βαρβαρικῶν ἐμπεπλήσθαι, δι' ὧν ἐγεώργουν οἱ πλοῖνοι τὰ χωρία, τοὺς πολίτας ἐξέλασαντες.

³⁵ White (1913, 17); Lomas (1996, 69). Göhler (1939, 89–92) thinks Appian and Plutarch each refer to a different law.

³⁶ Niese (1888, 416), followed by Beloch (1926, 344).

³⁷ Tibiletti (1948–9, 6–14) calculates that in modern Lazio 500 *iugera* would feed 27–8 large animals and 132 small ones, and therefore 500 small and 100 large animals would need 1,850 *iugera*; but he also shows that the number of animals to be fed is highly dependent on soil quality. See also Labruna (1986, 100–5); Forsén (1991, 41–3).

³⁸ Beloch (1926, 620).

Many scholars have tried to overcome these objections by suggesting that the law of 367 specified certain limits to the use of land, but that the amount of 500 *iugera* was fixed at some later time. The law of 367 could have been amended over time to adapt to the amount of public land held by Rome. When the amount of 500 *iugera* was introduced is, again, hotly debated; some date the limit of 500 *iugera* to about 300,³⁹ others to the late third century,⁴⁰ while the period most commonly accepted is the early second century, some time before 167.⁴¹ Some argue for an even later date, around 145,⁴² or even 133 BC.⁴³

The idea that the limit of 500 *iugera* was set only in the second century is inspired by the account of Appian. As we have seen, the situation he describes would at first sight seem to fit the second century better than the fourth century. After the Second Punic War there was a large amount of *ager occupatorius* available, and this would have been an ideal opportunity to establish large slave-staffed estates. In such a situation a need may have been felt to establish limits to the amount of land which could be occupied by one individual.

We know for a fact that the limit of 500 *iugera* was introduced before 167, since in this year Cato referred to it in his speech *Pro Rhodiensibus*, which is quoted by Aulus Gellius: ‘What now? Is there a law that is so strict that it says “if you want to do this, the fine will be a thousand; if you want to have more than 500 *iugera*, the fine will be so much; if you want to have a higher number of animals, the fine will be so much”?’⁴⁴ It is true that Gellius wrote much later than the date of the actual speech, but his purpose was to give a reliable account of Cato’s text. We may therefore conclude that the limit of 500 *iugera* indeed existed in 167 BC. In another speech, dated to 195 by Livy, Cato apparently also referred to the limit: ‘What called out the Licinian Law which restricted estates to 500 *iugera* except the keen desire of adding field to field?’⁴⁵ However, it is possible that this reference is not genuine, since Livy’s purpose was not to report the words of Cato accurately, but to write a

³⁹ Rathbone (2003, 148–9).

⁴⁰ Bozza (1939, 173–4); R. Frank (1979, 48–9); Stockton (1979, 47). Frank connects the limit to Flaminius, the initiator of the distribution of the Ager Gallicus in 232, but there is no evidence that such a measure was part of his legislation.

⁴¹ Niese (1888, 416–22); Beloch (1926, 344); Tibiletti (1948–9, 223); Gabba (1956, 20; 1979b, 39); Toynbee (1965, ii. 556); Hermon (1976, 181); Stockton (1979, 46–8); Bringmann (1985, 11); Flach (1990, 32–4); Forsén (1991, 80); Lintott (1992, 37); Gargola (1995, 137); Carsana (2001, 272); Sacchi (2006, 419 n. 192). Uggeri (2001, 34) dates it to 167 exactly.

⁴² Triebel (1980, 183); Marccone (1997, 145).

⁴³ Maschke (1906, 54–67); Carcopino (1967, 214); Finley (1980, 152); Lomas (1996, 69).

⁴⁴ Gell. NA 6.3.37: *Quid nunc? Ecqua tandem lex est tam acerba, quae dicat ‘si quis illud facere voluerit, mille minus dimidium familiae multa esto; si quis plus quingenta iugera habere voluerit, tanta poena esto; si quis maiorem pecuum numerum habere voluerit, tantum damnas esto?’*

⁴⁵ Liv. 34.4.9: *Quid legem Liciniam excitavit de quingentis iugeribus nisi ingens cupido agros continuandi?*

speech indicating what Cato might have said.⁴⁶ It is unlikely that the limit of 500 *iugera* would have been of much relevance in 195, especially given the abundance of lands so soon after the Second Punic War. The reference to the law dating to 167, however, is generally accepted as genuine, and is often produced as evidence for the introduction of the limit of 500 *iugera* shortly before this speech. If the law was passed shortly before 167, it would fit into a series of sumptuary laws passed in this period for the purpose of limiting competition among the elite.⁴⁷

Another indication that seems to point to a second-century date for the law is Appian's statement that 'they embodied these provisions in a law, which they swore to observe, and laid down penalties (for violating it)'. It is sometimes argued that the swearing of oaths, intended to make sure that the law would be obeyed by the appropriate magistrates—the *iusiurandum in legem*—did not originate until the second century.⁴⁸ However, this argument is problematic, since there are only very few references to oaths sworn on laws. The two most famous examples are the *Lex agraria* of 111, which states that 'without personal liability he [the magistrate] is not to swear to obey those statutes and plebiscites'.⁴⁹ The other famous example dates from 100 BC, when the *Lex Appuleia agraria* required an oath by all Senators and Metellus Numidicus' refusal to swear led to his banishment.⁵⁰ The *Lex Latina Tabulae Bantinae* of the late second century BC states the swearing procedure in detail:

[In front of] the temple of Castor, openly, before the light of day, facing the forum, and they are to swear within the same five days, in the presence of the quaestor, by Jupiter and the [ancestral] gods, [that he] will do [what shall be appropriate according to this statute,] and that he will not act contrary to this statute knowingly with wrongful deceit and that he will not act or intercede [to the effect that this statute may not be, or be improperly, observed].⁵¹

Other examples of laws requiring an oath are not known until the first century BC, the most famous being Caesar's agrarian law.⁵² The fact that laws

⁴⁶ Yardley (2000, 561).

⁴⁷ The *Leges Orchia* (182 BC), *Fannia* (161), and *Didia* (143). See Macr. *Sat.* 3.17.2–15 and Gell. 2.24.3–10. See also Lucil. 1241; Ath. *Deipn.* 6.274c–e; Plin. *HN* 34.14.30; Schol. Bob. *Sest.* 138 (Stangl p. 141). See Bringmann (1985, 13); Flach (1994, 289); Gargola (1997, 566).

⁴⁸ Luzzatto (1955, 37); Bauman (1979, 394–5).

⁴⁹ *Lex agraria* l. 42: *Fraude sua nei iurato* . . .

⁵⁰ App. *BC* 1.29–32, *Vir. ill.* 62, 73; Cass. Dio 38.7.3; Cic. *Sest.* 47.101; Flor. 2.3.16.3; Plu. *Mar.* 29.1. Bringmann (1986, 65) and Flach (1994, 293) argue that Saturninus' law was the first requiring an oath, but this was clearly not the case.

⁵¹ *Lex Latina Tabulae Bantinae* (CIL 1².197) ll. 14–22, ed. Crawford (1996, 203). See also the Tarentum fragment ll. 20–7 in Crawford (1996, 214).

⁵² Cic. *Att.* 2.18.2; Cass. Dio 38.7.1–2; App. *BC* 2.42; Plu. *Cat. Mi.* 32.3. See Carsana (2001, 263–4).

requiring oaths seem not to have appeared until the later second century has led many scholars to argue that the law *de modo agrorum* mentioned by Appian cannot have been passed earlier than the second century.

However, an important distinction must be made between oaths sworn by magistrates and by the people. It is indeed likely that the swearing by magistrates to uphold a certain law, as in the examples above, did not appear until the later second century. However, laws sealed by oaths of the people are already recorded for the early Republic. After the expulsion of the kings the people swore an oath never to reintroduce kingship.⁵³ The *Lex Icilia* of 456 also seems to have required an oath, since Livy calls it a *lex sacrata*. These oaths must have been sworn by the assembled people, not only by magistrates.⁵⁴ It would seem, therefore, that the idea of swearing by the people had been introduced quite early in the Republic. It seems as if the law in Appian was also sworn by the people, and not only by the magistrates; Appian's words 'they swore to observe the law' seems to refer to 'the people' mentioned earlier ('the Roman people became concerned that they might no longer have a ready supply of allies from Italy. . . . They did not consider reform. . .').

Therefore, the introduction of oaths by magistrates in the second century cannot be adduced as proof that the law mentioned by Appian also dates to the second century. It is quite possible that Appian, seeing the importance of the *lex de modo agrorum* and the custom of swearing to other important laws by the people in the early Republic, ascribed such an oath to the law of 367, even if this had not actually taken place.⁵⁵ The swearing of laws by magistrates is not mentioned by Appian at all. In any case, the *Lex agraria* of 111 BC and Saturninus' law are much later than the supposedly second-century law of Appian, which is most often dated to before 167 BC, and the late second-century examples cannot therefore be taken as evidence for the passing of the agrarian law in the early second century.

Other scholars have tried to rehabilitate the date of 367 for the *Lex Licinia*. Some argue that the amount of 500 *iugera* at least was realistic, even if the stipulated number of animals was not. As a result of the conquest of Veii in 396 the Roman state had acquired much land. As yet there were not a great number of people who were rich enough to occupy this land, so the limit of 500 *iugera* may be considered reasonable for this period.⁵⁶ The developments described by

⁵³ Liv. 2.1.9.

⁵⁴ Liv. 3.32.7. See Drummond (1989, 223); Carsana (2001, 268–71).

⁵⁵ Riecken (1911, 117).

⁵⁶ Bozza (1939, 168); Burdese (1952, 54–6); Sterckx (1969, 331–5); Labruna (1986, 104–5); Hermon (1994b, 139); Oakley (1997, 657–9). Cornell (1989b, 328) argues that the *Lex Licinia* differed from the Gracchan law, in that it only set a maximum on the amount of land to be occupied, and did not try to distribute land. The two laws are not exact parallels, and this

Appian, furthermore, can also be applied to the fourth century: it appears from Livy that discussion about the occupation of land had been a continual issue from the fifth century onward. Moreover, slavery existed in the fourth century as well, and it is possible that some rich men owned enough slaves to work such a large amount of land.⁵⁷ The amount of 500 *iugera* is therefore possible for the fourth century; however, if we take into account the amount needed to graze cattle as well, the Roman territory was surely not large enough.

An important argument against the introduction of the limit in the early second century, the period favoured by many scholars, is that there is no reference anywhere to the passing of such a law shortly before 167. To explain this supposed omission Forsén points out that the first time the limit of 500 *iugera* was connected to Licinius Stolo and the year 367 was in Tiro's discussion, written in 46, of Cato's speech *Pro Rhodiensibus*, and in the works of Varro and Cornelius Nepos, all writing in the mid-first century BC. He argues that the connection between the year 367 and the limit of 500 *iugera* may have been first made around the time of the Gracchi, when the amount of 500 *iugera* became important. Livy may have taken up this tradition, and ignored any sources which referred to the introduction of the limit by a law of the second century BC.⁵⁸

Others argue that in the early second century the agrarian debate was not a big issue in politics and that therefore the law disappeared from the sources.⁵⁹ It makes sense to suppose that the passing of such a law at this time raised little protest, since there was enough land available for everyone. On the other hand, Livy can be expected to have reported an agrarian law if it was passed at this time, even if it did not become relevant until later; his account is usually quite complete, especially when it comes to such controversial matters as agrarian laws.⁶⁰ Indeed it would be very strange if he did not report the one law which introduced the 500-*iugera* limit, since this law set the later standard for occupation of *ager publicus*. In fact, it is clear that Livy himself thought that the law of 500 *iugera* was passed in 367 BC, since this is what he states in his discussion of the *Leges Liciniae*, and there was therefore no reason for him

provides a strong argument in favour of a fourth-century date for the *Lex Licinia*, which therefore was not just a fictitious anticipation of Gracchan legislation.

⁵⁷ Manzo (2001, 123–4). See Chs. 3.3.1 and 4.3.4 on the importance of slavery.

⁵⁸ Forsén (1991, 51–5, 60–9).

⁵⁹ Tibiletti (1950, 264).

⁶⁰ Oakley (1997, 659) points out that Livy omits such laws as the *Lex Cincia* of 204 and the *Lex Orchia* of 182, but agrarian laws may be expected to have been recorded with more care, judging from the importance of debates over land.

to mention a law passed between 200 and 167 BC.⁶¹ From this it can be inferred that the tradition that the limit of 500 *iugera* was introduced in 367 was already firmly established in the first century BC. Since it is unlikely that the introduction of such an important limit would have been completely neglected by all later writers, it is likely that the 500-*iugera* limit was indeed set in 367, and that the absence of a second-century law from Livy's account is due to the fact that there was no such law.

In fact, we have evidence for the existence of a limit on the possession of land at an early date: Livy reports that in 298 'a large number of people were prosecuted by the *aediles* for possessing more than the legal quantity of land. Hardly one could clear himself of the charge, and a very strong curb was placed upon inordinate covetousness.'⁶² The text of the reference is very short and does not serve to support any larger argument, which makes it likely that Livy took it from an annalistic source. It may therefore be genuine. Unfortunately the text does not mention what the limit on the possession of *ager publicus* was, but it at least shows that such a limit was in existence by 298 BC.

I believe that the debate about the date of the law can be solved by answering the second point of debate: the question of whether the limit of 500 *iugera* in the *lex de modo agrorum* limited the use of *ager publicus*, *ager privatus*, or both. Until the early nineteenth century most scholars assumed that the law limited the possession of private property,⁶³ until Niebuhr claimed that it restricted only the use of *ager publicus*. His only arguments for this were Livy's use of the verb *possidere* instead of *habere* (see below) and that it was clear from the context that the law concerned *ager publicus*.⁶⁴ This was enough to convince scholars unanimously that the law was about *ager publicus*.⁶⁵ Recently, however, Rathbone has again taken up the argument that the law referred to private land only. He argues:

No source, apart from Appian, says that the pre-Gracchan law affected *ager publicus*. Appian says it affected 'this land', apparently referring back, although he does [not]⁶⁶

⁶¹ Toynbee (1965, ii. 560).

⁶² Liv. 10.13.14: *Eo anno plerisque dies dicta ab aedilibus, quia plus quam quod lege finitum erat agri possiderent; nec quisquam ferme est purgatus vinculumque ingens immodicae cupiditatis iniectum est.*

⁶³ See discussion in Forsén (1991, 29) and Rich (2008, 539–43).

⁶⁴ Niebuhr (1832, 13–14).

⁶⁵ e.g. Niese (1888, 416); Zancan (1934, 8); Cornell (1989b, 327); Forsén (1991, 30–4). For a summation of the public–private debate, see Ridley (2000). Most scholars believe that only *ager occupatorius* was subject to the limit, not *ager quaestorius*, *ensorius*, and *compascuus*: Burdese (1952, 68); Bernstein (1969, 169 n. 287). Botteri (1992, 54) suggests that Appian is speaking only about the sale and lease of land, and that the concept of *ager occupatorius* was not created until the second century BC, but this is very unlikely.

⁶⁶ Rathbone actually omits 'not'.

make it completely clear, to the ‘undivided’ (public) land held by the rich. Plutarch too implicitly takes it to refer to public land, but both these versions are suspect because, unlike the other references, they are embedded in accounts of the formulation of Tiberius Gracchus’ law, which did aim to repossess *ager publicus*. Some passages about the pre-Gracchan law do use the verb ‘*possidere*’, which in legal terms meant ‘possess’, not necessarily ‘own’, but since Latin had no verb ‘to own’, *habere* (Greek *echein*) and *possidere* were commonly used of ownership. The crucial testimony is that of the elder Cato in 167: read, as it was spoken and heard, with no knowledge of the Gracchi, it must refer to private property. . . . The long orthodox idea that the Licinian law related only to *ager publicus* is the outcome of a debate prematurely truncated in the nineteenth century. The older, more radical, interpretation of it as an equalising limitation on the ownership of private agricultural property also fits well with its probable historical context.⁶⁷

I think, however, that a third possibility must be considered, namely that the *Lex Licinia* covered both private *and* public land. This theory was already proposed by Huschke,⁶⁸ but was subsequently discarded. It has only very recently been brought forward again in an excellent article by Rich, which proposes a number of attractive arguments in favour of this theory.⁶⁹

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

The first point to note is the centrality of private property, including *ager privatus*, in Roman society and law. Private ownership, in my view, was the first legal category of land tenure to be formalised at Rome. Probably from the late sixth century, the political status of individual citizens was dependent on their census, that is their private property, particularly land. The Twelve Tables . . . equally imply that the fundamental concept of private ownership was well established.⁷⁰

It is difficult to see how the centrality of private property can be reconciled with the establishment of a maximum amount of private property to be owned by one individual. If, at the time of the introduction of the law, someone owned more than the maximum, he would be compelled to give

⁶⁷ Rathbone (2003, 145–6), see Kunkel (1995, 494).

⁶⁸ Huschke (1835, 3–8). Hermon (1994b, 142) also maintains this possibility, but her explanation is linked to the controversial theory about the origin of *ager publicus* from lands owned by *gentes*: since, in her view, the difference between *ager privatus* and *ager publicus* was not as clear-cut in the fourth century as it became later, no distinction was made between the two. However, since the idea of private property had already been established very early in Roman history (see Ch. 2.1.1), this explanation cannot be correct.

⁶⁹ Rich (2008, 545–60).

⁷⁰ Rathbone (2003, 138–9).

up the excess amount. The state had no right to force people to limit their holdings of private property, whereas it had every right to dispossess people of public land. The limit can have been applied to *ager privatus* only if it was issued before anyone owned 500 *iugera*, and was only a theoretical maximum which had not been reached. In that case, however, the law would not solve the problems caused by the occupation of large plots of public land—if social problems already occurred when some people owned, say, 300 *iugera*, they would not have been solved by limiting private ownership to 500 *iugera*.

Another, more likely, possibility is therefore that the limit concerned the possession of both private and public land, in an age when nobody yet owned 500 *iugera* of private land, but holdings of private and public land together had in some cases reached this limit. If the *Lex Licinia* of 367 concerned both public and private land, this would mean that the Roman elite was relatively poor at this time, since no one as yet owned more than 500 *iugera*. In 167, when we are sure the 500-*iugera* limit was in force, many individuals owned more than this amount. There are many stories about Senators, even in the early second century, who were quite poor,⁷¹ but in 167 many people certainly owned more than this amount (see Ch. 5.2.3). To limit private ownership to a total of 500 *iugera* in the second century would mean that the elite would lose much of its private land. It is therefore unlikely that a law limiting the amount of private land was enforced in this period.

However, in the fourth century it is highly probable that the situation was different and individual Senators owned less private land. This made it possible to issue a law limiting the possession of all land, both private and public, to 500 *iugera*. The state could then take away the public land, and in this way make sure that total possessions of private and public land did not reach the maximum of 500 *iugera*. In this case the introduction of the limit did not deprive people of private holdings. This would also explain why the law had come to be totally ignored in the second century: if a law was still in force in 167, which limited total possession of land, both public and private, to 500 *iugera*, it would have been completely out of date. That Cato refers to it does not mean that the limit was still relevant at this time, but only serves to reinforce his image as a supporter of traditional Roman frugality.

Some scholars, for example Niebuhr, have argued that the use of the terms *habere* and *possidere* in the sources can shed light on the kind of land involved.

⁷¹ The examples are almost endless: Val. Max. 2.5.5; 2.9.4, 4.3.4–4.4.11; 4.8.1; Liv. 3.26.8; *Vir. ill.* 17, 18, 40, 56, 58; Plin. *HN* 18.4.20, 21.7.10, 33.55.153; Polyb. 5.22.3; Cass. Dio 5.22.3, 20.67.1; Zonar. 9.24; DH 5.48.2, 6.96.1, 10.8.4, 10.14.1–2, 10.17.4–5, 10.24.1–2, 10.35.3, 19.15.1; Colum. *R.* 1.pr.13, 10.1; Plu. *Aem.* 5.7, 39.10, *Cat. Ma.* 2.1, 4.4, 6.1; Cic. *Rosc. Am.* 18.50–1, *Mur.* 36.75, *Sen.* 16.55–6; Gell. *NA* 1.14, 17.21.39; Flor. 1.5.11.13; Eutrop. 2.12; Front. *Strat.* 4.3; Sen. *Helv.* 12.5; Veg. *Mil.* 1.3.

They suppose that *habere* was used of ownership, while *possidere* was used for the possession of things not in full property. Supporters of this theory suggest that the concept of *possessio* was especially created for holdings of *ager publicus*. They assume that in early Republican law there was only a distinction between *dominium* (full ownership) and *usus* (practical use of land without any rights whatsoever).⁷² To open up the possibility for people to occupy *ager publicus*, but simultaneously to be granted some rights to the land, the idea of *possessio* was developed: an intermittent category which granted some sort of legal protection against third parties who might have wanted to deprive a possessor of his land.⁷³ If this were the case, the specification that *ager publicus* was involved in the *Lex Licinia* would be superfluous, because this would have followed logically from the term *possidere*. However, it is unclear what the exact conditions of *possessio* can have been in the early Republic: at this time, there existed no mechanisms to safeguard possessions; possessory interdicts, for example, had not yet been created (see Ch. 3.2.3). It is therefore unlikely that the concept of *possessio* in the early Republic was comparable to the more strictly defined legal concept of later periods, and therefore unlikely that it was created in the early Republic as a method of holding *ager publicus*.

Rathbone is right to emphasize that the difference between *habere* and *possidere* is not clearly defined; however, although it is true that both terms were commonly used of ownership, they were also both used to denote holdings of *ager publicus*.⁷⁴ While *possidere* was not used exclusively for possession by a non-owner, *habere* did not exclusively denote full ownership. In Imperial legal texts a clear distinction between the two terms existed, but it seems as if the kind of *possessio* that was possible on *ager publicus* could have been indicated with either term. A short investigation into the nature of *possessio* under the Empire may show that this was the case.

In the Imperial period, two different kinds of *possessio* existed: first *possessio civilis*, which allowed a person to become an owner by *usucapio*. We have seen that this was not possible for *ager publicus*, which fell under the second category, namely *possessio* after the *ius honorarium*. In this case *possessio* was protected by interdicts (for which see Ch. 3.2.3), and therefore anyone who could avail himself of these was considered a possessor. It was not necessary for an owner to actually hold the land in order to be considered a possessor;

⁷² Other scholars have argued that the idea of *dominium* (*ex iure Quiritium*), meaning full property, did not originate until the second century, e.g. Diósdí (1970, 133); Capogrossi Colognesi (1979, 322). However, private property certainly existed in the archaic period (Ch. 2.1.2).

⁷³ Kaser (1956, 239–41); see Oakley (1997, 677).

⁷⁴ Zancan (1934, 33); Forsén (1991, 31).

even if the land was held by another, the owner still had *possessio*: 'We possess also through our tenants, agricultural or urban, and through our slaves; and should they die or lose their reason or let to someone else, we are deemed to retain possession.'⁷⁵ Furthermore, it was not essential to use the land at all times: a person could, for example, be the possessor of summer pastures which were not used throughout the whole year.⁷⁶

Therefore the term possession was not limited to public lands, but could also be applied to full ownership: '*Possessiones* are lands stretching far and wide, both publicly and privately owned, which at the start individuals occupied and possessed as they could.'⁷⁷ Consequently, we see that anyone whose possession of land, whether public or private, was protected by an interdict, was called a possessor, even if he held the land only by *precarium*: 'We should remember that anyone who has something by *precarium* also possesses it.'⁷⁸

According to the Imperial jurists, *habere* had a slightly wider meaning than *possidere*: not only the owner and the lawful possessor, but also the physical user, who did not have rights to the land, could be indicated by this term: "Have" is doubly acceptable; for we apply the word "have" both to the man who is the owner of a thing and to the man who is not the owner, but holds it; for example, we are accustomed to use the word in relation to property deposited with us.'⁷⁹ *Habere* could therefore also be used as an equivalent of

⁷⁵ D.41.2.25.1, by Paulus in the second century AD. Other jurists from the Imperial age agree, e.g. D.41.2.3.7 (Paulus): 'Should you be in possession by will alone, you continue to possess the land, even though someone else be physically present on it.' D.2.8.15.1 (Macer): 'One who has bare ownership is understood to be possessor.' D.41.2.52.pr (Venonius): 'It is no barrier to possession that another has enjoyment.' D.43.17.1.2 (Ulpian): 'It may happen that one person is a possessor but not an owner, the other an owner but not a possessor; and it may be that the same person is both possessor and owner.' See D.2.8.15.2–7 for the definition of possessors in specific cases. However, it is likely that the difference between ownership and possession had already been defined in the Republic; the possessory interdicts, datable to the second century BC, cannot have been created without a clear idea of what constituted ownership and possession. See Bove (1960, 157); Kaser (1968, 82–4); Johannsen (1971, 229–31).

⁷⁶ D.41.2.3.11, 41.2.27, 41.2.44.2, 41.2.44.46, 43.16.1.25, all from the Imperial period.

⁷⁷ *De agris* 272.1–2: *Possessiones sunt agri late patentes publici privateque, quos initio non mancipatione sed quisque ut potuit occupavit atque possedit.* See D.50.16.78 (Paulus): 'At times the word possession signifies property (*proprietas*), as has been laid down in the case of someone who has bequeathed his possessions.' See Festus 277 L.

⁷⁸ D.43.26.4.1 (Ulpian): *Memnisse autem nos oportet eum, qui precario habet, etiam possidere.*

⁷⁹ D.45.1.38.9 (Ulpian): '*Habere* dupliciter accipitur: nam et eum habere dicimus, qui rei dominus est et eum, qui dominus quidem non est, sed tenet: denique habere rem apud nos depositam solemus dicere. Watson translates *denique* as 'lastly', but in legal Latin *denique* usually introduces an example of a previous statement. Non. 497 L gives the meaning of *habere* as *tenere*, *occupare*. See Diódsi (1970, 51); Tibiletti (1974, 94); Labruna (1986, 148). Cic. *Quinct.* 29.89 states: 'I proved that the property had not been taken possession of at all (*bona possessa non esse constitui*), because goods are regarded as possessed, not when part only, but when everything

tenere, to simply hold a thing without being able to protect it by the possessory interdicts. This short overview shows that *ager publicus*, even if it was held as a *precarium*, could be indicated both by *possidere* and *habere*. It is by no means the case that *habere* indicates stronger rights than *possidere*, as has been argued by Niebuhr and others.⁸⁰

From all this we may conclude that the term *possessio* from the late Republic onwards denoted the legal control exercised by an owner or possessor over pieces of property, whether public or private. It is therefore to be expected that authors writing about the *Lex Licinia* in the late Republic or Imperial period would have needed to indicate that it concerned *ager publicus*, since at this time *possessio* did not automatically refer to *ager publicus*. Therefore we cannot conclude that the use of the word *possidere* automatically indicated public land.

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

The sources never state which land was involved; they simply mention *ager* without adding any further qualification. The only sources giving any indication of the sort of land involved in the law are Plutarch and Appian, who clearly indicate that it dealt with public land. Appian says that ‘no one was to hold more than 500 *iugera* of this land’, and the only land he has referred to earlier is the ‘undistributed lands’ which had been taken from defeated peoples, in other words, *ager publicus*.⁸¹ Plutarch’s testimony also refers without doubt to *ager publicus*. However, the accounts of both Plutarch and Appian are influenced by the events of the Gracchan period; they are trying to imbue the law of the Gracchi, which certainly concerned only *ager*

that can be held and possessed (*quae teneri et possideri possint*) has been seized.’ Therefore not only the actual use of, but also the right to the land must come to a person before the land can be considered to have been legally seized by him.

⁸⁰ See Zancan (1934, 33); Diósdí (1970, 51); Rich (2008, 553–8).

⁸¹ App. BC 1.8 states that the *Lex Licinia* limited the possession of τῆσδε τῆς γῆς, referring back to the *ager publicus* he just mentioned. Huschke (1835, 7) argued that the word τῆσδε was not in the manuscripts, but in fact it is in all the best manuscripts, and the reading τῆσδε τῆς γῆς is now generally accepted, see Rich (2008, 545).

publicus, with an air of paternal authority. If the Gracchi presented the older law as referring to *ager publicus* as well, it is not strange that Plutarch and Appian, who both used a pro-Gracchan source, give us this version. People listening to Gracchan speeches are unlikely to have accepted an older law which was exclusively concerned with *ager privatus* as a forerunner of a law that solely concerned *ager publicus*. A law which encompassed both public and private land, however, may have served as a more acceptable example.

Yet another argument against the limit involving only private land is that, according to the sources on the early Republic, up until the promulgation of the *Lex Licinia*, discussion had centred on the distribution of *ager publicus*. The early Republican *plebs* continually asked for the allotment of *ager publicus*; not once was there any attempt to share out private lands. The sources for this period are influenced by later events, but if in later times the distribution of private land was an issue, we should expect this to have been reflected in sources covering earlier periods. There is no indication that the distribution of private land had ever been an issue. For anyone listening to the arguments of Cato it would have been immediately clear that he was talking about *ager publicus*, since taking away private lands would have been so aberrant that it would have required some explanation—the situation is therefore the reverse of that postulated by Rathbone.

In short, it cannot be accepted that the *Lex Licinia* of 367 limited the possession of private land only, as Rathbone argues. The idea that it concerned both public and private land cannot be proved, but the assumption that it could would solve many difficulties which are connected with the theory that the law limited the possession of public land alone, most importantly the objection that the occupation of such a large area of *ager publicus* is difficult to envisage for the fourth century.

Even if the limit of 500 *iugera* can reasonably be expected to have been introduced in 367 BC, there is still the problem of the limitation on the number of animals which could be grazed and the obligation to employ free labourers. According to Appian these stipulations were introduced at the same time as the 500-*iugera* limit on *ager publicus*. Some scholars believe that this limit was introduced in 367, at the same time as the limit of 500 *iugera* of arable land.⁸² Others maintain, however, that even if Rome controlled enough arable land for the 500-*iugera* limit to have been passed in 367, it is unlikely that it also held enough pasture land to allow such large numbers of beasts to be grazed. It is to be noted that Appian says possession of 500 small or 100 large animals was allowed, not both of them at the same time. This would reduce the

⁸² Manzo (2001, 125–6).

maximum limit considerably; however, it is generally assumed that the law was cumulative, as was the *Lex agraria* of 111, and therefore allowed a total of 600 animals.⁸³ As we have seen, however, the introduction of a maximum of 500 small and 100 large animals would have been unrealistic for the fourth century, and this has led scholars to assume that the limit on animals was introduced in the second century as well.⁸⁴ However, as I have argued, it would be better to date the 500-*iugera* limit to 367, and I do not believe that any law concerning the use of land was passed in the early second century. The maximum limit on animals may have been an addition to the *Lex Licinia* introduced shortly after 367, for example after the Samnite Wars. As we have seen, it was at this time that Rome acquired extensive pasture lands in the Apennines, for which such regulations would have been useful (see Ch. 3.4).⁸⁵

There are several references to the existence of a limit on the number of animals to be grazed on *ager publicus*. Livy recounts that in 296 and 293 fines were levied on cattle breeders,⁸⁶ but does not mention the reason they were fined. Ovid refers to a prosecution of graziers in 241:

The custom grew of grazing the people's pastures, and it was long allowed to go unpunished. The masses lacked champions to protect public land, and the lazy alone grazed privately. This licence was arraigned before the Publicii, *aediles* of the plebs. Before that men's courage had failed them. The people recovered their rights, the guilty were fined.⁸⁷

In 196 and 193 cattle breeders were again fined.⁸⁸ Unfortunately, we cannot be sure that they were fined because they had grazed more animals than was allowed on *ager publicus*.⁸⁹ There were other reasons for which shepherds could be fined, such as grazing cattle on lands which were not *ager publicus*, or inflicting damage. However, since the only law in the sources concerning stockbreeding is that limiting the number of animals, as it is mentioned in

⁸³ Niese (1888, 411) assumes the law offered an alternative of either 100 large or 500 small animals. Most scholars assume, however, that the limit was cumulative, e.g. Tibiletti (1948–9, 6); Burdese (1952, 62).

⁸⁴ Tibiletti (1948–9, 231–3); Burdese (1952, 62); Pasquinucci (1979, 135–6).

⁸⁵ Rich (2008, 565) argues the law limited pasturing on both private and public land, in which case 367 is not an unlikely date. However, 600 animals needed the same amount of land whether it was public or private, and therefore the Roman state would still need a sufficient total amount of pasture land.

⁸⁶ Liv. 10.23.13, 10.47.4.

⁸⁷ Ov. *Fast.* 5.283–90. See Festus 276 L.

⁸⁸ Liv. 33.42.10, 35.10.11–12.

⁸⁹ As is assumed by Skydsgaard (1974, 19) and Botteri (1977, 317). Tibiletti (1948–9, 228) suggests the *publicani* collecting the rents may have been meant, but this is unlikely. For conflicts in later times, which may have led to convictions, see CIL 9.5074.

Ovid and Appian, it may be that Livy thought this self-evident. We can only conclude that a limit existed in 296, and since there is no indication of a renewal or revision of the number of animals allowed by this limit, it is likely that at this time it was 100 large and 500 small animals. This limit can have been introduced either in 367, which is the only date we have for the introduction of a limit on the number of animals to be pastured, and therefore perhaps the most likely, or shortly afterwards.

Appian's statement that a regulation was issued obliging the employment of a certain number of free labourers has led some to believe that this measure was also introduced in 367.⁹⁰ Others have argued that in the fourth century there were few large slave-staffed estates, and that therefore a date in the early second century would be more likely.⁹¹ However, the statement sounds remarkably like a law of Caesar, which also demanded a minimum number of free labourers on each estate.⁹² The regulation about free labourers in Appian may then have been added to create a spurious precedent for the Caesarean law, since it has no basis in any historical source other than Appian. Admittedly, there is no compelling reason why it could not have been introduced in the fourth century; Appian does not mention the law in connection with Caesar, so he may have thought that it had been passed earlier. Slavery certainly existed in the early Republic (see Ch. 4.3.4); Appian does not mention the exact number of free men who were to work on each estate, and a small number could have been sufficient to fulfil the functions required by the law. On the whole, however, it is more likely to have been a later measure.

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

⁹⁰ Manzo (2001, 122–4).

⁹¹ Tibiletti (1948–9, 233–6); Burdese (1952, 70).

⁹² Suet. *Iul.* 42.1. See Bringmann (1986, 64); Flach (1994, 293–4); Rathbone (2003, 144); Rich (2008, 565). Bringmann even maintains that the whole historiographical tradition about the *Lex Licinia* was created at the time of Caesar; he points out that Caesar's laws on debt were also very similar to those reported in the *Lex Licinia*. The fact that Tiro and Varro were the first to connect the limit of 500 *iugera* to Licinius Stolo and 367 could point to a general reconstruction of agrarian history in the time of Caesar. However, it would be presumptuous to suppose that the whole content of the *Lex Licinia* was made up in the first century BC. There is sufficient evidence for the existence of laws limiting possession of land and animals as early as the third century.

3.2.3. *Ager occupatorius* after the *Lex Licinia*

The law of 367 was apparently widely ignored. Appian writes: ‘No notice was taken either of the laws or the oaths; some who appeared to observe them made bogus transfers of land to their relations, while the majority completely ignored them.’⁹³ And Plutarch: ‘For a short time this edict did check greed and help the poor, and they stayed on the land they had rented, with each person occupying the plot of land he had originally held. Later, however, their rich neighbours began to transfer the leases to themselves under fictitious names, and then ended up by blatantly owning most of the land in their own names.’⁹⁴

We have seen in Livy that those who possessed too much land were penalized once and that those who grazed too many animals on *ager publicus* were fined, but we have only a few references to such punishments. In consequence, most scholars agree that the limit of 500 *iugera* was universally disregarded. Moreover, the law did not state that the excess amount had to be confiscated and distributed; Appian says that it was ‘expected that the remainder of the land would at once be sold in small parcels to the poor’,⁹⁵ but he does not say that the actual punishment for possessing too much was the loss of the excess land. Even Licinius Stolo, who according to legend was the first to be penalized under his own law, only received a fine;⁹⁶ in any case, no distributions of land are recorded for this period. If the excess land was not taken away, this means that someone who continued to hold too much could be fined repeatedly. However, most magistrates had little inclination to fine their fellow nobles, since magistrates and perpetrators belonged to the same class.⁹⁷ Therefore, apart from the occasional fine, possessors of *ager publicus* could simply continue possessing their land.

It has been argued that in some way the *Lex Licinia* granted the possessors more rights to the land. As long as someone held less than 500 *iugera*, it may have been felt that it would be unfair to take the land away: after all, possessing land within the limit was allowed. Even if the state was still the

⁹³ App. *BC* 1.8.

⁹⁴ Plu. *TG* 8.2.

⁹⁵ App. *BC* 1.8: ἡγούμενοι τὴν λοιπὴν αὐτίκα τοῖς πένησι κατ’ ὀλίγον διαπεπράσσειν. Some, e.g. Capogrossi Colognesi (1980, 55) and Gabba (1992, 401) argue that in 367 the land was to be distributed to plebs in seven-*iugera* allotments. There is, however, no reason to assume that this was the intention of the law, and there is no reference to such a distribution. Gabba (1979a, 160), Bringmann (1985, 11), and Carsana (2001, 272), inspired by Plu. *TG* 8.1–2 and App. *BC* 1.8, argue that the law intended to stimulate the sale or lease of land to the poor. However, it is unlikely that the poor would have been able to buy land, since they had no money to do so.

⁹⁶ Liv. 7.16.9; DH 14.12.1.

⁹⁷ Gargola (1995, 144–5) argues that the *aediles* conducted prosecutions when this might promote their political status, but otherwise ignored the law.

owner of the *ager occupatorius*, and in theory could take the land away whenever it was needed, this would have been very difficult.⁹⁸ However, the 'stronger rights' granted by the *Lex Licinia* were only a matter of practice, not of legal right. The state did not actually exert much control over the *ager publicus* it owned in theory: many possessors were too powerful to contemplate simply confiscating their lands, and, moreover, a great number of them belonged to the ruling class and would never have implemented laws obliging them to give up their own possessions. The longer the land had been left with the possessors, the more difficult it would be to take it away, as became clear in the time of the Gracchi.

The possessors' legal hold over *ager occupatorius* was gradually reinforced by the development of legal instruments pertaining to this land. Possession of *ager occupatorius* always was a *precarium* held from the state (see Ch. 3.2.1), so that the holder had no rights when faced with the real owner.⁹⁹ However, it became possible to protect possession against third parties by the creation of the *interdictum uti possidetis*. This meant that when a dispute arose about who possessed a tract of *ager occupatorius*, the person who at the moment of the lawsuit was in possession of it was adjudged the rightful possessor, except if he had obtained the land by force (*vi*) or stealth (*clam*) or held it as a *precarium* from the other party: 'the way you possess the land in question, which you possess neither by force, nor by stealth, nor without security of tenure from the other party, you will (continue to) possess in this way. I forbid violence to be carried out against this.'¹⁰⁰ If someone had obtained the land by force or stealth, or if he possessed it without secure title, he was still protected, but not against a person who had more rights to it; in this case the former possessor or the real owner could retake the land:

The man who is said to have driven another away by violence has many pleas of defence allowed him (and if he can prove any one of them to the satisfaction of the judge, then, even if he confesses that he drove him out by violence, he must gain his

⁹⁸ Manzo (2001, 152) assumes that through the *Lex Licinia* the possessor gained security of tenure over his land, even when confronted with the state, but this is very unlikely.

⁹⁹ Bozza (1939, 74); Bove (1960, 130).

¹⁰⁰ This is the classic formulation of the interdict from *C. J. 8.6.1: Uti nunc possidetis eum fundum, quo de agitur, quod nec vi nec clam nec precario alter ab altero possidetis, ita possideatis. Adversus ea vim fieri veto*. See also *D.41.2.6.pr*, 43.17, 43.24.1.4–5 (all Ulpian); *Inst.* 4.15.4–5; *Paul. Sent.* 5.6.1; *Gaius* 4.148–50; *Fest.* 260–2L. It is not certain that the Republican wording would have been the same, but the contents most likely were. *Vi aut clam* had been defined by the late Republic, as is attested by *D.50.17.73.2* from Scaevola, consul in 95 BC: 'Something is regarded as being done by force if someone did it when he was forbidden to do it; done secretly if someone did it when he thought that he had or would have controversy over it.' See Burdese (1952, 28); Kaser (1966, 319–23); Bignardi (1984, 41); Labruna (1986, 55).

cause), either that he who has been driven out was not the owner, or that he had got possession from him himself by violence, or by stealth, or as a present (*precarium*).¹⁰¹

By a lawsuit under the *interdictum uti possidetis* the person who possessed the land was confirmed in his possession, so that, should a new lawsuit arise about the land, he would be the defendant and the other party would have to bear the burden of proof. Consequently, the interdict did not decide who owned *ager occupatorius*, since that was always the state; it only stopped someone from preventing the possessor from using it.¹⁰² In some cases it was hard to establish secure possession: 'If, however, a site consists of pasture-land, scrub land, and places that have been left uninhabited and almost abandoned, these offer much less secure proof of possession.'¹⁰³ This uncertainty must have caused problems for those who did not have any method of proving their rights of possession, as can be seen in the Gracchan period (Ch. 5.2.3).

Someone who had been driven from his possession, whether this was public or private land, by violence could also use the *interdictum unde vi* ('from where by force'), which restored possession to the injured party: 'If a person be evicted forcibly from possession, he is treated as still possessing, since he has the ability to recover possession by the *interdictum unde vi*.'¹⁰⁴

It is not clear when the *interdictum uti possidetis* originated. The interdict is not mentioned in the *Lex agraria* of 111, which refers only to the *interdictum unde vi*. However, it is likely that the *uti possidetis* originated sometime in the second century.¹⁰⁵ Therefore until the early second century the only laws

¹⁰¹ Cic. *Tull.* 19.45. See D.43.26.17 (Pomponius): 'Anyone who possesses a farm by *precarium* may avail himself of the interdict for possession of land against all but the person he asked.'

¹⁰² D.43.17.1.1 (Ulpian): 'This interdict is written with respect to the person whom the praetor has as the preferred possessor of the land, and it is prohibitory, for keeping possession.' See Bignardi (1984, 27).

¹⁰³ Agennius Urbicus 30.34–32.1.

¹⁰⁴ D.41.2.17.pr (Ulpian). See also D.43.16.1.1, 43.16.4 (both Ulpian); Gaius 4.154–5; C. *Th.* 4.22. Cic. *Tull.* describes such a case; see also Cic. *Mur.* 12.26 and *Rep.* 1.13.20.

¹⁰⁵ Festus 260–2 L mentions Aelius Gallus (fl. 170–150 BC) as the oldest authority: *Possessio est, ut definit Gallus Aelius usus quidam agri, aut aedifici, non ipse fundus aut ager. Non enim possessio est . . . rebus quae tangi possunt . . . qui dicit se possidere, his vere potest dicere. Ita quem legitimis actionibus nemo ex his qui possessionem suam vocare audet, sed ad interdictum venit, ut praetor his verbis utatur: uti nunc possidetis eum fundum quo de agitur, quod nec vi nec clam nec precario alter ab altero possidetis, ita possidetis, adversus ea vim fieri veto.* See Labruna (1986, 49). Bignardi (1984, 3), however, thinks the form of the interdict as cited by Festus did not appear until the first century BC. Kaser (1956, 247–8) assumes the *interdictum uti possidetis* was the oldest of the possessory interdicts, but does not date it exactly. He sees Plaut. *Stich.* 696, 'Age dice uter utrubi accumbamus' and 750, 'Utrubi accumbo? —Utrubi tu vis', as evidence for the existence of this interdict, but this passage seems to refer to the *interdictum utrubi* rather than the *interdictum uti possidetis*: see Watson (1968, 86–7). In Ter. *Eun.* 319–20, written in 161, one of the characters says: 'Do you make it your care to obtain her for me either by force, stealth, or entreaty; so that I only gain her, it matters not how to me.' This seems to be a clear reference to

applying to *ager publicus* were the laws *de modo agrorum*.¹⁰⁶ What protection, if any, a possessor of *ager occupatorius* had before this time is not known. Apparently the need for protection of holdings of *ager occupatorius* grew stronger in the second century BC; with the amount of *ager publicus* available in the second century, a large part of which was possessed by *occupatio*, the need for some sort of legal protection for the occupants may have been felt more urgently. Moreover, the value of investments made in land by the rich necessitated the creation of more instruments of protection (see Ch. 3.3.1).¹⁰⁷

We have already seen that in many instances it was very difficult for the state to keep track of its property. Even the simple task of administering which lands were *ager publicus* proved too much. Given that possession of *ager occupatorius* was always precarious, there were no documents to demonstrate who possessed which land. Land could retain the classification *ager occupatorius* for a very long time, as we have seen. Throughout this time the possessors used the land virtually as if it was their own, transferring it to others, bequeathing it to their children, and marking its boundaries, all actions which were never officially recorded. Consequently it seems not improbable to assume that the state quickly lost track of which land was *ager occupatorius* and which was private.

Sometimes the state did take steps to remedy the situation by investigating which land was *ager publicus* and which was not. Campania was a region of utmost importance to the state, and here several attempts were made to distinguish *ager publicus* from private lands. This land was not *ager occupatorius* but *ager censorius*; however, the fact that the state was unable to keep track of land which in theory was supposed to be strictly supervised leads to the assumption that it must have been even more difficult to keep track of *ager occupatorius*. In its attempts to clarify the status of the Ager Campanus the state depended on information given by private individuals, who were encouraged to declare which land was public. Livy tells us that in 205 'people were allowed to lay information about lands that had belonged to any Campanian citizen, so that it could become the property of the Roman people'.¹⁰⁸ Only in 210 all land previously belonging to Capua had been

the words of the interdict, but Watson (1968, 89) is doubtful. See also Capogrossi Colognesi (1979, 324); Lintott (1994, 55).

¹⁰⁶ Bignardi (1984, 77).

¹⁰⁷ Burdese (1952, 29); Bignardi (1984, 72–8); Labruna (1986, 95–7). Kaser (1956, 269) argues that the interdicts were created especially for *ager occupatorius*, but this category of land was much older than the interdicts. Labruna (1986, 52) thinks that they were created to counter the accumulation of *ager publicus*, but it is unclear how this could have worked.

¹⁰⁸ Liv. 28.46.5. The state often depended on private informers for gathering intelligence on *ager publicus*: App. BC 1.18, *Lex agraria* ll. 90–1.

declared *ager publicus*, meaning that the state had lost track of *ager publicus* within five years of its appropriation.

In 173—more than thirty years after its confiscation—the Senate finally tried to restore order in Campania: ‘The Senate decided that the consul L. Postumius should go into Campania to fix the boundaries between the State land and the land in private occupation. It was a matter of common knowledge that persons had appropriated a large part of the state domain by gradually advancing their boundaries.’¹⁰⁹ This had some effect, because ‘a large part of the Campanian district, which had been appropriated in many places by private individuals, was by the survey of the consul Postumius recovered for the State.’¹¹⁰ The fact that one of the consuls was charged with this task reveals the importance of Campania to the Roman state, and the fact that ‘Postumius spent the summer in surveying the fields and returned to Rome for the elections without even having seen his province’¹¹¹ shows that the confusion in Campania had been sufficiently complicated to occupy him for a long time.

The *Ager Campanus* was supposed to be leased out at this moment (see Ch. 3.3.3), but this probably never happened, since in 165 another magistrate, P. Lentulus, was dispatched to investigate:

When he was *praetor urbanus*, the Senate authorised him to buy up the Campanian territory, which was occupied by private individuals, in order that it should become public land. The owners of the land agreed to let Lentulus set the price, and being a just man he did not deceive them. Such was his moderation that he both served the interests of the republic and restricted private ownership, and he used public money to buy 1,500 *iugera* [*sic*, SR] of land. He brought the Campanian territory, which had been divided amongst private individuals, into public ownership, and let it out at a fair price. Put in charge of an investigation, he recovered much other land, and left a plan of the territory on a bronze tablet in the temple of Liberty, which Sulla later despoiled.¹¹²

It seems that Lentulus bought lands which were *ager publicus*, but had been occupied as if they were private lands by individuals.¹¹³ This means that the state was obliged to buy back *ager publicus* which was officially its own property; apparently it did not even have the power simply to take it from its possessors. This led to the paradoxical situation that although the state did

¹⁰⁹ Liv. 42.1.6.

¹¹⁰ Liv. 42.19.1.

¹¹¹ Liv. 42.9.7, see 42.8.4.

¹¹² Gran. Lic. 28.31–6; see Cic. *Agr.* 2.29.82. The figure of 1,500 *iugera* (3.75 km²) seems too low and may be corrupt; Frederiksen (1984, 274) assumes 50,000 *iugera*.

¹¹³ Manzo (2002, 156); Rathbone (2003, 156).

in fact own huge amounts of *ager publicus*, in the second century there was not enough land available for distribution.

It was to have been expected that the situation in Campania was more complicated than in other areas, since there were many different forms of land tenure there: land which had been sold by the censors and quaestors, private property of loyal Campanians, and *ager occupatorius*.¹¹⁴ However, in other areas of Italy similar problems very probably occurred. The distance from Rome was greater and the level of control correspondingly smaller. If the state proved unable to keep control of the prime agricultural land of Campania,¹¹⁵ it must have faced far greater difficulty in controlling *ager publicus* it had acquired in Lucania, Bruttium, Samnium, and Apulia, and the situation must have been even more confusing in these regions.

When the Gracchi tried to distribute land, it became clear how large the problems caused by inadequate administration were:

When land of a different category which bordered on public land had been sold or distributed to the allies, in order to establish its dimensions the whole lot had to be investigated, and how it had been sold or distributed. Not all owners had kept their contracts of sale or titles of allotment, and such as were actually discovered were inconclusive. . . . Even in the beginning the division had never been done with any great accuracy, as this was territory seized by war. The proclamation that anyone who wished could work unallocated land encouraged many to cultivate what lay next to their own property and blur the distinction between the two, and the passage of time put everything on a fresh basis.¹¹⁶

As we will see, in the time of the Gracchi this situation forced the state to grant the possessors of *ager publicus* extensive rights of tenure on the land they had held only as a *precarium* before (see Ch. 5.2.3). We can see therefore that holders of *ager occupatorius*, although in theory they still held the land as a *precarium* from the state, in fact had a very strong position in the second century. Their possessions were protected by a variety of interdicts, and the lack of administration

¹¹⁴ Bringmann (1986, 57).

¹¹⁵ Vallat (1981, 93) thinks that *ager publicus* was cultivated less well than private land, and that Postumius needed to sell it so that it would be properly farmed. However, it is highly unlikely that the first-rate agricultural land in Campania would not have been worked.

¹¹⁶ App. BC 1.18: ὄση γὰρ ἄλλη πλησιάζουσα τῆδε ἐπέπρατο ἢ τοῖς συμμαχοῖς ἐπιδιήρητο, διὰ τὸ τῆσδε μέτρον ἐξητάζετο ἅπασα, ὅπως τε ἐπέπρατο καὶ ὅπως ἐπιδιήρητο, οὔτε τὰ συμβόλαια οὔτε τὰς κληρουχίας ἔτι ἐχόντων ἀπάντων· ἃ δὲ καὶ εὐρίσκετο, ἀμφίλογα ἦν. ἀναμετρομένης τε αὐτῆς οἱ μὲν ἐκ πεφυτευμένης καὶ ἐπαύλεων ἐς ψιλὴν μετετίθεντο, οἱ δ' ἐξ ἐνεργῶν ἐς ἀργὸν ἢ λίμνας ἢ τέλματα, οὐδὲ τὴν ἀρχὴν ὡς ἐπὶ δορικτήτοισι ἀκριβῆ πεποιημένοι. καὶ τὸ κήρυγμα, τὴν ἀνέμητον ἐξεργάζεσθαι τὸν θέλοντα προλέγον, ἐπῆρε πολλοὺς τὰ πλησίον ἐκπονοῦντας τὴν ἑκατέρω ὄψιν συγχέει· χρόνος τε ἐπελλῶν ἐνεόχμωσε πάντα.

on *ager occupatorius* made it very difficult to retake the land from its possessors, who could hold the land uninterrupted for many years.

3.3. THE SALE AND LEASE OF PUBLIC LAND

Until the third century the only form of *ager publicus* was *ager occupatorius*. Although the possession of this land was protected against occupation by other parties, it could still be taken away by the state whenever it was needed. That this in fact would prove difficult when the state finally attempted to reclaim its rights was of course not known beforehand; at the time the holders may have felt that some stronger form of possession was necessary. The economic developments of the third century made working *ager occupatorius* increasingly unsatisfactory. In this period the Roman state rapidly acquired more and more territory. This led to more economic differentiation in society: the city of Rome itself already had some 150,000–200,000 inhabitants in 225 BC,¹¹⁷ and the majority of them did not produce their own food. As a result the market for agricultural goods increased significantly. Moreover, Rome's increasing contacts with other regions of Italy and the Mediterranean created possibilities to venture into overseas trade, even if such enterprises were still small in the third century. These combined structural alterations in society led to the development of a larger market for agricultural products.¹¹⁸

The use of *ager publicus* for market-oriented production was problematic. Insecurity of tenure would make people reluctant to invest in land, since they could not be sure that their holdings would not be taken away from them. The presence of a large amount of *ager publicus* can therefore be assumed to have been an impediment to the development of commercial agriculture. From the description of Cato and the archaeological record it is clear that commercial agriculture demanded a relatively large investment. The owner needed to pay for slaves, equipment, livestock, seeds or plants, building material, transport, wages for free labourers, and any other expenses which would be incurred in running a farm.¹¹⁹ This of course involved a considerable risk: if the harvest

¹¹⁷ Hopkins (1978, 68–9). See Ch. 4.3.5.

¹¹⁸ Cornell (1995, 380–90).

¹¹⁹ We have little information about the costs involved in setting up a commercial estate. Information about land prices is available only for private land, but *ager publicus* could also be sold by its possessors, and figures about private land may be helpful. Unfortunately, most of our information about the price of land and its development comes from the work of Columella from the first century AD. Colum. R. 3.3.8–10 shows that the total cost of buying and equipping a vineyard of seven *iugera* would have been HS 32,480, of which 7,000 would have represented

failed or the produce could not be sold at a profit, the owner would lose much of the invested capital. The same would happen if the owner held *ager occupatorius* which was suddenly taken away by the state. It is a reasonable assumption that insecurity of possession would have inhibited a holder from making large investments in the development of the land: one would think twice before setting up an elaborate estate if the basic necessity, land, was not securely held.¹²⁰

That this was not a completely theoretical possibility is shown by the fact that Cato himself as censor ordered that 'structures owned by private individuals that had been built or erected on public land [should be] demolished within thirty days'.¹²¹ Cicero highlights the connection between insecurity of tenure and unwillingness to invest for a later period. He explains that distributions made by L. Antonius could easily be annulled, because 'the occupiers will depart with equanimity; they have gone to no expense; have not yet stocked the land, some because they had no confidence (*non confidebant*), some because they had no money'.¹²² Apparently the insecurity of their tenure had made the recipients hesitant to invest in the land. Admittedly, possessors of land in the first century had more reason to feel insecure in their position than those in the second, since in the first century much land was redistrib-

the cost of buying the land. Columella's price of HS 1,000 per *iugerum* has widely been accepted as a 'standard' value for land, e.g. Shatzman (1975, 480–1) and Nicolet (1977, 109), who then make assumptions about the size of estates based on their value (e.g. Cicero owned 13,000 *iugera* because his estates were worth HS 13 million, Roscius owned 6,000 *iugera* because his were worth HS 6 million), but this overlooks other investments which would have increased the value of an estate. In Columella's example only 21% of the total expense was devoted to the buying of the land. It is risky to apply information for Italy in the first century AD to other periods or places. Prices varied according to soil quality, location, political situation (proscriptions), and such like. De Neeve (1985, 77–95) therefore argues against using Columella as a source for other times and locations. Columella's price of HS 1,000 per *iugerum*, however, is quite close to the price of HS 11,500,000 for 1,000 *iugera* of land mentioned in Cic. *Att.* 13.31.4. Eus. *HE* 3.20.2 gives 9,000 *denarii* (HS 36,000) as the value of 39 *iugera* of arable land, which again comes close to HS 1,000 per *iugerum*. Maybe this was a standard value, but the fact that the figures in these examples do not seem to have been rounded off makes it likely that they had some basis in fact.

¹²⁰ Hopkins (1978, 14); Labruna (1986, 97). Nicolet (1994, 623) emphasizes that insecurity of tenure on land would have had a negative effect on its market value. Kehoe (1997, 15) points out that a secure income was appreciated above a high income by ancient landowners (see Plin. *Ep.* 3.19, 9.37), and security of tenure on land must therefore have been welcome.

¹²¹ Liv. 39.44.4. The Latin in fact says *loca publica*, which is not the same as *ager publicus*, but could refer to public places such as roads or fora.

¹²² Cic. *Phil.* 6.5.14; apparently they lacked confidence in the security of their holdings. See App. *BC* 4.31. Uncertainty about property would cause problems when trying to sell land. For example, in 45 Caesar tried to have sales made in Sulla's time ratified, so that he would have more authority over those lands that he had bought himself. If his title would remain uncertain, then 'what possible right of property can his sales carry?' As long as Caesar's title to the land remained uncertain, he could not transfer its ownership by sale, Cic. *Fam.* 13.8.2.

uted again shortly after being assigned, even in the case of private land. However, in the case of *ager occupatorius* the state could in theory take the land away whenever it was needed, without having to pay any compensation to the dispossessed holder. Therefore it was unsatisfactory to be the possessor of *ager occupatorius*: insecurity of possession would limit investments, and thereby the potential profit to be made from the land.

Therefore it is safe to postulate that in the middle Republic insecurity of tenure already formed a check on the investments people were willing to make. Since this situation was problematic if a growing market had to be catered for, it was in this period that the Roman state first attempted to create new forms of tenure for *ager publicus*.¹²³ Colonization and *viritane* distribution were solutions aimed mostly at subsistence-level agriculture, and for richer farmers it had until now not been possible to acquire land in any other way than by occupation. In the third century the state therefore created methods of transferring land to people with an official title and security of tenure, while the land still remained public.

3.3.1. *Ager quaestorius*

The earliest of these methods entailed the sale of *ager publicus*. This was done by the quaestors, and the land sold is therefore known as *ager quaestorius*, at least in the works of the *Agrimensores*; in Republican works the term does not appear. Although the sale of land by the quaestors appears in the third century BC, there are actually very few examples of it for the Republic. On the other hand, the *Agrimensores* refer to this kind of land repeatedly. This may indicate that in the Imperial period land was sold by the quaestors more often, but the conditions to which this land was subject were most likely different from those in the Republic. In this case especially we must be careful to use the *Agrimensores* as a source for the Republic.¹²⁴ However, some land was sold by the quaestors in the Republic, and I will use the term *ager quaestorius* for this land.

Ager quaestorius was sold at auction in Rome, according to the *Agrimensores* in fifty-*iugera* blocks: ‘*Agri quaestorii* are those lands that the Roman people took over after the enemy had been conquered and evicted, and instructed the quaestors to sell. . . . These lands they enclosed within *limites* in squares of fifty *iugera* each, and in this way they sold a definite area to each

¹²³ See for a more detailed discussion on the relationship between privatization and the uncertainty of possession Roselaar (2009a).

¹²⁴ Kaser (1942, 20–1 n. 58).

person.¹²⁵ If we assume that the land was sold at market rates, which seems likely if it was sold at auction, smaller farmers could not buy large amounts of land, and the bulk of the *ager quaestorius* therefore ended up in the hands of the rich.¹²⁶ For richer citizens it was an easy way to acquire additional land and for the state to obtain additional income.

The legal status of the land which was sold has generated considerable discussion. It is usually assumed that it remained *ager publicus*. An argument which is often adduced to support this thesis is the imposition of a *vectigal* on *ager quaestorius*. Many scholars assume that a *vectigal* had to be paid to the state, and therefore the land on which it was paid must have been *ager publicus*, because the state had no right to impose a *vectigal* on private land.¹²⁷ However, there is no direct evidence of the demand of a *vectigal* on *ager quaestorius*. Livy mentions this only in relation to *ager in trientabulis* (see Ch. 3.3.2): ‘The consuls were to evaluate this land and impose a tax of an *as* per *iugerum* to show that it was public land.’¹²⁸ It may be that the circumstances of the creation of *ager in trientabulis* were different from those pertaining to *ager quaestorius*, and not all conditions imposed on the *trientabulis* may have applied to *ager quaestorius*. Moreover, the imposition of a *vectigal* cannot be offered as evidence for land being public, since the *Lex agraria* of 111 mentions *ager privatus vectigalisque*: land both private and burdened with a *vectigal*.¹²⁹ Others maintain therefore that *ager quaestorius* became the property of the buyer.¹³⁰

However, there are other indications of the public status of *ager quaestorius*. First, alienation or perpetual renting out of land could be decided only by the popular assembly, and not by a *Senatus Consultum*. Since the sale of land as *ager quaestorius* was decided by the Senate alone, apparently without ratification by the assemblies, it must have remained public.¹³¹

¹²⁵ Hyginus (1) 82.23–6. See also Siculus Flaccus 102.35–104.3; 118.26–7. For late Republican sales, see Cic. *Agr.* 2.21.55. Kaser (1942, 27) assumes that only cultivated land was sold or rented out, while uncultivated land was left over for occupation. However, there is no reason to think that *ager occupatorius* could not also be cultivated land, or vice versa.

¹²⁶ Zancan (1924, 20); Bozza (1939, 66). Gabba (1985, 182) thinks that in the second century *ager quaestorius* was a way of giving land to the poor, but this is unlikely (see Ch. 3.2.3).

¹²⁷ Zancan (1934, 20); Bozza (1939, 67, 178); Kaser (1942, 7, 44); Burdese (1952, 45); Vallat (1981, 89). See De Martino (1956, 564) for a discussion of various possibilities suggested by previous scholars.

¹²⁸ Liv. 31.13.7: *In iugera asses vectigal testandi causa publicum agrum esse imposituros.*

¹²⁹ *Lex agraria* ll. 49 and 66. Zancan (1934, 33) and Bozza (1939, 32) assume *ager quaestorius* was *ager privatus vectigalisque*. Contra: Kaser (1942, 44).

¹³⁰ Nicolet (1967, 97).

¹³¹ Bozza (1939, 177–8); De Martino (1956, 566); Bove (1960, 8).

Much of the confusion about the public or private status of the land is caused by the terms used for the act of selling the land. Sources on *ager quaestorius* always use the word *vendere* (or *venire*). Throughout much of the Republican period there was some fluidity in the definitions of sale and lease, and the difference between them was often vague. The lease of land was usually indicated with the terms *locare* and *conducere*,¹³² but *vendere* and *emere* (buy and sell) sometimes also appear. *Vendere* therefore could also be used when rights of ownership were not actually transferred. The *Lex Coloniae Genetivae Iuliae*, for example, expressly states concerning the lands belonging to the colony: ‘Nor, if they shall have been sold, are they thereby any the less to belong to the colony Genetiva Iulia.’¹³³ It is stated explicitly that the lands were to remain the property of the city. It looks therefore more like a lease, whether on a renewable basis or in perpetuity.

This consideration already led Rudorff to argue that the ‘sale’ of *ager publicus* did not actually mean the sale of the land, but only sale of the right to possess it—in other words the usufruct—while the actual ownership remained with the state. This postulation is now accepted by most scholars.¹³⁴ It therefore seems more likely that *ager quaestorius* remained the property of the state, in other words *ager publicus*.

However, even if the *ager quaestorius* was public in theory, the extent of state control over it was very limited. According to the *Agrimensores* some record was made of the sales which were sold in their time: ‘In quaestorian lands yielding revenue, virtually the same kind of practice can be followed as in allocated lands, since disputes are based on maps.’¹³⁵ From this it appears that a map was made recording the sales, and that the boundaries between the blocks were marked. However, the owners were apparently free to buy and sell the land, and this was not carefully noted; it could also be bequeathed to heirs. Therefore problems were bound to arise with the administration of *ager quaestorius*:

¹³² *Locare* appears, for example, in the *Lex agraria* lines 21, 27, 32, 83; the *SC de Asclepiade* l. 6, Cic. *Verr.* 2.3.6.13, *Agr.* 2.19.50. See Kauffmann (1964, 235–55).

¹³³ *Lex Coloniae Genetivae Iuliae* 82 (CIL 12.594): *Neve, si venierint, itcirco minus c(oloniae) G(enetivae) I(uliae) sunt*. See also D.39.4.15 by Alfenus Varus, a jurist from the first century BC; Cic. *Brut.* 22.85, *Fam.* 13.76.2. See Crawford (1996, 425).

¹³⁴ Rudorff (1852, 288); see also Bozza (1939, 67); Gargola (1995, 118–19); Campbell (2000, 473–4).

¹³⁵ Hyginus (1) 92.8–9. See also 98.25–7 and the *Commentum* 62.13–14. It is unclear what is meant by *ager quaestorius vectigalius*; the reference may have been to *ager quaestorius et vectigalius*, indicating two different types of land, see Campbell (2000, 474). It is not certain how much of this is relevant for the Republic; the *ager quaestorius (vectigalius)* of the Imperial era may have been subject to different conditions from that of the Republic.

The markers of these lands have now almost been effaced . . . Therefore, it happens that they revert virtually to the category of ‘occupied’ land. . . . So, in *agri quaestorii*, since in certain regions the stones still exist by which the *limites* can be found, some traces (of the original division) are preserved. But, as I said above, by buying and selling some pieces of land, the landholders have confused things to the extent that the lands have reverted to the category of ‘occupied’.¹³⁶

If *ager quaestorius* was supervised so inadequately, any *vectigalia* which were supposed to be paid on it could no longer have been collected. It is likely therefore that if *vectigalia* were due in theory, they were never collected, since it was impossible for the state to do this.¹³⁷

Some have argued that this land could be bought back by the state only on the initiative of the buyer and against the payment of compensation.¹³⁸ Again, this idea is inspired by the *ager in trientabulis*, for which it is explicitly stated that ‘when the public purse was again solvent, anyone preferring cash to land could restore the land to the people’.¹³⁹ However, there is no reason to believe that this condition, applicable to *ager in trientabulis*, held for *ager quaestorius* as well, and the complexity of administration of *ager quaestorius* must have made it very difficult to take it back from the buyer when the state needed it.

The creation of *ager quaestorius* was therefore an important step in the privatization of *ager publicus*. Whereas previously the only possibility to possess *ager publicus* had been occupation, which provided no certainty of possession, it was now possible to possess land which remained *ager publicus*, while having a secure title of possession. The limited amount of control which the state was able to exert over this land made its possession even more secure in practice than it legally was.

In fact there are very few references to *ager quaestorius* in the sources. This makes it difficult to date the creation of this type of landholding. Some think it originated as early as the fifth or fourth century,¹⁴⁰ but it is never mentioned

¹³⁶ Siculus Flaccus 118.30–3, 120.13–16: *Horum vero agrorum paene iam oblilera<f>a sunt signa. . . . Paene iam ita fit, ut<ad>occupatoria<m>condicione<m>recidant. . . . Ergo in quaestoriis agris adhuc in regionibus quibusdam manentibus lapidibus, quibus limites inveniri possunt, aliqua vestigia reseruant<ur>. Sed, ut supra diximus, emendo vendendoque aliquas particulas ita confunderunt possessores, ut ad occupatoriorum condicionem reciderint.* See also Hyginus (1) 82.28–30: *Vetustas tamen longi temporis plerumque paene similem reddidit occupatorum agrorum condicionem.*

¹³⁷ Rathbone (2003, 153).

¹³⁸ Muzzioli (1975, 227). Kaser (1942, 46) says that ‘daß daneben auch der Staat von sich aus jederzeit die Einlösung verlangen, ja überhaupt das Land einziehen konnte, wird man vermuten dürfen’. However, there is no evidence whatsoever for this, and we must assume that the control of the buyer over the land was stronger than Kaser supposes.

¹³⁹ Liv. 31.13.8: *si quis, cum solvere posset populus, pecuniam habere quam agrum mallet, restitueret agrum populo.*

¹⁴⁰ Burdese (1952, 44); Mitchell (1996, 269). However, the only ‘evidence’ is references to the sale of public land in DH 8.73.3, where Appius Claudius states that ‘if large allotments offering

for this period. Siculus Flaccus refers to the sale of the land in Sabinum as an archetype for *ager quaestorius*: 'As the Romans became masters of all nations, they divided up among the victorious people land captured from the enemy. But they sold other land, for example the land of the Sabines, which is called "quaestorian".'¹⁴¹ Indeed a centuriation with squares of fifty *iugera* has been found around Cures Sabini, which may have been linked to the sale of land, but there is no external evidence from which to date this centuriation. Siculus Flaccus' text sounds as if the sale happened immediately after the conquest in 290,¹⁴² but this is not made explicit. Scholars remain divided on the issue: some maintain that it indeed happened in the third century, and that the Romans were inspired to lease out land after their conquest of Sicily, where similar arrangements were common.¹⁴³ Others argue that the land around Cures was not sold until the Sullan era.¹⁴⁴

The first and only datable occurrence of the sale of land appears in the Second Punic War. In 205 a relatively small part of the *Ager Campanus* was sold: 'Since the war was facing a financial deficit, the quaestors were instructed to sell off an area of Capuan farmland between the Fossa Graeca and the coast.'¹⁴⁵ It is not known where exactly this land was located; however, because the majority of the *Ager Campanus* became *ager censorius* (Ch. 3.3.3), and another part was used for colonization, there was only a small part left which could have been sold, probably located near the Volturnus River. We may conclude that there

varied and worthwhile tasks for the husbandmen are let out by the state, they will bring in large revenues', and in Liv. 2.17.6, but these references seem very much influenced by later practice. Gabba (1992, 400) states that occupation of land was the last phase in the tenure of *ager publicus*, and that assignation, sale, and lease were older. This is, however, extremely odd, since sale and lease are not attested to until the third century, while occupation is mentioned in the fifth century.

¹⁴¹ Siculus Flaccus 102.34–104.3. See also 118.26–34 and *Ordines finitionum* 256.11–13.

¹⁴² As assumed by Muzzioli (1975, 226–8); Gabba (1985, 181).

¹⁴³ Bozza (1939, 175); Kauffmann (1964, 284).

¹⁴⁴ Rudorff (1852, 288); Burdese (1985, 69); Hermon (1997, 40–2).

¹⁴⁵ Liv. 28.46.4: *Et quia pecunia ad bellum deerat, agri Campani regionem a Fossa Graeca ad mare versam vendere quaestores iussi*. See Vallat (1981, 89). Andreau (1999, 114) states that in 205 large tracts of *ager publicus* were sold, but actually a rather limited amount of land seems to have been involved. There are some other references to the sale of land: Liv. 26.11.6 mentions 'the sale at auction of the spot on which he [Hannibal] had fixed his camp, and the fact that, in spite of his occupation of it, there was no reduction in the price'. See also Zonar. 9.6; Val. Max. 3.7.10b; Flor. 1.2.6.47–8; Front. *Strat.* 3.18.2. However, given the circumstances, this seems to have been more a propagandistic action than a genuine measure to raise money. App. *BC* 1.7 refers to the sale of land, but does not date or quantify this. DH 20.17.1–2 mentions land in Samnium being sold, but it is unclear which land was concerned and to whom it was sold. Quilici (1994, 130) says that after the Samnite Wars land was sold as *ager quaestorius*, but does not give any sources. Wild (1995, 309) suggests that land in the territory of Cosa was sold as *ager quaestorius*, but there is no evidence for this.

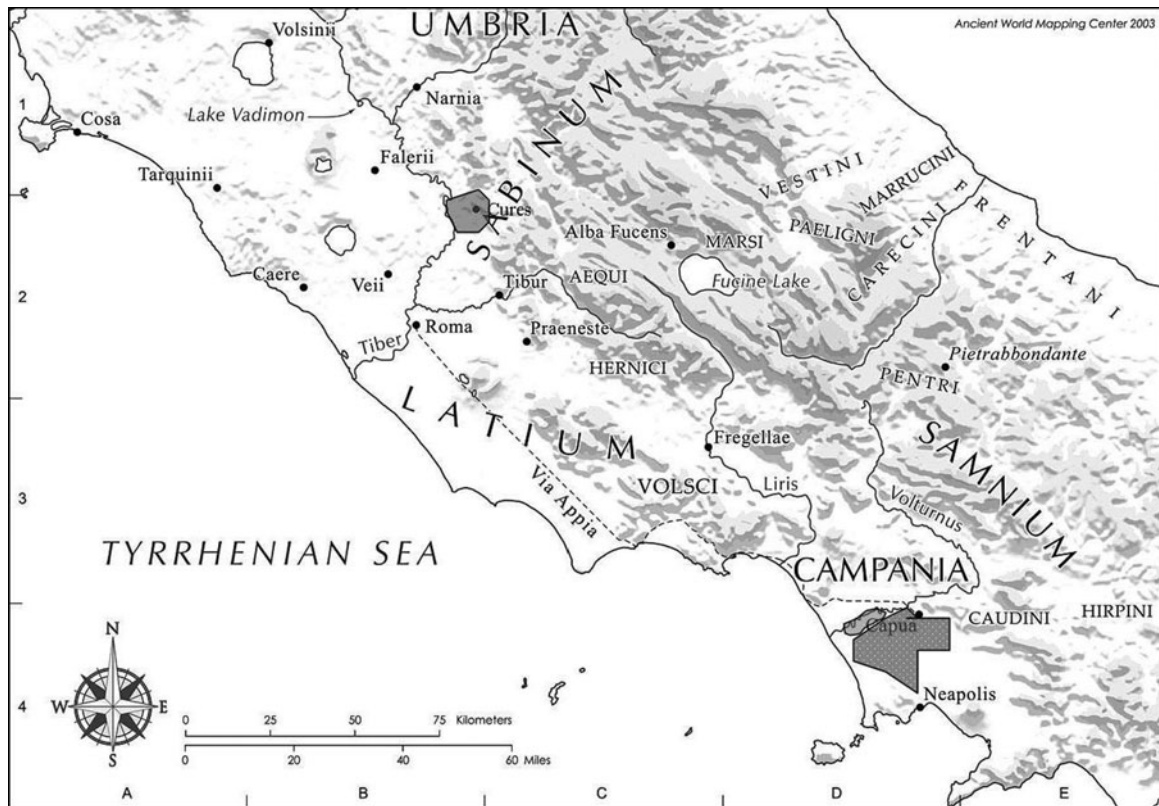


Figure 3.1. The locations of *ager quaestorius* (dark) and *censorius* (light)

was only a limited amount of *ager quaestorius*, at least in Italy, where the only known cases concern Sabinum and a small part of Campania.¹⁴⁶

That the state did not often resort to the sale of land may be explained by the fact that it knew it would be difficult to keep control of this land, since in practice the sale of land gave full control to the buyers. Indeed, the sale of land in the Second Punic War seems to have been an emergency measure to raise money for the war.¹⁴⁷ The state therefore preferred to use methods of assignation to individuals which would allow it to keep more control over the assigned land.

3.3.2. *Ager in trientabulis*

In 210 many citizens gave their gold, silver, and jewellery to the state to finance the Second Punic War:

Every member [of the Senate] brought to the treasury his own gold, silver, and bronze; and so heated was their rivalry to have their names listed first, or among the first, on the public records that the treasury officials were incapable of taking the deposit, or the secretaries of recording them. The equestrian order responded with the same unanimity as the Senate, and the plebs followed the equestrian class.¹⁴⁸

It was decided that this money would be paid back in three instalments,¹⁴⁹ but in 200 when the time came for repayment of the second, it transpired that there was no money available. Therefore

Since many of these citizens observed that there was, in many areas, land for sale which they needed to buy, the Senate decided that they should be granted the opportunity of using public lands within a fifty-mile radius of Rome. The consuls were to evaluate this land and impose a tax of an *as* per *iugerum* to show that it was public land that was involved. The rationale behind this was that, when the public purse was again solvent, anyone preferring cash to land could restore the land to the people. The private citizens were happy to accept this compromise, and the land involved was given the name *trientabulis* because its granting accounted for one-third of the public debt.¹⁵⁰

¹⁴⁶ Bozza (1939, 180); Burdese (1952, 48); Rathbone (2003, 152).

¹⁴⁷ Bozza (1939, 176); Burdese (1985, 69).

¹⁴⁸ Liv. 26.36.11–12.

¹⁴⁹ Liv. 29.16.1–3.

¹⁵⁰ Liv. 31.13.6–9: *Quoniam magna pars eorum agros volgo venales esse diceret et sibimet emptis opus esse, agri publici qui intra quinquagesimum lapidem esset copia iis fieret: consules agrum aestimaturos et in iugera asses vectigal testandi causa publicum agrum esse imposituros, ut si quis, cum solvere posset populus, pecuniam habere quam agrum mallet, restitueret agrum populo. Laeti eam condicionem privati acceperunt; trientabulumque is ager, quia pro tertia parte pecuniae datus erat, appellatus.*

It is to be assumed that the amount of land received in 200 depended on how much money each person had lent; consequently, the greater part of this land must have gone to the rich, who had contributed the most. Unfortunately, we do not know how much land belonged to this category; it is likely that most of the land in the environs of Rome had already been privatized before 200, and that therefore the amount involved cannot have been large (see Ch. 2.2.1–2, 2.2.5, 4.2).

The fifty-mile radius ran from Graviscae in Etruria via Narnia and Alba Fucens to a little north of Circeii in Latium (see Figure 2.3).¹⁵¹ Its proximity to Rome must have meant that it was in high demand among those wishing to produce for the market in Rome. It is expressly stated that the rich preferred land to money, and this is perhaps an additional indication of the increased importance of market production in central Italy in the late third century (Ch. 4.3.4).

It is clear that the state was unable to retain control of the *ager in trientabulis*, even though it was expressly stated to have remained *ager publicus*. The land could only be taken away by the state on the initiative of the buyer, and therefore its occupiers acquired virtually complete security of tenure on this land. There is no indication that anyone ever exchanged his land for money, and the *trientabula* are mentioned as an existing category of land in the *Lex agraria* of 111.¹⁵² It had never been taken away from its possessors, who had now held it for almost ninety years. The creation of this land had been another easy way for the rich to gain control of *ager publicus* and acquire on it a title which secured their possession, even though this may not have been the original intention of the state.

3.3.3. *Ager censorius*

The state could also assign *ager publicus* to individuals on lease, while preserving its public status. As this was usually arranged by the censors, this

¹⁵¹ Sacchi's statement (2006, 159) that the *ager in trientabulis* was located partly in the Ager Campanus does not make sense.

¹⁵² *Lex agraria* ll. 31–2: *quei in trientabule[is sunt]*. Lintott's (1992) translation runs: 'Any of that land which has accrued or accrues in the future to those, who are in the *trientabula*, by inheritance, will or cession, who had the right before the passage of this law to hold, enjoy, possess and defend land or territory which had been leased, apart from that land or territory. . . he shall have the right to hold, enjoy possess and defend it to the extent that anyone had the right to do so before the passage of this law.' However, according to Crawford (1996, 117), the word *trientabula* should be placed in the next line; he suggests that *ager in trientabulis* had in some way accrued to the colonies and *municipia* mentioned in the same line.

land is known as *ager censorius*.¹⁵³ Again there is some confusion as to whether the land was sold or leased; in general the sources use *locare* for land rented out by the censors, for example in the *Lex agraria*. However, the recipients of such lands are then sometimes indicated as *redemptores* (buyers).¹⁵⁴ Therefore it is sometimes difficult to distinguish between leases, which were often indicated with *vendere*, and real sales, whereby the land became the private property of the buyer. This is expressly indicated by Gaius 3.145, who says:

The affinity between sale and hire goes so far that in certain cases there is a standing question of whether the contract is one of sale or of hire, for example where a thing is let in perpetuity. This is the practice with the lands of municipalities: they are let upon the terms that, so long as the rent is paid, the land shall not be taken away from either the tenant or his heir. But the prevailing opinion is that this is a letting.¹⁵⁵

Festus states: ‘Sales were called “leases by the censors” in earlier days, because they sold the usufruct of public places.’¹⁵⁶ Apparently the term *vendere* had become more common for such leases in the Imperial era, whereas leases by the censors had usually been called *locationes* in the Republic. Indeed *locare* is the common term in Republican sources, such as the *Lex agraria*.

Some confusion therefore exists as to what exactly was rented out by the state: the land itself or the right to collect revenues from it. Some maintain that the land itself was rented out by the censors every five years, and that the highest bidder would gain the right to work the land for the coming five-year period, as long as he also paid an annual rent.¹⁵⁷ Because it is difficult to envisage how this worked—it would mean that every five years the sitting tenants had to move out—it is more likely that in practice the contracts of the sitting tenants were renewed every five years.¹⁵⁸

¹⁵³ Some equate *ager censorius* with *ager vectigalis*, e.g. Kaser (1942, 34). This is not wrong in itself, since a *vectigal* had to be paid on *ager censorius*, but to refer to this land as *ager vectigalis* may cause confusion with this term in the Digests, where it is mainly used for lands rented out by towns.

¹⁵⁴ e.g. D.39.4.15 (Alfenus Varus, first century BC). See Kauffmann (1964, 251–3).

¹⁵⁵ Gaius 3.145: *Adeo autem emptio et venditio et locatio et conductio familiaritatem aliquam inter se habere videntur, ut in quibusdam causis quaeri soleat, utrum emptio et venditio contrahatur an locatio et conductio, veluti si qua res in perpetuum locata sit. Quod evenit in praediis municipum, quae ea lege locantur, ut, quamdiu [id] vectigal praestetur, neque ipsi conductori neque heredi eius praedium auferatur; sed magis placuit locationem conductionemque esse.*

¹⁵⁶ Festus 516 L: *Venditiones dicebantur censorum locationes; vel <fr>uctus locorum publicorum venibant.*

¹⁵⁷ Bove (1960, 6); Sirago (1995, 95); Manzo (2002, 138).

¹⁵⁸ Kaser (1942, 37).

Nevertheless, apparently the state did initially plan to rent out the land itself. After the Ager Campanus had been made public in 210, 'a motion was brought to the plebs, which gave its consent, that the two censors should lease out the farmland of Capua'.¹⁵⁹ It is possible that in this year the land was indeed leased out, with the intention of demanding a regular rent for it; Livy tells us that 'in Capua, meanwhile, Flaccus [the consul] had been spending his time . . . renting out the farmland that had been appropriated by the Roman state, taking grain as rent'.¹⁶⁰ However, since the state did not in fact collect this *vectigal*, in 173 the state had to send government officials into Campania to sort out which land was public and which private, as we have seen (Ch. 3.2.3). The statement that in 173 'one of the tribunes of the plebs gave notice of a proposal that the censors should let out the Campanian land for cultivation, a thing that had not been done through all the years since the fall of Capua',¹⁶¹ suggests that since 209 the censors had not occupied themselves with either the farming out of the land or the revenues.¹⁶² In 173 therefore the state planned to rent out not the actual land, but only to farm out the revenues from this land.

This meant that the existing tenants could remain on their farms, and that the censors let out only the right to collect the rents from the land. This was probably done by the *publicani*, since the state itself had no machinery to collect taxes and rents on a large scale. This was the established practice with such other state property as harbour dues and pasture taxes.¹⁶³ Every five years the highest bidder received the right to collect the rents in the next five years.¹⁶⁴ The farmers who actually worked the land could remain on it indefinitely and had to pay a rent to the *publicani*, perhaps with a system like that which was later used for land belonging to cities: 'The lessees who bought the right to collect the rents due according to the conditions imposed,

¹⁵⁹ Liv. 27.11.8: *Ii censores ut agrum Campanum fruendum locarent ex auctoritate patrum latum ad plebem est plebesque scivit*. Curreri (1971, 36) states the Ager Campanus was rented out as *ager quaestorius*, but this does not make sense.

¹⁶⁰ Liv. 27.3.1: *Capuae interim Flaccus dum bonis principum vendendis, agro qui publicatus erat locando—locavit autem omnem frumento—tempus terit*.

¹⁶¹ Liv 42.19.2.

¹⁶² Manzo (2002, 140) and Rathbone (2003, 156–7) suggest that the Campanian land had never actually been let by the censors, and from the beginning private individuals had occupied it as they wished. Vallat (1981, 87–8) believes the land was actually leased out in 209.

¹⁶³ See Cic. *Agr.* 2.14.36, *Verr.* 2.3.7.18; Polyb. 6.17.2. Some even connect the emergence of the *publicani* system with the creation of *ager censorius*, e.g. David (1997, 72). However, the system of *publicani* already seems to have been well established, and the power of these men great, in the early years of the Second Punic War, see Liv. 23.48.12–49.4, 25.3.8–12; Val. Max. 5.6.8. See Bozza (1939, 184).

¹⁶⁴ Bove (1960, 11–14, 54–5).

themselves rented out by *centuriae*, or sold it to some of the adjacent landholders.¹⁶⁵ It was therefore not the land itself which was rented out. *Ager censorius* clearly remained the property of the state and therefore *ager publicus*. This is shown by the use of the term *locare*, to lease, which is applied to this kind of land. Moreover, the state could lease out the right to collect *vectigalia* from public property only.

In contrast to *ager quaestorius*, rents from *ager censorius* were collected regularly. Cicero warns about the loss of state income which would result from the privatization of the Ager Campanus: 'After the abolition of customs duties in Italy and the distribution of the Campanian Domain the only internal revenue left is the five per cent [the 5 per cent tax on manumission of slaves].'¹⁶⁶ The amount of rent to be paid is connected by some scholars to the amount stated in Appian, namely one-tenth of the grain and one-fifth of the tree crops.¹⁶⁷ If, as we have assumed above (Ch. 3.2.1), Appian made this general statement on the basis of the lease of the Ager Campanus, this may indeed have been the amount demanded on *ager censorius*, but there is no proof that this was the case.

As with *ager quaestorius*, it seems that the leasing out of land by the censors happened only rarely (see Figure 3.1). Apart from the Ager Campanus there are a few other references to the sale of land by government officials. In 199 the censors 'sold off land belonging to Capua at the foot of Mt. Tifata'.¹⁶⁸ In 174 there is a reference to 'the money which they received from the sale of portions of the State domain' in Auximum and Calatia.¹⁶⁹ These references are also sometimes considered to apply to *ager censorius*, but there are some differences between these cases and those of 209 and 173. It is remarkable that for 209 and 173 Livy uses the term *locare fruendum*, while for 199 and 174 he

¹⁶⁵ Hyginus (1) 84.7–8: *Mancipes autem, qui emerunt lege dicta ius vectigalis, ipsi per centurias locaverunt aut vendiderunt proximis quibusque possessoribus*. See Mitteis (1903, 15–22); Burdese (1952, 107); De Martino (1956, 577); Bove (1960, 36).

¹⁶⁶ Cic. *Att.* 2.16.1, see also *Phil.* 2.39.101. See Vallat (1983b, 228). When Caesar distributed the Ager Campanus to individual citizens in 59, and 'the *publicani* asked for relief, he freed them from a third part of their obligation, and openly warned them in contracting for taxes in the future not to bid too recklessly' (Suet. *Iul.* 20.3). Some assume this is about bids made by the *publicani* for tax collection in Asia, but the sentence follows directly after the discussion of the Ager Campanus.

¹⁶⁷ App. *BC* 1.7. See Sirago (1995, 106). Manzo (2002, 135) states that the rent was simply 10%.

¹⁶⁸ Liv. 32.7.3: *Et sub Tifatibus Capuae agrum vendiderunt*. See Vallat (1981, 90); Manzo (2002, 140).

¹⁶⁹ Liv. 41.27.10: *Idem Calatiae et Auximi . . . venditisque ibi publicis locis pecuniam*. It may be that this refers to sales of rights to collect taxes which were levied for the use of *loca publica*, or perhaps that the land here was rented out (on similar conditions as *ager censorius*) instead of actually sold.

uses *vendere*, a term usually connected with the *ager quaestorius*. The statement that the motion of 173 to lease out lands caused protests, since this had not happened ‘since the fall of Capua’, is strange, because if in 199 and 174 land had been leased as *ager censorius*, 173 would not have been the first occasion after 209. We must therefore conclude that in 199 and 174 land was not leased out but sold, maybe under conditions similar to those pertaining to *ager quaestorius*. Apparently the censors could not only rent out but also sell *ager publicus*, but the specifics of these two sales, and their differences—if any—from *ager quaestorius* escape us. Again, we see that the terms *locare* and *vendere* are closely related, and that no definitive conclusions can be drawn from their use.

There are no references to *ager censorius* from Italy apart from the Ager Campanus.¹⁷⁰ The *Agrimensores* are silent on this category of land, so we must assume that in their time it no longer existed under this name—which makes sense, since the censorship had been abolished under the Empire. However, although there are few specific references to *ager censorius*, it may have been more common in the second century than appears from the sources. The *Lex agraria* of 111 mentions ‘that land which . . . contracted out according to a *Senatus consultum* on 20 September, together with the land across the Curio’.¹⁷¹ This appears to refer to a specific case of lease, and the fact that only one specific occasion of the lease of land is mentioned may indicate that this had not happened often. However, it shows that there may have been more occasions of lease than can be accounted for on the basis of the literary sources.

The *Lex agraria* also mentions a category of land known as *ager patritus*: ‘For however much anyone may have leased it in the censorship of L. Caecilius and Cn. Domitius [115/114] with the censors, whoever shall be appointed hereafter, they [the censors] are to see that [whoever of them] shall wish may have it leased *pro patrito* for as much, and that they register security in property.’¹⁷² The nature of this land is unclear, but it is possible that this

¹⁷⁰ Land in the provinces could be leased out as well, as happened in Sicily, Cic. *Verr.* 2.3.6.13: ‘A very few [cities] our ancestors subdued by force of arms; though the territory of these few thus became the property of the Roman state, it was restored to their possession, and this land is regularly subject to censors’ contracts.’ Apparently this land was leased out to the original inhabitants. See also the *SC de Asclepiade* l. 6. Burdese (1952, 46) says leases of land occurred often in the second century, but this seems not to have been the case.

¹⁷¹ *Lex agraria* l. 21: *eum agrum, quem . . . ex s.c. a.d. X K. Octobris oina cum agro, quei trans Curione est, locaverunt.*

¹⁷² *Lex agraria* l. 28: *quanti quis pro patrito L. Caecilio Cn. Dom]itio cens(oribus) redemptum habe[a]t, censoribus, quei quomque posthac facteis erunt, ei faciunto [ut]ei [quei eorum] volent, tantidem pro patrito redemptum habeant, p(raedia) supsignent.*

was land held in long-term lease. It may in fact be the Ager Campanus, which is not mentioned by name in the *Lex agraria* (see Ch. 5.3.3).

The creation of *ager censorius* gave more security of tenure to people wanting to profit from commercial agriculture. Cicero calls the farmers of the Ager Campanus *plebs optima et modestissima*,¹⁷³ but it is unlikely that they were all small farmers. The archaeological evidence shows that in the second century BC the Ager Campanus was one of the most intensively worked areas of Italy, and that many producers were clearly rich enough to engage in market agriculture. They now worked the land on a secure basis; the leases were likely to be renewed indefinitely, as long as they paid the rents demanded from them by the *publicani*. At the same time, *ager censorius* made it possible for the state to keep more control over state-owned land; it was clear which land was *ager publicus*, and a regular income from it was ensured by the *publicani*.

We have seen that the legal categories of *ager quaestorius*, *ager in trientibus*, and *ager censorius* were all created in the (late) third century, and that the recipients of this land were usually those rich enough to produce for the market in Rome. However, the area covered by these kinds of land seems to have been small, and they were all located in central Italy. Therefore, the *ager publicus* located in the periphery remained *ager occupatorius*. Any development of commercial agriculture taking place in regions outside of central Italy therefore had to take place on land which could only be held on an insecure title. This would, however, not cause serious consequences until the Gracchan period.

3.4. AGER SCRIPTURARIUS

Arable *ager publicus* was not the only type of public land. The Roman state also owned large amounts of non-arable *ager publicus*, or *ager scripturarius*. This consisted of all pasture land which was not in any way occupied by individuals, and on which all citizens could graze animals against the payment of a rent, the *scriptura*. Many mountainous or forested areas, especially in the Apennines, must have been *ager scripturarius*. These lands, contrary to the maps presented by such writers as Beloch and Toynbee, were not part of the territory of any specific town, but were under the control of the Roman state (Ch. 2.2.1).

¹⁷³ Cic. Agr. 2.31.84.

As in early modern grazing systems, the tax was probably collected before the pastures were entered. These were reached by *calles*, drove-roads leading to them and between different pasture areas.¹⁷⁴ The collection of the *scriptura* was farmed out to *publicani*, who rented the right to collect it for five years from the censors.¹⁷⁵ It may therefore have been more difficult to evade paying the *scriptura* than the rents on other kinds of public land; the *publicani* were notoriously more efficient than the state could be. The penalties imposed on graziers mentioned by Livy, whatever their exact reasons, suggest that the *ager scripturarius* was supervised more strictly than other kinds of *ager publicus* (see Ch. 3.2.2).¹⁷⁶ At least in theory it was quite easy to collect the *scriptura* from anybody taking his animals to the pastures by setting up control posts at certain points. Pliny says that the *scriptura* was ‘for a long time the only *vectigal*,¹⁷⁷ implying that it was regularly collected. Festus’ definition of *scripturarius* also indicates that the *scriptura* was paid, although he does not refer to a specific period: ‘To allow cattle to graze, there is a certain rent of which the *publicanus* establishes the value with the shepherd.’¹⁷⁸

Theoretically every citizen was free to use the *ager scripturarius*, as long as the *scriptura* was paid. Some think that the plebs had no access to the *ager scripturarius*, because they had no money;¹⁷⁹ however, the *vectigal* was probably not very high and depended on the number of animals, so *ager scripturarius* may have been accessible to the poor. The *Lex agraria* decreed that a small number of animals was allowed on the *ager scripturarius* free of charge,¹⁸⁰ and thereby assured the access of small farmers to the public pastures. This might suggest that monopolization by the rich had caused the exclusion of the poor from the public pastures before the passing of this

¹⁷⁴ Burdese (1952, 37); Pasquinucci (1979, 139).

¹⁷⁵ See Cic. *Verr.* 2.2.70.169–71.172. Farmers of pasture taxes are also mentioned in Plaut. *Truc.* 146–52 and the *Lex agraria* ll. 19–20. See Skydsgaard (1974, 13); Pasquinucci (1979, 137–8); Corbier (1991, 152–4).

¹⁷⁶ Bortuzzo (1995, 197). Contra: Pasquinucci (1979, 114).

¹⁷⁷ Plin. *HN* 18.3.11: *Etiam nunc in tabulis censoriis pascua dicuntur omnia, ex quibus populus reditus habet, quia diu hoc solum vectigal fuerat.* See also Siculus Flaccus 104.4–7: ‘Other land remained, but in such a way that it was the territory of the Roman people, for example, in Picenum in the region of Reate, where there are mountains called “Roman”. They are the territory of the Roman people and the rent from them belongs to the public treasury.’

¹⁷⁸ Festus 446 L: *Scripturarius; ut pecora pascuantur, certum aes est, quia publicanus scribendo conficit valiolem cum pastore.* Var. R. 2.1.17 states: ‘Flocks of sheep are driven all the way from Apulia into Samnium for summering, and are reported to the tax-collectors, for fear of offending against the censorial regulations forbidding the pasturing of unregistered flocks.’ Apparently control was quite strict.

¹⁷⁹ Burdese (1952, 40).

¹⁸⁰ *Lex agraria* l. 26: [*quei volet, pascere ad eum numerum pecudum qu]ei numerus pecudum in h(ac) l(ege) scriptus est, liceto, neve quid quoi ob eam rem vectigal neve scri[pturam da]re debeto.*

law, and that the law was an attempt to remedy this, but it may also have been simply the codification of an existing practice.

The origins of *ager scripturarius* are obscure. Some think it already existed under the kings, when the land conquered by Rome was possessed collectively as pasture land (Ch. 2.1.1).¹⁸¹ However, there is not much evidence for this; it seems unlikely that regulations for pasture lands can have been the same in the archaic period as they were for later *ager scripturarius*. It is more likely that regulations for *ager scripturarius* developed when long-distance transhumance became more important as a result of the gradual conquest of Italy by the Romans. The confiscation of larger tracts of unfertile land in the fourth and third centuries led to a need to regulate the use of this land more strictly, and this may have led to the introduction of the *scriptura* and the setting up of a system to ensure its collection.¹⁸² The *Lex agraria* of 111 is the first source which describes this system, although it does not yet use the term *ager scripturarius* (Ch. 5.3.3). This has led Rathbone to suggest the concept of *ager scripturarius* was created only during or after the Gracchan period,¹⁸³ but it is very unlikely that there were no earlier regulations concerning the large tracts of pasture land the state had acquired long before the second century. In fact, Livy's references to fines given to graziers (see Ch. 3.2.2) show that some regulations were already in force in the early third century.

The amount of *ager scripturarius* must have been considerable. As we have seen, large parts of Italy were suitable only for pasture, and most of this land must have been *ager scripturarius*, as long as it was not *ager compascuus* or *privatus*. It must be remembered that not all pasture lands were *ager publicus*; Cato for example explains that pasture rights could also be rented from private individuals:

Winter pasture should be offered on these terms. State the boundaries of the pasture you sell. Pasture may be occupied for use from the Calends of September onwards. Dry meadow must be given up when the pear begins to blossom; irrigated meadow when neighbours, above and below, begin to irrigate. Or fix a date agreed on both sides. Other pasture must be vacated on the Calends of March.¹⁸⁴

Private mountain pastures are also mentioned in Cicero: 'When some dispute (as is often the case) had arisen in the hills between the shepherds,

¹⁸¹ Badian (1972, 16–19); Burdese (1985, 50).

¹⁸² Burdese (1952, 39); Skydsgaard (1974, 8); Botteri (1977, 319–20); Bortuzzo (1995, 197).

¹⁸³ Rathbone (2003, 135) thinks that *scriptura* was not usually collected from public pasture lands, because these were not demarcated. This was not remedied until the *Lex agraria* of 111, which lays down rules for use of the *ager scripturarius* (ll. 25–6). However, there is no reason to assume that the same regulations did not apply to the *ager scripturarius* before the passing of the *Lex agraria*. Demarcation was not necessary for the collection of tax from *ager scripturarius*.

¹⁸⁴ Cato Agr. 149.1–2.

the stewards of *Habitus* defended the property and private possessions of their master.¹⁸⁵

Ager scripturarius was not subject to the privatization process which affected the status of arable *ager publicus* during the Republic; at the end of the Republic pastures were in fact the only kind of *ager publicus* still in existence. Of course, occupation of this land by private individuals may have occurred, just as this happened on arable land, even though this had been forbidden by the *Lex agraria* of 111. However, the *Lex agraria* laid down that such land was to remain public, and indeed it remained so until the late Empire (Ch. 5.3.3).

3.5. *AGER PUBLICUS* BELONGING TO COMMUNITIES

So far we have dealt only with *ager publicus* belonging to the Roman state. However, not only the state, but individual towns as well, could possess land as their public property. It seems plausible that when colonies were founded, they were usually granted some land as the property of the community. This may be surmised from the fact that around colonies often much more land was centuriated than was necessary to accommodate the colonists. Around Bononia, for example, the visible centuriation measures 519 km², while only 427.5 km² would have been needed for the colonists. Around Mutina 165 km² were centuriated, while the colony itself needed only 25 km².¹⁸⁶ In the case of Sinuessa and Minturnae only 3 km² of the total centuriated area of 110 km² were distributed. These may have been extreme cases, but in most colonies the centuriated territory was larger than the amount necessary for the settlers. Most likely not all these centuriations were created at the time of the foundation of these colonies; in cases where more than one centuriation is visible, the oldest is usually much smaller than the newer ones, and sometimes smaller than the amount needed for the recorded number of colonists. However, in some cases early centuriations were of considerable size as well.¹⁸⁷

¹⁸⁵ Cic. *Cluent.* 59.161: *Cum quaedam in callibus, ut solet, controversia pastorum esset orta, Habiti vilici rem domini et privatam possessionem defenderunt.* In the Digest we find references to privately owned summer pastures (*saltus*) in the mountains, as we have seen (n. 76). See Skydsgaard (1974, 12).

¹⁸⁶ Tibiletti (1950, 220, 229) gives these sizes as 1,200 and 2,000 km² respectively. However, the centuriations pictured in Barrington's Atlas are considerably smaller. I calculated the surface as pictured in the atlas, which yielded the totals given above.

¹⁸⁷ Chouquer (1981) describes various centuriations in Cisalpine Gaul, which he dates to the foundations of the various colonies here; some of these are of considerable size. In the case of colonies in peninsular Italy, the remains of early distribution grids are usually smaller than the size required for the attested number of settlers. This may either indicate a different way of

In Roman colonies the amount of land each colonist received was smaller than in their Latin counterparts, and as a consequence there was a greater need for additional public land, not only pasture, but also arable (Ch. 4.3.7). Nevertheless, in Latin colonies as well a substantial amount of extra centuriated land was granted to some colonies.¹⁸⁸ It is also possible that additional unmeasured land was granted. Not only colonies, but Italian towns as well possessed lands held under the control of the community, as appears from the *Sententia Minuciorum*, a judgement pronounced by two Roman magistrates in a conflict between the allied communities of Genua and the Langenses in Liguria in 117 BC.

The origins of land belonging to towns have been discussed at great length. It is likely that most communities, even in pre-Roman times, had some (pasture) land which could be used only by the inhabitants of the community,¹⁸⁹ but this does not appear in the sources until the *Sententia Minuciorum*. Such arrangements may have become increasingly formalized in Roman times, until at the time of Augustus each town had a demarcated territory with centuriated and pasture lands (see Ch. 2.3.1).

Many scholars have assumed that the land belonging to towns was used only as pasture land, on which the locals could graze their animals.¹⁹⁰ However, in the immediate surroundings of many colonies there were also large amounts of land perfectly suitable for agriculture. It is therefore more likely that the inhabitants also used town lands for agriculture. This can be seen, for example, in the *Sententia Minuciorum*. It states that the Langenses were allowed to work the public land of Genua in exchange for a payment of 400 *victoriati* per year to the Genuates. If this sum was not paid 'the Langenses shall be required to pay into the public treasury in Genua every year one-twentieth part of the corn and one-sixth part of the wine which shall have been produced on the said land'.¹⁹¹

dealing with colonies outside of Cisalpine Gaul (see Ch. 2.3.10), or it may be that the early distribution grids in these colonies are no longer fully visible.

¹⁸⁸ Curti et al. (1996, 174) for some reason assume that Latin colonies received common land from their foundation, but Roman colonies only at some later date. In fact, given the small amounts of private land in Roman colonies, it would be more likely if there was more common land in Roman ones than in Latin ones, see Ch. 4.3.7.

¹⁸⁹ Burdese (1985, 56).

¹⁹⁰ Toynbee (1965, ii. 550–1); Laffi (1998, 112).

¹⁹¹ *Sententia Minuciorum* (ILS 5946) ll. 26–8: *Quod in eo agro natum erit frumenti partem vicensumam vini partem sextem Langenses in poplicum Genuam dare debent in annos singulos*. It is to be noted that the amounts stated here are different from those in Appian, which draws our attention to the fact that rents on public land were not necessarily 20% on fruits and 10% on grain (Ch. 3.2.1).

Likewise no person other than the Genuates or the Langenses was permitted to use this land ‘for the purpose of tilling’ (*colendi causa*).¹⁹² Apparently this public land, which was accessible only to the people of Genua and the Langenses, was not only used for pasturing, but also for the production of grain and wine. The *Lex agraria* likewise speaks of land granted to colonies or *municipia* for exploitation (*fruentus*), which clearly indicates arable land.¹⁹³

In the Imperial period such arable lands could be rented out in order to provide additional income for the town, and were then known as *ager vectigalis*. Hyginus writes: ‘Lands left over were made subject to rent, some for a period of years, others for one hundred years when lessees procured, that is, leased them. But a large number (of these lands), after the appointed time has elapsed, are put on sale again and leased out, as is the practice with land yielding revenue.’¹⁹⁴ Clearly this was not an outright sale, since after the lapse of the contract the lands were sold again; it looks therefore more like a lease. The only Republican evidence for land rented out by towns, albeit late, is from the *Lex Coloniae Genetivae* (47–44 BC). This law deals with the renting out of land, whether *agri* or *silvae*, belonging to the town. It stipulates: ‘Whatever land and woods and buildings shall have been assigned or attributed to the colonists of the colony Genetiva Iulia, in order that they may make public use of them, no-one is to sell those land or those woods, or lease (them) out for longer than for five years.’¹⁹⁵ It is likely that not only the colonists themselves, but also other people using land belonging to towns, such as *incolae*, had to pay a rent for its use (Ch. 4.4.1).¹⁹⁶

Town lands remained the property of the city. Some of these could not be alienated by the town council at all: ‘Similarly, if something has been allocated to a territory, it will belong to the city itself, and it may not be sold or alienated from public ownership. We shall write this down as follows: “such

¹⁹² *Sententia Minuciorum* l. 31: *Dum ne alium intro mitat nisi Genuatem aut Veiturium colendi causa*. See Laffi (1966, 55–7).

¹⁹³ *Lex agraria* l. 31: *Quibus coloneis seive moi]nicipieis . . . [ceivium Rom(anorum)] nominisve Latini, poplice deve senati sententia ager fruentus datus [est]*. The *Lex agraria* consistently uses *agri* to indicate arable (public) land, while it refers to pasture lands as *ager compascuus* and the imposition owed for its use as *scriptura pecoris* (e.g. ll. 19–20, 25–6).

¹⁹⁴ Hyginus (1) 82.35–84.2. See also D.50.8.5 (3.1) (Papinianus). See Mitteis (1903, 23); Laffi (1998, 111); Bispham (2008, 77–8).

¹⁹⁵ *Lex Coloniae Genetivae Iuliae* 82: *Qui agri quaeque silvae quaeq(ue) aedificia c(olonis) c(oloniae) G(enetivae) I(uliae), quibus publice utantur, data adtributa erunt, ne quis eos agros neve eas silvas vendito neve locato longius quam in quinquennium*. Not only land could be rented out, but also other town property, such as *silva caedua* (forests) and even factories, as is attested for the very early Empire by Labeo, D.18.1.80.2, and for later periods by D.8.5.8.5 (Ulpian).

¹⁹⁶ Laffi (1966, 83).

and such granted to the territory for its support”, as in the case of woods and public pasture land.¹⁹⁷ However, other lands could be sold permanently: ‘Public places are those inscribed, for example “the woods and public pastures of the Augustan colonists.” These seem to have been granted by name; they can even be put up for sale.’¹⁹⁸ Similarly ‘the Pisarenses officially sold off this area of land, and we must suppose that it was bought by the nearest neighbours, who had lands adjoining it’.¹⁹⁹ This seems as if the land was alienated in perpetuity, although again the term *vendere* may refer to lease instead. Even if the land was not alienated permanently, it could not be taken away from the tenants as long as they paid the rents.²⁰⁰

The land belonging to a town was sometimes occupied by private individuals, even though this was officially prohibited: ‘Private individuals without any respect for religion are in the habit of appropriating parts of these places [reserved for burials], since they are on the outskirts of town, and adding

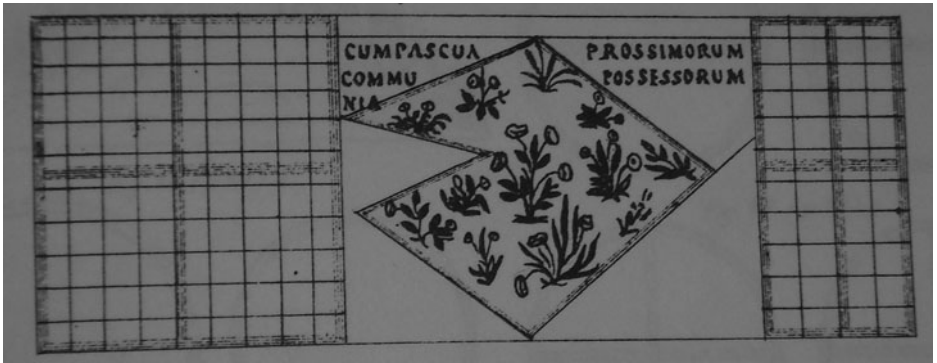


Figure 3.2. Ager *compascuus* as depicted in the manuscripts of the *Agrimensores*

¹⁹⁷ Hyginus (2) 154.34–156.2. See Frontinus 6.9; Agennius Urbicus 42.30–3.

¹⁹⁸ Agennius Urbicus 42.28–9.

¹⁹⁹ Siculus Flaccus 124.21–2. See Agennius Urbicus 40.19–32. CIL 10.5853 records an individual who bought land from a town, then granted it in perpetual rent to the same town: *Fundos Ceponian(um) et Roianum et Mamian(um) et pratum Exosco ab r(e) p(ublica) redem(it) . . . et in avit(um) r(ei) p(ublicae) reddid(it)*. Conversely, Plin. *Ep.* 7.18 relates how Pliny gave land to a town and then rented it back in order to provide the town with a secure income.

²⁰⁰ D.6.3.1pr-1 (Paulus): ‘As long as the rent-charge is paid, neither the original tenants nor their successors may be removed from the land. It is accepted law that those who take a lease of land from a municipality, to be enjoyed in perpetuity, although they do not become owners, yet have an action *in rem* against anyone who has possession and even against the municipality itself? If cities were not careful, their land could become the full property of an individual by *usucapio*, D.39.2.15.27 (Ulpian). See Mitteis (1903, 25); Bove (1960, 93).

them to their own gardens.²⁰¹ Over time it became unclear who owned it, and disputes could arise, as Agennius Urbicus explains: ‘Over a long period of time, neighbouring landholders encroached on unoccupied land, as if the availability of idle ground had prompted them, and over a long period of time attached it to their land with impunity.’²⁰² Occupation of pasture lands owned by towns was not permitted either, but this sometimes happened as well: ‘Many areas were left over [in colonies] that were not granted to veteran soldiers. . . . In general, this pasture land was given to certain individuals for pasturing at the time when the lands were allocated. Many have taken over this pasture land arbitrarily and cultivate it.’²⁰³

Apart from public arable land, every town had public pasture lands, or *ager compascuus*.²⁰⁴ Some of this remained under direct control of the town authorities. It could be earmarked for use by the town, for example woods which were used for building projects or heating the public bath house: ‘In order to support the urban fabric, forests were allocated, from which wood could be brought for the repair of the city buildings.’²⁰⁵ Other lands were used by all inhabitants of a community as pasture lands and for such purposes as

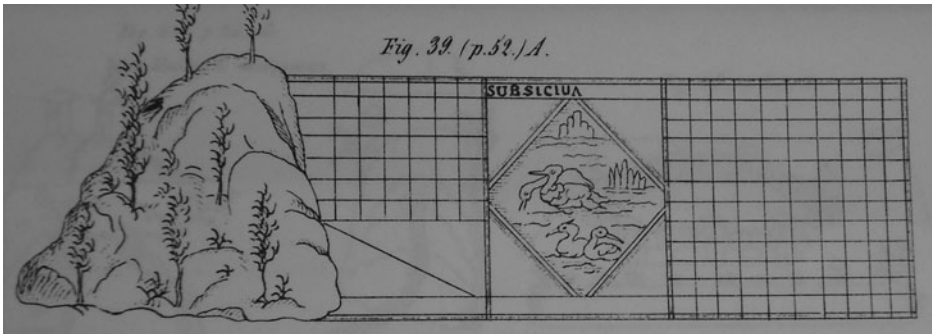


Figure 3.3. *Subseciva* as depicted in the manuscripts of the *Agrimensores*: an infertile tract of land within a centuriated area

²⁰¹ *Commentum* 68.32–70.1.

²⁰² Agennius Urbicus 38.10–12. See also Frontinus 6.21–3; *Commentum* 70.15–17.

²⁰³ Agennius Urbicus 36.10–13. See also the *Commentum* 64.11. Incidentally, this shows that pasture could also be used for agriculture.

²⁰⁴ Hyginus (2) 158.15–17. See also Frontinus 6.36–8.2; Agennius Urbicus 40.23; Hyginus (1) 82.34–5. See Gabba (1979b, 21); Stockton (1979, 213). The term *ager compascuus* is usually applied to land which was limited to specific (neighbouring) individuals, e.g. Kaser (1942, 51 n. 163); Tibiletti (1950, 256); Burdese (1952, 125); Laffi (1998, 112–13). However, in many cases it seems to be used to indicate all public pasture lands belonging to a community, and this is how I will use it in this chapter. It is almost impossible to locate *ager compascuus*; Wightman and Hayes (1995, 34–5) identify the infertile border zone between Interamna and Casinum as public pasture belonging to the colony of Interamna. This may be true, but there is no evidence for this.

²⁰⁵ *Commentum* 66.22–4. See Frontinus 6.11; Agennius Urbicus 42.33–4.

cutting wood. The *Sententia Minuciorum* states: ‘As for the land that will be *compascuus*, it will be allowed to the Genuates and the Langenses to pasture the flocks just as it is in the other land of Genua that is destined for public pasture; no one may hinder them or oppose it by force or hinder them to take or use wood or fuel from the land.’²⁰⁶

Not only outside the centuriated land, but also within the distributed *centuriae* there were lands which could not be used for agriculture, because they were marshy, rocky, or forested. These were known as *subseciva*, and they were also part of the community’s property. Frontinus says: ‘There are two types of *subseciva*, one when on the outer boundaries of allocated lands a *centuria* could not be completed; the second type of *subsecivum* is that which occurs in the middle of allocated lands and within completed *centuria*.’²⁰⁷ *Subseciva* could also be rented out, like other land belonging to a town: ‘Some communities, that is, the colonists, sold off the *subseciva* that had been given to them; some attached them to adjoining land in return for a rent; some normally lease them out for five-year periods, and enjoy the return through the lessees, while others lease them out for longer periods.’²⁰⁸

Access to *ager compascuus* was normally limited; only the inhabitants of the colony (including the *incolae*) could use the land assigned to the city as *ager compascuus*. Sometimes it was limited to more specific individuals, for example those living directly adjacent to the land: ‘Some places are marked as ‘common pasture land’: this is a type of land like *subseciva*, or a place where all the closest neighbours, that is, those whose property adjoins it, pasture.’²⁰⁹ Apparently such demarcations did not always occur at the time of assignment, but could also be the result of an agreement between neighbours: ‘Several citizens of a municipality, who held different estates respectively, purchased a tract of woodland as their common property so as to have a common right of

²⁰⁶ *Sententia Minuciorum* ll. 32–5: *Quei ager compascuos erit in eo agro quo minus pecus [p]ascere Genuates Veiturosque liceat it utei in cetera agro Genuati compascua; ni quis prohibeto nive quis vim facito neve prohibeto quo minus ex eo agro ligna materiamque sumant utanturque.*

²⁰⁷ Frontinus 2.24–7; Agennius Urbicus 38.4–5. See also the *Commentum* 54.21–2, 68.17–18; *De agris* 272.16–19. See Moatti (1993, 36); Guillaumin (2007, 157–66).

²⁰⁸ Sculus Flaccus 130.3–5.

²⁰⁹ Sculus Flaccus 124.4–6. See 118.21–4: ‘I have discovered that certain woods, which are in a sense public property, are in the hands of the neighbours, indeed are in a sense the property of these neighbours, and that no one except those are adjacent to the woods has the right to cut down trees or pasture there.’ Festus 40 L: *Compascuus ager, relictus ad pascendum communiter vicinis*. Gargola (2008, 506–8) argues that the land which according to Appian was open for occupation was the *subseciva*, namely land that was left over after a distribution of land. However, the term *subseciva* clearly applies only to leftover pieces of land within in a centuriation (as can be seen from Figure 3.3), and cannot be used for all *ager publicus* that remained free for occupation.

pasture.²¹⁰ Even centuriated land could be used as pasture, if it proved impossible to lease out all of it:

In these lands (i.e. subject to rents), therefore, some places did not find any buyers (i.e. lessees) because of the rough or infertile terrain. So, on the maps of these sites the following notation has sometimes been made, namely, ‘for an area of common pasture’, or ‘so much common pasture’; these areas should therefore belong to those adjacent landholders whose boundaries touch them.²¹¹

It is usually assumed that for the use of town pasture a rent was required.²¹² The *Agrimensores* say that common pasture lands ‘furnish a rent, though it is a small amount’.²¹³ If there was a *vectigal* on *ager compascuus*, it may not always have been collected;²¹⁴ since *ager compascuus* was used mainly by small farmers (see Ch. 4.3.7), it might not have been worth the effort of collecting it. On the other hand, it may have been easier for a local community to collect *vectigalia* than it was for the Roman state. The *Agrimensores* continually state that there were maps indicating which land was common pasture land, and so there seems to have been a reasonably correct administration of this.

There is some discussion as to whether the land assigned to towns was *ager publicus populi Romani*; some have argued that the Roman state kept some form of control over the land assigned to towns.²¹⁵ Others assume it became the full property of the towns.²¹⁶ In the case of towns that were not conquered by the Romans, it is of course difficult to see how the Roman state could have established any control over their public land. However, in towns that were colonies there are some indications of Roman authority over the town lands. After the Second Punic War the state decreed that of the unfaithful Campani ‘those moved across the Tiber were—themselves and their descendants— forbidden to acquire or possess land anywhere *other than in the territory of Veii, Sutrium and Nepes*’.²¹⁷ This implies that the state may have indicated specific areas of land belonging to these cities for the use of the Campani, or at least that the state could oblige these communities to accommodate the

²¹⁰ D.8.5.20.1 by Scaevola from the late Republic. The pastures mentioned in Cic. *Quinct.* 6.28 and 14.46 also belonged to a partnership.

²¹¹ Hyginus (1) 84.8–12.

²¹² Liebenam (1900, 14); Burdese (1952, 126); Rathbone (2003, 142).

²¹³ Hyginus (2) 158.21: *nam et vectigal quamvis exiguum praestant.*

²¹⁴ Burdese (1952, 126).

²¹⁵ Mitteis (1903, 20); Bozza (1939, 150); Tibiletti (1974, 91).

²¹⁶ Laffi (1966, 59–60, 93–4). Bernstein (1978, 123) thinks the state could rent out *ager publicus* to towns.

²¹⁷ Liv. 26.34.10: *Qui eorum trans Tiberim emoti essent, ne ipsi posterive eorum uspiam pararent haberentve nisi in Veiente Sutrimo Nepesinove agro, dum ne cui maior quam quinquaginta iugerum agri modus esset.*

deported. Apparently the state had retained some authority over the land held by these cities. All the land of Veii had become *ager publicus* in 396, and it is possible that some was still held as such by the state, but this does not explain how the state could assign land in the territory of the colonies Sutrium and Nepet. It may be that the Second Punic War had caused population decline in these two colonies, and that therefore the state assigned the land which was no longer used to the Campani, possibly with the permission of the colonies.

The *Lex agraria* mentions land which had been *fruentus datus*, given to towns in order to be worked: ‘granted by the people or by a decree of the Senate to exploit, [which land those colonies or those *municipia* or any] equivalent of a colony or *municipium* or of *municipia* (there may be) shall exploit.’²¹⁸ It is not stated that these towns gained full property over this land, which makes it possible that the state retained some measure of control over these lands, and could reclaim them if necessary. A parallel may be drawn with the case of Thurii (Ch. 2.3.8), where one-third of the land was reserved for later distributions.

Some towns possessed land in areas far away. Agennius Urbicus says: ‘[Towns] normally have some privileges by the gift of emperors, in that they have received in far-distant places some tracts of land in order that they might have the yield from them. The ownership of these clearly belongs to those to whom it was allocated.’²¹⁹ This phenomenon is already attested for the late Republic. The towns of Atella, Arpinum, Aquinum, and Rhegium owned land in Cisalpine Gaul. Placentia, Parma, and Luca all owned land in the Ager Veleias.²²⁰ Capua received land in Crete when its own land was distributed by Octavian.²²¹ This land of course could not practically be used by the colony’s inhabitants, and only provided the town with income from rents taken from the people working it.

As far as we can tell, land held by towns was not subject to any process of privatization during the Republic. Its existence is widely attested for the Imperial period, especially in the Digests. Such land was, therefore, available to most people in Italy in the Republican period; it is indeed likely that for many people public land belonging to their towns formed an essential

²¹⁸ *Lex agraria* l. 31: *Poplice deve senati sententia ager fruentus datus [est, quo agro eae coloniae eave moincipia seive qua]e pro colonia moincipiove prove moincipieis fruentur*. Unfortunately, the *Lex agraria* does not give enough information to allow us to make a distinction between the land of Roman and of Latin colonies, and between them and *municipia*.

²¹⁹ Agennius Urbicus 36.21–3. See the *Commentum* 64.17–19.

²²⁰ Atella: Cic. *Fam.* 13.7.1; Arpinum: Cic. *Fam.* 13.11.1; Rhegium: Cic. *Fam.* 13.7.4; Aquinum: Plin. *HN* 3.15.116; Ager Veleias: CIL 11.1147. See Galsterer (1976, 168); Campbell (2000, 361).

²²¹ Vell. 2.81.2. See Keppie (1983, 70).

condition for their survival. Thus it may have been far more important for the average Roman farmer than *ager publicus* belonging to the state (Ch. 4.3.7).

3.6 CONCLUSION

What emerges from this analysis of the different forms of landholding in the Republic is a gradual privatization of much of the original *ager publicus populi Romani*. In the early Republic there were no laws concerning public land. Even though at this time the amount of *ager publicus* was small, most of it appears to have been occupied by the elite, causing problems for small farmers. In 367, when it had become clear that the occupation of *ager publicus* was a problem, a law was issued to the effect that limited the amount of land (private and public) which could be occupied by one individual. There is no reason why the limit introduced at this time should not be the 500 *iugera* stated in the sources. Although the law did not give any official security of tenure on *ager publicus*, in practice it made it more difficult for the state to take away land held within the limit.

In the third century the growth of the market for agricultural products and the increase in (inter)regional trade caused an increase in the demand for land on which to produce for the market. Investments in public land, however, were risky, since the possessor might lose the land if the state chose to retake it. The creation of *ager quaestorius*, which was probably developed in the third century, was a first step in granting more security of tenure on *ager publicus*. Although the land in theory remained state property, the buyer had security of tenure and could sell and bequeath it as he liked. It could not be taken away as long as the rent was paid. Moreover, the inadequate administration of *ager quaestorius* meant that it soon became indistinguishable from the private property of the buyer. In the Second Punic War the state furthermore created the *ager in trientabulis* and *ager censorius*. These also provided the leaseholder with security of tenure on the land, which could not be taken away from him.

In the early second century there was so much *ager publicus* that there was no reason for the state to maintain strict control over it. Although in theory the law limiting possession to 500 *iugera* remained in force, no attempts were made to deprive anyone of land in excess of the upper limit. Those who acquired public land in this period may have been confident that it would not be taken away from them. During the second century many possessors of *ager publicus* appear to have considered the tenure over their holdings secure, and to have invested in them, as is shown by the protests which were voiced against the Gracchan reform plans.

As the century progressed competition for land grew. With the continued growth of pressure on the land in central Italy, it proved impossible to leave the land they had cultivated to the users of *ager publicus*. In previous centuries it had been an ongoing policy of the Roman state to remove people from central Italy to the more peripheral regions to mitigate the effects of population growth in central Italy. The pressure on the land which affected this region in the second century made it necessary to renew this policy. However, the only land which was available to the state was *ager publicus*, especially the public land in southern Italy. Distributing this land would have improved the situation of many landless proletarians, and would, at least temporarily, have alleviated the pressure on the land in central Italy. However, this naturally caused protests from those who had occupied *ager publicus* for a very long time, both Romans and Italians. We will discuss this process in more detail in the next two chapters.

The Second Century and the Economy of *Ager Publicus*

4.1. INTRODUCTION

In the second century the Roman state developed rapidly from a city-state to an empire spanning the Mediterranean. This brought unprecedented opportunities to Italy, but at the same time the economic growth caused problems for those who were unable to benefit from the favourable economic climate. The traditional picture of the period is familiar: the new conquests brought an enormous amount of wealth from the eastern part of the Mediterranean pouring into Italy, in the form of money and slaves. Most of this was accumulated by the elite; they occupied the land, especially *ager publicus*, and used their new wealth to establish large slave-staffed *latifundia* and sheep farms. Small farmers, suffering from increasing burdens of military service, were driven from their lands by the ‘greed of the rich’. Some of the landless poor flocked into the cities, while others remained in the countryside and formed a rural proletariat. In short, the soldiers who had conquered the Mediterranean in the service of the Roman state did not partake of the spoils; in Hopkins’s famous words: ‘Roman peasant soldiers were fighting for their own displacement.’¹

The proletarianization of the poor and the consequent increase in their dependence on the market pushed up the demand for foodstuffs, which were produced by the rich. This made the rich even richer, and prompted a further increase in the demand for land, since more land was needed set up cash crop estates. Since the impoverished and landless proletariat had no means to cover their subsistence needs, they became reluctant to raise children; this seems to have caused an absolute decline in their numbers. *Ager publicus* in this reconstruction was central to the problems of the small farmers: it was this land on which they depended for their subsistence, but which was occupied by the rich. Thus the loss of access to public land was a direct cause of the

¹ Hopkins (1978, 30).

crisis of the Roman peasantry. This famous reconstruction of the ‘crisis of the second century BC’ occurs in many modern works, most notably those of Toynbee, Hopkins, and Brunt, who do not hesitate to use such rhetoric as ‘the deracination of the Roman peasantry’ and ‘the disappearance of the small Roman farmer’.²

The proletarianization of the free Roman citizen is thought to have reached its culmination in the Gracchan reform. The Gracchi recognized that the occupation of *ager publicus* by the rich was the most pressing problem facing the Roman peasant. To address this problem, they attempted to distribute public land to landless citizens. As we shall see in the next chapter, the idea held by the Gracchi that *ager publicus* was both the cause of and the solution to the peasants’ predicament led to the gradual disappearance of most public land by the middle of the first century BC.

Even though this traditional reconstruction is still upheld by many, several insights emerging from recent scholarship have made it impossible to maintain. One of the most radical new ideas is that the second century was not a period of population decline, but of population growth. Population decline was not caused by the proletarianization of the small farmer, as the ancient sources would have it, but proletarianization was itself caused by *growth* of the free population of Italy and the subsequent competition for land. Another important issue which has been brought forward concerns the importance of elite competition for land: it is now increasingly recognized that the market for which the elite—and other producers, for the elite were not the only group involved in commercial agriculture—could have produced their goods was limited. Urbanization was not as substantial as it would later become, and the market for agricultural products was correspondingly smaller. This has serious implications for the importance of aristocratic competition for land: if there was no market for the products of a great number of large estates, there seems to have been no reason to accumulate large tracts of land, whether public or private.

The idea, central to the traditional picture, that the land accumulated by rich farmers was *ager publicus* has not as yet been challenged. However, in my

² The traditional picture is based mainly on App. *BC* 1.7–8 and Plu. *TG* 8. Other writers also mention the ‘greed of the rich’ and their accumulation of land: Plaut. *Trin.* 287; Sall. *Iug.* 41.5–8; Juv. *Sat.* 9.140–51; Colum. *R.* 1.3.12; Sen. *Ep.* 89.22; 90.39; Ps-Quint. *Decl. Mai.* 13.2–3. Many modern scholars have adopted this picture, to name just most influential: Tibiletti (1948–9, 30–6); Toynbee (1965, ii. 9–14, 177–9, who coins the phrase ‘deracination of the Roman peasant’); Brunt (1971, 142–3); Gabba (1977, 277–9); Hopkins (1978, 11–13, 30–1); Stockton (1979, 6–9). In fact this reconstruction is almost universally repeated in scholarly works, right up to the present day; see for a few recent examples: Kolendo (1993, 168–74); David (1997, 88–9); Levi (1997, 33–4).

view the role of *ager publicus* in the reconstruction of second-century developments was much more complicated than is usually assumed. As we have seen, the insecurity of tenure on *ager publicus* made it unattractive as an object of investment; this had already led to the creation of new forms of tenure in the third century (Ch. 3.3.1–3). Moreover, a major problem is that the location of arable *ager publicus* makes it difficult to maintain that the spread of cash crop estates took place mainly on public land (see below, Ch. 4.3.6). Furthermore, many small Roman farmers did not depend on public land, because this was often difficult to obtain (Ch. 4.3.7).

In this chapter, I shall investigate the economic and social developments of the second century and the role played by *ager publicus* in more detail. I shall investigate the correlation between proletarianization, population growth, increasing competition for land, and the growth of urbanization and commercial production, as they emerged in Italy in the second century (see Figure 4.1 for a flowchart of second-century developments). For this discussion it is sometimes necessary to move away from *ager publicus* for a while: we must first look into the extent of the spread of cash crop estates in Italy and the causes of the accumulation of land for the purpose of commercial agriculture. If, as I believe, such estates were usually not located on *ager publicus*, public land will not be the main focus of this part of the chapter. However, after investigating the importance of market agriculture, we will return to *ager publicus*, in order to see how important this kind of land was for commercial producers and small farmers. My main aim will be to argue that, even if many elements of the traditional picture of the second century are correct, it is still possible to offer a very different reconstruction of this crucial period in Roman history, especially with respect to the role of *ager publicus*. For my reconstruction of developments in this period, see Figure 4.1.

4.2. *AGER PUBLICUS* AFTER THE SECOND PUNIC WAR

Before investigating the role of *ager publicus* in the developments of the second century, it is necessary to start with a short overview of the location of *ager publicus* shortly after the Second Punic War.³ After this war an increase in the amount of public land took place, since the rebellious allies were punished by the confiscation of large tracts of land. In northern Italy the conquest of Cisalpine Gaul recommenced and was completed in the 170s BC,

³ For the details of colonization and land distribution mentioned in this section, see Chapter 2 and the Appendix.

leading to the creation of further extensive tracts of public land. Most *ager publicus* which existed during the second century, therefore, was situated either in Cisalpine Gaul or in the south. Only a relatively small amount was located in central Italy, where it had been left over from conquests before the Second Punic War.

In the early second century a large number of colonies were founded. Most colonists were sent to Cisalpine Gaul, and only a minority to southern Italy; this left much *ager publicus* in the south available for occupation, whereas much of the land in the north became private. Since the number of Roman colonies outside central Italy was small, the majority of Roman citizens were still located in central Italy;⁴ the importance of this will be revealed when we turn to the consequences of social and economic developments in the second century. The reason for founding so many colonies at this time was probably the need to ensure that the defeated peoples would not resist the imposition of Roman rule; the Romans had found out that their control over Italy was not as secure as they may have thought, and wanted to be certain their hold over it would not be compromised again. The main strategy open to them was to strengthen the Roman presence across Italy by establishing strongholds in all conquered areas.

It is not immediately clear why, with the possible exceptions of Auximum and Heba, colonization stopped after the last *virgatio* distribution in 173. One likely explanation is the fact that there was no longer any military reason to found new colonies, because the whole of Italy had been pacified. No further colonization was necessary to make sure the defeated peoples remained loyal. Some have argued that by the 170s much of the remaining *ager publicus* had been occupied by rich Romans, who were unwilling to give it up.⁵ However, this can be challenged on the grounds that the events of the Gracchan period show that much of the *ager publicus* in the south had remained in the hands of the Italian allies (see Ch. 5.2.4); in theory the state could have used this land for distribution.

It has also been suggested that the nobility feared the power of the men who founded new colonies, because the inhabitants of these colonies would become their clients. Livy usually mentions the names of the men chosen as triumvirs for the establishment of new colonies in this period; it was clearly a prestigious position, and a record was kept of the men chosen for this honour, but there is no reason why such a position would suddenly have been viewed as a danger from the 170s onwards, when this had not been the case in the previous decades. However, increasing competition within the elite seems to

⁴ De Ligt (forthcoming).

⁵ Stockton (1979, 135); Cornell (1996, 111).

have been an issue in the second century, judging from the number of *leges sumptuariae*,⁶ and this may have obstructed new land distributions.

Another possible explanation for the sudden end of colonization may be deduced from the census figures preserved for the second century. During the Second Punic War the population had declined, and therefore it proved difficult to find enough colonists for the new colonies. We have seen that Latins and even allies were admitted into the official body of colonists in several colonies and viri-tane distributions after the Second Punic War (Ch. 2.5.2). Several colonies, moreover, were abandoned shortly after their foundation. Apparently the survivors of the war had ample opportunities to acquire land, and could be picky about the land assigned to them.⁷ In considering this, it is important to remember that those sent out to Latin colonies no longer counted as citizens, and therefore were no longer included in the census. This may have been a reason for the large number of Roman colonies rather than Latin ones after the war: the state wanted to distribute the land, but was anxious that the census figure not fall even more. In fact, the

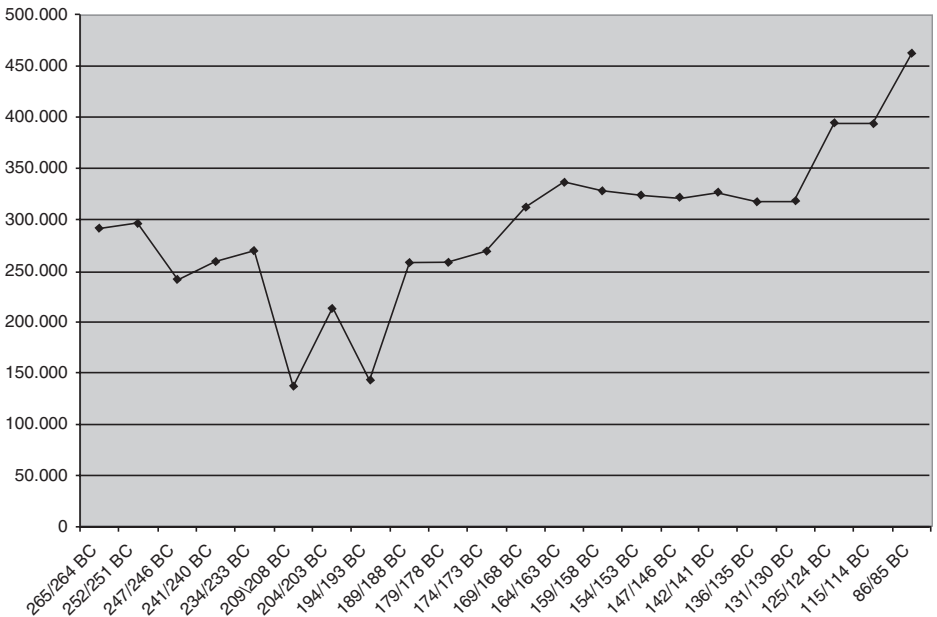


Figure 4.2. Census figures for the third to first centuries BC

⁶ Salmon (1969, 112–13); Patterson (2006, 202). For *leges sumptuariae*, see Ch. 3.2.2.

⁷ Flach (1990, 31).

census figures show a quick recovery from the decline during the war: the census of 169/168 recorded an impressive rise to 312,805 citizens, more than 40,000 above the last pre-war figure.

If the state believed that land distributions were an incentive to stimulate population growth, it would have been assumed that it was now no longer necessary to distribute land for this purpose. It is possible, of course, that the Roman state was always endeavouring to increase its manpower for ideological reasons, to show the continuous growth of Roman power. However, this is never discussed in the ancient sources; the only preoccupation with population figures seems to stem from practical reasons, such as anxiousness about a shortage of men. It may have been the case therefore that a rapid population growth led to the cessation of colonization. That land distributions were used in this way may be shown by their use in the Gracchan period. The general decline of the population was considered a serious problem in the later second century, and the distribution of land was suggested as a possible solution: men who were able to support a family would be more eager to have children.⁸ In the same way it is possible that, observing the rise in the census figures, the politicians of the 170s BC concluded that land distributions were no longer necessary as an incentive to promote population growth. This would mean that the census figures were used by Roman politicians as a basis for policy making, and that they were also considered to be, at least roughly, reliable (see further Ch. 5.2.2).

The end of colonization led to a situation where the majority of the Roman citizens owned private plots of land, sometimes supplemented by public lands in the vicinity. Moreover, there were still considerable tracts of *ager occupatorius*, which, in principle, were open for occupation by anyone who wanted them. However, this type of land was not spread evenly throughout Italy. As we have seen (Ch. 2.2.2–5), most of the public land in Latium had been distributed to Roman citizens as private property in *viritane* distributions or in colonies after the Latin War. Furthermore, many towns in Latium had been granted Roman citizenship without losing any land. The same situation pertained in Sabinum, where many local inhabitants had received Roman citizenship without loss of land, and most of the land which had been confiscated was assigned to Roman citizens by *viritane* distributions. In Etruria, although some land had remained public for a considerable period,

⁸ In 393 lands had already been distributed, with the aim, according to Liv. 5.30.8, 'to encourage the rearing of children'. Cass. Dio 38.1.3 states that the depopulation of Italy in the first century BC would be solved by land distributions of Caesar. See Brunt (1971, 28), Cassola (1988, 14), and Patterson (2006, 196) for the impact of land distribution on demographic development.

this had gradually been transformed into the private property of Roman citizens by the establishment of colonies in the early second century. Finally, most *ager occupatorius* in southern Etruria, Sabinum, and Latium within a fifty-mile boundary from Rome had been turned into *ager in trientabulis* in 200 BC.⁹

In Campania as well much land had been privatized during the third century by the establishment of colonies or by viritane distributions. New public land had been created during the Second Punic War: the territory of Capua, known as the *Ager Campanus*, had been confiscated as a punishment for Capua's disloyalty. Most of this land had been quickly disposed of: new colonies had been established along the coast, and the rest of the *Ager Campanus* had been sold or leased out. This means that again there was only a limited amount of *ager occupatorius* available; what was left in Campania was located mainly in the mountainous areas on its northern and eastern borders.

This means that the only forms of *ager publicus* still available in central Italy were special kinds of public land: *ager in trientabulis* and other land that had been sold or leased out. The extent of each of these types of public land seems to have been small, as we have seen (Ch. 3.3), and they seem to have accrued especially to the rich. More importantly, once this land had been obtained by its first possessors, they could treat it as their private land, in the sense that it could be sold or bequeathed to heirs, and could not simply be retaken by the state. Its legal status was not comparable that of *ager occupatorius*, and it was therefore not threatened by the Gracchan land distributions, which involved only *ager occupatorius*.

In short, we can conclude that most *ager occupatorius* was located not in central Italy, but in the more peripheral regions: southern Italy, Picenum, and Cisalpine Gaul. There was therefore almost no *ager occupatorius* in central Italy of which 'the rich', or any other group, could have taken possession by expelling the poor. This will have had important implications for the role of *ager publicus* in the developments of the second century. With the end of colonization after the 170s, it is to be expected that pressure on the land would gradually increase, at least if commercial agriculture continued to gain economic importance, and if the population as a whole continued to grow.¹⁰

⁹ Gargola (1995, 116) sees the passage in which Tiberius Gracchus' journey through Etruria is described as proof of the continued existence of *ager publicus* in the area. However, the southern part of the route would have led through *ager in trientabulis*, while most of the northern part, between Graviscae and Cosa, would have belonged to the territory of these two colonies.

¹⁰ Rich (2007, 165).

4.3. THE GROWTH OF COMMERCIAL AGRICULTURE AFTER THE SECOND PUNIC WAR

To see where pressure on the land was located and how large it may have been, it is necessary to consider the consequences of economic growth in the second century in more detail. Appian and Plutarch leave no doubt about the consequences of the increased wealth coming into Italy: ‘the rich’ occupied the land and established large slave-staffed estates on it, driving the poor from the land. This made it impossible for the poor to gain a living and they were reduced to destitution. This reconstruction is extremely familiar, since it has been almost universally believed since antiquity. From Appian’s famous words it appears that the land monopolized by the rich was mainly *ager occupatorius*:

The rich gained possession of most of the undistributed land and after a while were confident that no one would take it back from them. They used persuasion or force to buy or seize property which adjoined their own, or any smallholdings belonging to poor men, and came to operate great ranches instead of single farms. They employed slave hands and shepherds on these estates to avoid having free men dragged off the land to serve in the army.¹¹

While there is certainly some truth in this picture, it does not accurately represent the situation during the second century, especially with respect to the legal status of the occupied land.

Furthermore, Appian’s general description does not take account of regional variations in the economic developments of the second century. In some areas, mainly in central Italy, an increase in the number of estates producing for the market, largely staffed by slaves, certainly took place. In other regions the production of goods for the market did not play such an important role. Moreover, it is now widely accepted that commercial production did not always take place on large estates; instead, cash crop farms existed in many shapes and sizes, but were mostly fairly small during the second century. If we want to assess the consequences for the small farmer of the accumulation of land by those producing for the urban market, we must study this development in more detail. In which regions did an increase in

¹¹ App. BC 1.7: οἱ γὰρ πλούσιοι τῆσδε τῆς ἀνεμήτου γῆς τὴν πολλὴν καταλαβόντες καὶ χρόνῳ θαρροῦντες οὐ τίνα σφᾶς ἔτι ἀφαιρήσεσθαι τά τε ἀγχοῦ σφίσιον ὅσα τε ἦν ἄλλα βραχέα πενήτων, τὰ μὲν ἄνοῦμενοι πειθοί, τὰ δὲ βίᾳ λαμβάνοντες, πεδία μακρὰ ἀντὶ χωρίων ἐγεώργουν, ἄνητοῖς ἐς αὐτὰ γεωργοῖς καὶ ποιμέσι χρώμενοι τοῦ μὴ τοὺς ἐλευθέρους ἐς τὰς στρατείας ἀπὸ τῆς γεωργίας περισπᾶν, φεροῦσης ἅμα καὶ τῆσδε κτήσεως αὐτοῖς πολὺ κέρδος ἐκ πολυπαιδίας θεραπεύοντων ἀκινδύνως ἀξιομένων διὰ τὰς ἀστρατείας.

commercial production occur, and when did this happen? Which crops were cultivated, and to which markets were they transported? How large were these markets? How large were the estates producing goods for the market, and how many slaves were involved in such enterprises? And, most importantly for our purposes: was the land used for commercial production *ager publicus*, private land, or both?

Whereas the traditional reconstruction of economic developments asserts that the growth of commercial estates took place mainly on *ager occupatorius*, I shall argue that this thesis is invalid. In central Italy, where commercial agriculture was most widespread, the amount of *ager occupatorius* was in fact rather limited. It is therefore impossible that in this area the land on which large estates were established consisted mainly of public land. This would have coincided with the developments described in the previous chapter: people wanting to invest with a view to producing for the market would have been reluctant to use public land because of the insecurity of such holdings. How, then, can the occupation of public land have been a problem for the poor, as the sources would have us believe?

4.3.1. Market production on arable land

The idea that large slave-staffed estates producing for the market became the dominant form of land possession in the second century is constantly reiterated in the works of modern historians. The ‘crisis of the second century’ is often attributed to the growth of large estates called *latifundia*, which are described as vast enterprises worked by large numbers of slaves. Such ideas have been partially influenced by the slave plantations in the United States, especially in older works such as those of Frank and Toynbee.¹² However, estates which can realistically be termed *latifundia* did not appear until the first century BC, when estates were far larger and more luxurious than in the second century. The term *latifundium* is not used in the sources until the Imperial period.¹³ All archaeological finds of villas which can be dated securely to the second century were much smaller, a few hundred *iugera* at most, and produced not only for the market, but also for the subsistence of

¹² Tibiletti (1948–9, 36); Frank (1962, whose sixth chapter is called ‘The establishment of the plantation’); Toynbee (1965, ii. 160–8, who mentions ‘plantations’); White (1970, 346); Gabba (1972, 63–4; 1977, 278); Frederiksen (1981, 271); De Neeve (1984, 79).

¹³ Plin. *HN* 18.4.17, 18.7.35; Sen. *Ep.* 90.36; Petron. *Sat.* 48, 77; Colum. *R.* 1.3.12; Flor. 2.3.19.3. For descriptions of such estates see White (1967, 65); Shatzman (1975, 472–4); Purcell (1995, 168–72); Marzano (2007, 126–7).

their own personnel.¹⁴ Moreover, they cultivated a variety of produce instead of one cash crop. It would therefore be unwise to call the estates of the second century *latifundia*; the term *villa* is now considered to be the most suitable for second-century cash crop farms.¹⁵ This will be used throughout this chapter to indicate any estate which was clearly above subsistence level and was therefore probably engaged in production for the market. Of course, commercial agriculture was not a new development after the Second Punic War; as we have seen, the market was already considerable in the early third century. Nevertheless, at this juncture it increased significantly in scale, with both the number of cash crop estates and their individual size becoming larger. To assess how important the accumulation of land actually was, our first priority is to find out how large such estates were, and where they were located.

Cato's treatise *De agri cultura* is the first literary source which describes production for the purpose of making a profit. His observations are often confirmed by those of Varro in the mid-first century BC, and by Columella in the first century AD, although individual farm buildings and the estates connected to them were much larger by their time.¹⁶ There is no doubt that the main aim of Cato's estates was to make a profit, and he shows constant awareness of the importance of the market: 'There must be a sizeable town nearby, or the sea, or a river used for traffic, or a good and well-known road.'¹⁷ Since transportation was very expensive, the presence of a market nearby, or good possibilities for transporting products, was very important.¹⁸ It is clear

¹⁴ Many scholars point out that second-century estates were small, even if they sometimes still call them *latifundia*, e.g. White (1967, 65; 1970, 388); Frederiksen (1970–1, 331); Gabba (1979b, 42); Marcone (1997, 136). The number of larger estates as a percentage of the total number of sites was always small in this period: Vallat (1987, 194), for example, states that in Etruria and Latium *villae* never made up more than 10% of the total number of sites. Nicolet (1994, 622), on the other hand, states: 'if there had not been an accumulation of "big estates"—over 120 hectares at least, and in fact much bigger—there would *not have been* a socio-political problem in 133 B.C.' (author's emphasis). However, if many people were competing for the limited amount of land available, some of them would have been able to accumulate large estates, some medium-sized ones, and many of them would have ended up with too little to support their families, in which case there could have been a socio-political problem, at least in some parts of Italy.

¹⁵ Kuziščin (1984, 44); Lomas (1993, 90). However, there has been almost as much debate about the definition of *villae* as about *latifundia*; some, e.g. Terrenato (2001), have argued that the term cannot be applied to most second-century estates (see below). It should therefore be remembered that the size of the establishments called *villae* by modern authors could vary greatly.

¹⁶ Varro and Columella do not explicitly mention farm sizes, although Varro's description of a farm in *R.* 3.5.9–17 shows that such enterprises were much more luxurious in his days than in Cato's time. See also *Cic. Q.* 3.1.3.

¹⁷ *Cato Agr.* 1.3.

¹⁸ *Cato Agr.* 22.3 discusses prices for the transport of a crushing mill, which would take six days to transport from Suessa with the help of oxen and six labourers; the total cost of the mill

that the purpose of the farm was to produce a surplus and sell this on the market, and hence to make a profit.¹⁹

On the other hand, the estates described by Cato were also supposed to be self-sufficient. The main products were wine and olive oil, but the farms also produced grain to feed the slave workers and many other products that were needed to support the farm and its labourers. Throughout Cato's work it is clear that a wide variety of crops are produced. He starts by listing the elements which should be present on a good farm: 'A vineyard (or an abundance of wine), second an irrigated kitchen garden, third a willow wood, fourth an olive field, fifth a meadow, sixth a grain field, seventh a plantation of trees, eighth an orchard, ninth an acorn wood.'²⁰ Not only foodstuffs, but many other utilities as well could be made on the farm; Varro mentions 'articles which are made of withes and woods, such as hampers, baskets, threshing-sledges, fans, and rakes; so too articles which are made of hemp, flax, rush, palm fibre, and bulrush, such as ropes, cordage, and mats.'²¹ All these crops were produced on the farm in order to make its level of self-sufficiency as high as possible. However, more specialized objects were usually bought; Cato mentions ploughs, crushing mills, spades, carts,

plus the labour was HS 72. If the same mill were transported from Pompeii (with apparently the same number of labourers), the price would increase to HS 280. Cf. Var. R. 1.16.3. See Spurr (1986, 125–6); Morley (1996, 63–8); Erdkamp (1998, 62–72).

¹⁹ Cato Agr. 3.2 encourages his readers to make sure that there are 'plenty of [storage] vats so that one is free to wait for prices to rise, which will be better for income, self-esteem and reputation'. See Cato Agr. 2.7: 'The master has to be a selling man, not a buying man.' Cf. Var. R. 1.2.8, 1.22.4, 1.69.1, 3.16.11.

²⁰ Cato Agr. 1.7: *Praedium quod primum siet si me rogabis, sic dicam: de omnibus agris optimoque loco iugera agri centum, vinea est prima, vel si vino multo est, secundo loco hortus irriguus, tertio salictum, quarto oletum, quinto pratum, sexto campus frumentarius, septimo silva caedua, octavo arbustum, nono glandaria silva*. This passage has often been understood as a listing the most profitable types of agriculture in descending order, e.g. Var. R. 1.7.9–10; Plin. HN 18.6.29; see modern scholars, such as White (1970, 391–2); Shatzman (1975, 16); Oehme (1988, 27–8). However, the prominence of willow woods in the list is surprising; it has therefore been suggested that this is not a list of profitable types of agriculture, but of the requirements for a good farm. Dalby (1998, 57), following De Neeve (1981, 54), argues that it is 'a list of added-value features whose presence . . . helps to promote self-sufficiency, to reduce marginal expenditure and to provide added sources of profit. That is why . . . there is less need for a vineyard if the neighbourhood already offers abundant, and therefore cheap, wine.' On the other hand, if even Varro and Pliny interpret Cato's passage as a list of profitable types of agriculture, this makes it more likely that this was Cato's intention. In any case, monocultures, in the sense of farms devoted to only one crop, were non-existent in the Roman Republic, see Toynbee (1965, ii, 308–9); White (1970, 51); Spurr (1986, 9); Morley (1996, 75–6). Contra: Tibiletti (1955, 23).

²¹ Var. R. 1.22.1–2, 1.2.21. See Plin. Ep. 2.17. Cf. Pall. 6.12, 9.12 for the production of tiles and iron wares at the farm; D.8.3.6.pr for the production of *amphorae*, *dolia*, and tiles. This is supported by archaeological finds from Moltone: Isayev (2007, 46).

vats, tiles, yokes, horse tack, clothes, and boots.²² In short, the farm was very much a part of the market, not only on the supplying side, but also on the buying side.

An important question involves the size of the estates described by Cato, since this might tell us something about the accumulation of land by cash crop producers. Cato himself gives lists of inventories for olive plantations of 120 and 240 *iugera* and vineyards of 100 *iugera*.²³ Usually it is assumed that much of the total farm size of 100, 120, or 240 *iugera* was used for produce other than the main crop.²⁴ However, in my view the land for the other products must be added to the land needed for the main crop, so that the total size of the farm would have been larger than the size mentioned. The main evidence for this is Cato's inventory for the 100-*iugera* vineyard, which includes 'enough vats for five vintages, total 800 *cullei*'.²⁵ If 800 *cullei* (413,600 litres) were produced in five harvests on a surface area of 100 *iugera*, this means that 827 litres of wine were produced per *iugerum* per year. Estimates of the yield of ancient vineyards are usually around or even below this figure, even if some ancient sources boast about extremely high yields.²⁶ Jongman, for example, has calculated a production of only 500 litres per *iugerum* per year.²⁷ Even if this is too low, it is unlikely that, apart from the wine, other crops could have been produced on a 100-*iugera* estate.²⁸ The estate would therefore have needed additional land to produce the other food and non-food items needed for the subsistence of its workers.

It is possible to make a rough estimate of how much land was needed apart from the 100 *iugera* for the vineyard or 240 for the olive grove. Cato gives information about the amount of grain his slaves received as rations: each

²² Cato *Agr.* 135. See 162 for the buying of pork. Cf. *Var. R.* 1.16.3.

²³ Cato *Agr.* 3.5, 10–11. In 1.7 he cites the ideal size of a farm as *iugera agri centum*.

²⁴ The exact surface area needed for other crops is debated; Carandini (1980, 2) estimates that of 100 *iugera* about twenty to thirty-three were used for wine production; De Martino (1980, 91) forty-five. See in general White (1970, 391–2); Duncan-Jones (1982, 327).

²⁵ Cato *Agr.* 11.1: *Dolia ubi V vindemiae esse possint culleum DCCC*.

²⁶ Colum. *R.* 3.3.8 argues that a vineyard yielding less than three *cullei* per *iugerum* should be rooted out; Colum. *R.* 3.3.3 states that twenty *amphorae* (less than one *culleus*) per *iugerum* is low, but 100 (five *cullei*) is very much. Colum. *R.* 3.3.2 cites Cato's *Origines*, in which he estimates the yield of vineyards in the Ager Gallicus at 600 *urnae* (7,875 litres) per *iugerum*. Plin. *HN* 14.5.52 mentions seven *cullei* per *iugerum*. *Var. R.* 1.2.7 tells us that the Ager Faventinus yielded fifteen *cullei* per *iugerum*. It is likely that such figures were exceptional, and that the normal yield of vineyards was much lower.

²⁷ Jongman (1988, 132). See Rathbone (1981, 12); Duncan-Jones (1982, 40, 45). However, Purcell (1985, 13) agrees with Columella's estimate of at least three *cullei* per *iugerum*. With a yield of 500 litres per *iugerum*, 165.4 *iugera* would be needed to produce 82,700 litres per year; apparently, the yield on Cato's estates was around 1.5 *cullei* per *iugerum*.

²⁸ Desy (1989).

field worker received four *modii* per month in winter and 4.5 in summer, except for the *vilicus* and *vilica*, the supervisor and the shepherd, who received three *modii* per month. This means that for Cato's estate with sixteen slaves 760 *modii* of grain per year would have been required. To this should be added seed corn, amounting to 200–300 *modii*, a total of about 1,000 *modii* per year.²⁹ Jongman estimates that one *iugerum* produced 100 kilos (15.3 *modii*) of grain, in which case the labour force of sixteen slaves who lived on the 100-*iugera* vineyard needed at least an additional seventy *iugera* to provide its own grain supply. However, Erdkamp has argued for a yield of forty to fifty *modii* per *iugerum*,³⁰ and this would lower the amount of land required to about twenty *iugera*.

It is even more difficult to quantify the amount of land needed for the other produce of the farm. The sixteen slaves received at least 2,500 litres of wine per year, which would require an additional three to five *iugera* in the case of the farm producing olive oil; in the vineyard, wine for the slaves was deducted from the amount sent to market.³¹ Cato also mentions several fodder crops; it is likely that each of these leguminous crops did not require more than one *iugerum*.³² If the list in *Agr.* 1.7 is a list of various crops needed on a farm, Cato would appear to recommend that a farm should have its own irrigated garden, willow wood, olive grove, meadow, coppice, orchard, and acorn wood. Some farmers will have owned additional private land for these purposes; others may have had access to public lands on which they could find their willow and acorn woods, meadow, and coppice, since these were not present in all locations and so could not always be part of the private estate. Gardens and orchards, however, were most likely not located on public land.³³

²⁹ Cato *Agr.* 56.

³⁰ Jongman (1988, 135), see Duncan-Jones (1982, 328). Erdkamp (2005, 34–49) argues that yields of 8 : 1 or 10 : 1 were normal for large estates on fertile soil, but that on peasant smallholdings yields were probably lower.

³¹ From Cato *Agr.* 57 it appears that the slaves received a total 2,440 litres of wine a year, which would take five *iugera* to produce if one *iugerum* produced 500 litres, but only three if one *iugerum* produced 832 litres. In *Agr.* 25 Cato states that the provisions for the slaves in a vineyard were deducted from the yield.

³² Cato *Agr.* 60. Lupines yield about 4,000 kilos/ha (www.lupins.org); beans a few hundred kilos/ha (<http://www.hort.purdue.edu/newcrop/1492/beans.html> <http://aphorticulture.com/Beans.htm>) and vetch about 1,000 kilos/ha (http://www.hort.purdue.edu/newcrop/1492/legume_animal.html). See Flint-Hamilton (1999).

³³ This was the case, for example, in Boscoreale, see Jashemsky (1994, 104–10). See Catul. 114; Petron. *Sat.* 38, 48 for estates with different kinds of land. Last (1932, 5) argues that estates were large because one person required different kinds of land (arable, summer and winter pastures), but it is unlikely that a person would have one estate in which all kinds of land were present.



Figure 4.3. Intercropping of grain between olive trees

We must remember that the practice of intercropping was most likely widespread in antiquity. This means that grain and other crops were sown between the vines or olive trees.³⁴ The sheep Cato mentions could have grazed on the land between the olive trees, so that no extra land would have been needed for them.³⁵ However, it is possible that planting other crops between trees would have lowered the yield of the trees themselves, so that intercropping probably did not significantly reduce the total amount of land needed. The total number of additional *iugera* needed can therefore be set at a minimum of thirty, the largest part of which was taken up with the production of grain. If all this land was added to the land necessary for the main crop, a vineyard of 100 *iugera* would have meant a minimum estate size of 130 *iugera*, and an olive yard of 240 *iugera* would have meant an estate size of 270

³⁴ Cato *Agr.* 33; Plin. *HN* 17.35.197–8 for the sowing of *ocinum*, a fodder crop, between vines. Colum. *R.* 5.6.5 mentions growing vines tied to other trees; 5.6.11, 5.7.3, 5.9.7, and 5.9.12–13 mention grain sown between olive trees, and 2.9.6 grain sown between vines. See Duncan-Jones (1982, 327–8); Spurr (1986, 6); Goodchild (2006, 202).

³⁵ MacKinnon (2004, 113). Var. *R.* 1.2.21 and 2.2.12 refer to animals grazing on the land after harvest so that their manure would increase fertility. Pall. 3.26 mentions the grazing of pigs in the vineyard in order to cut the vines.

iugera. Although such estates are not to be compared to the enormous *latifundia* that would come into being in the early Empire, they were still quite large.

Cato's is the first literary description of a commercial estate, and at first sight his description seems reasonable for the second century. However, it has recently been pointed out that there seems to be a discrepancy between the villa as described by Cato and the finds that turn up in the archaeological record. Terrenato has argued that archaeological sites dating from the second century cannot be equated with the 'Catonian villa', the villa as described by Cato. He argues that not a single 'Catonian villa' has turned up in the archaeological record until the late second century. Instead, from the third century (and in some areas even earlier) there appear what Terrenato calls 'Hellenistic farmsteads', sites which show evidence of commercial production, but seem to have been built on a much smaller scale than the *villae* described by Cato. He points out, for example, that while Cato states that a villa should have five olive presses,³⁶ no establishment with five presses has been found.³⁷ Most 'Hellenistic farmsteads' have only one press, and larger numbers do not appear until the late second century. On this basis Terrenato argues that the estates connected to such small farm buildings could not have run into the hundreds of *iugera*.³⁸

Nevertheless, it seems unlikely that the *villae* described in Cato's work would have had no relation at all with the reality of his time. The main source of the problem lies in the fact that it is very difficult to determine what a 'Catonian villa' actually looked like; Cato himself gives no clear description of the farm buildings. The only information he gives on the building of the farmhouse is that it had 'foundations in stone and mortar to a foot above ground level, then walls in mud-brick' and 'walls 1 foot thick'.³⁹ There were also various adjacent buildings; Cato mentions 'ox-sheds winter and summer, feed-racks, stable, slave quarters'.⁴⁰ The 'Catonian villa' as described by Cato himself therefore seems to have been a rather modest affair: built of mud-brick and apparently unplastered,⁴¹ it was a long way from the later monumental *villae*.

³⁶ Cato *Agr.* 10.2.

³⁷ Most *villae* around Rome had only one, or sometimes two, presses: Marzano (2007, 104).

³⁸ Terrenato (2001, 20–5). Other scholars as well maintain that the 'Catonian villa' did not appear until the late second century, e.g. Frederiksen (1981, 277). This view has been criticized by many scholars, e.g. Gualtieri (2003, 134); Marzano (2007, 9–10).

³⁹ Cato *Agr.* 14.4–5, 15.

⁴⁰ Cato *Agr.* 14.1–2.

⁴¹ Gell. *NA* 13.24.1: '[Cato's] country seats were plain and unadorned, and not even white-washed.' Terrenato (2001, 25), however, points out that no unplastered buildings from the second century have been found.

Another problem is that it is difficult to connect the size of farm buildings to the amount of land connected to it.⁴² For example, Cato's olive grove, although more than twice as large as his vineyard, did not require a larger number of slaves, and so the slave quarters would not have had to have been larger. Nor did the larger surface require a significantly larger amount of space for processing the harvest or storage: the inventories of both types of farm include a roughly similar number of instruments for processing and storing the harvest, carts and smaller tools, and draught animals. The only thing missing from the vineyard as compared to the olive yard are the sheep and the three mills specified in *Agr.* 10.4. It is therefore not possible to postulate that a larger amount of land automatically meant that the villa building was larger. The only indication of the amount of land occupied by a villa is the number of vats used for the storage of the harvest: a larger number of vats would probably mean a larger estate. However, since Cato says that the number of *dolia* should be large enough for five vintages, the presence of a certain number of vats does not necessarily mean that the harvest to be stored in them had to be produced in one year.

Several sites which Terrenato classifies as 'Hellenistic farmsteads' have been excavated, among them Giardino Vecchio and Villa Sambuco in Etruria, Via Gabina in Latium, Posta Crusta in Herdonia (Apulia), and San Vito in Salapia (Apulia). The size of these buildings is limited to a few hundred square metres: Villa Sambuco measured 530 m², Posta Crusta 400 m², and Giardino Vecchio 4–500 m².⁴³ Most of these buildings, possibly with some adjacent sheds, would have been large enough to fit the demands of a villa as described by Cato.⁴⁴ It is therefore very possible that the 'Hellenistic farmsteads' identified by Terrenato are the same as the 'Catonian *villae*'. Terrenato himself dismisses this possibility: 'Archaeologists have failed

⁴² Some scholars have attempted this; Mari (1991, 36), for example, states that the size of *villae* in the western part of the Ager Tiburtinus was 55 to 100 *iugera*, and in the area close to the Tiber 100–240 *iugera*. However, it is unclear on what evidence these estimates are based.

⁴³ Villa Sambuco: Rathbone (2008, 314–15); Posta Crusta: Torelli (1999a, 112); Rathbone (2008, 316); Giardino Vecchio: Celuzza and Regoli (1985, 51); Rathbone (2008, 315). In Selvasecca in the territory of Cosa several houses measured about 1,000 m²; they are called by Cambi (2002, 144) 'Hellenistic farmsteads'. Wightman and Hayes (1995, 37) state that *villae* in the lower Liris Valley measured between 500 and 1,250 m² in the second century.

⁴⁴ Rathbone (2008, 314–16), estimates the size of the estates belonging to these *villae* as much smaller than the 'Catonian villa'. However, there is no reason why the farm buildings as described by Cato would have needed to be larger than Villa Sambuco, Giardino Vecchio, or Posta Crusta. This also means that Rathbone's estimation of the estate sizes of these farms, between twenty and fifty *iugera*—with the result that he identifies some of them as Gracchan colonists' farms—cannot be accepted. The same goes for farms in Poggio del Bronco in the territory of Cosa, where three sites measure 1,152 m², which Celuzza (2002b, 167) identifies as houses of richer colonists.

to bring to light settlements that fit the bill, unless one is prepared to admit that they were one and the same as the Hellenistic farmsteads, which were certainly not introduced at the time of the Censor.⁴⁵ In other words: since the Hellenistic farmsteads were not a recent introduction in Cato's lifetime, Cato could not have written a treatise about them. However, Cato does not claim to describe new developments in his work; he simply gives advice on how to manage a farm. The Second Punic War was not a watershed in the development of *villae*; an increase in the number of larger *villae* producing for the market had already occurred in the late third century, and these may be called 'Catonian *villae*'.⁴⁶ There is no reason why Cato should not have described villa structures that had appeared some decades earlier.

The only significant problem remaining is that no *villae* have been found which fit Cato's description of 'major processing structures', as Terrenato calls the five olive presses prescribed by Cato. There are several possible explanations for this: first of all, Cato's writings are only applicable to a fairly small region, namely northern Campania,⁴⁷ and not much archaeological research has been undertaken in this area. Given the small number of *villae* that have been excavated in their entirety, it may be that estates of the type described by Cato simply have not yet been discovered. Another explanation is that Cato's work may have been influenced by Mago's treatise on African agriculture; in Africa some farms with five presses have been found dating to the late third century. If Cato based some of his advice on Mago's work, then it is not to be expected that the five presses will appear in the Italian archaeological record.⁴⁸ This does not mean that Cato's work in general cannot be applied to Italian agriculture; for the work to have any value at all, some of it must have been applicable to Italy, and most of the advice given by Cato seems reasonable for the second century BC.⁴⁹

⁴⁵ Terrenato (2001, 24–5).

⁴⁶ See on market agriculture in the third century Frederiksen (1970–1, 339); Cornell (1995, 380–90); Morley (1996, 126).

⁴⁷ Dalby (1998, 22) locates it in the vicinity of Venafrum. This is clear, for example, from the fact that Cato *Agr.* 135 mentions several places where tools can be bought, and all of these are located in Campania; this advice would not be useful for someone living further away.

⁴⁸ Rathbone, pers. comm. See *Var. R.* 1.1.10 for Mago's importance.

⁴⁹ Terrenato (2001, 24–6, quotation p. 27) assumes that Cato's description of modest and simple farms was unrealistic, and that he wanted to present a picture of frugality to his political peers. This would be in keeping with his, most likely exaggerated, representation as a hard-working farmer in other sources, e.g. *Cic. Sen.* 7.24; *Plu. Cat. Ma.* 1.1, 2.1, 3.2, 4.4–5, 6.1; *Nep. Cat.* 1.1. However, since there are no larger farms dating from the early second century in the archaeological record, it is unlikely what Terrenato assumes a villa of Cato's time to have looked like.

Many smaller farms dating to the third and early second centuries show evidence of the commercial production of wine and olives, as is attested by the presence of *amphorae*, *dolia*, and wine and olive presses. It is likely therefore that commercial production as described by Cato did not take place on large *villae*, which occur in the archeological record only from the late second century and thereafter, but on the smaller 'Hellenistic farmsteads'. Terrenato himself must admit that

no villas in central Italy can be clearly associated with agricultural intensification before the 1st century B.C., but the massive diffusion of wine- and oil-*amphora* production in the same areas began at least a century and a half before. To find sites that match the massive *amphora* output... for now one can only point to the Hellenistic farmsteads.

We may conclude that the relatively small buildings which have been excavated are identical with the 'Catonian villa', or at least are typical of estates producing for the market in the early second century.

Unquestionably, such *villae* were on a completely different scale from the monumental affairs which appeared from the late second century onwards. In some parts of Campania and Latium larger and more luxurious *villae* of the type described by Varro appeared already from the mid-second century onwards,⁵⁰ but in the rest of Italy villa buildings began to be constructed on a larger scale only in the later second century. The peak of activity in villa building took place between 140 and 25 BC, especially after the age of Sulla. In this period a large number of luxurious *villae* were built and many older *villae* were enlarged and/or embellished.⁵¹ *Villae* built in this period were usually much larger than those of the early second century, often measuring several thousand square metres. Some surface scatters in Etruria measure up to 80,000 m²; which indicates the presence of very large *villae*.⁵² It is likely that the size of the estates attached to such enormous buildings would have been larger than the few hundred *iugera* of Cato's time.⁵³ Of course, regional

⁵⁰ D'Arms (1970, 1–18); Vallat (1983b, 224–5); Pucci (1985, 17).

⁵¹ The largest number of Republican villa sites in the *suburbium* catalogued by Marzano (2007) can be dated to the late second or early first century BC, with only a few dating back to earlier periods. See White (1967, 74; 1970, 388); Frederiksen (1981, 271); Frayn (1984, 113); Spurr (1985, 125–6); Vallat (1987, 200–4); Rathbone (1993b, 19). For the political developments leading to the accumulation of land in the Sullan period, see Keaveney (1982, 184–5). See Ch. 5.4.3.

⁵² Regoli (2002, 146); Marzano (2007, 68). Vallat (1987, 196) states that the size of actual buildings in Cosa varied from 1,800 to 25,000 m².

⁵³ Fentress and Jacques (2002, 126) estimate that in Saturnia each villa controlled 600 *iugera*. In Heba each villa may have controlled 400 *iugera* of land: Attolini (2002, 130–1). In Cosa average estate size may have been 1,000–1,200 *iugera*: Marzano (2007, 128). However, it is again not clear on what data these estimates are based. It is to be remembered that not all villas may have been used for agriculture; close to Rome, for example in Collatia, there are so many villas that it seems more likely that they were elite residences: Launaro (2008, 148).

variation occurred in the size of *villae*; in the territory of Volaterrae for example, which was located further away from the central market in Rome, farm buildings still did not exceed 10,000 m².⁵⁴ For most of the second century, therefore, the size of individual buildings, and probably also the estates on which they were erected, was limited. Although relatively small, they were markedly larger than would have been required by a subsistence farmer, and many show architectural elements which indicate the production of cash crops.

It goes without saying that changes in the labour organization of estates could take place without physical changes in the buildings. For example, an increase in the use of slavery replacing the manpower supplied by family labour, which took place in the second century according to the sources, did not require the construction of new buildings. It is also possible that a number of smaller farms ended up in the hands of one owner, who consequently accumulated a large amount of land spread out over various locations. There is in fact much evidence that many large landowners did not have one large estate, but many smaller ones. Roscius from Ameria, for example, owned thirteen different farms in the Tiber Valley, and it is generally accepted that this was the normal pattern of landholding of the late Republican elite.⁵⁵ Therefore, accumulation of land in the hands of the elite would have been possible without this having been reflected in the archaeological record.

In short, in the second century we are still dealing with fairly small farms, which produced partly for subsistence and were worked by a small number of slaves. Even if some people owned several such farms, their total landed possessions will have been limited by the small size of the market, a matter to which we will turn shortly. The accumulation of land which is supposed to have occurred in this period, therefore, does not seem to have been as serious as the traditional reconstruction of events would have it. It seems difficult to uphold the idea that small farmers throughout Italy were expelled from the land by 'the rich', as the ancient sources tend to claim. Should we therefore put this idea aside completely? Or does the loss of land by small farmers still have some role to play in the putative misery of the Roman peasantry? To answer this question, we must now look at the regional variation in the spread of cash crop *villae*.

⁵⁴ Saggin (1994, 472).

⁵⁵ Cic. *Rosc. Am.* 7.20. This was not only the pattern found among the top of the elite, but also with the only moderately rich: see Ascon. *Mil.* 46 for Causinius Schola, who owned land in Interamna and Alba. See White (1967, 74; 1970, 388); D'Arms (1970, 11); Finley (1999, 112).

4.3.2. Regional specialization

Although there were many commercial farms in the second century, they were not spread evenly throughout Italy. Some regions specialized in products destined for the largest market, the city of Rome, while others remained focused on local markets. The importance of Rome as a central market can be illustrated by using the well-known central place theory by Von Thünen. This model postulates that, if there is a central market, the land closest to the market will produce such perishable goods as flowers, fruit, and vegetables; further away staple foods, such as grain, will be grown, and beyond that extensive animal husbandry will be practised. A similar spatial distribution of production can be seen in Italy.⁵⁶

The production of perishable goods took place close to Rome. Varro explains: 'It is profitable near a city to have gardens on a great scale; for instance, of violets and roses and many other products for which there is a demand in the city; while it would not be profitable to raise the same products on a distant farm where there is no market to which its products can be carried.'⁵⁷ In the first century BC, the time of Varro, the immediate surroundings of Rome were used mainly for *pastio villatica*, the large-scale production of luxury perishable goods. The locations Varro mentions for this kind of production are all situated in Latium and Campania, at relatively short distances from the city.⁵⁸ Although this kind of production did not reach its greatest extent until the first century BC, Cato already advises: 'Close to the City be sure to grow all kinds of vegetables; all kinds of flowers for wreaths.'⁵⁹

The large-scale production of wine, olive oil, and grain for the market at Rome took place mainly in Etruria, Latium, Sabinum, and Campania.⁶⁰ The possibilities for commercial production for the market in Rome in areas further away than this were limited, since at further distances profits would

⁵⁶ Von Thünen (1875, 1–13, 172–223, 229–45). See for the application of this model to Roman Italy De Neeve (1984, 11–19); Pucci (1985, 17); Morley (1996, 58–63).

⁵⁷ Var. R. 1.16.3.

⁵⁸ Ostia: Var. R. 3.2.7; Alba: 3.2.17; '24 miles from Rome': 3.2.14; Tusculum: 3.4.3, 3.5.9; Casinum: 3.5.9; Bauli: 3.17.5; Naples: 3.17.9. See also Var. R. 3.2.14 and 3.3.2–3 and Pall. 1.22–30. See Jongman (1988, 132) for Pompeii; Alvino and Leggio (1995, 204) for Sabinum; Purcell (1995, 157), Morley (1996, 88–90), Valenti (2003, 27) for Tusculum.

⁵⁹ Cato Agr. 8.2: *Sub Urbe hortum omne genus, coronamenta omne genus.*

⁶⁰ There is no sharp distinction between this zone and that of *pastio villatica*: wine and oil production also took place in the immediate vicinity of Rome, for example in the Alban Hills, Praeneste, and Collatia: Tchernia (1993, 283–4). However, the zone in which these crops were produced extended slightly further than *pastio villatica*, and so forms the second zone of production. Conversely, *pastio villatica* took place further away from Rome as well, but may in that case have been destined for markets in other towns. See Torelli (1995, 9).

be curbed by increasing costs of transport. However, some sites located far away from the market at Rome produced exclusive specialities, which were transported to the central market, no matter the cost.⁶¹

An increase in the scale of commercial production had already taken place in some parts of Latium in the fourth and third centuries. For example, in the middle Tiber Valley the number of archaeologically visible sites declined after 250, but the sites that remained became larger, indicating an increase of market agriculture.⁶² After the Second Punic War *villae* that may be called 'Catonian' appeared in many parts of Latium: small to middle-sized, slave-staffed *villae* with a specialized production of wine, oil, and grain for the market.⁶³

An increase in wine and oil production was not confined to Latium, but could be found in many other areas surrounding Rome. Some parts of Campania, especially the coast between Terracina and Naples, the Garigliano basin, the territory of Sinuessa, and the Ager Falernus, had already been specializing in the production of wine, oil, and fruit since the third century.⁶⁴ As were their counterparts in Latium, *villae* in Campania were usually relatively small during the second century: they were mostly of the 'Catonian' type, a few hundred *iugera* at most. Not until the first century did their number and size begin to increase significantly.

The second century saw an increase in the number of larger sites in southern Etruria as well.⁶⁵ Again, large estates were located mainly along the coast, in the territory of Cosa, and in the Albegna Valley, from where the produce could easily be transported to Rome and other markets (Ch. 4.3.4). *Villae* in the interior were usually smaller, and produced mainly grain and legumes for the local market.⁶⁶ In the Tiber Valley in Sabinum the first large *villae*, staffed with slaves and producing for the market at Rome, also appeared in the second century.⁶⁷

In applying the central place theory to Roman Italy we must take geographical factors into account. Mountains fragment Italy into a large

⁶¹ Plin. *HN* 14.4.39 and 14.8.69 mentions many kinds of grapes which were produced in specific places, and Strab. 6.1.14–15 various kinds of wine with special qualities. See Morley (1996, 146).

⁶² Di Giuseppe (2005, 13–15).

⁶³ This transformation of market-oriented small farms to *villae* in the early second century is visible in many parts of Latium, for example in Praeneste, Anagnia, Tibur, and Crustumerium, Vallat (1987, 200–1); in Tibur, Mari (1991, 29–32); in Tusculum, Valenti (2003, 55).

⁶⁴ Arthur (1991b, 155–7); Marzano (2007, 13–14); Launaro (2008, 128–300).

⁶⁵ Potter (1979, 117); Fentress and Jacques (2002, 126).

⁶⁶ Spurr (1985, 125–6); Saggin (1994, 472–3); Ikeguchi (1999–2000, 16–17); Regoli (2002, 145–6); Launaro (2008, 108–14).

⁶⁷ Cic. *Att.* 4.15.5; Var. *R.* 1.7.10. See Coccia and Mattingly (1992, 271–4); Alvino and Leggio (1995, 203–4); Launaro (2008, 114–20).

number of smaller units. Cities, which are usually located in the valleys or on the lower hills, have their main arable land in the immediately surrounding lower areas, while the mountains are often unsuitable for anything other than extensive animal husbandry. Even hills quite close to Rome, such as the Monti Lepini or the Monti Simbruini, were useless for agricultural purposes.

Moreover, large estates needed to be near markets or transport routes, so that many parts of Italy, even if the soil was perfectly fertile, were not suitable for large-scale production.⁶⁸ It must also be remembered that in the Von Thünen model each city has its own production zones, so that around each city there is a zone producing perishable goods and foodstuffs.⁶⁹ Therefore, not all large farms in Italy produced for the market at Rome: cash crop estates were usually located in the most fertile valleys, close to a market, or, if their products were to be transported to a market further away, near a road, waterway, or the sea.⁷⁰ In the *Ager Pomptinus*, for example, most villa sites clustered around the markets at Norba, Setia, and Cora.⁷¹

The importance of local markets means that commercial production of grain, wine, and olive oil was not limited exclusively to central Italy. In many areas in southern Italy the second century saw an increase in the production of wine and oil on estates which were larger than they had been earlier. Wine and olives were produced around most cities in the south, for instance Tarentum, Thurii, Oria, Canusium, Arpi, and Brundisium.⁷² An important external market for the products of Apulia was the Roman armies in the eastern Mediterranean. Brundisium was the centre of export for the wine, oil, grain, leather, and wool which were produced in its hinterland, and these were transported across the Adriatic rather than to central Italy.⁷³ Apulia and southern Italy had been able to provide Hannibal with supplies for a number of years during the Second Punic War, and it was still important as a producer of grain in the second century.

In 172, for example, the Senate sent an embassy to Apulia to buy grain when production in central Italy had proved insufficient.⁷⁴ Commercial production accompanied by a certain degree of accumulation of land seems to have occurred in Apulia in the second century, as it did in central

⁶⁸ Frederiksen (1970–1, 336); Pucci (1985, 18).

⁶⁹ Jongman (1988, 132); Morley (1996, 71).

⁷⁰ Marzano (2007, 155–9).

⁷¹ Marzano (2007, 176–9). The same occurred in Apulia, where commercial *villae* were clustered mostly round the towns and along the main roads, see Burgers (2001, 260–2).

⁷² Ghinatti (1977, 106–7); Small (1978, 198); Compatangelo (1989, 81–2); Desy (1993, 56–8); Launaro (2008, 131–4).

⁷³ Volpe (1990, 265); Desy (1993, 165); Cornell (1995, 129–31); Yntema (2006, 105–6).

⁷⁴ Liv. 42.27.8. See Jones (1980); Desy (1993, 41–2).



Figure 4.4. The Monti Lepini as seen from Signia



Figure 4.5. Grain production in modern Puglia, near Venosa

Italy: compared to the previous period, the number of estates declined, but those which survived became larger than they had been before. By and large, estates in the south were smaller than in central Italy; in Gravina for example they measured no more than 1,000 m² and in Oria they were not larger than 2,000 m².⁷⁵ In any case, as in central Italy, the dominant form of land possession in the south was still the small farm with mixed agriculture.⁷⁶

In Bruttium and Lucania the production of crops for the market during the second century was limited to coastal regions, from where products could easily be transported to Rome. One special item exported from these areas was fish.⁷⁷ In the interior, most agriculture was pursued in fertile valleys, such as the Tanager Valley, and was intended for local markets. Larger *villae* producing for the central Italian market did not appear in the interior until the late second and early first centuries, and measured no more than 1,000 to

⁷⁵ Gravina: Small (2001, 45); Oria: Boersma et al. (1991, 129). See Compatangelo (1989, 81–2); Desy (1993, 132); Battista Sanguineto (1994, 583–4); Torelli (1999a, 109–10); Fentress (2005, 484–6); Yntema (2006, 105–6).

⁷⁶ Vallat (1987, 207); Desy (1993, 66); Lomas (1993, 119–20).

⁷⁷ Colicelli (1998, 120).



Figure 4.6. The Tanager Valley (modern Val di Diano)

3,500 m².⁷⁸ However, the amount of land held by some proprietors could be large; a building in Monte Irsi, which appears to have been a stable, may have housed six or eight oxen, indicating that its owner may have held a large amount of arable land.⁷⁹

The main economic importance of Samnium was as an area with summer pastures for transhumant animal husbandry (Ch. 4.3.3). The most frequently cultivated crops here were grain and legumes, produced for subsistence and local markets. Some accumulation of land by the local elite, however, seems to have taken place.⁸⁰ Although for Picenum less information is available, it appears that here small farms were still the norm, and large *villae* were mostly absent.⁸¹ Wine seems to have been important, however, judging from the

⁷⁸ Ghinatti (1977, 106–7); Simelon (1993, 49–56); Colicelli (1998, 117); Battista Sanguineto (1994, 579–80); Fentress (2005, 484–6); Launaro (2008, 134–7). For villa size, see Fracchia (2001, 64) for the Buxentum area and Bracco (1978, 19) for the Tanager Valley.

⁷⁹ Small (1978, 198).

⁸⁰ Barker et al. (1978, 43–5); Curti et al. (1996, 180); Tagliamonte (1996, 249); Launaro (2008, 122–4).

⁸¹ Vallat (1987, 212). White (1970, 70) argues that there were many large estates and that most of the small farmers became tenants of the rich, but there is not much evidence for the



Figure 4.7. The landscape of Samnium as seen from the pre-Roman sanctuary at Monte Vairano

large *amphorae* production in the region.⁸² Likewise, in Umbria larger *villae* did not appear until the first century BC.⁸³

Cisalpine Gaul was far away from the market at Rome, and therefore its involvement with the market across the Apennines was limited. Because of the limited importance of commercial agriculture, farms in Cisalpine Gaul were generally small and produced mainly grain and wine for the local markets.⁸⁴ However, Varro's reliance on the statements of the Sasernae, a father and son from Cisalpine Gaul who wrote a book on villa agriculture in late second century BC, shows that there was some increase in commercial agriculture in the north as well.⁸⁵

existence of large estates before the literary sources referring to Pompey's and Mamurra's possessions in the first century; see Catul. 114–15, Vell. 2.29.1.

⁸² Guidobaldi (1995, 207).

⁸³ Bradley (2000, 230).

⁸⁴ Toynbee (1965, ii. 181–2); Bonetto (2004, 58); Corti (2004, 80).

⁸⁵ Var. R. 1.18.6. See Bortuzzo (1995, 194–6); Launaro (2008, 99–104). However, Denti (1991, 31) points out that subsistence agriculture was dominant in Cisalpina.

4.3.3. Animal husbandry

The breeding of livestock is the third zone in Von Thünen's model, and is supposed to be located furthest away from the central market. Many scholars assume that in the second century the large-scale breeding of animals was the most important purpose to which *ager publicus* was put by rich farmers.⁸⁶ This apparently happened especially in southern Italy, where much *ager occupatorius* was still available.⁸⁷ Some animal husbandry in Roman Italy took the form of long-distance (horizontal) transhumance. Varro describes his own flocks, which apparently 'wintered in Apulia and summered in the mountains around Reate, these two widely separated ranges being connected by public cattle-trails' (*calles*).⁸⁸ Most likely the summer pastures used for this kind of transhumance were *ager publicus*, since it would have been unprofitable to have private summer pastures. The flocks never stayed long in one place, because there was not enough vegetation to feed on for very long. However, in winter they were kept in lowland plains near the farm building and sometimes in stables, and the owner of large flocks therefore also needed some land on which to build the winter accommodation. This may well have been private land, and consequently there is no reason to assume that all land used for animal husbandry was public.⁸⁹

Short-distance (vertical) transhumance had most likely been common from a very early date; in many places Italy is so rough that mountain pastures

⁸⁶ This misconception is held mainly by those who believe that all or most of the *ager occupatorius* (or *ager publicus*, often a distinction between the two is not made) was used as pasture, e.g. Gabba (1977, 278–9). However, this was by no means the case, and much *ager publicus* was used for agriculture (Ch. 2.4). It may be that this idea has been influenced by the commons of early modern societies, which were used principally for pasturage (see Ch. 4.4.1).

⁸⁷ The picture of great cattle holdings occupying all *ager publicus* in southern Italy is extremely widespread, see for example Toynbee (1965, ii. 286–95); Brunt (1971, 358); Hopkins (1978, 3); Gabba (1979b, 33; 1985, 170); Pasquinucci (1979, 143); Rathbone (1983, 161); Deman (1988, 213). Only recently have some scholars tried to change this picture: Desy (1993, 132); Rosafio (1993, 168–9).

⁸⁸ Var. R. 2.2.9. See also Var. R. 2.9.6 (Umbria–Metapontum), 2.1.16 (Apulia–Samnium), and 2.1.17: from the Rosea in Sabinum to the (unknown) *Burbures montes*. See Hor. *Epod.* 2.27–8 (Lucania–Apulia) and Pall. 4.11–13. It should be noted that winter pastures could be located both in Sabinum and in Apulia; in the latter case, the owners of these pastures and flocks may have been Italians instead of Romans.

⁸⁹ D.33.7.12.8 (Ulpien) states that animals are kept on the farm for one part of the year and on 'rented pastures' for the other part; it may be that these pastures were rented from the state, in which case they would be *ager publicus*, but they may also be rented from an individual: Cato *Agr.* 149 already explains how to lease rights to privately owned pastures (see Ch. 3.4). Some assume that owners of flocks in the Republic accumulated arable *ager publicus* in order to turn it into private pasture, e.g. Yeo (1948, 284); Shatzman (1975, 16); Gabba (1977, 283; 1979b, 51); Corbier (1991, 155). However, owners of large flocks did not necessarily own pasture land; they only needed private land on which to keep their animals in winter.

are never far away, and there is no reason to assume that mountains were not used as such from a very early date onward.⁹⁰ By contrast, the origins of long-distance transhumance are much debated. The most plausible view is that the combination of increased security in Italy and the availability of *ager scripturarius* and money led to an increase in long-distance transhumance after the Second Punic War.⁹¹ In fact, references to long-distance transhumance are quite sparse; movements from one region of Italy to another are not attested until Varro's time. Nevertheless, the importance of animal husbandry, at least some of which took place on *ager publicus*, is hinted at by the fact that in 296, 293, 196, and 193 fines were imposed on holders of livestock, who may have exceeded the maximum number of animals to be kept on *ager publicus* (Ch. 3.2.2).

Indeed the literary sources often refer to the breeding of livestock. The southern regions had various specialities in the production of animals: Apulia was famous for its horses;⁹² the region around Tarentum produced high-quality wool.⁹³ The statements found in the literary sources are corroborated by archaeological evidence. Finds of animal bones show that the largest number of animals in Italy was located in the Apennines and southern Italy. The majority of animals found here are sheep and goats, which were kept in large transhumant herds. In Latium and Campania the number of finds is significantly lower, and they are especially of oxen, which were held as draught animals.⁹⁴ Winter pastures were located in lowland Apulia: in this area, e.g. in Herdonia, many bones of young animals (under six months) were found. These animals were apparently not sent out into the mountains in summer, but were slaughtered beforehand.⁹⁵

Another indication of the importance of animal husbandry in the south is various references to shepherds in the literary sources. Shepherds were usually slaves; the existence of slave shepherds is recorded from the second century,

⁹⁰ References to fights over cattle appear very early, e.g. Liv. 1.22.3, 3.38.3, 4.21.2. See Salmon (1967, 68); Garnsey (1988b, 200).

⁹¹ See for the growth of transhumance after the Second Punic War Toynbee (1965, ii. 155–7, 286–95); Garnsey (1988b, 199–201); Deman (1988, 209); Corbier (1991, 161); MacKinnon (2004, 130). On the other hand, some maintain that long-distance transhumance had been a feature of the Italian economy long before the Romans unified Italy; they assume that informal agreements could have sufficed to allow access to pastures located in another people's territory: Skydsgaard (1974, 21); Gabba (1979b, 48–9); Pasquinucci (1979, 87–90). However, it is difficult to envisage how flocks could have travelled halfway through Italy without encountering inimical peoples.

⁹² Lucil. 4.154; Var. R. 2.7.1; Strab. 6.3.9; Hor. *Epod.* 3.16. On animals in Apulia in general, see Strab. 6.3.5; Juv. *Sat.* 9.55. See Morley (1996, 153–4).

⁹³ Strab. 6.3.9; Plin. *HN* 8.7.190; Hor. *Od.* 3.15.14. See White (1970, 73).

⁹⁴ MacKinnon (2004, 91–3).

⁹⁵ MacKinnon (2004, 123).

although their absence in earlier periods may be related to the scarcity of sources for the third century. There are some second-century references to slave rebellions in southern Italy in the second century, and usually those involved are 'shepherds'. The most serious of these occurred in 186 in Apulia: 'There was a dangerous slave revolt in Apulia that year [186]. Tarentum was the province of Lucius Postumius, who conducted a strict inquiry into a conspiracy of shepherds whose banditry had made roads and public pasture lands unsafe. He convicted some 7,000 men.'⁹⁶ Apparently, the shepherds in this area were numerous enough to have posed a danger to the public order.

For Lucania and Bruttium the archaeological record shows an increase in animal husbandry in the second century. A villa in Moltone in Lucania, measuring 600 m² and dated to the late third or early second century, was located next to a transhumance route, and is likely to have been aimed at livestock breeding.⁹⁷ For Metapontum pollen analysis shows that typical fodder crops, such as *Centaurea* (thistles) and *Plantago* (plantains), gradually became more common in the third to first centuries BC. Many horse bones have been found here, which suggests the breeding of horses in this area.⁹⁸ There were also many finds of bones of pigs, which were usually bred in forests, and such wild animals as roe deer and wild boar. This suggests that the area was heavily wooded. The Silva Sila in Bruttium was an important forest in southern Italy; it seems therefore that animal husbandry was an important element of the economy of this area.⁹⁹ However, this development had apparently already started before the Second Punic War, and neither the

⁹⁶ Liv. 39.29.8–9, see 39.41.6. In the first century shepherds were still considered a dangerous element of society, e.g. the shepherds that supported Catilina (Cic. *Sest.* 5.12, *Cat.* 3.6.14). It was feared that shepherds would be used as private armies; Cicero accused C. Antonius Hybrida of selling his flocks, but keeping the shepherds, so that he could use them as an army (Ascon. *Tog.* 87). Cf. also Spartacus' rebellion; Liv. *Per.* 90–7. Cf. Tac. *Ann.* 4.27. See Toynebee (1965, ii, 319–31); Deman (1988, 212–18). Some have downplayed the importance of shepherd rebellions: Desy (1993, 79–84) connects the rebellion of 186 to the Bacchanalia scandal and suggests that there were not many shepherds in Apulia at all. Vallat (1987, 207) maintains that shepherd rebellions occurred mainly in Lucania and Bruttium, but we do not have any reference to rebellions in this area. In fact, the rebellion of 186 is the only one specifically mentioned to have involved shepherds, but its scale suggests that the number of shepherds in this area was considerable.

⁹⁷ Terrenato (2001, 22–3); Gualtieri (2003, 137).

⁹⁸ Carter (2005, 243–8).

⁹⁹ The most important product of the Silva Sila was pitch (Cic. *Brut.* 21.85; DH 20.15.2), but animal husbandry surely played a role as well. See Enn. *Ann.* 6.181–5 for forests in Heraklea; for Lucania in general Strab. 6.1.9, 6.3.9; Lucil. 6.262, Var. *R.* 2.1.2, 2.7.1; Vitruvius 8.3.14; Calp. *Ed.* 7.17; Sen. *Tranq.* 2.13; Hor. *Epist.* 2.2.177–8, *Od.* 3.4.15; Verg. *Georg.* 3.146–9. See White (1970, 74); Frayn (1984, 20–5); Simelon (1993, 44–8); Colicelli (1998, 118–19); MacKinnon (2004, 93, 123). Yeo (1948, 300) and Kolendo (1993, 174) speak of deforestation in southern Italy, apparently connected to overgrazing by large herds, but this does not seem to have taken place at all.

war nor an increase in the amount of *ager publicus* can therefore be held solely responsible.

In the literary sources Samnium is indicated as the most important region for summer pastures, and this claim is supported by archaeological evidence: on such sites located next to transhumance routes as S. Giacomo, Matrice, Saepinum, and Campochiaro, many remains of young animals (seven to twelve months) are found, in contrast to those found on the locations of winter pastures. These were apparently slaughtered while on the summer pastures.¹⁰⁰ Not all animals in Samnium came there from Apulia or Lucania; many local farmers owned livestock as well, which they pastured in the nearby mountains.¹⁰¹

Several literary sources criticize the fact that arable lands in the south were given over to pasture; such laments, however, are usually not specific as to the exact time and place of such developments. Varro, for example, is rather vague: 'In a land where the shepherds who founded the city taught their offspring the cultivation of the earth, there, on the contrary, their descendants, from greed and in the face of the laws, have made pastures out of grain lands.'¹⁰² Most of these statements may be part of a standard representation of the south as a poor and backward area. However, some credibility is lent to this process, at least in Lucania, by an inscription known as the *Elogium Pollae*, probably dating to the late second century BC. The subject of this stone, found in Polla in Lucania, prides himself on being 'the first to have made the shepherds give way to farmers on *ager publicus*'.¹⁰³ The assumption that livestock breeding was especially prevalent in southern Italy has contributed to the idea that small farmers disappeared from this area in the second

¹⁰⁰ MacKinnon (2004, 128). See Lloyd (1995, 202–4).

¹⁰¹ Ghinatti (1977, 107); Lloyd (1995, 204).

¹⁰² Var. R. 2.pr.4. See also Cic. *Rosc. Am.* 46.132, *Att.* 8.3.4; Sen. *Ep.* 87.7, *Tranq.* 2.13; Strab. 5.2.1, 6.3.5; Juv. *Sat.* 4.27. See Hopkins (1978, 3); Small (1978, 197).

¹⁰³ CIL 1².638 = CIL 10.6950 = ILS 23: *Primus feci ut de agro poplico aratoribus cederent paastores*. The question to whom this inscription refers has been widely debated. Various scholars attribute it to an enemy of the Gracchi, especially P. Popilius Laenas, e.g. Panebianco (1963–4, 7–9). Other suggestions have been T. Annii Rufus, Wiseman (1964, 36); and T. Annii Luscus, Bracco (1962, 441). However, it is very strange that an enemy of the Gracchi should have prided himself on having given out land to farmers. Others have therefore claimed that the inscription refers to actions of the magistrate, maybe Laenas, while he was in Sicily, e.g. Burdese (1952, 102); that the reference was to the creation of *viasii vicanei* in connection with the building of the Via Popilia, A. Franciosi (2002, 212–13); or have proposed an identification with a pro-Gracchan individual, for example Ap. Claudius Pulcher; Verbrugghe (1973), but see Burckhardt (1989, 5). This is not the place to go into the details of this debate, but at least the inscription does show that some *ager publicus* had in some way been occupied by stockbreeders.

century, which led to the virtual depopulation of the south.¹⁰⁴ However, as we have seen, Apulia was not confined to breeding animals, but still played an important role as a producer of grain and other crops. Representations of this area as depopulated and impoverished are therefore exaggerated. Only for Lucania it may be argued that there is some likelihood to the idea that agriculture lost ground to stockbreeding, and the situation described by the ancient sources—depopulation of the south and the establishment of large cattle farms—may have been partially correct for this part of Italy.¹⁰⁵

However, southern Italy was not the only region in Italy which specialized in animal products. Many regions had their own specialities: Liguria and Umbria were known for breeding sheep and cattle,¹⁰⁶ and in Sabinum the famous meadows of the Rosea bred high-quality horses and mules.¹⁰⁷ Sheep and goats were an important part of the economy in Cisalpine Gaul as well, but its most important export products were wool, especially from Liguria, and pigs, which thrived in the oak forests of the Po Valley. These were even transported to Rome, notwithstanding the great distance.¹⁰⁸

Animals were kept not only on rough mountain pastures: there were also more delicate and therefore more expensive animals, such as those described by Varro: 'Jacketed sheep, those which, on account of the excellence of the wool, are jacketed with skins, as is the practice at Tarentum and in Attica.'¹⁰⁹ Cato describes how flocks of sheep could be leased to another individual. This allowed the lessee to pasture the sheep close to a market town, where customers could buy lambs, milk, and soft cheese.¹¹⁰ Such more valuable animals were not pastured on waste lands, but on irrigated and fertilized

¹⁰⁴ This image is upheld by many ancient sources, e.g. Cic. *Att.* 8.3.4, *Lael.* 4.13; Sen. *Ep.* 87.7. The poverty of the south is attested in Cic. *Rosc. Am.* 46.132; Juv. *Sat.* 4.27. The 'depopulation' of southern Italy is believed by many modern historians, e.g. Toynbee (1965, ii. 13–14); Gabba (1989, 201–2); Ghinatti (1977, 167); Hopkins (1978, 30–6); Rathbone (1981, 18–19); Torelli (1995, 3); Cornell (1996, 104–11). See Kolendo (1993, 183) for a map which happily shows the whole of southern Italy as having a 'prevalenza di latifondi'. Even if some population decline may have been visible in some areas of the south from the third century, see Yntema (2006, 120), this picture has been greatly exaggerated by many scholars, see Dyson (1985, 74–6).

¹⁰⁵ Small (1978, 197); Fentress (2005, 482). Launaro (2008, 153–4) argues that the same seems true for Etruria, which fits with literary descriptions of this area as depopulated.

¹⁰⁶ Umbria: Cic. *Div.* 1.42.94; Liguria: Strab. 4.6.2. See White (1970, 69–71); MacKinnon (2004, 115).

¹⁰⁷ Var. *R.* 2.1.14, 2.6.1, 2.8.3, 2.10.11; Strab. 5.3.1. See Pasquinucci (1979, 143–5); Coccia and Mattingly (1992, 271); Alvino and Leggio (1995, 204).

¹⁰⁸ Strab. 5.1.12; Plin. *HN* 8.7.191; Polyb. 2.15.2. See White (1970, 320–1); Frayn (1984, 20–5); Bortuzzo (1995); MacKinnon (2004, 91–2, 125).

¹⁰⁹ Var. *R.* 2.2.18; see Colum. *R.* 7.4.1. Lucil. 1253 talks of the 'coarse wool' of the animals that graze in the mountains.

¹¹⁰ Cato *Agr.* 150, see Dalby (1998, 213). The same practice occurred in Greece, Polyb. 9.16.6.

meadows (*prata*), as described by Cato: ‘Manure the pastures at the beginning of spring at new moon, or, if they are not irrigated, when the Favonius begins to blow. While the animals are out of the pastures, clear them and root out all invasive weeds.’¹¹¹

Many animals were held on the farm on a year-round basis. This applied especially to draught animals used for ploughing the fields, transporting the harvest, and many of the other tasks which were part of the routine of the farm; Cato’s inventories include oxen and donkeys.¹¹² Animals played a crucial role in the daily work; notwithstanding the cost of transport over land, in many areas there was no other possibility but to load goods on the backs of donkeys and bring them down the mountains. Varro for example describes how ‘the trains are usually formed by the traders, as, for instance, those who transport oil or wine and grain and other products from the region of Brundisium or Apulia to the sea in donkey panniers.’¹¹³ Furthermore, animal manure was essential to maintain the fertility of arable land. Its importance, as well as an apparent concern with its shortage, is attested by Cato’s repeated advice about the collection and storage of manure.¹¹⁴ The practice of grazing animals in the arable fields was common; this could be either between the vines or olive trees, as we have seen, or after the harvest: ‘It is profitable to drive [sheep] into the stubble fields for two reasons: they get their fill of the ears that have fallen, and make the crop better the next year by trampling the straw and by their dung.’¹¹⁵

All in all, considering Italy as a whole the central place theory proves fairly accurate: production of vegetables, fruit, and other fresh products was concentrated in the immediate vicinity of Rome and other towns, while wine and oil were produced in Etruria, Campania, and further along the coast, from where they could easily be transported to markets. Animal husbandry for the Roman market was located mainly in southern Italy. This variety in the use of land meant that the pressure to accumulate large tracts of land would not have been felt equally in all regions of Italy. If a large market were present, as in the vicinity of Rome, it would have been profitable to hold a greater amount of land and to produce on larger units. In areas where only a local market, essentially limited in size, was available, accumulation of land would have progressed at a slower pace—unless external markets could be accessed,

¹¹¹ Cato *Agr.* 50.1. See Pall. 3.1. See Spurr (1986, 122); White (1970, 152, 200).

¹¹² Cato *Agr.* 10.1, 10.4, 11.1, 11.4. Colum. *R.* 2.12.3 states that an estate of 200 *iugera* needed two teams of oxen.

¹¹³ Var. *R.* 2.6.5; see Verg. *Georg.* 3.162. See Pasquinucci (1979, 163).

¹¹⁴ Cato *Agr.* 5.8, 10.1, 10.4, 10.36; see Var. *R.* 1.38.2.

¹¹⁵ Var. *R.* 2.2.12, see Cato *Agr.* 30; Plin. *HN* 18.40.161; Accius *Oenomaus* 509–12; Juv. *Sat.* 14.146–9; Pall. 12.13. See Skydsgaard (1974, 15); Bonetto (2004, 61).

as happened in Apulia and other regions which exported their wares outside of Italy.¹¹⁶

The development of regional specialization is often linked to population growth. By using each soil type for the crop for which it is most suitable, instead of practising subsistence agriculture in all areas, the total amount of food produced increases. Regional specialization can be observed in many countries which experienced population growth in particular periods. England in the sixteenth century is a well-known example: in many regions arable land was turned into pasture, a development which would not immediately have been expected in periods of growing population, since arable land can feed more people off the same surface than pasture.¹¹⁷ However, these regions were especially suitable to the commercial breeding of animals, and therefore specialized in raising livestock. In the early modern period regional specialization meant that many people who produced for the market grew dependent on the market for their own basic subsistence, since they did not produce all the goods that they needed.¹¹⁸ Regional variation therefore presupposes a stable supply of basic consumption goods, especially grain. This means an integration of markets: goods must be traded freely throughout the country, so that they can be transported to those areas where demand is largest.¹¹⁹

Something similar may have happened in second-century Italy, but the situation here was different in some important respects. There was no fully integrated grain market in the second century BC: even *villae* producing for the market still also grew their own grain, and imports of grain from other parts of the Mediterranean went only to Rome itself. On the other hand, in this period the whole of Italy was united in one political unit for the first time, and there were no more internal wars. This allowed the unhindered movement of goods and people through the peninsula and, increasingly, the whole Mediterranean world. Some products were therefore transported over longer distances and in larger amounts than before. Since regional variation increased the total amount of foodstuffs produced, a larger total population would be able to live off Italian soil (see Ch. 4.3.5 for the effect of increased market integration on the carrying capacity of Italy).

¹¹⁶ There were of course goods which largely remained outside the system, because they could only be produced in a specific area, for example marble from northern Etruria. Such products were transported to wherever they were needed, see Launaro (2008, 110).

¹¹⁷ Yelling (1977, 217); Grigg (1980, 38); Van Bavel (2001, 31–9; 2002, 15–19, 28–9).

¹¹⁸ Allen (1992, 38).

¹¹⁹ Walter and Schofield (1989, 10). See Erdkamp (2005, 328–9) for the ancient world.

4.3.4. Competition for land in the second century

It is a widely accepted view that the Roman aristocracy gained the bulk of its income from agriculture.¹²⁰ It is also generally assumed that there was fierce competition among the rich to acquire ever more land. Because the elite were always eager to acquire more land, the poor were gradually expelled from their holdings. The land from which they were expelled was, according to this traditional view, mainly *ager publicus*: 'the rich' were supposedly able to pay higher rents on public land,¹²¹ or simply expelled the poor by force.¹²² However, in recent years many elements of the traditional view have been challenged. We have seen that commercial production was limited to areas located close to the market, and that second-century *villae* were usually quite small. The logical consequence of this is that the importance of large slave-staffed estates in the second century must have been smaller than was previously assumed. If this was the case, it raises the question: how can it be maintained that the greed of the rich was an important factor in the increasing proletarianization of the small farmer which occurred in this period? To answer this, we must examine the size of the market and the resulting competition in more detail. Importantly, besides the total size of production, the location where this production took place must be taken into account: it may be that regional variation caused widely divergent developments in different regions of Italy.

A first modification to the traditional picture has concerned the size of the market. In recent years it has been argued that the size of the Italian market for agricultural goods was quite limited. The most important calculations in this respect have been carried out by Jongman. He begins by estimating the urban population of Roman Italy in 28 BC at some 1.9 million people, including slaves. Considering the average nutritional needs of adults and the estimated yields of crops, he concludes that only 20,800 km² of land were needed to produce the grain, wine, and oil to feed these 1.9 million people, or about 20 per cent of all arable land in peninsular Italy.¹²³ The size

¹²⁰ Ancient sources emphasize the importance of agriculture, which was the most profitable and respectable compared with either trade or industry, e.g. Cic. *Off.* 1.42.151, *Sen.* 15.51. See Hopkins (1978, 49–54).

¹²¹ As stated by Plu. *TG* 8.2 and accepted by Tibiletti (1948–9, 206) and Morley (1996, 90, 133).

¹²² As stated by App. *BC* 1.7 and accepted by Toynbee (1965, ii. 251) and Morley (1996, 133).

¹²³ Jongman (2003, 112–16); see also Jongman (1988, 76–85, 132–5; 2007, 602–5). He assumes that the annual consumption of the average Roman amounted to 100 litres of wine (i.e. a total of 1.9 million hectolitres for the whole urban population), see also Tchernia (1986, 21–7, 58–60), twenty litres of oil (i.e. 380,000 hectolitres in total), and 200 kilos of grain (i.e. 380 million kilos in total). He also assumes that one hectare of land in antiquity produced 2,000

of the urban population had increased rapidly between 133 and 28 BC, and the amount of agricultural land needed to feed the urban market was therefore even smaller in the second century. If we put the number of urban dwellers in 133 at 750,000 to 1 million,¹²⁴ they could have been fed by the yield of only 10 per cent of the arable land in peninsular Italy.

We must conclude that the urban market for agricultural products, at least basic foodstuffs, was rather small. Since the needs of the urban population could have been met by a relatively small part of the Italian countryside, competition for land among market producers would be limited. After all, if there was only a limited market on which to sell their products, why would people fight for the land on which to cultivate them?

litres of wine, 440 litres of oil, or 400 kilos of grain. This means that to supply 1.9 million urban inhabitants with grain 19,000 km² were needed; for wine and oil these figures are 950 km² and 850 km² respectively. If the amount of arable land in the Italian peninsula was 40% of the total surface, or 100,000 km²—as assumed by Beloch (1880, 417), Hopkins (1978, 7 n. 13), and Jongman (1988, 67)—about 20% of the total amount of arable land could feed the urban population in 28 BC. Lo Cascio (2001, 122) argues that the agricultural surface of Italy may have been nearer to 50 than to 40%, in which case an even smaller percentage of the total will have been required. Of course, 'arable surface' is not an immutable category of land; if necessary, a great deal of land which would have been considered marginal could have been made to yield crops, and the reclamation of such lands, which was already occurring in the second century (Ch. 4.4.2), shows that pressure on the land played a role in this period.

¹²⁴ In 28 BC the city of Rome may have held one million people, including slaves; see Garnsey (1988a, 190); Morley (1996, 182); Jongman (2001, 1078). Some estimates are slightly lower; Brunt (1971, 384) estimates 750,000 people lived in Rome, Hopkins (1978, 68–9) estimates the free population at 600,000. Witcher (2005, 132) calculates 750,000 people living in the city, while another 350,000 lived in the direct surroundings.

The size of Rome in 133 BC is difficult to establish; De Ligt (2004, 742) reckons with an adult male population of Rome of about 100,000 men in 133, which would suggest 300,000 free citizen men, women, and children, plus an additional 100,000 slaves and *peregrini*. Rosenstein (2004, 144) assumes that Rome held 500,000 people in the time of the Gracchi; Brunt (1971, 384) and Garnsey (1988a, 190–1) keep the number at 375,000 and Jongman (2000, 272) at 250,000.

The growth rate of other Italian cities was much slower than that of Rome: according to Hopkins (1978, 68–9) they doubled in size from 250,000 in 225 to 500,000 in 28; in 133 the number of urban inhabitants may therefore have lain in between, at about 375,000. Gabba (1972, 102) assumes that migration was mainly directed at Rome and that other cities grew more slowly, but Jongman (2001, 1078) points to the growth of such towns as Ostia, Capua, Naples, Puteoli, Teanum, and Cumae; however, these were all towns located in central Italy, and many of them were involved in the supply of the market at Rome itself.

It is likely that many urban dwellers in Italy would still have been engaged in agriculture, see White (1970, 345); Scheidel (2004, 5). The urbanization rate is therefore not the same as the percentage of people working outside of agriculture, and therefore the number of people depending on the food market. Conversely, it is possible that many people living in the countryside were not employed in agriculture alone. Morley (1996, 52) sets the urbanization rate at 10% in the Augustan period, but the number of people working in agriculture at only two-thirds. Erdkamp (2005, 12) estimates that 80% worked in agriculture.

Furthermore, it must be remembered that ‘the rich’ were not the only group producing for the market. In contrast to the ancient sources and the traditional picture, which uphold a strict division between ‘rich’ and ‘poor’, recent scholarship has drawn attention to the existence of a considerable middle class. Very rich producers did of course exist, but most small farmers regularly sold some of their produce on the market as well,¹²⁵ and no doubt there were many farmers that we could classify as ‘middle class’. One of the arguments to support this thesis can be found in the spread of slavery throughout society: to own slaves was not only a prerogative of the richest segment of society, as has been recently pointed out by Rosenstein. Livy describes how, when in 214 the Roman state needed rowers for its fleet,

Any man who, in the censorship of L. Aemilius and C. Flaminius [220], had his own property, or that of his father, assessed at between 50,000 and 100,000 *asses* (or if it subsequently reached that level) was required to supply a single sailor, along with six months’ pay. Anyone assessed above 100,000 and up to 300,000 was to supply three sailors, along with a year’s pay. For assessment above 300,000 and up to a million, it was five sailors, and above a million it was seven. Senators were to supply eight sailors with a year’s pay.¹²⁶

The property classes in this passage can be connected to the census classes; the group owning between 50,000 and 100,000 sesterces would then have constituted the third and second census class.¹²⁷ This means that the members of these classes were expected to own at least a few slaves.¹²⁸ A small number of slaves sufficed to work a generous amount of land (see below), and the group of people owning a few slaves can therefore reasonably be expected to have been engaged in market production, even if on a small scale.

¹²⁵ *Apul. Met.* 9.32; D.50.11.2. See Evans (1980, 144); Rosenstein (2004, 15–16); Erdkamp (2005, 58). De Ligt (1990, 17–19) draws attention to the fact that many non-food needs of small farmers could not have been met by production at home: many tools and services had to be paid for by small farmers.

¹²⁶ *Liv.* 24.11.7–9.

¹²⁷ Rosenstein (forthcoming). The existence of a large group of middle-class landholders may also be surmised from the alimentary tables of the early second century AD (CIL 9.1455 and 11.1147), where about 30% of the listed holdings belonged to the group of moderately rich landholders. Landholdings listed range in value between HS 14,000 and 501,000 in *Ligures Baebiani* and between HS 50,000 and 1,508,150 in *Veleia* (however, these were often made up of more than one estate; in *Veleia* individual estates were valued between HS 2,100 and 400,000). This means that those holding less land were not included at all.

¹²⁸ See for middle classes working with slaves and producing for the market Rathbone (1993b, 19); Morley (1996, 80–1). Scheidel (2006, 51) assumes that those belonging to the fourth census class were ‘reasonably secure commoners’. See also Jongman (2007, 610) for slaves owned by those who were ‘just well-to-do’. De Ligt (1990, 49–56) argues that there was a considerable class of richer peasants, who created a demand for more expensive consumer goods.

There are other indications to suggest that the number of 'middle-class' citizens in the second century was actually quite large. Archaeologists have pointed out that the traditional classification of sites into 'large' and 'small' sites is unsatisfactory. Buildings came in all shapes and sizes, and many would have to be classified as 'medium-sized' sites.¹²⁹ Since a family of four could be fed on the produce of no more than seven *iugera* (Ch. 4.3.7), and could work this by themselves, it can be expected that those holding more land were engaged in production for the market. It should be remembered, moreover, that the size of an estate did not mean that profits could not be considerable. Varro tells the story of two brothers who had 'a bit of land certainly not larger than one *iugerum*, [where] they had built an apiary. . . . These men never received less than 10,000 sesterces from their honey'.¹³⁰

The implication of all this is that, if so many people were engaged in market production, the number of potential sellers was even larger than just the elite. This would mean that the profit a producer could have expected to gain from his estates was much smaller than is usually assumed. Columella calculates the net profit for seven *iugera* of vineyard at 150 sesterces per *iugerum* per year at the lowest, which does not seem to be an amount to have become very excited about. Nevertheless, it was apparently much more than 'meadows, pastures and woodland, [which] seem to do very well by their owner if they bring in a hundred sesterces for every *iugerum*'.¹³¹ The fact that Columella praises viticulture above all other crops shows that the profit which could be expected from other products was not very large.¹³² Rosenstein calculates that if the market of urban dwellers consisted of one million people in the late second century, 100 million litres of wine and 200 million kilos of grain would have

¹²⁹ A traditional division is that between farms of ten to eighty *iugera*, which are termed 'small farms', eighty to 500 *iugera*, called 'middle class' farms, and 'large farms' of over 500 *iugera*, e.g. White (1970, 387). It is clear that such a range is meaningless for the second century BC, when almost all farms were smaller than 500 *iugera*, and many of those holding fewer than eighty *iugera* were producing not only for subsistence, but clearly also for the market. It must be remembered that the nature of peasants' farms is a heavily debated topic. If the houses of the poorest class of farmers are not recognized in the archaeological record at all, because they were built of perishable material, then a large group would not be recognized. This would also mean, incidentally, that the Italian countryside would be more densely populated than is assumed by the adherents of the 'low count', and that a higher number for the Italian population would not have been impossible. However, there is no indication that a large number of people lived in very poorly built houses; excavations of Roman towns show a large number of good-quality houses, in which lived people whom we would call 'lower and middle class', so that a large group of even poorer citizens would be hard to imagine. See for this discussion Witcher (2006b, 97–8); Launaro (2008, 45–8); Rathbone (2008, 306).

¹³⁰ Var. R. 3.16.10–1. Of course, this may be exaggerated, but the figures are not impossible. See Purcell (1995, 155).

¹³¹ Colum. R. 3.3.3.

¹³² Colum. R. 3.3.8–13. See White (1970, 268–9).

been required to feed them. He sets the number of producers at 23,300 (300 Senators plus the 23,000 *Equites* mentioned in Polybius 2.24—in fact, many producers would not have been Senators or *Equites*, but would have belonged to the middle classes, which even increases the number of producers).¹³³ This would mean that each producer must have produced 4,292 litres of wine and 8,584 kilos of grain on average, for which an estate of only 93.83 *iugera* was required.¹³⁴

Moreover, in 218 BC a *lex Claudia* was passed, which according to Livy stipulated that ‘no senator, no one whose father had been a senator, was allowed to possess a vessel of more than 300 *amphorae* (7,875 litres) burden. This was considered quite large enough for the conveyance of produce from their estates’.¹³⁵ At a—rather low—yield of 500 litres per *iugerum*, only 15.75 *iugera* would have been needed to produce this amount—indeed not a very large estate for a Senator. Of course, some producers would have had more land at their disposal, while others would have had much less, but in any case, the profits to be made from agriculture seem to have been limited, at least from the production of basic foodstuffs; we have seen that *pastio villatica* was not yet very important in the second century. We cannot but conclude that the share of agriculture in the income of the elite must have been much more limited than has previously been assumed, and that many rich men must have made their fortunes in other enterprises.¹³⁶

As a result of these new insights, the number of slaves in Italy should also be reduced. Earlier estimates put the number of slaves as high as two to three

¹³³ Brunt (1988, 245) argues that there were about 50,000 *decuriones* in Italy in the late Republic. The *Lex Tarentina* l. 26–31 from the early first century BC stipulates that ‘whoever is or shall be a decurion of the *municipium* of Tarentum . . . he is to have in the town of Tarentum . . . a building which be roofed with no less than 1,500 tiles’. According to Crawford (1996, 310), 1,500 tiles would mean a surface of about 440 m²; the owner of such a house must have been engaged in some form of production for the market or some other profitable enterprise. This means there were even more producers than the 23,300 Senators and *Equites* appearing in Polybius.

¹³⁴ Rosenstein (forthcoming), see Scheidel (2005, 67). Ninety-four *iugera* with a profit of HS 150 per *iugerum* for viticulture would mean an annual income of 14,100 sesterces, hardly an impressive income for a rich man, and the profit for other crops was even lower. Garnsey (1988b, 204) likewise argues the market in antiquity was never very large.

¹³⁵ Liv. 21.63.3–4. It is likely that the harvest from one estate was transported in several shipments, in which case the estates were larger. However, even if we assume five shipments, the estates need not have been larger than eighty *iugera*.

¹³⁶ See e.g. Plu. *Cat. Mai.* 25.1, who states that Cato obtained most of his income from sources other than agriculture, such as investing in fisheries, baths, pastures, and woodland, and from usury; see also 24.11. The profit to be made from pasturing was apparently much higher than that from agriculture, see Cic. *Off.* 2.25.89; Var. *R.* 1.7.10. See Shatzman (1975, 76). Other sources of income may have been the production of ceramics, textiles, and leather, see Pasquinnucci (1979, 166–7).

million in the early Empire,¹³⁷ but there is no evidence whatsoever for this. It is possible to reach a more realistic estimate by comparing the number of slaves necessary to work the land with the amount of land needed for market production. Ancient sources state that only one slave was needed per eight *iugera* of vines, and this was even lower for olive and grain production.¹³⁸ Of course, slaves not only produced basic foodstuffs for the urban market, but also worked in *pastio villatica* and other profitable enterprises. It is unfortunately impossible to calculate the number employed in such jobs, but since these seem to have been relatively limited in the second century, the total number of slaves does not need to have been much larger. It does not matter, of course, whether slavery was widely spread throughout society. The total size of the market does not change, and so the distribution of slaves among producers does not raise the total number of slaves.¹³⁹ In a nutshell, it is unlikely that more than a few hundred thousand slaves were employed in the production of basic foodstuffs in Italy in the second century.¹⁴⁰

The number of slaves employed in stockbreeding is more difficult to establish. Varro states that one shepherd was needed per 80 to 100 sheep and two herdsmen for 50 horses.¹⁴¹ The slave rising in Apulia in 186 involved 7,000 men, apparently all shepherds. Unfortunately, it is impossible to calculate the number of the number of slaves employed in livestock breeding in

¹³⁷ Toynbee (1965, ii. 170–4); Brunt (1971, 124); Hopkins (1978, 68–9). The supporters of the ‘high count’ also assume a large number of slaves, e.g. Lo Cascio and Malanima (2005, 11). A slave population of two to three million in 28 BC would have meant 33–40% of the total population in the case of a ‘low count’ population. The presence of large numbers of slaves cannot have originated at once, and it is often assumed that their number must already have been large in the third century and earlier; numbers for enslavement in the Samnite Wars were very high. See Finley (1980, 148–51); Rathbone (1981, 22); Cornell (1989a, 388; 1995, 393); Oakley (1993, 24–6). Bradley (1989, 19) even assumes that as early as 225 one-third of the population were slaves.

¹³⁸ From Cato *Agr.* 11.1 it appears that sixteen slaves were needed for a vineyard of 100 *iugera*, or one slave per 6.25 *iugera*; cf. Var. *R.* 1.18.1: one slave per eight *iugera*. Colum. *R.* 3.3.8 mentions one slave per seven *iugera* for a vineyard, and Plin. *HN* 17.37.215 one slave per ten *iugera*. For Cato’s olive plantation only one slave was needed per 18.5 *iugera* (*Agr.* 10.1). This means that 950 km² of vineyard would have required about 60,800 slaves, and 850 km² of olives only about 18,000 slaves, see De Ligt (2004, 746–7); Scheidel (2005, 68). For grain land the required number is more difficult to establish; Scheidel (2005, 70) estimates one slave per twenty *iugera* of grain land, which would mean 380,000 slaves for 19,000 km².

¹³⁹ Contra: Finley (1980, 148).

¹⁴⁰ If we halve the numbers calculated in n. 124 for the urban market in 28 BC, the number of slaves in grain, wine, and olive production in 133 BC can be set at about 250,000. Other agricultural enterprises would perhaps add another 100,000. A low number of agricultural slaves is assumed by Garnsey (1979, 2); Scheidel (1999; 2004, 1; 2005, 71); Rosenstein (2004, 10–11, 171–3). However, Launaro (2008, 52–63) argues that a much higher number of slaves would not have been impossible.

¹⁴¹ Var. *R.* 2.10.11.

more detail, but it is very unlikely that there would have been many more than 100,000.

At first sight, therefore, both competition for land and the extent of the 'slave mode of production' in the second century seem to have been much smaller than has previously been assumed, and it seems unlikely that competition for land as a result of commercial agricultural production could have been solely responsible for the precarious position of many small farmers. However, it is necessary to study the interplay of consumption and production in the second century in more detail. First of all, the figures provided by Jongman are not as straightforward as they seem at first sight. Only 10 per cent of the agricultural land in Italy was needed for the production of food for the urban population, but the population was of course larger than just one million urban dwellers. Let us, for the sake of argument, put the total population of Italy at four million free inhabitants and a maximum of 500,000 slaves and *peregrini* in 133. If one million people would have needed 10 per cent of the arable land, then 4.5 million people would have needed about 45 per cent of the arable land just for their basic subsistence. In this calculation it does not, of course, matter whether people lived in cities or in the country: their nutritional needs would have remained the same.

Moreover, land was not needed only for the production of basic foodstuffs. Jongman's calculation does not include land used for growing vegetables and fruit. Moreover, foodstuffs required only a part of Italy's surface; non-food products, such as flax and linen, which were used as raw materials for clothes etc., had to be cultivated as well. Furthermore, we must not underestimate the importance of animal husbandry. We have also seen that many animals were kept on farms; all these animals needed fodder crops.¹⁴²

Apart from the products needed for the inhabitants of Italy itself, there was also some export of Italian products, especially wine, to other parts of the Empire. Tchernia estimates the export of Italian wine to Transalpine Gaul alone at 50,000–100,000 hectolitres per year at the end of the second century BC.¹⁴³ The increased importance of wine export can be glimpsed in the large amount of first 'Graeco-Roman' and later Dressel I *amphorae*, which were used for exports from Italy and are found throughout the Mediterranean

¹⁴² MacKinnon (2004, 95) estimates that twelve *iugera* were needed to feed two oxen. Cf. White (1970, 336). It is possible that in the case of a two- or three-field rotation system the fodder crops were grown on land that would otherwise be fallowed; typical fodder crops include vetch, lupines, beans, and other leguminous crops; these are nitrogen-fixing and therefore enrich the soil, see Cato *Agr.* 60, with White (1970, 214–19). In this case, fodder crops would not have competed directly with the production of human foodstuffs.

¹⁴³ Tchernia (1983, 91–2; 1986, 86–97). However, the amount stated by Tchernia would require no more than 500 km² to produce, even using Jongman's low estimates.

from the early third century.¹⁴⁴ However, the largest growth of wine production for export seems to have taken place after the Gracchan period.¹⁴⁵

It may be that the amount of land needed for products exported from Italy was cancelled out by imports into Italy; most significant among these grain from Sicily, Sardinia, and Africa. The amount of grain imported to feed the people of Rome alone in the early Imperial period has been estimated at forty to sixty million *modii* of grain per year.¹⁴⁶ It has been argued that from the early second century Italy already depended mainly on the import of grain from the provinces, and this has traditionally been seen as one of the reasons for the decline of the small Italian farmers: unable to compete with cheap provincial grain, Italian farmers could no longer sell their products.¹⁴⁷ However, this was certainly not the case: Italian cities always relied on their own hinterland for the production of grain, and the bulk of all imports went to the city of Rome.¹⁴⁸ In the second century even the market in Rome was still partially supplied by grain from Italy itself.¹⁴⁹ Imports of grain to Rome were organized by the state from the early second century, but this did not happen on a regular basis until the end of the century. Livy records several instances of grain being imported from Sicily, Africa, and Spain,¹⁵⁰ but this did not happen every year, and the amounts imported, though impressive, were far too low to support the entire population of Rome. Further shipments of grain were sent not to Italy, but to the armies serving in the provinces;¹⁵¹ however, since most of the soldiers were Romans or Italians, they form part of the four

¹⁴⁴ Middleton (1983, 76–7); Purcell (1985, 7). The increasing number of shipwrecks of Italian ships from 200 BC also indicates a growth of the export of products from Italy to the provinces, see Parker (1992). Another indication of the increased importance of trade is the settlement of Romans and Italians on Delos and elsewhere in the East, see Hatzfeld (1912); Harris (2007, 513). Furthermore, a large number of harbours and other buildings associated with trade were constructed at Rome and on the Italian coast for trade purposes in the early second century (see Ch. 4.4.2).

¹⁴⁵ De Ligt (2004, 747).

¹⁴⁶ See on the grain supply of Rome Rickman (1980); Jongman (2000, 279; 2001, 1082). See for the importance of imports to Rome from Sicily Liv. 27.5.5; Cic. *Verr.* 2.2.2.5, *Phil.* 8.9.26; Polyb. 1.16.10; Diod. Sic. 25.14; DH 7.2.1, 7.20.3; Strab. 6.2.7. For Sicily and Sardinia: Flor. 2.4.2.22. For Egypt and Africa: Liv. 36.3.1; Jos. *BJ* 2.383–6.

¹⁴⁷ Gabba (1972, 102); Lomas (1996, 144); Levi (1997, 467–9).

¹⁴⁸ Cic. *Phil.* 8.9.26 calls the *Ager Campanus* the grain store of Rome. See White (1970, 398); Garnsey (1976, 191); Rickman (1980, 103); Spurr (1986, 144). The same applied to other foodstuffs, as well as manufactured goods.

¹⁴⁹ See Liv. 27.3.9 for the buying of grain from Etruria. Imports of grain to Rome from the Volsci, Cumae, and Syracuse are already reported for the early Republican period, see DH 7.12.3.

¹⁵⁰ Liv. 22.37.6, 23.21.5, 27.8.19, 30.26.6, 31.19.4, 33.42.8–11, 36.2.12, 36.4.5–9, 43.6.11–12; Entrop. 3.1.

¹⁵¹ Liv. 27.8.19, 32.27.2, 37.2.12, 37.50.9. See Erdkamp (1998, 85–94; 2005, 210–13).

million free inhabitants of Italy whom we postulated, and this means their nutritional needs must be deducted from those of the total Italian population. In short, the role of imports in the food supply can be said to have been irregular and relatively small compared to the amount of food required. Since exports in the second century seem to have exceeded imports, and to have occurred on a more regular basis than imports, some Italian land must have been reserved for them.

Finally, land was not used just for agricultural production; it was also seen as a safe investment. In societies where, in the absence of a complex banking system,¹⁵² there are few possibilities of keeping money safe, buying real estate is the most secure investment that can be made. Land, as opposed to many other investments, does not lose its value and cannot be stolen as easily as precious metals.¹⁵³ Land was used as the security for other investments; people who did not own any land would have found it difficult to invest in other enterprises.¹⁵⁴ Therefore, even those who were not interested in producing for the market may have been willing to buy land. Moreover, short-term investment (speculation) in land may also have occurred. Large profits could be made on buying land and selling it again as soon as prices had risen.¹⁵⁵

Taking all this into consideration, the amount of Italian land used was much larger than the 45 per cent of the arable land necessary for the production of basic foodstuffs, and the demand for land can therefore be assumed to have been considerable. On the other hand, as we will see below, the population of Italy was still rather low in the second century, and plenty of land was still available for cultivation. Consequently, it would seem that the available surface area of arable land in Italy was large enough to accommodate all these functions, without causing any shortage of land. It is therefore unlikely that demand for land by itself would have been sufficiently large to warrant the transformation of Italy into a land dominated by large slave-staffed farms. The archaeological evidence supports this assumption, as we have seen: although an increase in the number of *villae* for the commercial

¹⁵² See for the possibilities and limitations of the banking system Andreau (1999); Harris (2007, 521–3).

¹⁵³ Brunt (1962, 79); Nicolet (1994, 623).

¹⁵⁴ This is shown, for example, by the protests raised against the Gracchan distributions of *ager publicus*: ‘moneylenders could show loans made on this security’ (App. BC 1.8).

¹⁵⁵ Cicero gives examples of real estate which changed hands rapidly: *Balb.* 24.56, *Att.* 4.5.2. It is likely that this was mostly a development of the first century, when prices of land fluctuated more strongly because of political events; however, speculation may have occurred in the second century as well. See Hopkins (1978, 52); Marzano (2007, 75–8). Gabba (1989, 233) states that ‘the major speculative schemes of the wealthy revolved around *ager publicus*’, but there are no sources to support this.

production of foodstuffs is already visible from the early second century, and in some areas even earlier, for most of the second century the size of individual buildings, and probably also the estates to which they were connected, was limited. Moreover, small sites, presumably held by subsistence farmers, seem to have been the dominant form of landholding in all regions of Italy during the Roman period.¹⁵⁶ It is therefore unlikely that the picture painted by the literary sources—the rich expelling the poor from the public land because of their greed—can be applied to the whole of Italy, and competition for land in the second century cannot have been the sole cause of the proletarianization of the small farmer in this period. How, then, can the expulsion of the poor from the land, described by the sources, be explained?

I argue that it was not just a question of the amount of land which was needed, but also of the location of this land. As we have seen, the size of the market and the importance of commercial production were the largest in central Italy. The population of the city of Rome itself in 133 may have amounted to about 300,000 citizens and perhaps 100,000–200,000 *peregrini* and slaves (see n. 124 above)—about 10 per cent of the total population of Italy at this time. The area immediately surrounding it must have added another considerable (although incalculable) number of people, who together made up the market of central Italy.

It was important for commercial farms to be located in the vicinity of the market, because transport costs over land were high, and so profits would be severely eaten into if products had to be transported over long distances. Products from estates in central Italy could be most easily and cheaply be transported to the market, either overland, by the Tiber, or by ship from the coasts of Etruria, Latium, and Campania. The presence of a market in central Italy meant that production for this market was practical only in the nearby countryside. If there was land (private or public) available in Cisalpine Gaul or in southern Italy, this would not have been of much use to someone producing for the market of central Italy, except in the case of specialities which would fetch high prices no matter what the transport costs. It is likely, therefore, that competition for land was strongest in the *suburbium*. Not surprisingly, the number of estates producing in some way for the market was highest in central Italy, and the size of individual estates was largest in this area as well. Incidentally, the land of those individuals of whom we know the

¹⁵⁶ Many scholars point out the continued importance of small farmers: Gabba (1977, 271; 1979b, 18); Hopkins (1978, 3); Frayn (1979, 22); Garnsey (1979, 2); Spurr (1986, p. ix). The continuing presence of small farmers in the second century has been attributed by some, e.g. David (1997, 95), to distributions of land to veteran soldiers, but in the second century these mostly took place in northern and southern Italy, not in the centre. It was not until the first century BC that land in central Italy was distributed to veterans.

locations of the land they possessed was situated mainly in central Italy, not only in the second, but also in the first century BC.¹⁵⁷

Moreover, central Italy was politically the most important region of the Roman state. This area roughly coincided with the old *Ager Romanus*, the combined total of private land and *ager publicus* in central Italy which had been Roman before the early third century BC. It is likely that even in the second century the majority of Roman citizens still lived in the old *Ager Romanus* in central Italy,¹⁵⁸ and if in this area the population had grown, then the same amount of land had to be shared with more people. The fate of Roman citizens living in this area was a very important factor in the political process. These people could vote in the popular assemblies, and make their sufferings known to the political leaders. Those Roman citizens who became landless would have made their dissatisfaction known in the city of Rome itself, thereby making their leaders quickly aware of the problems they were facing.¹⁵⁹ It was these people who had to be satisfied by the state, and they therefore had to be provided with the means to feed themselves, either by working their own land or by receiving food hand-outs from the state. Had Italian or Latin allies been dissatisfied, this would not have immediately concerned the Roman leaders. Consequently, the fate of the Roman citizens is likely to have loomed disproportionately large in Roman decision making, and therefore also in our sources for Roman politics, economy, and society. If Roman citizens in central Italy were suffering from economic decline, this may have been seized upon by political leaders trying to make their name, which is exactly what the Gracchi tried to do.

¹⁵⁷ See Shatzman (1975, 440–64) for an extensive survey of all known individuals and their property from the second century onwards. In the second century estates were located almost exclusively in Latium, Campania, and southern Etruria; from the late second century more properties in locations further away are known, for example Umbria, Picenum, and Sardinia. In the first century many Senators owned property all over Italy and in the provinces, but at the same time they all held land in central Italy as well. A few examples include Cicero, who owned property in Astura, Arpinum, Tusculum, Caieta, Naples, and Pompeii (Cic. *Q.* 2.5.5). Pompey owned land in Picenum, Formiae, Alba, Tusculum, Falerna, Lucania, and elsewhere (Cic. *Phil.* 13.6.11; Plu. *Pomp.* 6.1; Vell. 2.29.1). Columella *R.* 3.9.2 mentions lands in Ardea, Carseoli, and Alba; Augustus owned land in Campania, Lanuvium, Tibur, and Praeneste (Suet. *Aug.* 72). However, not all these properties were farms; some, such as the villa of Cicero in Astura, had only residential functions.

¹⁵⁸ Cornell (1989a, 414) states that ‘the mass emigration of tens of thousands of poor peasant families must have led to a gradual depopulation of the old *Ager Romanus*’, but emigration was probably mitigated by population growth and the increase of slavery in central Italy (see below). See De Ligt (forthcoming).

¹⁵⁹ Erdkamp (1998, 204). Salmon (1967, 317) suggests that the social problems of the second century were important mainly in the *Ager Romanus*. This may not be entirely true, but it is likely that they were more serious in this area than elsewhere in the peninsula.

All in all, we may conclude that increased competition for land played an important role in the second century especially in central Italy. This may have made it difficult for small farmers in this area to hold on to their land, and may have led to their gradual displacement from the land. For this area there may be some truth to the picture sketched in the sources, although it was not *ager publicus* which was accumulated by commercial producers. However, although the growth of market production in central Italy played an important role, this factor in itself is insufficient to explain the extent of the problems as they are described in the sources. We must therefore turn to another factor that contributed to the increasing demand for land, namely population increase.

4.3.5. Population developments in the second century

The development of the Roman population during the second century BC has been hotly debated, especially in recent years. The most obvious short-term effect of the Second Punic War was a significant decline in the free Roman citizen population due to war casualties.¹⁶⁰ Another effect had been a significant increase in the amount of *ager publicus*. This combination of a low population and an abundant supply of land made sure that there was no shortage of land in the period immediately after the war. In fact, there was so much land that the state could not distribute all of it to Roman citizens: in many colonies founded shortly after the war, not only Roman citizens, but also Latins and allies were accepted (Ch. 2.5.2). A large part of the *ager publicus* was simply left open for occupation. This abundance of land ensured that those in need of land could usually obtain some; landless citizens could profit from state-sponsored colonization schemes, while those with some capital could set up a farm on public land. Italian allies who had technically lost their land because of its confiscation as *ager publicus* need not have suffered greatly: in many cases the confiscated land remained in the hands of those who had held it before, since the Roman state did not find it necessary to distribute this land.

The Second Punic War is often considered to have been a cause of the proletarianization of the peasant farmer: many people had fled to the cities because of war, and when it was over their farms had been destroyed and could not be rebuilt. The most serious damage caused by the war is assumed to have occurred in the south of Italy, leading to the depopulation of this

¹⁶⁰ Brunt (1971, 694–6).

area.¹⁶¹ It is, however, unlikely that the Second Punic War would have had such long-term consequences: most rich men would have had enough resources to rebuild their estates, and small farmers who could not restore their own farms could make a new start in the governmental colonization schemes. Moreover, even if some damage had occurred as a result of the war, this had happened mostly in the south, and therefore did not directly involve Roman citizens. The view that Roman citizens had been suffering from the war, which is suggested by the ancient sources and by many modern scholars, cannot therefore be maintained.¹⁶²

On the contrary, even though the Second Punic War had negative effects for those who had lost family members or land, overall conditions were ideal to support a quick increase in population. After the Second Punic War most people were able to find sufficient land to support themselves, and the number of proletarians must have been low.¹⁶³ The ample supply of land led to the concentration of labour on the most productive lands, and so to an increase in labour productivity per head. This, in turn, led to an overall increase in living standards for the majority of people. This may have lowered the age at first marriage, since men could more easily establish their own farms, instead of being dependent on their paternal estates. If we assume that many colonists, at least in Latin colonies, were veterans (in the sense of former soldiers, who were *assidui* or their sons),¹⁶⁴ these men could have profited from opportunities of acquiring an estate independent of their fathers'

¹⁶¹ See Liv. 28.11.8–11; Cass. Dio 9.40.27; Polyb. 23.15.1 on the negative effects of the Second Punic War; Cic. *Imp. Pomp.* 6.15 on later wars; cf. n. 106 on the supposed depopulation of the south. See Harvey (1986, 209–17) on the damaging effects of war on arboriculture: it is very difficult to destroy vines and olive trees completely by fire; only cutting them down would really be effectual, but this would be too time-consuming for an army. However, if people were prevented from planting new crops, they would have no harvest in the coming year. Of course, poor people could usually not afford to lose the harvest of even one year, so they suffered most from pillaging armies.

¹⁶² Desy (1993, 66–7); Cornell (1995, 127); Marcone (1997, 133–4). Torelli (1999b, 8) states that most of the depopulation and settlement rearrangements in southern Italy were caused by the Roman conquest in the third century, not by the Second Punic War. On the other hand, some scholars have recently argued for a re-dating of Black Glaze pottery, which would mean that many sites in southern Italy were in fact abandoned in the second century BC, see Isayev (2007, 173). This, however, may have been the result of regional specialization (Ch. 4.3.2) or changes in production and consumption of specific types of pottery, see Witcher (2008, 276–80).

¹⁶³ It may be that the number of proletarians in the third century was higher than immediately after the Second Punic War, since population pressure was higher before than after the war, see De Ligt (2006, 10). Hopkins (1978, 57) argues that the small plots handed out in colonies between 194 and 177 indicate impoverishment of many farmers, but at this time population was still low and there was plenty of land available. On the contrary, it shows that many farmers were restored to privately owned subsistence plots.

¹⁶⁴ Rosenstein (2004, 82–8).

possessions. All this encouraged rapid population growth in the decades immediately after the Second Punic War.¹⁶⁵

Equally important were the wars fought in the east: enormous amounts of money were brought into the country as booty or indemnity payments from the defeated states.¹⁶⁶ Not only military leaders profited from the money pouring into Italy: Livy lists eighteen donatives to soldiers between 200 and 167 BC.¹⁶⁷ Donatives could be equal to 100 daily wages, a considerable sum.¹⁶⁸ All citizens, moreover, profited from the new wealth through the abolition of *tributum* in 167.¹⁶⁹

Of course, the amount of money flowing to the upper classes was large as well. Individual commanders could keep a large part of the spoils for their own use. An important part of the booty was captives taken during the wars and sold as slaves. The increased contacts with the east also allowed for more state-sponsored and private trade contacts with the new provinces, while the organization of the conquered territories as provinces offered a chance for further enrichment through the collection of taxes and other revenues by their governors. Various sources attest to the growth of luxury displayed by the Roman elite in the early second century: Plutarch speaks of the 'hydra-like luxury and effeminacy of the time' against which Cato the Elder acted.¹⁷⁰ In short, this economic prosperity is supposed to have played a large role in the creation of large estates.

It is often argued that military service had negative effects on small Roman farmers: those owning a small farm could not work the land while they were away, and when they returned found their land neglected and were forced to sell it. Others lost their land to greedy neighbours who occupied it while they

¹⁶⁵ Malthus (see 1989, 20) already stated that when the availability of land increases people will marry earlier and have more children, so that populations grow. For the second century BC see Rosenstein (2006a, 236–41; 2006b, 81–4); Hin (2009, 81–90).

¹⁶⁶ Indemnity payments and (forced) monetary contributions to the Roman cause are mentioned very often in the sources, and could vary from twenty-five (Liv. 38.13.13) to as much as 15,000 talents (Liv. 37.45.14; Polyb. 21.17.4; App. *Syr.* 38; Plu. *Aem.* 7.2). Booty figures are equally impressive; for example, the booty from the Third Macedonian War brought into the treasury 200 or 300 million sesterces (Vell. 1.9.6; Plin. *HN* 33.17.56). See also Plaut. *Epid.* 160.

¹⁶⁷ Liv. 31.20.7, 33.23.7, 33.37.12, 36.40.13, 37.59.6, 39.5.17, 39.7.2, 40.34.8, 40.43.7, 41.7.3, 41.13.7, 45.34.5, 45.40.5, 45.42.3, 45.43.7. See Plu. *Apophth. Cat. Mai.* 26, *Aem.* 29.3; Val. Max. 5.1.1. See Brunt (1971, 394).

¹⁶⁸ In 179 foot soldiers received 300 *asses*, centurions 600, and cavalry 900 (Liv. 40.59.2). Crawford (1974, 622–4) argues, on the basis of Polyb. 6.39.12 and Plaut. *Most.* 357, that the standard daily wage for infantry was three *asses*.

¹⁶⁹ Cic. *Off.* 2.22.76; Plin. *HN* 33.17.56; Val. Max. 4.3.8.

¹⁷⁰ Plu. *Cat. Mai.* 16.5, see 18.2 and *Marc.* 21.5. See Liv. 39.6.7–9; Flor. 1.3.12.8; Plin. *HN* 33.53.148, 34.8.14, 34.16.34; Nep. *Cat.* 2.3; Val. Max. 9.1.3; Lucil. *Sat.* 5.2.

were away.¹⁷¹ However, service in the army in this period was clearly a very attractive option for many Roman citizens, especially for families with several adult sons: they received a reasonable daily stipend, could usually count on considerable donatives after successful campaigns, and often received their own plot of land when they were discharged (see further Ch. 4.4.2). Military service and its material rewards may be expected to have led to increased welfare for many Roman citizens, and are likely to have been a stimulus for population growth.

Much has already been said on population developments in the second century, and I do not wish to present any new argument here. However, demographic developments are crucial to my reconstruction of the economy in the second century and the role of *ager publicus*, and it is therefore necessary to take a stand in this debate.

The traditional account of the second century, following the ancient sources, suggests that the rich invested their new wealth in land, driving off the poor and causing population decline: robbed of the certainty of access to land, the poor were unwilling to have children and therefore the absolute number of free inhabitants of Italy declined. In Plutarch's famous words: 'Then the poor, who had been ejected from their land, no longer showed themselves eager for military service, and neglected the bringing up of children, so that soon all Italy was conscious of a dearth of freemen.'¹⁷² Adherents of this thesis have found support in the census figures for the second century. From a maximum in 164/163 the censuses of the later second century show a continuous, if slow, decline, until in 131/130 the reported number of citizens was 25,000 lower than it had been thirty-three years before (see Figure 6). At first sight this would indicate a decline in population.¹⁷³

A slightly modified theory has been formulated by Beloch, Brunt, and Hopkins, which was almost universally agreed upon until only a few years ago. On the basis of the population lists in Polyb. 2.24, Brunt argued that the total number of free men, women, and children in the Italy (including

¹⁷¹ See Liv. 2.23.5–6, 5.10.6–9; DH 6.22.1, 6.26.1; Sall. *Iug.* 41.5–8. The theory that this was an important factor in the 'decline of the small farmer' is still widely believed, see Toynbee (1965, ii. 95); Gabba (1979b, 38); De Neeve (1984, 9); Evans (1991); Rathbone (1993b, 19).

¹⁷² Plu. TG 8.3. See also App. *BC* 1.7: 'The Italian people dwindled in numbers and strength, being oppressed by penury, taxes, and military service.' Gell. 1.6 and Suet. *Aug.* 89.2 cite a speech called *De prole augenda*, given in 131 by Metellus Macedonicus, in which he exhorted the Romans to marry and have children. For the traditional analysis of the effect of economic adversity on nuptuality and fertility see Brunt (1971, 136–43). Whether it is a logical assumption that people refrain from having children when facing economic adversity cannot be discussed here; in modern societies this is usually not the case, see Hin (2009, 108–20).

¹⁷³ As is assumed e.g. by Tibiletti (1948–9, 35); Gabba (1956, 47); Bernstein (1969, 45); Bringmann (1985, 20).

Cisalpine Gaul) in 225 BC had been 4.5 million. The census figure of 28 BC, four million, is interpreted by these scholars as representing men, women, and children, which would mean the free population had shrunk by about 0.5 million in 200 years. Furthermore, the rate of urbanization in the last two centuries BC caused the free rural population of Italy to decline from 4.1 million in 225 to only 2.9 million in 28, a decline of almost 30 per cent. This is supposed to have been the result of the serious economic difficulties experienced by many people from the middle second century onwards, which supposedly made them refrain from rearing children. That the population figures show stagnation instead of outright decline was attributed to the manumission of slaves, while 'by 124 or earlier an actual decline in the number of citizens of the old stock may have begun'.¹⁷⁴

Recently a new interpretation of the census figures has been suggested. It had already been postulated earlier that the stagnation of the census figures was caused not by an actual decline in the number of free Roman citizens, but by the increasing under-registration which occurred in the later second century. The census thus became more unreliable, because it failed to record the population growth which was actually taking place. Support for this thesis has been found mainly in the census figure for 125/124, which shows an increase of about 75,000 compared to the census of six years earlier. Since the census was supposed to count all adult male citizens, such a growth rate can only be explained either by a sudden increase in the number of citizens,¹⁷⁵ or by the inclusion of a part of the citizen population which had not been counted in earlier censuses. The latter explanation is usually favoured by modern scholars, who argue that the censuses between 167 and 125 simply failed to record the rise in population.¹⁷⁶

The most obvious cause of this under-registration was the increased proletarianization of the small farmer: many men who had been *assidui* at

¹⁷⁴ Brunt (1971, 79). The theory of the decline in the free citizens of Roman origin was first put forward by Beloch (1886, 370–8); and was supported, most notably, by Tibiletti (1948–9, 36); Toynbee (1965, i. 438–79); Brunt (1971, 44–6, 77–9, 138–45); Gabba (1972, 64; 1989, 201), Nicolet (1977, 83–6), and Hopkins (1978, 68–9).

¹⁷⁵ See Ch. 5.2.5. Some, e.g. Fraccaro (1914, 273), have assumed that there is an error of transmission in the figure, but this is unlikely.

¹⁷⁶ Frank (1962, 131 n. 3); Brunt (1971, 78–81); Rich (1983, 303); Lo Cascio (1999, 234); De Ligt (2004, 754; 2006, 6); Rosenstein (2004, 156–7). See for an analysis of the reasons for under-representation Hin (2009, 128–31). Shochat (1980, 39) does not believe that under-registration offers a sound explanation, because when 75,000 people are missing this constitutes an undercount of about 20%, which seems too wide a margin of error. However, I think the difference between the real figure and the census figure was still small enough for state officials to believe the results of the census were correct. See Evans (1988, 128–9) for examples of deficiency in modern censuses.

the beginning of the century had now become too poor to be counted as such. While in theory *proletarii* were also counted in the census, they were of less practical interest to the censors, since they did not serve in the army.¹⁷⁷ The censors therefore expended less effort into counting these people correctly, and the *proletarii* themselves were not interested in reporting themselves at the census, since there was no tangible advantage to being registered. Furthermore, those who still qualified as *assidui*, and therefore were of interest to the censors, evaded the census because of the unrewarding situation facing them in Spain (see Ch. 4.4.2). This led to a smaller segment of the population being counted in the census than before and thereby to an apparent decline of the population.

Although it is now more and more accepted that the second century was a period of population growth, scholars do not agree on the rate of growth which occurred in this period. Debate is caused mainly by the Augustan census figures; the first of these, dating to 28 BC, shows 4,063,000 citizens.¹⁷⁸ The relation between these figures and those for the second century has recently been the subject of much debate. Two mutually exclusive theories now exist.

A radically new reconstruction of population developments has been proposed by Lo Cascio, who suggests that the Augustan census figures represented only adult males. The Republican census, after all, had included only adult males, and it is not immediately obvious why Augustus would now include women and children in his total figure. Working with a low multiplier of three to arrive at the total population, this would mean that the total Roman citizen population had grown from about two million in 225 BC to at

¹⁷⁷ In the time of the Gracchi the threshold to qualify as an *assiduus* was probably no more than the possession of a hut and a small garden, which leads Rich (1983, 298–9) to suppose that all who lived on the land possessed enough to qualify as *assidui*. However, people who had no land of their own at all could not have complied with this qualification. Some sources indicate that *proletarii* (sometimes) served in the army, as appears from Tiberius Gracchus' speech in Plu. *TG* 9.4–5: 'Those who fight and die for Italy have nothing—nothing except the air and the light. Houseless and homeless they roam the land with their children and wives.' Many have therefore argued that a considerable number of proletarians served in the army, even before the Marian reforms: Brunt (1971, 18); Shochat (1980, 27); Erdkamp (2006, 42). In emergencies proletarians could indeed be called upon to serve, and therefore their inclusion in the census would have served some purpose. However, during most of the second century there were not many emergencies, and there was therefore no need to include proletarians regularly. It is likely therefore that the efforts undertaken in registering them may have slackened, see De Ligt (2006, 18). It was only in the latter half of the century, when recruitment became increasingly difficult (see Ch. 4.4), that more proletarians may have been recruited. Gaius Gracchus' law to provide soldiers with free clothes (Plu. *CG* 5.1) is an indication of the poverty of many soldiers joining the army in this period; many of them may have been proletarians.

¹⁷⁸ *RG* 8.2; in *RG* 8.3 4,233,000 citizens are reported for 8 BC, and *RG* 8.4 reports 4,937,000 citizens for AD 14.

least twelve million in 28 BC, and thus had experienced extremely rapid growth in the last two centuries BC.¹⁷⁹ A consequence of this position must be that the census figures for the second century were totally unreliable, since they did not record the enormous population increase that apparently took place. Moreover, a very large number of slaves must have been imported to Italy, since natural growth of the citizen population alone cannot have caused the total to have grown so quickly.

However, there are severe problems with this 'high count' scenario.¹⁸⁰ First of all, to achieve such growth, the population must have had an average growth rate of about 0.5–0.8 per cent per year over a period of 200 years.¹⁸¹ This does not sound very impressive, but it is in fact very high for pre-industrial societies, and it is unprecedented that such a growth rate was maintained over such a long period. Moreover, it would mean that the population density of the Italian countryside in the first century AD had reached a level it did not reach again until the late nineteenth century. It would have been difficult to feed all these people with the produce of the Italian countryside: we have seen that to feed a population of about five million people in 133 BC, already more than 50 per cent of the surface of Italian arable land was needed.¹⁸² To feed another seven million, imports from other parts of the Empire must have been huge, but there is no evidence that this was the case, not even in the first century BC.

A new scenario has therefore been proposed by Ligt.¹⁸³ This scenario agrees with the 'low count' theory of Brunt and Hopkins that during the second and first centuries the population experienced only limited growth. However, its supporters believe that Brunt's and Hopkins's estimates of the number of

¹⁷⁹ This theory had earlier been proposed by Frank (1924, 340). It has most recently been supported by Lo Cascio (1994, 1999, 2001); Morley (2001); Lo Cascio and Malanima (2005); and Kron (2005).

¹⁸⁰ See Scheidel (2008) for an analysis of the problems connected with the 'high count' scenario.

¹⁸¹ Rosenstein (2004, 146) calculates a growth of 1.3–1.5% per year between 200 and 168, and 0.6–0.8% between 168 and 124.

¹⁸² Morley (1996, 48–50; 2001, 53–7) assumes that the carrying capacity of Italy would allow for about 7.5 million people, based on the estimates of Jongman (1988, 81); however, there is no evidence for this. Crawford (2008, 640–2) believes the high count, but suggests that several million Roman citizens lived in the provinces in the second century already, which would solve the problem of the carrying capacity of Italy. However, there is no evidence for this, and Scheidel (2007, 64) assumes that no more than 750,000 citizens were living outside Italy in the Augustan period. See Hin (2009, 16–40) on the difficulties of estimating the carrying capacity of Italy and the relation between carrying capacity and economic growth. Goodchild (2006) shows that there are many variables which have to be taken into account, and that even one of the most fertile areas of Italy was not capable of producing a large surplus which could be traded on the market.

¹⁸³ De Ligt (2004); his theory is supported by Scheidel (2004, 2–9).

people in Italy in 225 are too high. Whereas Brunt assumed the population of Italy amounted to 4.5 million people in 225, an estimate of 3.5 to 4 million may be more realistic.¹⁸⁴ If in the Augustan era about one million citizens lived outside of Italy, the total becomes five million people in 28 bc, and this would mean a relatively slow (about 0.3 per cent per year) population growth over the two preceding centuries. Moreover, the supporters of this theory deny the presence of several millions of slaves in Italy, and assume that growth of the citizen population was caused mainly by natural growth of the free citizen population. The census figures for the second century in this case show an increasing degree of under-representation, since they do not record the fact that the population was actually growing; however, since they were still close enough to the real figure, they were accepted as roughly correct by Roman politicians.

In my view, the problems connected with the 'high count' scenario are too serious to accept this theory at this moment. However, the 'low count' scenario is not free from problems either. It would be wise to maintain a critical outlook towards the basic assumptions of the model, such as the idea that the Republican census figures include all adult males, and keep an open mind toward other possible explanations which might lead to a different reconstruction of Italian population developments, for example a 'middle count'.¹⁸⁵

It is likely, moreover, that while Italy as a whole experienced only limited population growth, the population was not spread out evenly throughout the peninsula. It is difficult to distinguish between the rate of growth of the Roman citizen population and the allies; there are no reasons to assume

¹⁸⁴ The difference lies mainly in the interpretation of the figures for the Italian population given in Polyb. 2.24. Brunt assumed that these represent all adult males in the case of the Romans, but that in the case of the allies only the *iuniores* were included. However, if the numbers as cited by Polybius represent all adult men in the case of both the Romans and the allies, the total population of Italy in 225 would be much smaller than assumed by Brunt. If we assume that the undercount was 0% and the figure of 770,000 in Pol. 2.24.16 represents all adult males, a multiplier of three would give only 2.3 million people in the whole of peninsular Italy. An undercount of 10% would give 2.54 million. The same goes for the population of Cisalpine Gaul: Brunt reckons with a Gallic adult male population of 300,000–500,000 in 225, but the lower figure is more probable than the higher. A multiplier of three would give 900,000 Gauls, and a total number for the whole of Italy of about 3.5 to four million in 225 becomes possible. See De Ligt (2004, 734–8); Scheidel (2004, 4). This scenario would mean a net growth rate of about 0.3% for the last two centuries of the Republic; the actual growth rate was higher, but some emigration from Italy must be taken into account.

¹⁸⁵ It may be, for example, that the Augustan census did not count all men over 17, but all citizens (men, women, and children) who were *sui iuris*. This has been suggested in the past by e.g. Bourne (1951–2, 133), but has not received much attention in recent scholarship. It is now time for a re-evaluation of this theory, which has recently been carried out by Hin (2009, 163–95).

that allies experienced widely different growth rates from citizens—in my view, not much land was actually taken away from the Italians after the Second Punic War, so loss of land cannot be adduced as an explanation for population decline among the allies. Population growth among Roman citizens alone cannot have been responsible for the total growth of the Italian population, and it is therefore likely that natural growth rates among both groups were roughly equal.¹⁸⁶ It is certain that the city of Rome experienced rapid growth in the second century, although its exact size remains unclear (see n. 124). This growth may have been caused partly by migration of non-citizens to Rome.

It is difficult to quantify migration movements, but we do know that several cities complained to the Roman authorities because their subjects had moved to Rome. It is not clear which towns exactly suffered from migration toward the capital; Livy describes how in 187 complaints were voiced by ‘all the Latin allies, who came together from everywhere in the whole of Latium’ (*sociorum Latini nominis, qui toto undique ex Latio frequentes convenerant*); apparently, the towns of Latium itself were hardest hit by the emigration of their citizens. Twelve thousand Latins were removed from the city, since ‘even by that time the large number of foreigners was becoming burdensome for the city’.¹⁸⁷ This apparently did not have much effect, since in 177 another embassy came from ‘the Latins’ in general, joined by the Samnites and Paeligni, who opposed the emigration of their people to the Latin colony Fregellae; in 173 those allies still resident in Rome were ordered to move back home.¹⁸⁸ In the later second century migration to Rome was still an issue: in 126 the tribune Pennus again expelled people without citizenship from the city,¹⁸⁹ and the *Lex Licinia Mucia* of 95 aimed at removing allies who had infiltrated the census lists, presumably by moving into Roman territory.¹⁹⁰

It is likely therefore that the population of central Italy, and especially Rome itself, experienced a rate of growth which was higher than the rest of Italy. In the first decades of the century the growth of the population in central Italy was mitigated by the establishment of colonies in the periphery,

¹⁸⁶ Brunt (1971, 89); Perelli (1993, 26–7). Contra: De Neeve (1984, 36).

¹⁸⁷ Liv. 39.3.4–6. For the ‘depopulation’ of Latium, apparently caused by migration to the city itself, see Cic. *Planc.* 9.23; DH 4.53.1; Prop. 4.1.33, 4.10.9.30; Hor. *Epist.* 1.11.7–8. See Tibiletti (1950, 189); Liverani (1984, 44–7); Gabba (1989, 201–2); Rosenstein (2004, 7). On migration in general, see Erdkamp (2008); Hin (2009, 132–61).

¹⁸⁸ Liv. 41.8.6–12, 41.9.9–12, 42.10.3; Cic. *Sest.* 13.30. For these episodes, see Toynbee (1965, ii, 137–41); Broadhead (2001).

¹⁸⁹ Cic. *Off.* 3.11.47. See Wulff Alonso (1991, 213–14).

¹⁹⁰ Cic. *Balb.* 23.54, see *Sest.* 13.30. See Badian (1970–1, 405–8).

especially in Cisalpine Gaul.¹⁹¹ However, after colonization stopped, people moving to central Italy had fewer opportunities to emigrate away from this area again, and its population was therefore growing because of natural increase, the manumission of slaves, and immigration from other areas of Italy to the centre. As the century progressed the negative effects of unhindered population growth emerged. Rosenstein explains: ‘Inevitably, sooner or later, population would have to exceed the supply of available farmland, helping . . . to create the widespread poverty and landlessness that were the underlying causes of the “crisis without alternative” from which the late Republic suffered.’¹⁹²

Population growth in the case of the ‘low count’ scenario was relatively small, and at first sight it seems doubtful whether the economic and social problems occurring in the second century could have been caused by such a relatively small population growth.¹⁹³ However, combined with increased competition for land, which, as we have seen, also was most severe in central Italy, a limited growth in population may have been sufficient to cause the process of proletarianization described in the sources. If, as I would suggest, this was the region in which these negative developments mainly manifested themselves during the second century, then regional variations in population and economic developments may well be essential to explain the reforms attempted by the Gracchi.

4.3.6. *Ager publicus* and commercial production

After this—seemingly overlong—discussion it is time to return to *ager publicus*. Following Appian, many modern scholars have asserted that the developments described in the sources took place on public land: the rich established large farms on *ager publicus*, especially *ager occupatorius*, and used these both for agriculture and animal husbandry. This deprived the poor of access to the public land.¹⁹⁴ Van Dooren argues, for example, that

¹⁹¹ Broadhead (2000, 147); Rosenstein (2004, 145).

¹⁹² Rosenstein (2006a, 241).

¹⁹³ Morley (2001, 61) argues against the low count, because he believes that such a small population would not have caused the problems of competition for land described in the sources. However, if these were mainly a regional phenomenon, it is certainly possible that they were caused by a limited population growth.

¹⁹⁴ Frank (1979, 48–9); De Neeve (1984, 79). Quilici (1994, 130) assumes that large *villae* in Terracina, Ardena, and Cosa were located on *ager publicus*. Perelli (1993, 240) states that the Etrurian coast was public land in the Gracchan period. See Small and Buck (1994, 38) for Lucania; Accardo (2000, 42–3) for Bruttium; Regoli (2002, 148) for Cosa; Torelli (1999b, 5) for central Italy in general.

the presence of *villae* in an area is a strong indication of the presence of *ager publicus*, because one would expect *villae* to have been created in areas that were centuriated, but not distributed, and where, therefore, land was ready for use and available for occupation. Thus he uses the presence of *villae* as an argument to establish the location of *ager publicus*.¹⁹⁵ However, first of all, land was usually not centuriated until it was distributed (see Ch. 3.2.1), and furthermore, the distribution of large estates and that of *ager occupatorius* throughout Italy makes this hypothesis very difficult to maintain.

When looking at the location of cash crop estates in Italy an important observation can be made: the number and size of such estates was largest in the areas *where there was the least ager occupatorius*. The presence of *ager publicus* would have been an obstacle to investment in land (Ch. 3.3.1), and this had already led to the assignment of private rights of tenure on *ager publicus* in central Italy in the third century. We would therefore expect that anyone wanting to engage in market agriculture would have preferred to use private land, and that the spread of large estates mostly occurred on such land. It is therefore far more likely that *ager publicus* would have been an *obstacle* to the growth of large *villae* rather than a stimulus.

The largest expansion of cash crop farms took place in the *Ager Romanus* in central Italy, where, as we have seen, only a limited amount of *ager occupatorius* was still in existence (Ch. 2.3.2–5).¹⁹⁶ Most of the *ager publicus* which survived in central Italy was *ager censorius*, *ager quaestorius*, or *ager in trientibus*, and as such it was held with a secure title by its possessors. It was, therefore, in many ways similar to private land, and was not subject to redistribution by the Gracchi. The presence of large amounts of private land and public land with security of tenure in this region fits nicely with the presence of large estates in this region.

That *ager publicus* in general, and *ager occupatorius* specifically, played a limited role in the creation of large estates, at least in central Italy, may be inferred from Cato's *De agri cultura*. Cato never mentions *ager publicus*, but speaks only about buying land. Even his pastures were apparently private, as in chapter 149, where the leasing out of pasture rights is described.¹⁹⁷ Furthermore, there are hardly any examples of Senators or other members of the upper class making use of *ager publicus*. We know of several Senators who already owned large estates in the early second century—the most

¹⁹⁵ Van Dooren (2008, 202).

¹⁹⁶ This is suggested by Shatzman (1975, 15), but he does not elaborate.

¹⁹⁷ e.g. Cato *Agr.* 1. See Bernstein (1969, 67) and Kuziščin (1984, 33–5), who, however, assume that Cato did use public pastures. In Cato's case the absence of public land may be attributed to the fact that his estate was located in the vicinity of Rome, where hardly any *ager occupatorius* was available.

famous being the estate of Scipio Africanus in Liternum—but none of them is described as holding *ager publicus*.¹⁹⁸ It is not until the Gracchan period that specific individuals are credited with holding *ager publicus*.

In other areas of Italy the situation was different. In southern Italy there was still a large amount of *ager occupatorius*. Much of this was suitable for agriculture, and could be occupied by Roman citizens as long as the state did not need it. Yet Roman citizens were not the only parties interested in occupying this *ager publicus*. During the second century only a minority of all inhabitants of Italy possessed Roman citizenship. Most of these people were living on Ager Romanus in central Italy; the inhabitants of southern Italy, where much *ager occupatorius* was located, did not possess the Roman citizenship. In areas where large tracts of land had been confiscated by the Romans, not only small farmers, but also many rich Italian allies had no access to land other than *ager publicus*. There were some areas, for example in Lucania, where hundreds of square kilometres had been turned into *ager publicus*, and no other land was available for the people living there. These farmers therefore held a larger proportion of their total holdings as *ager publicus* than Roman citizens did, and could therefore only work public land. *Ager publicus*, then, was mainly located outside the old Ager Romanus, in areas where most people were *not* Romans. We have seen that some increase in animal husbandry took place in the south, which would fit with the image of depopulation created by the sources. However, it may have been that many of these stockbreeders were not Romans, but Italians, who used the Roman *ager occupatorius* for their own purposes (Ch. 2.5.2 and 5.2.4). A villa in Vittimose, for example, dating to the late second century and used especially for animal husbandry, was the property of a local noble.¹⁹⁹

This does not mean that Italian small farmers did not experience any negative developments in the course of the second century; it is possible that in the periphery as well, more land was accumulated by those producing for the market.²⁰⁰ As we have seen, commercial agriculture became more important in northern and southern Italy as well, albeit on a smaller scale than in central Italy, and it may be that some of this was Roman *ager publicus*, used by local elites. As long as the Romans decided not to use this land, there

¹⁹⁸ Scipio Africanus in Liternum: Liv. 38.52.1; Sen. *Ep.* 86.1; Val. Max. 2.10.2b; Fabius Maximus: Liv. 22.23.4; Aemilius Paullus in Terracina: Liv. 40.51.2; Laelius in Puteoli: Suet. *Vit. Ter.* 3. See Frederiksen (1970–1, 340); Shatzman (1975). On competition for land especially in the *suburbium*, see also Nagle (1973, 369–70).

¹⁹⁹ Gualtieri (2003, 140–1). See Battista Sanguineto (1994, 568, 579) for *villae* in Lucania and Bruttium.

²⁰⁰ Richardson (1980, 5).

was no problem—but in the end, this was exactly what the Romans planned to do.

In short, we may conclude that the discrepancy between the location of large estates and that of *ager occupatorius* means that the developments occurring in the second century were not as straightforward as has been suggested. The accumulation of *ager occupatorius* by the rich cannot be the sole explanation for the problems of the small farmers in central Italy. Of course, demand for land among commercial producers increased, and this caused pressure on the land in those areas where market agriculture would be most profitable, especially the *suburbium* of Rome. However, the land accumulated by such producers was not *ager occupatorius*, but especially *private* land, which had previously been held by small farmers. If this is the case, then what led small farmers to sell their land to commercial producers? And how did the sale of their private land eventually lead to economic and social difficulties for small farmers?

4.3.7 The use of *ager publicus* by small farmers

Many textbooks speak of a drastic decline in the number of free peasants during the second century, and assume that Italy was transformed into a land filled with large slave-staffed estates, while the poor dispossessed farmers formed an urban proletariat much like the poor of the nineteenth century. Because the rich preferred to staff their estates with slaves, there were no possibilities for the poor to find permanent employment on the land of the rich, and the landless were deprived of their livelihood. Some remained in the countryside where they worked as seasonal wage labourers on the land of the rich;²⁰¹ others moved to the cities and formed an urban proletariat.

In this reconstruction the possession of *ager publicus* is seen as indispensable for small farmers: it is assumed that some depended entirely on public land, while others worked land which was partially their own and state land for the rest. Even though possessors of *ager occupatorius* were protected by law (Ch. 3.2.3), in practice it was difficult for the poor to act against the occupation of the public land by the rich, and so the poor could easily be deprived of the public land they held. It remains unclear, however, exactly which *ager publicus* was used by small farmers and in what way they could have profited from its use. For public land to be useful to a small farmer, it had to be located close to his private lands, which means that many kinds of *ager publicus* would have been inaccessible to small farmers. Especially the wide tracts of *ager*

²⁰¹ Brunt (1971, 161–3) and Rosenstein (2006, 228) assume the majority of impoverished farmers remained in the countryside.

occupatorius, of which there was a great amount during the second century, would not have been accessible to a small farmer if they were not located near his private land: a small farmer could not work land located in areas that were located far away from each other, since travelling would cost him too much time.

Before investigating the possible locations of *ager publicus* accessible to small farmers in more detail, we first need to answer the question of how much land a family actually needed to survive. The idea that many small farmers were dependent on *ager publicus* has been inspired mostly by the small amounts of land assigned to settlers in colonies and *viritane* distributions, which have long puzzled scholars. The traditional amounts cited in the sources, two *iugera* as the Romulean *heredium* and attested in the colony Terracina, and seven *iugera* in various *viritane* distributions and colonies, are believed to have been insufficient to sustain a family. It is therefore assumed that the use of *ager publicus* must have constituted an important source of income for many colonists and other small farmers.²⁰²

While it is universally accepted that two *iugera* were insufficient to provide an income for a family,²⁰³ opinions are more divided over the economic viability of plots of seven *iugera*.²⁰⁴ Many scholars believe that seven *iugera* was not enough to provide a living for an average Roman family, but others are more optimistic as to the possibilities of survival on a plot of this size.²⁰⁵ It is difficult to arrive at definite conclusions using comparisons with other societies, since soil and climatic conditions can vary enormously. For example, the amount of land needed in Greece has been estimated at sixteen to twenty *iugera*,²⁰⁶ but since the climatic and ecological conditions in Greece

²⁰² Tibiletti (1950, 228); Gabba (1979b, 20); Morley (2001, 60); Rosenstein (2004, 76). Other sources of additional income may have been wage labour, trade, tenancy, manufacture, fishing, salt production, and money made from temples and wells; see Salmon (1963, 33–4); Brunt (1971, 194); Garnsey (1976, 99); Frayn (1979, 93).

²⁰³ The multiplier used to arrive at the total population based on the number of adult males varies between three and 3.5; White (1970, 336) uses 3.25, while Hopkins (1978, 68–9) uses three. We will take 3.5 as the average family size; if the multiplier was lower, a family would have needed even less land. The amount needed varied throughout the family life cycle: a family of two adults and two small children needs less land than a family of two adults and two adolescent children, see Gallant (1991, 82); Rosenstein (2004, 68–9).

²⁰⁴ Brunt (1971, 194), who estimates twenty to thirty *iugera* were needed; Hopkins (1978, 21) suggests fourteen; Garnsey (1980, 37); De Neeve (1984, 30); Rosenstein (2004, 68–9). Some argue therefore that small *viritane* distributions only make sense as bonuses for people who already had other land. If the recipients did not have access to extra *ager publicus*, they may have sold, leased out, or exchanged the land they received, see Galsterer (1976, 59).

²⁰⁵ Tibiletti (1950, 228); White (1970, 336); Evans (1980, 161); Finley (1999, 99); Jongman, pers. comm.; Rathbone, pers. comm.

²⁰⁶ Gallant (1991, 82–7). Walter and Schofield (1989, 13) put the subsistence limit in early modern Europe at ten acres (sixteen *iugera*).

are very different from those in Italy, it is highly probably that the necessary amount in Italy was smaller.

We may try to calculate the necessary amount of land by using consumption estimates. Jongman's consumption estimate of 200 kilos (22.8 *modii*) of grain per person per year would set average necessities for 3.5 people at about eighty *modii* of grain per year. Brunt assumes the net yield of seven *iugera* (after deduction of seed and assuming one-half of the land was fallowed) at 52.5–105 *modii*.²⁰⁷ Erdkamp assumes that 3.5 people consumed ninety-four *modii*; for a farm of seven *iugera* he assumes a yield of between eighty-four and 128 *modii*.²⁰⁸ In both cases an average family would, under favourable circumstances, have been able to produce a slight surplus; this amount of land would therefore in many cases have been sufficient. If grain yields on peasant farms were usually higher than those favoured by Brunt, whose estimates are rather low, seven *iugera* would have been even more likely to have been sufficient.²⁰⁹ Moreover, grain was not the only crop grown on small farms; if a family also grew legumes, vegetables, fruit, and the like, seven *iugera* may well have been sufficient. Pliny for example mentions vegetable gardens: 'At Rome a garden was in itself a poor man's farm; the lower classes got their market-supplies from a garden.'²¹⁰ For those living on the coast, fishing may have been a daily activity, while those living near forests or other uncultivated areas may have supplemented their income by hunting.²¹¹

There is therefore no pressing need to see stories about people receiving only seven *iugera* as legends. The fact in itself that such small amounts of land were distributed by the state indicates that the Roman officials thought seven *iugera* sufficient to support a family. According to legend, represented in a variety of sources, Dentatus distributed seven *iugera* to each of his veterans with the statement 'may no Roman ever think that land too small which

²⁰⁷ Brunt (1971, 194).

²⁰⁸ Erdkamp (2005, 48–9). However, he admits that these estimates are valid only for commercial farms; yields on subsistence farms were probably lower.

²⁰⁹ Yield of course depends on the amount of land fallowed; some assume a traditional two-year fallowing cycle, with an alternation of cereals and fallow, based on Columella's calculations for the number of labourers in *R.* 2.12.7–9, e.g. White (1970, 119); Duncan-Jones (1982, 328); Jongman (1988, 81). Others assume that less land was fallowed, e.g. only one-third: Lo Cascio (1999, 239). See for the importance of fallowing *Cic. Brut.* 4.16; *Var. R.* 1.44.2. If much land was fallowed, seven *iugera* would not have been sufficient, but unfortunately we have no information on fallowing by small farmers.

²¹⁰ Plin. *HN* 19.19.52–4. See Evans (1980, 140–3); Garnsey (1988a, 53); Rosenstein (2004, 70).

²¹¹ Plaut. *Rud.* 289–305; Greg Naz. *Or.* 43.34; Dio Chrys. *Or.* 7.45–7; D.7.1.62.pr. For the importance of fishing, see D.33.7.27.pr. MacKinnon (2004, 190) argues that wild animals were not an important part of the diet, and that this is shown by the fact that they do not often show up in the bone record. Gallant (1991, 115–20) likewise argues that the collection of wild foods was very time-consuming, and therefore not widely practised.

suffices to maintain him'.²¹² This shows that the idea that seven *iugera* were sufficient was an accepted view among the Roman elite. Even if such legends were aimed mainly at illustrating the frugality of archaic leaders, very small allotments are actually attested in various colonies of the second century (Ch. 2.2.12). The additional circumstance that seven *iugera* were sufficient to provide food for a family, especially if worked in intensive mixed agriculture, supports the conclusion that the Roman state viewed a seven-*iugera* plot as the minimum amount of land required to maintain a subsistence farmer. Caesar's distributions in Campania in 59 granted ten *iugera* to families of five or more people, and they are likely to have been considered large enough to feed such a family. If a family owned draught animals the amount needed would have risen quickly to at least twenty *iugera*. However, most farmers would not have owned oxen;²¹³ animals like chicken, geese, goats, and pigs would have been more common, since they could easily feed on leftovers and in marginal areas.²¹⁴

The geography of virgane distributions also supports the idea that seven *iugera* were considered an amount sufficient for subsistence. Whereas in colonies there was usually some communal land belonging to the town which could be used by all inhabitants, in virgane distributions there was no communal land.²¹⁵ The settlers were simply assigned their own private plots, without the creation of a central administration which could be given authority over common land. Access to arable *ager publicus* would not have been easy for most settlers in virgane distributions, depending on the geography of such a settlement: if a settler happened to be located close to *ager occupatorius*, he may have been able to use this as an addition to his own plot, but if there was no *ager occupatorius* in the vicinity, the settlers would not have been able to supplement their income by using *ager publicus*. Therefore to make sure that the settlers were able to survive, they received the whole amount of land needed for their survival as private land, and this was estimated by the state to be seven *iugera*.

²¹² Val. Max. 4.3.5b; *Vir. ill.* 33; Plin. *HN* 18.2.7, 18.4.18. The same story is told of Marius in Plu. *Crass.* 2.8, but the amount distributed is given as fourteen *plethra*. See also the story about Atilius Regulus (*cos.* 257), who apparently owned only seven *iugera*, Val. Max. 4.4.6.

²¹³ It is likely that such valuable resources as draught animals were shared by a number of families, and that generally speaking family or neighbour assistance played an important role in peasant survival. See e.g. Cato *Agr.* 136; Gell. *NA* 2.29.11; Cic. *Lael.* 7.23, *Off.* 1.18.59; Dio Chrys. *Or.* 7.10–22, 7.68; Var. *R.* 1.17.2; D.19.5.17.3, 17.2.58.pr. See Gabba (1977, 272); Gallant (1991, 82); Erdkamp (2005, 17).

²¹⁴ White (1970, 273); Rosenstein (2004, 70); Erdkamp (2005, 76).

²¹⁵ Contra: Toynbee (1965, ii. 291); Hermon (2001, 205). The only common lands readily conceivable would be *subseciva*.

In situations, then, where access to secure sources of income besides agriculture could not be granted, the state provided its citizens with the amount of land deemed necessary for survival. In other cases, however, there is a possibility that the Roman state *expected* the colonists to be partly dependent on *ager publicus* for their livelihood, and therefore gave them an amount of land which was insufficient to sustain them without other sources of income.²¹⁶ Two *iugera*, the amount received in various Roman colonies, were certainly not enough to sustain a family. Although in some cases two *iugera* of land may have been fertile enough to earn a considerable amount of money, as in Varro's example (n. 130), some Roman colonies were located in terrain which was not extremely fertile, which undermines this supposition.

Of course, it would make no sense if the Roman state were to have given its citizens an amount of land which would have been insufficient to support themselves, without making sure that the colonists would have been able to supplement their income in some way. It is possible that poor Roman citizens occupied *ager occupatorius* on their own initiative, without waiting for an official distribution of land,²¹⁷ but for many of them this must have been impossible. Setting up a new farm required some money, which many subsistence farmers would not have had,²¹⁸ and for many of them *ager occupatorius* would be too far away. A solution to this problem may have been found in the possibility that *ager publicus* was supplied to colonies, to be governed by the colonial magistrates and for the use of all colonists. As we have seen, not only colonies, but many other towns as well, possessed some form of public land, both arable and pasture belonging to the community as a whole (see Ch. 3.5). In colonies therefore people could use common arable land to supplement the income from their private plots. If at any time during the family life cycle they needed more arable land, and their private plots were insufficient, they could also use this land as an additional resource. Since the control exercised by the community over its communal land was secure, there was no need to give the colonists more private land; their income would have been secured by access to common town lands.

Public pasture lands were probably available everywhere, either as *subseciva* or as unassigned land in the surroundings of the town, and people could have used these to pasture animals or to gather wild foods. Apart from such products as wool, milk, and meat, animal manure was the most important

²¹⁶ Brunt (1971, 194–5); Rosenstein (2004, 76–9).

²¹⁷ This can be seen in the early Republic, when people had apparently occupied the *Ager Pomptinus* before the state had decided what to do with it, Liv. 6.6.4. The same happened in Veii, *Vir. ill.* 23.

²¹⁸ Bringmann (1985, 13); however, in some cases the reclamation of new land requires mostly labour, not money. Labour was usually available in sufficient amounts.

reason for keeping animals. It was the main source of fertilizer in the ancient world, and it was therefore very important that pasture land was available in the near surroundings of private land.²¹⁹

The loss of access to public pasture lands would have had serious consequences for small farmers. Besides the loss of animal products from the beasts grazing on the land, it would have caused a decline in the amount of manure they could obtain.²²⁰ If there was a decrease in the amount of manure and other fertilizers available, arable land would have become less fertile. After a few years the produce from arable land would have declined to a level where it would have become impossible to support a family from a small plot of private land only.²²¹ However, not all land was equally susceptible to occupation by elites: the land held by towns could not be occupied by anyone who wanted to. It was controlled by the town council, which could eject people who occupied it illegally (see Ch. 3.5). State-owned *ager scripturarius* may have been used mainly by rich men during the second century, but it is unlikely that a serious shortage of pasture land occurred in this period. In the *Lex agraria* it was stipulated that small farmers could graze up to ten large and (probably) fifty small animals free of charge; apparently, it was expected that small farmers would have also been able to use it, at least if they lived close by.

All this means that *ager publicus* was important to many small farmers, but also that not all farmers were dependent on the same type of *ager publicus*. Most of them would have mainly used public land belonging to their towns, and maybe some public pasture lands, whether those belonging to the town alone or the state-owned *ager scripturarius*, if there was any nearby. The loss of access to *ager publicus* would therefore have had serious consequences for small farmers, but only in the case of specific kinds of *ager publicus*. *Ager occupatorius*, in the sense of large tracts of arable public land, was not available in many places, especially in central Italy, where the problems of peasant farmers were most serious. Therefore it must be assumed that most small farmers in central Italy were using their own private lands in the second century BC, and this means that their land could not simply have been occupied by the rich, unless the small farmer decided to sell it. It is therefore impossible to maintain the idea that the occupation of *public* land after the Second Punic War led to a 'decline of the small farmer'. However, the loss of

²¹⁹ The animals did not necessarily have to graze on the arable land in order for the manure to be useful; it could also be collected from the pasture land and brought to the arable land in baskets or carts, see Netting (1995, 31).

²²⁰ See Cic. *Quinct.* 6.28 for small farmers being driven from the common land.

²²¹ Yelling (1977, 100–2).

access to land by peasants may have been caused by other factors, which we will investigate in the remainder of this chapter.

4.4. CONSEQUENCES OF PRESSURE ON THE LAND FOR SMALL FARMERS

4.4.1. Population growth and the privatization of common lands

We must now turn to the consequences of the increased pressure on the land which occurred in the second century BC. Even if the loss of access to *ager occupatorius* was not central to the problems of small farmers in this period, the growth of population and the increasing demand for land, which were both especially prominent in central Italy, will have had serious consequences for those farmers who were unable to profit from the increasing wealth flowing into the peninsula.

In many pre-industrial societies a consequence of growing pressure on land is the increasing privatization of common or publicly owned lands. As population grows, competition for land intensifies, and those who hold the land want to secure their rights to it. Access to lands which had been open to common use are increasingly limited, first by setting a maximum on the amount which can be exploited by one person, and then by complete privatization. Whereas at first each person could access the land and exploit as much of it as he wanted, the lands are now demarcated and each person formerly holding rights of access to the common lands receives a share as his private property.²²²

Although this process is visible in many societies, the example which springs most readily to mind is the enclosures in early modern England. Whereas in the Middle Ages much of the land was held in so-called 'common fields', from the thirteenth century the land was gradually privatized. This was a very slow process, which did not end until the nineteenth century; the process was diverse, and it is very difficult to draw general conclusions from the multitude of local developments. Nevertheless, some general trends can be discerned: the two major phases of enclosure, in the Tudor era (late fifteenth and early sixteenth centuries) and the so-called parliamentary enclosures (late eighteenth and early nineteenth centuries), coincided with rapid population growth.

²²² Boserup (1965, 78); Demsetz (1967, 350–9); Libecap (1986, 230–5). A concise overview can be found in Monson (2008, 24–9). See also Roselaar (2009a).

Common lands played a crucial role both in early modern England and in the Roman Republic, but the system of open fields in England was very different from Roman *ager publicus*.²²³ Land in open fields was usually the property of a lord, who rented out the land on long-term contracts. The tenants each rented a private plot, which was clearly demarcated from the plots of others; the arable land was usually not worked by the farmers collectively. The open character of this system of landholding was most clearly visible after the harvest had been taken from the fields. The boundaries between the individual plots temporarily disappeared; the people then let their animals graze on the stubble on the arable fields. There was usually also a considerable amount of land which was fallowed during the whole year, and on this the village flocks were grazed when the crops were still in the fields.

The tenure of a plot of arable land carried with it rights of access to public lands, the commons, which consisted of pasture. Some pastures were meadows of good quality, while others, the so-called wastes, consisted of mountainous or otherwise infertile land. The number of animals a person could keep on the common pasture depended on the amount of arable land he had; however, the maximum was sometimes ignored, which led to overgrazing. There were also common forests, in which the tenants had the right to cut trees and collect fuel and wild foods.

In the Middle Ages most rents of private plots were prolonged indefinitely; the tenant did not have to be afraid that he would lose the land, even if he were unable to pay his rents. This changed in the fifteenth century, when many peasants lost control of the land they had held. Apparently this was the result of population growth: as more and more people needed land, the lords could be stricter with their tenants, evicting those who did not pay their rents. There were enough new tenants to be found, who would willingly pay increasingly high rents.²²⁴

Although enclosures had already taken place in the Middle Ages, their number increased in the fifteenth and sixteenth centuries. The enclosures in this period were a direct result of the population growth which had occurred after the Black Death. Low population immediately after the plague had led to favourable economic circumstances for the survivors, and this had encouraged rapid population growth. However, a century later the limited amount of arable land in England caused problems for the growing population. We see that this development is fairly similar to that for Italy in the second century BC sketched above (Ch. 4.3.5). The enclosures in England were undertaken

²²³ The system of English open fields and common lands is explained in Dahlman (1980) and Mingay (1997, 7–9).

²²⁴ Yelling (1977, 109); Allen (1992, 59).

mostly at the initiative of large landowners, who, with the permission of the government, enclosed the land and forbade their former tenants access to it. Often the enclosed land was turned into pasture, and, since cattle did not need as much labour as agriculture, many peasants migrated from these areas. This led to the depopulation of areas specializing in cattle breeding (see Ch. 4.3.2).²²⁵ Thus population growth led to the privatization of common lands, but, conversely, regional specialization sometimes led to depopulation of specific areas. The government recognized the problems this created, and tried to protect small farmers against loss of land by giving them security of possession on their land.²²⁶

In the period 1750–1850 the population of England grew at an unprecedented rate of 1 per cent per year.²²⁷ This was the period of the parliamentary enclosures, when all remaining common lands were enclosed at the instigation of the government, in the hope that enclosed land would be worked more efficiently and therefore would produce more food. The common fields were distributed and privatized, and all land which was even remotely suitable for agriculture was brought under cultivation.²²⁸ The reactions to the enclosures in this period were remarkably like those in the Roman Republic: some writers bewailed the decline in population, arguing that because the land was appropriated by the rich there was nothing left for the poor, hence causing depopulation. It was even feared that this would cause a shortage of soldiers, just as in Italy. In reality, the population was growing at an unprecedented rate in the eighteenth century, but, just as in Roman Italy, this was not perceived by most members of the ruling class. Enclosure did not cause the depopulation of country; even in enclosed villages, population continued to rise.²²⁹

In many other European countries similar developments occurred. In Germany, for example, population rose quickly after 1750, and much public land (*Marken*), which had been used as pasture, for cutting turf, and for illegal occupation by the poor, was turned into private land.²³⁰

²²⁵ Yelling (1977, 191, 217); Dahlman (1980, 167); Grigg (1980, 88); Allen (1992, 32–4). Van Bavel (2001, 23–31) shows how in parts of the Netherlands in the sixteenth century, a period of population stagnation, land was accumulated by large tenant farmers, who took access to it away from peasants. This then led to further population decline, as peasants migrated away or had fewer children. This shows that even in situations of low population pressure, land rights can still become more strictly delineated, if commercial farmers see a reason to accumulate land (e.g. growing markets in other, more densely populated regions).

²²⁶ Allen (1992, 66–8).

²²⁷ Yelling (1977, 2); Grigg (1980, 2).

²²⁸ Grigg (1980, 216).

²²⁹ Yelling (1997, 223); Neeson (1993, 13, 22–3).

²³⁰ Brakensiek (1991, 21).

The problems of possession for the early modern poor were often similar to those in Roman Italy. In theory all people leasing a private plot of land received a part of the commons as their private property when the land was enclosed. However, many people could not show evidence that they had a right to access the commons, because their leases had been renewed for many generations and the original titles had been lost. There were also people who had simply worked common lands without being entitled to do so. Others did not have any private arable land and had been totally dependent on the commons for their survival. All these people had no right to a private plot of land upon enclosure. Furthermore, in many cases the amount of (formerly common) pasture received by the peasants as private plots was so small that it was insufficient to feed a family. To make matters worse, they also lost the rights of gleaning (collecting the remains of the harvest from the open fields) and of cutting firewood and gathering wild foodstuffs from common forests, which were now privatized. The privatization of common lands in England therefore had very serious consequences for small farmers, because their own private holdings were not large enough to provide enough food.²³¹ Many farmers decided to sell their insufficient plots and move to the cities looking for wage labour. Thus a combination of population growth and loss of common rights caused a growth of the landless population, and thereby a decline in the living standards of many people.²³²

There are considerable similarities, but also important differences between early modern common lands and Roman *ager publicus*. In early modern Europe arable open fields were usually the property of a lord, who rented out land to his tenants. In Roman Italy the functions of the lord were performed by cities, which owned both arable lands available for rent by the inhabitants of the city, and pasture, open to all inhabitants. English commons can therefore best be compared to Roman *ager compascuus*, which was used as pasture land by a specific group. However, town lands were not privatized in the Republic; the privatization process taking place in this period pertained only to state-owned *ager publicus*. Nevertheless, there is evidence that cities became stricter in who was admitted to their public lands, a logical development in case of population growth. Communities clearly became more adamant in restricting access to the inhabitants of their own city only. From the *Sententia Minuciorum* it appears that people not belonging to the Genuates or the Langenses were forbidden to use the public land belonging to these two communities (Ch. 3.5). The *Lex Coloniae Genetivae* likewise specifies that

²³¹ Allen (1992, 287); Neeson (1993, 159–69); Mingay (1997, 93).

²³² Yelling (1977, 100); Dahlman (1980, 182); Allen (1992, 99); Neeson (1993, 249); Mingay (1997, 127).

access to ‘whatever rivers, streams, fountains, pools, ponds or marshes there are within the land, which shall have been divided among the colonists of the colony’ were only accessible to ‘those who shall hold or shall possess that land’, apparently including *incolae*, but not those who did not live in the territory of the colony.²³³

In early modern Europe there was no such thing as arable *ager publicus* belonging to the state, the equivalent of Roman *ager occupatorius*. There were wastelands, such as mountain ranges and swamps, which were not claimed by any village, but these were not suitable for agriculture. In this they differed from the Roman *ager occupatorius*, which was often suitable for agriculture. Roman *ager occupatorius* also differed from early modern examples in another important aspect: whereas modern common lands were usually not inhabited, but used only for pasture, this was not the case with Roman public land. *Ager occupatorius* was usually not empty, but in many cases was used by the people from whom it had been confiscated. Its distribution was therefore a solution for the growing Roman population, but was dangerous for the allies, some of whom lost an important part of their lands (see Ch. 5.2.4).

Notwithstanding the differences between Roman and early modern privatization processes, the most important parallel between early modern common lands and Roman *ager publicus* was the increasing privatization in situations of growing pressure on the land. It was in the third century BC and again in the Gracchan period that the public status of land came to be recognized as unsatisfactory, and that large areas of land were distributed as private property. In this way developments in the second century were very similar to those in early modern societies: pressure on the land led directly to the privatization of public land. Privatization of public land was not simply the result of the ‘greed of the rich’, who were trying to monopolize all the land for their selfish gains. Instead, it was a logical conclusion of increased demands placed on scarce resources; the wish of commercial producers to acquire more land undoubtedly played a role, but this was a logical consequence of the growing market and not due to a decline in the morals of the rich, as the sources would have it. However, it is clear that we should distinguish between *ager occupatorius* and other forms of public land.

²³³ *Lex Coloniae Genetivae* 79: *Qui fluvi rivi fontes lacus atque stagna paludes sunt in agro, qui colon(is) h[ui]usc(e) colon(iae) divisus erit, ad eos rivos fontes lacus aquasque stagna paludes itus actus aquae haustus iis item esto, qui eum agrum habebunt possidebunt.* For the inclusion of *incolae*, see Liebenam (1900, 15).

4.4.2. Alternative survival strategies for small farmers

Apart from the gradual privatization of *ager publicus*, pressure on the land had other consequences which became apparent in the second century. Even if the accumulation of public land by the elite was not a direct cause of economic insecurity for most small farmers, they still experienced serious problems. Population growth and the accumulation of (private) land led to a shortage of land for many farmers in central Italy. Under such conditions small farmers had various other strategies to which they could resort to ensure sufficient income.²³⁴

The first would have been working the existing arable land more intensively.²³⁵ However, most methods for raising production, such as technical innovation, were inaccessible to small farmers because of the cost.²³⁶ The only realistic method available to small farmers was to increase the amount of work done on the land; however, this would have raised production only to a certain level, and this would be inadequate if the population continued to grow.²³⁷

Another option would have been to increase the amount of land used for agriculture.²³⁸ In fact, there are some indications that in the second century BC reclamation of land was pursued: in 164 BC 'the Pomptine marshes were drained by consul Cornelius Cethegus, to whom this task had been assigned, and converted into arable land'.²³⁹ Archaeological research shows that from the late third century, and especially in the second, more land became available for settlement and agriculture than in earlier periods.²⁴⁰ However, at the end of the second century, there was probably not much 'marginal' land left available for reclamation, at least in central Italy.

²³⁴ See Erdkamp (2005, 79–95); De Ligt (2006, 6–15); Hin (2009, 102–3).

²³⁵ Yelling (1977, 144); Grigg (1980, 22); Mingay (1997, 143).

²³⁶ Allen (1992, 86–7, 212–18).

²³⁷ Brenner (1976, 13–14); Grigg (1980, 36). For the ancient world, see Frier (2001, 159).

²³⁸ This occurred in many early modern societies having to deal with population increase, e.g. the Netherlands in the sixteenth century: Grigg (1980, 149–50).

²³⁹ Liv. *Per.* 46.15. However, Cass. Dio 45.9.1 refers to the distribution of the Pomptine marshes by Antony in 44 BC 'since these had already been filled in and were capable of cultivation'; it is not clear to which reclamation this refers. Cato *Agr.* 139–41 describes the rituals involved in clearing new fields; see also Pall. 1.6 and 6.3 and Lucr. 5.1440–1.

²⁴⁰ For example, in the 290s the Lacus Velinus in Sabinum had been drained, Cic. *Att.* 4.5.5. See Cambi (2002, 142) for Cosa; Arthur (1991a, 41) for Campania; Tagliamonte (1996, 36) for Samnium. For drainage of swamps in Cisalpine Gaul see Strab. 5.1.11 and White (1970, 170). However, even in the first century there were still many swamps in the area, as attested by the account of the Battle of Mutina in 43 BC, see App. *BC* 3.66; Strab. 5.1.5, and Corti (2004, 83). See Witcher (2005, 135) in general on deforestation in the *suburbium*.

It can be expected that when a population grows, landholdings will become more and more fragmented—at least when partible inheritance is practised, as in Roman society—since more people need a piece of land.²⁴¹ References to fragmentation of land, for example to people owning ‘one half of a field’ are abundant in the Digest²⁴² and in the Table of Veieia.²⁴³ For the second century BC there is no conclusive evidence of fragmentation, but it is plausible that the process of accumulation of private land was preceded by a process of fragmentation of land owned by small farmers. When the population grew during the second century, initially the land may have become more and more fragmented, since existing resources had to be shared among a growing number of people. The logical consequence was increasing underemployment among small farmers.²⁴⁴ When this process continued for some time, many farmers found their holdings insufficient, and may have decided to sell them. Many of them will actually have welcomed this possibility, because high demand for land in the *suburbium* will have ensured that even a small plot would have fetched a reasonable price,²⁴⁵ and the city of Rome seemed to offer better chances for many small farmers teetering on the edge of subsistence. Under these circumstances, the rich would have been able to accumulate arable land in the vicinity of Rome.

Those farmers who lost all or most of their land could try to support themselves by wage labour, even though this was difficult.²⁴⁶ There is ample evidence to show that the temporary labour of free men was very important to large estates. Cato was heavily dependent on free labour, mostly for such seasonal work as harvesting, but many other tasks could be done by hired

²⁴¹ Brenner (1976, 24); Gallant (1991, 41–3). For the ancient world see Garnsey (1988a, 49); Evans (1991, 105). Colonization of new land, achieved in the Republic by establishing colonies, could prevent fragmentation of parents’ estates, see Foraboschi (1992, 102). Erdkamp (2005, 73) points out that fragmentation of landholdings is an important strategy to spread risks; if the crop on one plot is destroyed, the others will still produce; see Plin. *Ep.* 3.19. However, in that case the landowner can still possess a large aggregate amount of land (Ch. 4.3.1).

²⁴² Quite a number of these refer to the Republic, e.g. 31.86.1, 31.88.6, 31.89.4, 32.93.5 (all Scaevola), 32.29.4 (Labeo). Others from later periods confirm this picture: D.18.1.79, 35.1.56 (both Iavolenus), 30.8.pr (Pomponius), 31.77.25–8 (Papinianus), 32.94 (Valens), 33.2.26.1 (Paulus), 39.6.20, 41.4.7.1 (both Iulianus).

²⁴³ *Tab. Vel.* 1.19, 1.23, 1.25, 1.28–9, and *passim*.

²⁴⁴ The presence of underemployment appears, for example, from Plin. *HN* 18.7.38: ‘Good farming is essential, but superlative farming spells ruin, except when the farmer runs the farm with his own family or with persons who he is in any case bound to maintain.’ See Erdkamp (2005, 84).

²⁴⁵ Boren (1968, 21); Badian (1972, 683). Toynbee (1965, ii. 165) assumes land was cheap because of the decline of the small farmers; however, it is not clear how the ‘decline of the small farmer’ would have led to a lower land price.

²⁴⁶ Wage labour was seasonal, and it is unlikely that one season of work could sustain a man throughout the whole year, see De Ligt (2006, 7–8); Erdkamp (2008, 430).

labourers as well.²⁴⁷ This work was regulated by middlemen, who organized groups of labourers to work on the lands of those who needed extra hands. Cato describes how such labourers were recruited: 'Sufficient gatherers and pickers must be provided: if they are not, any supplied or hired by the owner will be deducted. . . . [The contractor] is to provide fifty hard workers.'²⁴⁸ This shows that the management of such workers could be a profitable business, suggesting that it was widespread in the Republic. It also shows that small farms simply could not disappear completely as a result of the accumulation of land by the rich; large farmers needed free labourers living in the vicinity to work their land (Ch. 4.3.4).

Cities also offered many employment opportunities, especially during the first half of the second century. This period saw a large increase in the construction of monumental and/or utilitarian public buildings, not only in Rome, but also in many other cities, and this could have provided labour for a great number of workers.²⁴⁹ On the other hand, job opportunities declined in the later second century, at least in the city of Rome itself. It seems that after 140 there was a considerable decline in the number of public works being executed in Rome, which would have led to a shortage of work for the city population.²⁵⁰ There were of course many other possibilities for wage labour in the city, for example harbour work as porters, food-sellers, etc., but construction seems to have been the most important economic sector to find work, and a significant decline in this would have had serious consequences for wage

²⁴⁷ Cato *Agr.* 14–16, 21.5, 22.3, 135–7, 144; Plin. *HN* 14.3.10; Var. *R.* 1.17.2–3. Var. *R.* 1.16.4 states: 'For this reason farmers in such circumstances prefer to have in the neighbourhood men whose services they can call upon under a yearly contract—physicians, fullers, and other artisans—rather than have such men of their own on the farm; for sometimes the death of one artisan wipes out the profit of a farm.'

²⁴⁸ Cato *Agr.* 144.3. See for the contracting out of various jobs also 1.3, 2.6, 4.4, 13.1, 14–16, 21.5, 136–7, 144.1, 145.1. The Emperor Vespasian's great-grandfather was a contractor for seasonal labourers who travelled between Umbria and Sabinum, Suet. *Vesp.* 1.4. See White (1970, 349); Gabba (1979b, 35); Garnsey (1979, 10; 1980, 36); De Neeve (1984, 31); Spurr (1986, 135–43); Erdkamp (2005, 81–7).

²⁴⁹ In Rome e.g. the Emporium, various *horrea*, the Macellum, and the Porticus Aemilia, see Liv. 40.51.3–9. See Brunt (1980); Rickman (1980, 46–7). Other places saw an increase in public works as well, e.g. Ostia, Cosa, Pisaurum, and Sinuessa, see Liv. 41.27.5–12. Bernstein (1969, 12–13) argues that those employed in such work were usually slaves, which would have meant less work for free labourers. There were indeed slave-owners who rented out their slaves, see Plaut. *Vid.* 25–8, but see D.19.2.30.3 (Alfenus) for the importance of free labour in building.

²⁵⁰ Boren (1958, 896; 1968, 41–2). Coarelli (1977, 7–18) argues that the gaps in activity between 138–132 and 132–125 were too short to cause much unrest, but combined with rising prices six years of decreasing job opportunities could have caused serious problems for many people dependent on wage labour. The fact that shortages in labour opportunities were not equally spread over the years does not mean that they would have had the same impact each time; if more people still owned their own land or could acquire new land earlier in the second century, the absence of wage labour would have been less of a problem.

labourers. The fact that Gaius Gracchus introduced the first regular sale of grain at a reduced price to Roman citizens may indicate that at this time many of them found it difficult to make ends meet.²⁵¹

Another obvious possibility for wage labour was military service. Contrary to the traditional idea, the prolonged absence of small farmers in the army was not a cause of the decline of the peasant farmer. In fact, military service formed an essential way to gain extra income for many families with adult sons.²⁵² However, although wars in the early second century brought in booty and riches (see Ch. 4.3.5), and many soldiers received land in colonies after their discharge, as the century progressed wars became less profitable. Especially in the Spanish wars the chance of profit was small and the chance of dying great. References abound to evasion of service, desertion, and lack of morale for the later second century.²⁵³

A fifth possibility would have been to work someone else's land as a tenant. The importance of tenancy in the second century has often been disregarded, since there are hardly any direct references to its presence.²⁵⁴ Some, however, have argued that tenancy became increasingly important in the second century; it is possible, for example, that when colonization stopped in the 170s, tenancy became more important.²⁵⁵ Legal instruments concerning tenancy were created in the period shortly before 100 BC, which provides a clue to its

²⁵¹ Liv. *Per.* 60.7; Cic. *Sest.* 25.55; *Schol. Bob. Sest.* 55, 103.

²⁵² De Neeve (1984, 39); Erdkamp (1998, 261–5); Rosenstein (2004, 80–93); De Ligt (2006, 7–8). Brunt (1988, 77) thinks military service only became important as a profession after the Marian reform, but there is no reason why it should not have been so earlier.

²⁵³ See Polyb. 35.4.4–5 and Liv. *Per.* 48.17 for officers shirking their duties; for soldiers, see App. *Hisp.* 49; Lucil. 15.509–10. Desertion is mentioned in Liv. *Per.* 55.2; App. *Hisp.* 73, 79, *Pun.* 130–1; Front. *Strat.* 4.1.20. Lack of morale in the Spanish army is recorded in App. *Hisp.* 84; Plu. *Apophth. Scip. Min.* 16 (*Mor.* 201C). Some reports of protests about service date from earlier in the second century (Liv. 30.43.13, 34.56.9–11, 39.38.6–12, 43.14.2–15.1), but the fact that, despite their lack in Livy for the later second century, the number of references to evasion of service in the later second century outnumbers those from the beginning points to the greater importance of this phenomenon later. See Toynbee (1965, ii. 92–9); Shochat (1980, 58); Evans (1988); Rosenstein (2004, 53–4); De Ligt (2004, 743–4). Erdkamp (2006, 48) argues that increased urbanization in the later second century created alternative sources of income, and that for middle-class farmers military service had become a burden instead of an opportunity, since the rate of underemployment was lower than in the early second century. However, it may be that urbanization increased because military service became less popular. If this is correct, the declining opportunities for wage labour in the period before 133 must still have constituted a problem for the urban population.

²⁵⁴ White (1970, 404–5); Hopkins (1978, 23); Rosafio (1993, 16).

²⁵⁵ Tenancy seems to be recorded in Ter. *Phorm.* 361–2, 663–4, *Ad.* 950. The presence of tenancy in the second century is supported by Toynbee (1965, ii. 176); Bernstein (1969, 69; 1978, 92); Brunt (1971, 353); De Neeve (1984, 74–80); Launaro (2008, 165–72). Rosenstein (2004, 181) remains critical about the importance of tenancy in the second century.

growing importance in this period.²⁵⁶ However, if land became increasingly scarce, there may not have been enough land for all small farmers to rent a piece.

We can see, therefore, that there were many possibilities for employment for those who did not own their own land. This may have been one of the main reasons for small farmers to sell their land: because land was in high demand among commercial producers, it would fetch an attractive price. At the same time, there were sufficient alternative methods of subsistence for those who did not own land. However, in the period shortly before the Gracchan period such opportunities seem to have become increasingly difficult to find. At the same time the population continued to grow and the amount of land available did not increase sufficiently, which led to a decline in living standards among many small farmers and landless citizens.²⁵⁷

4.5. CONCLUSION: REGIONAL VARIATION IN THE USE OF *AGER PUBLICUS*

We have seen that a combination of population growth and increased competition for land among those producing for the market could lead to serious problems for the small farmers living in central Italy. Whereas in the first half of the century most people in Italy had been reasonably well off, a change set in around the middle of the century. The situation became untenable shortly before the Gracchan period: although the growth of the city of Rome had continued unabated, there had been no new colonies for almost forty years; hence the number of people sharing the scarce resources of central Italy mounted. This probably led to the fragmentation of the land belonging to small farmers, while in the second half of the century alternative sources of income became increasingly scarce for the population to support itself. The sources describe a large urban and rural proletariat, and although the extent of the proletarianization of the Roman free citizen has often been exaggerated in modern literature, there is some truth in the picture painted by the sources.

²⁵⁶ De Neeve (1981, 29–33); De Ligt (2000, 382–8; 2006, 8–12).

²⁵⁷ Hin (2009, 199–207). Perelli (1993, 90) argues that this was mainly a problem of perception, caused by economic growth: what initially had seemed sufficient now was no longer enough; however, in fact many citizens faced real problems of subsistence. See Jongman (2007, 607–15) for living standards in the early Roman Empire, which seem to have been high, even though this was a period of unprecedented population density in Italy. Scheidel (2007, 61) is critical of possibilities to establish living standards.

In the later second century, therefore, many Roman citizens experienced a decline in their economic and social well-being. However, I have argued that this phenomenon was limited to a small part of Italy, namely central Italy, where the presence of a quickly expanding market made sure that land was in high demand. It is very possible that the demand for land among the elite in this area grew, and that this led to increasing accumulation of the land in the hands of people engaged in commercial agriculture. The social problems identified by the Gracchi were real, but they were limited to central Italy, where demand for land was already larger than the amount available in the mid-second century.²⁵⁸ Contrary to what is stated in some of the sources and in many modern publications, however, the land accumulated was not *ager publicus*, but mainly the private land of small farmers. The eagerness of those interested in commercial agriculture to acquire land in central Italy had enabled many poor peasants to sell their small plots of land at favourable prices and move to the city. This development has often been termed ‘the decline of the small farmer’, and although it is by no means the case that all small farmers disappeared or experienced difficulties, the number of those who did increased, leading to the proletarianization of a considerable number of Roman citizens. Therefore the real problem was and remained lack of access to land, and this could not be solved unless some way was found to supply all Romans and Italians with land or adequate alternative sources of income. In short, we may say that *ager publicus* was not the *cause* of the problems of small farmers in the second century, but that its distribution was seen as an—at least temporary—*solution* to these problems.

Faced with the evidence of a declining census figure and a growth of the (urban and rural) proletariat, the Gracchi understandably drew the conclusion that many people were unable to make a living for themselves. However, they misunderstood the exact causes of this problem. The Gracchi, perhaps influenced by agitation aroused by *ager publicus* in the early Republic, thought the proletarianization of the small farmer was caused by the poor being driven off the public land by the rich. Moreover, the solution of the problem was sought in the distribution of *ager publicus*, which may have been an additional reason for the importance of this kind of land in the analysis of the problem: to make its distribution more attractive, *ager publicus* had to be presented as central to the cause of the problems. The idea in the sources that *ager publicus* was the *cause* of the problems may have been introduced mainly by the

²⁵⁸ Several scholars have argued that Italy reached its carrying capacity in the first century AD, e.g. Lo Cascio (1999, 123), Frier (2001, 142), and Morley (2001, 59), but for central Italy the strain may have begun to show already in the mid-second century BC, as suggested by Lo Cascio (2004, 141–2); however, he is talking about Italy in general and not the central region specifically.

Gracchan rhetoric, which presented the situation of the second century in this light.²⁵⁹ The Gracchi also claimed that the lack of land had caused the population to decline, an idea inspired by the declining census figures. This analysis of the problem led the Gracchi to look for possibilities to stop the proletarianization of the small farmer. The solution they proposed was logical, considering their assumption that the occupation of the public land by the rich was the source of the problem: *ager publicus* should be distributed to the poor, who should be given secure rights of tenure on their own plot of land, in order to prevent the rich from taking it away from them. Hence, the economic and social problems of the later second century directly resulted in to the privatization of *ager publicus*, a process to which we shall turn in the next chapter.

²⁵⁹ Gabba (1977, 270).

The Gracchi and the Privatization of *Ager Publicus*

5.1. INTRODUCTION

In the previous chapter we have seen that in the later second century some small farmers faced serious problems of subsistence. Around 140 BC a first attempt to improve the situation of the small farmers was made by the consul C. Laelius. Unfortunately, the nature of his activities is not mentioned; we may surmise that they had something to do with land distribution, since they incurred the anger of the ‘powerful’.¹ However, it was not until the tribunate of Tiberius Gracchus in 133 that a significant attempt was made to improve the position of the impoverished citizens. His proposal constituted a radical new solution to the problem: the distribution to the poor of *ager publicus* possessed above a limit set by law on the amount of land one man could hold. In 123 his brother Gaius Gracchus again attempted to distribute land to those who did not have sufficient means of subsistence.

The period of the Gracchi was of paramount importance for the history of the Republic, not only with respect to configurations of landholding, but for society in general: this period was considered by many contemporaries to have been the first time that violence was used against political adversaries.² Both Tiberius and Gaius Gracchus lost their lives at the hands of their opponents, without serious consequences for those responsible for their deaths. From now on violence was considered a normal weapon against political enemies, as would become clear in the course of the first century.

¹ Plu. *TG* 8.5: ‘Scipio’s friend Gaius Laelius took on the job of rectifying the situation, but faced with powerful opposition he became worried about the disruption his measures might cause and put an end to his programme of reform.’ The ‘powerful opposition’ (*δυνατοί*) are not necessarily the same as the rich possessors, since there may also have been Senators and other influential men who did not possess large tracts of *ager publicus*, but opposed Laelius all the same, for example because they feared the influence he would gain by distributing land.

² App. *BC* 1.2: ‘No sword was ever brought into the assembly, and no Roman was ever killed by a Roman, until Tiberius Gracchus, while holding the office of tribune and in the act of proposing legislation, became the first man to die in civil unrest.’ See DH 2.11.3.

For our purpose the consequences of the Gracchan land reforms for landholding patterns are the most important issue. To begin with, the reforms of 133 caused a revolution in the system of landholding and were the beginning of the end for arable *ager publicus*. The Gracchi chose to privatize, or at least to create security of tenure on, much of the former public land. Furthermore, the distribution of *ager publicus* previously held by allies constituted a crucial revision in the relationship between Rome and her allies, and struggles over the possession of this land would form one of the main causes of the Social War. For many years *ager publicus* had been regarded as a sort of *beneficium* to the allies, who had been allowed to continue to work the land which had been confiscated from them (Ch. 2.5.2). But with the increasing pressure placed on land in general, and on *ager publicus* in particular, the Romans now intended to use the land that was theirs by law. This meant that the allies lost the land they had previously held. But it was also dangerous for the Roman state itself: since the allies now had nothing more to lose, they were more inclined to rebel against Roman rule, which they indeed eventually did.

In this chapter, I will investigate the Gracchan agrarian laws and their consequences. I will show how the measures presented by the Gracchi evolved logically from the economic developments described in Chapter 4, and how the Gracchan period radically transformed the legal conditions of possession of arable *ager publicus*, ushering in its eventual disappearance. This privatization process can therefore be considered a direct consequence of the social and economic problems of poor Roman citizens. However, eventually the Gracchan reform proved inadequate to solve these problems, and discussions over public land continued into the first century.

Because many issues concerning the Gracchan land reforms and their aftermath are still hotly debated, the first necessary step is to investigate exactly what happened during and after their activities. In my view, many of the issues under debate can be satisfactorily resolved by looking at evidence other than literary sources. Paramount here is the *Lex agraria* of 111 BC, which gives very detailed regulations on *ager publicus*. I will investigate who exactly benefited and who suffered from the land reforms, and what legal position was granted to Gracchan settlers and to those holding *ager publicus* before 133, the *veteres possessores*. I will also examine what happened to the Gracchan laws after the deaths of the Gracchi and what role was played by the post-Gracchan legislation in the ongoing process of privatization. Finally, I will discuss the role played by new controversies concerning arable *ager publicus* in the outbreak of the Social War, and trace its eventual disappearance in the first century. This will show that the period 133–111 BC was crucial

in the transformation of arable *ager publicus* into private land: even though *ager publicus* still existed after 111, the Gracchan period formed a clear dividing line in the history of public land.

5.2. THE AGRARIAN REFORMS OF THE GRACCHI

5.2.1. The Gracchan land reforms: introduction

When Tiberius Gracchus was elected *tribunus plebis* late in 134 BC, the economic situation in the city of Rome and the surrounding countryside had been deteriorating for some time. As we have seen in the previous chapter, in the period between 140 and 133 few public works had been undertaken in Rome, and those depending on wage labour for their support may therefore have had fewer opportunities to gain an income in this period. It is also likely, though impossible to prove, that grain prices were high at this time because of the slave rebellion in Sicily from 137 to 133 BC, which hindered the transport of grain to Rome.³ The combination of population growth and declining willingness to serve in the army (see Ch. 4.3.5 and 4.4.2) would have caused more and more people to seek their livelihoods in Rome or other cities in Italy, but in the period shortly before Tiberius Gracchus' tribunate the possibilities for these people to support themselves seem to have been smaller than in the decade before.

Not all landless farmers came to the cities; many chose to remain in the countryside and tried to make a living in other ways. However, we have seen how the large number of people remaining in the countryside, combined with the absence of colonization and the increased demand for land needed for commercial agriculture, may have caused an oversupply of labour in the country, which made it difficult for the rural poor to support themselves. A situation in which both the rural and the urban poor were having problems of subsistence would have presented an ideal opportunity for a social reformer to gain support.

The exact timing of the reforms depended on the personality of Tiberius Gracchus himself, who was willing to risk his reputation and eventually his life in order to reach his goals. Whether he was really motivated by the misery of the poor, or was only looking for a possibility to make a name for himself,

³ Boren (1958, 897–8); Badian (1972, 679).

especially after the damage his reputation had suffered in the Numantia affair,⁴ is not immediately relevant to our discussion.

At first Tiberius Gracchus found support mainly among the rural poor, who would profit greatly from land distributions: 'Another large group [other than rich possessors of public land], composed of people from the colonists, or from states enjoying equal political rights (*ἰσοπολίτισιν*), or who had in some other way a share in this land, and had similar reasons for being afraid, came to Rome and gave their support to one side or the other.'⁵ It should be noted that not all rural dwellers came to Rome to support Tiberius; some actually came to oppose him. Still, it is likely that the rural poor were more interested in Tiberius' reform plans than the urban plebs. His first law aimed only at land distribution, which may have been of little interest to the urban plebs, for whom the law did not propose any specific measures. It was the rural poor, who had only recently lost access to land and now tried to make do on small private plots, perhaps supplemented by wage labour or by tenancy, who welcomed new land of their own.

When he attempted to be re-elected, Tiberius still counted mainly on the support of the rural poor, but this policy failed: he 'summoned the country people to come to vote; but they were busy with the harvest, and so under pressure from the short time still remaining before the day fixed for the election he resorted to the city population'.⁶ However, this was not enough to secure his election as tribune for a second time. Since the support of the rural plebs had turned out to be insufficient to secure Tiberius' re-election, from the beginning Gaius Gracchus paid much less attention to the land problem, and tried to attract support among a wider segment of society. He won his second tribunate by promising distributions of grain at a reduced

⁴ See for this Cass. Dio 24.83.2; Oros. 5.8.3; Vell. 2.2.1; Cic. *Har. Resp.* 20.43, *Brut.* 27.103–4; Flor. 2.3.14.2–3. For the role of this affair in Tiberius' motivation, see Bernstein (1978, 69); Bleicken (1988, 271–4). Tiberius may also have been influenced by Stoic philosophers, who were in favour of an equal distribution of land to citizens. According to Plu. *TG* 8.4–5 he maintained friendly relations with some philosophers, who may have given him the idea to attempt such a distribution in Roman Italy.

⁵ App. *BC* 1.10, see also Diod. Sic. 34/35.5.1. See Boren (1968, 89); Bernstein (1969, 49–58; 1978, 69); Nicolet (1967, 203; 1977, 127).

⁶ App. *BC* 1.14; Plu. *TG* 16.1–2. Heftner (2006, 55) argues that it is unlikely that the farmers did not want to come to Rome to support Tiberius, since the long-term advantages of the law were more important than the current harvest. However, it is extremely unlikely that farmers would neglect the harvest in order to vote for a law which was not certain to give them any tangible advantages. Ikeguchi (1999–2000, 30) assumes these people were city dwellers who had gone out to the countryside to work on the land, but this is not necessarily the case: for the first election it is stated explicitly that many country dwellers came to the city to vote. It is noteworthy that one of Tiberius' proposals was to reduce the length of military service (Plu. *TG* 16.1); clearly the heavy demands made of soldiers were considered a problem (cf. Ch. 4.4.2).

price,⁷ a measure clearly aimed at gaining the support of the city population instead of the rural poor.

Consequently, it seems that the situation of the rural poor by 133 had deteriorated enough to make them come to Rome at least to support Tiberius' first proposal for an agrarian law. Considering the problems they had to face, especially fragmentation of landholdings and a shortage of work in the countryside, it is not surprising that many farmers without land or with plots of insufficient size were eager to acquire new lands with which they could support a family.

5.2.2. The aims of the Gracchan land reform

The reform of Tiberius Gracchus was mainly supposed to benefit the rural poor. To understand the relationship between the problems threatening the Roman farmer and the solution proposed by the Gracchi, we must find out how Tiberius Gracchus perceived the situation of Italy in his time. What problems did he consider the most pressing, and what solutions did he propose?

To answer this question the accounts of Appian and Plutarch prove to be especially useful. As we have seen (Ch. 1.3), it has often been argued that they are unreliable as sources, since they are influenced by 'Gracchan propaganda' and therefore do not present an objective picture of the second-century situation. However, the statements in these works do give a good picture of how the Gracchi themselves presented the situation.

Plutarch describes the problem as follows:

The dispossessed poor lost any interest they might have had in performing military service, and could not even be bothered to raise children, with the result that before long all over Italy there was a noticeable shortage of free men for hire, while the place was teeming with gangs of foreign slaves, whom the rich used to cultivate their estates instead of the citizens they had driven away.⁸

Appian likewise explains:

For these reasons the powerful were becoming extremely rich, and the number of slaves in the country was reaching large proportions, while the Italian people were suffering from depopulation and a shortage of men, worn down as they were by

⁷ App. BC 1.21. See Ch. 4.4.2.

⁸ Plu. TG 8.3: *ἐξωσθέντες οἱ πένητες οὔτε ταῖς στρατείαις ἔτι προθύμους παρείχον ἑαυτούς, ἡμέλων τε παίδων ἀνατροφῆς, ὥστε ταχὺ τὴν Ἰταλίαν ἅπασαν ὀλιγανδρίας ἐλευθέρων αἰσθέσθαι, δεσμωτηρίων δὲ βαρβαρικῶν ἐμπεπλήσθαι, δι' ὧν ἐγεώργουν οἱ πλούσιοι τὰ χωρία τοὺς πολίτας ἐξέλασαντες.*

poverty and taxes and military service. And if they had any respite from these tribulations, they had no employment, because the land was owned by the rich who used slave farm workers instead of free men.⁹

In both cases the problem can be summarized as follows: the poor were driven off the (public) land by the rich, who cultivated their large estates with slaves, so that the poor were excluded from opportunities for wage labour. The people were reluctant to have children they could not feed, which led to a decline of the number of free citizens, a decline in the number of available soldiers, and general misery among the poor.

Plutarch quotes from a famous pamphlet written by Gaius Gracchus:

While Tiberius was travelling to Numantia through Etruria he saw how the land had been abandoned, and how the only people farming or cultivating the land were slaves introduced from abroad, and it was then that he first conceived the idea of the policies which would cause him and his brother such endless trouble.¹⁰

He also quotes a speech of Tiberius:

The wild animals of our Italian countryside have their dens. Each of them has a place of rest and refuge, but those who fight and die for Italy have nothing—nothing except the air and the light. Houseless and homeless they roam the land with their children and wives . . . They fight and die to protect the rich and luxurious lifestyle enjoyed by others. These so-called masters of the world have not one clod of earth that they can call their own.¹¹

It appears therefore that the Gracchi identified a lack of access to land as the main problem: the poor had no land to call their own, since it was all occupied by the rich, who worked it with slaves. It would make sense to conclude that this situation could be remedied by supplying the poor with a plot of land of their own, which was what Tiberius attempted to do. This would in turn raise the number of soldiers available for the army: by making sure the poor were eager to raise children, the number of soldiers would eventually rise as well. The restoration of Roman manpower can therefore be considered the most important aim of the Gracchan reform.¹²

⁹ App. BC 1.7: ἀπὸ δὲ τούτων οἱ μὲν δυνατοὶ πάμπαν ἐπλούτουν, καὶ τὸ τῶν θεραπόντων γένος ἀνὰ τὴν χώραν ἐπλήθυσεν, τοὺς δ' Ἰταλιώτας ἀλιγότης καὶ δυσανδρία κατελάμβανε, τρυχομένους πενία τε καὶ ἐσφοραῖς καὶ στρατείαις. εἰ δὲ καὶ σχολάσειαν ἀπὸ τούτων, ἐπὶ ἀργίας διετίθεντο, τῆς γῆς ὑπὸ τῶν πλουσίων ἐχομένης καὶ γεωργοῖς χρωμένωνν θεραπείουσαν ἀντι ἐλευθέρων.

¹⁰ Plu. TG 8.7.

¹¹ Plu. TG 9.4.

¹² Gabba (1956, 42); Badian (1972, 682); Molthagen (1973, 444); Rosenstein (2004, 165).

Some scholars maintain that there was no real shortage of manpower, and that therefore the purpose of the Gracchi was not so much to raise the number of soldiers, as to stimulate the citizen population to reproduce, and thus to increase the number of citizens.¹³ Appian and Plutarch consistently state that one of the most serious consequences of the land shortage was the inability of the free population to raise children. However, besides possible ideological reasons to promote the continuous growth of the population (Ch. 4.2), the main reason for concern about the declining population seems to have been the fact that this led to a decline in the number of soldiers. Appian starts out by explaining that the state feared a shortage of soldiers, even if it sounds as if this problem occurred only among the allies (BC 1.8): ‘Under these circumstances the Roman people became concerned that they might no longer have a ready supply of allies from Italy.’ After the failure of the Gracchan reform Appian states that the rent introduced by Spurius Thorius ‘did nothing to increase the population’, and ‘the people had been deprived of absolutely everything. For this reason the number of both citizens and soldiers diminished still more’ (1.27).

It is not strange that the Gracchi would have thought that the number of free men, and therefore the number of those who could perform military service, was declining. We have already seen that in the early second century the census figures may have been used as a policy-making tool: as long as the population remained low, land distributions were carried out to enable the population to grow; when it had reached a satisfactory number such distributions were terminated. When we look at the census figures for the mid-second century, we can see that they had been falling slowly for about thirty years, until in the census of 136/135 the number of citizens was lower by 25,000 than it had been at its height in 164/163. The Roman state had no method other than the census to ascertain the size of the population, and faced with declining census returns the leading men could not but conclude that the number of adult men was shrinking.¹⁴ That this led to a decline in the number of recruits was, in the eyes of the state, exemplified by the difficulties of finding soldiers for the Spanish wars (see Ch. 4.4.2).

The sources indicate that the problems of a diminishing willingness to serve and avoidance of the draft were known in the second century, but at the

¹³ Shochat (1980); Rich (1983, 303; 2007, 162); Perelli (1993, 79–82).

¹⁴ Brunt (1971, 77). This theory of course assumes that the census figures represent adult men capable of bearing arms. If the figure represented another section of the population, for example all people who were *sui iuris* (Ch. 4 n. 185), the census figures cannot be used as evidence to argue for a military goal behind the Gracchan reforms, since in that case the census figures did not bear any direct relation to the size of the army (although a general decrease of population may still have caused concerns over the number of soldiers available).

time apparently nobody connected this problem with under-registration in the census, which, as we have seen, may be one of the factors influencing the census figure. Tiberius Gracchus could not have known that the census figures were unreliable and that the population was in fact increasing, since he did not know that the number for 125/124 would show an increase of almost 75,000 compared to the pre-Gracchan figure. Gaius Gracchus, on the other hand, was familiar with this figure, and consequently did not make land distribution the central theme of his laws. By his time it had become clear that the Roman citizen population was in fact able to reproduce itself even when confronted with economic difficulties, and it was therefore less necessary to distribute land in order to stimulate them to have children.

The fact that the population was not in fact shrinking does not mean that the problems described by Appian and Plutarch were not real: there were many areas where small farmers were experiencing difficulties because of increased pressure on the land. Coastal Etruria, through which Tiberius Gracchus travelled on his way to Numantia, was one of these regions. Here many cash crop estates were located, partly staffed with slaves, and observing these he may well have drawn the conclusion that the free population was declining because of the competition from large estates.¹⁵ However, it is unclear how far Tiberius' knowledge of rural Italy stretched. In Latium and Campania, areas with which he would have been familiar, the number of large estates was similarly increasing, but it is unlikely that he knew that the situation in other regions was different.¹⁶ He may therefore have concluded that the situation in the whole peninsula was the same as in central Italy.

As we have seen, most large estates were established on private land, not on *ager publicus* (Ch. 4.3.6). However, the occupation of *ager publicus* by the rich had been a familiar topic during most of the Republican period. In the early Republic the struggle for access to land between patricians and plebeians had already been presented as a struggle for *ager publicus*, and it may be that the Gracchi phrased their views in terms which were familiar to their audiences. Inveighing against the accumulation of private land by the rich would not have had the desired effect, since the state had no means of taking away private land from the rich. In the eyes of the Gracchi the only reasonable solution to the problem of access to land would have been to provide the poor with land. Tiberius Gracchus wanted to alleviate the problems of the poor,

¹⁵ Nagle (1976, 488–9); Launaro (2008, 153–4). Dyson (1978, 260) and Ikeguchi (1999–2000, 17) point out that even in the Gracchan period there were still many small farms in the territory of Cosa; however, this was one of the areas in which cash crop estates were most widespread, and this may have had a significant impact on the small farmers in this region.

¹⁶ Nagle (1976, 489); Morley (2001, 60).

and he would therefore have had to make land available to them. Even if the problems were in fact caused by the occupation of private land instead of *ager publicus*, the state could only distribute public land, and this may have been one of the reasons why the Gracchan rhetoric focused mostly on the occupation of *ager publicus*.

An important task of the Gracchan commission was to sort out competing claims to the land, and to determine which land was public land and which private. Because of the various kinds of legal status that land could have, it was often uncertain to whom it belonged, as is attested by Appian:

For when land of a different category which bordered on public land had been sold or distributed to the allies, in order to establish its dimensions the whole lot had to be investigated, and how it had been sold or distributed. Not all owners had kept their contracts of sale or titles of allotment, and such as were actually discovered were inconclusive. . . . Even in the beginning the division had never been done with any great accuracy, as this was territory seized by war. The proclamation that anyone who wished could work unallocated land encouraged many to cultivate what lay next to their own property and blur the distinction between the two, and the passage of time put everything on a fresh basis.¹⁷

To be able to carry out land distributions, the Gracchi therefore needed to investigate who held land and under which title, and catalogue all possessions. However, this was not the main goal of their reforms, as some have argued,¹⁸ but only the means to an end.

Others believe that the purpose of the Gracchi was actually to turn public into private land.¹⁹ In the case of the plots assigned to small settlers, the land distributed was indeed privatized (Ch. 5.2.3). However, the land which remained with the *veteres possessores* was not turned into private land, as we shall see, and this shows that the privatization of land was not a goal in itself, but only the means to an end.

Some believe that the *Lex Sempronia* should be considered a *lex sumptuaria*, devised to limit competition within the elite.²⁰ As such, it would fit into a series of similar laws which had been passed earlier in the second century. This may have been an additional advantage of the law, but there is nothing in the sources to suggest that Tiberius Gracchus had this in mind when proposing it.

In short, the aim of Tiberius can be identified as to restore the small independent farmer, who had suffered from eviction from the land because of the occupation of land by the rich. The restoration of the class of small

¹⁷ App. *BC* 1.18.

¹⁸ Burdese (1952, 90); Moatti (1992, 73).

¹⁹ Hermon (1976, 186).

²⁰ Bringmann (1986, 62); Gargola (1997, 566).

farmers was supposed to lead to an increase of the number of potential recruits for the army, and eventually to a general increase of the population of Italy, which, according to the census figures, had been declining for the last thirty years.

5.2.3. Distributions of land by the *Lex Sempronia agraria*

The basic facts of the agrarian reform launched by Tiberius Gracchus are clear enough: he proposed a law which limited the possession of *ager publicus* by existing possessors, the *veteres possessores*, to a maximum of 500 *iugera*, plus an additional amount for their children. All *ager publicus* over and above the limit was to be returned to the state, which would distribute it to the poor. A three-man commission, the *triumviri agris iudicandis adsignandis*, was installed to supervise its execution.²¹ However, once we get beyond the mere basics, almost every element of the Gracchan land reform is hotly debated.

A first point of debate has been which limit exactly was set on the possession of *ager publicus*. Appian states that ‘no individual should hold more than 500 *iugera*, but [Tiberius Gracchus] modified its previous provisions [of the older agrarian law] by adding that children of occupiers could have half this amount’.²² However, the Epitome of Livy and *De viris illustribus* state that the maximum amount was 1,000 *iugera*.²³ This has led many scholars to assume that the amount was 500 *iugera* for the main occupant and 250 for each of a maximum of two children, since that would make a total of 1,000.²⁴ However,

²¹ Liv. *Per.* 58.2 mentions the creation of the agrarian commission only in a second law ‘to judge which land was owned by the state and which by private individuals’; this is believed by Linke (2005, 32). It would be strange, however, if the Tiberius had not realized from the beginning that he would need the authority to sort out possessions of *ager publicus* which had become confused over time; it seems more likely that from the beginning the law had included provisions for its execution.

²² App. *BC* 1.9: ἀνεκαίριζε τὸν νόμον μηδένα τῶν πεντακοσίων πλέθρων πλέον ἔχειν. παισὶ δ’ αὐτῶν ὑπὲρ τῶν παλαιῶν νόμον προσετίθει τὰ ἡμίσηα τούτων.

²³ Liv. *Per.* 58.1; *Vir. ill.* 64.

²⁴ Beginning with Niebuhr (1844, 411), although he himself doubts this, and proposes as an alternative that only 250 additional *iugera* in total were allowed, not 250 per child (n. 12), a theory also held by Huschke (1835, 18) and Rudorff (1852, 313). The 500 plus two times 250 *iugera* theory is still almost universally believed: it is held by, to name just a few, Burdese (1952, 78); Tibiletti (1955, 32); Johannsen (1971, 205); Molthagen (1973, 423); Hermon (1976, 182); Bringmann (1985, 9); Gabba (1990, 674); Bleicken (1992, 64); Perelli (1993, 75); Rathbone (2003, 161); Sacchi (2006, 250). Others assume that the limit was simply 1,000 *iugera*, whether someone had children or not: Schneider (1977, 84–5). He supports his argument with the thesis that if all children were allowed to hold 250 *iugera*, holders of *ager publicus* were allowed to keep almost all of their land. However, this grossly overestimates the average number of children in the Roman family. Badian (1972, 702–3) suggests that security of tenure was only given on the first 500 *iugera*.

it is by no means obvious that the law made grants of land to two children only; Appian does not speak of any limit on the number of children—although neither does he say that each child received land. There is a strong possibility that the Epitome of Livy and *De viris illustribus*, which are both late sources, have become corrupted in transmission, since the numerals for 500 and 1,000 (ID and CID) are confusingly similar. Moreover, neither of them shows awareness of a distinction between the land granted to the main holder and that given to his children, which in itself sheds doubt on their reliability.

One of the objectives of the Gracchan reform was to stimulate population growth, and this makes it difficult to explain why Tiberius would have limited the number of children for whom land could be reserved. It is probable that concerns about a decline in the number of children were not limited to the lower classes alone; this may be deduced from Metellus' speech *De prole augenda* (Ch. 4.3.5), which was directed towards the elite. The grant of security of tenure to those holding large tracts of *ager publicus* would have benefited population growth more if it had been extended to all children instead of only two.

It is important to remember that Tiberius Gracchus wanted to present his law as a repetition of an earlier law. In this way, his regulations would have seemed less of an innovation than they would otherwise have been; he could point to earlier laws and claim he was only upholding *mos maiorum*.²⁵ However, he would hardly have been able to do that if the limit he proposed was twice that of the earlier law. It would have made more sense had he introduced the same limit which had been in force earlier, and presented the extra amount as bonus compensation, which would have been reasonable in view of the protests raised by possessors who had held *ager publicus* for decades. It seems therefore more logical to assume that the limit was 500 *iugera* for the possessor and 250 for each child, no matter how many children someone had, and no matter whether they were boys or girls.²⁶ In that case Tiberius' law was actually very generous compared to the earlier one, since his limit was 500 *iugera* plus 250 for every child, and granted, moreover, security of tenure on this land, which had not been given by the earlier law *de modo agrorum*, which I assume to have been the *Lex Licinia* of 367. As we have seen

²⁵ Vell. 2.6.3, although confusing Tiberius and Gaius Gracchus, explicitly states that the Gracchan law 'limit[ed] the holdings of each citizen to five hundred *iugera*, as had once been provided by the Licinian law'. See De Ligt (2004, 725); Gargola (2008, 490); Rich (2008, 545–6).

²⁶ Stockton (1979, 41); Richardson (1980, 1); Lintott (1994, 62); De Ligt (2001a, 122). Unfortunately Appian does not allow us to reconstruct the practicalities of this measure. It seems most likely that someone would receive 250 *iugera* for each child he had in 133, and that no provision was made for future children. Nor is it clear whether someone would have to return this land in the case of a child's death.

(Ch. 3.3.2), I do not think that there was any law prescribing maximum limits of landholdings between 367 and the Gracchan period.

In contrast to the *Lex Licinia*, it is quite clear that the *Lex Sempronia* concerned public land only. The *Lex agraria* of 111 constantly refers to ‘whatever public land of the Roman people there was in the land of Italy in the consulship of P. Mucius and L. Calpurnius’, and in line 2 refers to the *ager publicus* which each man ‘took or kept [for himself], provided that its size be not greater than what [it was lawful] for one man to take [or keep] for himself according to statute or plebiscite’. This clearly refers to the law of Tiberius Gracchus and the maximum he introduced for holdings of *ager publicus*. Moreover, although Appian does not explicitly say that the law referred to public land, he does say that the *Lex Licinia* pertained to public land, and that Tiberius repeated the measures of the *Lex Licinia*.²⁷ Plutarch says that after the death of Tiberius Gracchus ‘the Senate, trying to conciliate the people now that matters had gone too far, no longer opposed the distribution of the public land’,²⁸ and carried out the distributions. We can therefore safely say that the *Lex Sempronia* pertained only to *ager publicus*, not to land in general.

The excess *ager publicus* was to be taken away and distributed to the poor. It is not known how much land each settler received; however, the amount of thirty *iugera* is often suggested. This idea is based on a passage in the *Lex agraria*: in lines 13–14 it is stipulated that ‘[—if anyone after the proposal of this statute for the purpose of agriculture] shall possess or have not more than 30 *iugera* of land in that land [the *ager publicus*], that land is to be private.’²⁹ Although it may be surmised that a plot of this size was considered to be a reasonable maximum for a small farmer, there is nothing at all to suggest that this was also the amount distributed by the Gracchi, as many scholars assume.³⁰ A plot of thirty *iugera* seems large compared to the amounts granted to colonists in earlier Roman colonies, where the amount never exceeded ten *iugera* (Ch. 2.3.12). The colonists in second-century Roman

²⁷ App. BC 1.9.

²⁸ Plu. TG 21.1: οὔτε πρὸς τὴν διανομὴν ἔτι τῆς χώρας ἤναντιοῦντο.

²⁹ *Lex agraria* l. 13–14: [- - - *sei quis post hanc legem rogatam agri colendi cau]sa in eum agrum agri iugra non amplius XXX possidebit habebitve, <i>s ager privatus esto.*

³⁰ Carcopino (1929, 10); Badian (1972, 704); Richardson (1980, 1); Bleicken (1992, 64). See discussion in Crawford (1996, 161). Gabba (1990, 674) and Perelli (1990, 242) doubt the figure, but do not give an alternative. Toynbee (1965, ii. 565) suggests the allotments were probably not larger than ten *iugera* on average. Jones (1980, 93), followed by Rathbone (2008, 308), estimates the size of Gracchan allotments in Luceria to have measured between eighty-four and ninety-two *iugera*, but this seems unlikely; such a large amount was not necessary for the subsistence of a family, and it is likely that the Gracchi would have preferred to give as many small farmers as possible a plot of land. It may be that plots of this size, visible in the landscape, were destined for *veteres possessores*.

colonies were proletarians, just like the beneficiaries of the Gracchan reform, and it therefore seems unlikely that the Gracchan settlers received such generous allotments. If each settler was assigned thirty *iugera*, only a relatively small number of people can have profited from the Gracchan scheme, and this is unlikely to have been the intention of the Gracchi.

An important question is whether the land distributed by the commission remained *ager publicus* or became private land. Sale of the distributed land was forbidden by the law of 133;³¹ the plots distributed by Gaius Gracchus were, moreover, burdened with a *vectigal*: ‘When Gaius distributed land to the poor on the condition that each man was to pay rent into the public treasury, [the Senate] raged at him for trying to ingratiate himself with the masses, but they approved of Livius [Drusus’] plan to let the tenants off this rent.’³² It is not stated that the allotments distributed by Tiberius were also burdened with a *vectigal*, but this may well have been the case. The *Lex agraria* speaks of *ager privatus vectigalisque* in Roman Africa, especially in the colony Iunonia, settled by Gaius Gracchus. It is possible that the same arrangement had been made for the land the Gracchi distributed in Italy: this, according to De Ligt, ‘points to the conclusion that we are dealing here with a general policy which may go back as far as the *Lex Sempronia agraria* of 133 BC’.³³ If this is correct, then *ager privatus vectigalisque*, private land burdened with a *vectigal*, had already been created in 133.³⁴

The fact that sale of the assigned land was forbidden and that it may have been burdened with a *vectigal* has often been seen as evidence that the land did not become the private property of the settlers. After all, if the recipients did not have full powers of ownership over the land, including the right to sell it, the land could not have been considered private property *ex iure Quiritium*. Support for the thesis that the land remained public seems to be found in the *Lex agraria* of 111. It declares in line 3 that various kinds of land are to be private, among them the land that ‘a IIIvir according to statute or plebiscite

³¹ App. BC 1.10: ‘They would be unable to buy land from those who received allotments, since Gracchus had foreseen this and was proposing to forbid sale.’ See Molthagen (1973, 425); Lintott (1992, 44); De Ligt (2001a, 122).

³² Plu. CG 9.2.

³³ De Ligt (2007, 89–94, quote 94); cf. his view in (2001a, 128–31), which differs from the one expressed later. Muschiatti (1972, 216) thinks Gaius Gracchus introduced a *vectigal* on the land that had already been distributed by Tiberius.

³⁴ Saumagne (1927, 76); Zancan (1934, 90–3); Kaser (1942, 10); Burdese (1952, 84–5); Johannsen (1971, 210–11); Molthagen (1973, 451); Bleicken (1992, 64); Mouritsen (1998, 92); Rathbone (2003, 165). Some think the Gracchan settlements did not become private until 111, e.g. Bernstein (1969, 33–4); Muschiatti (1972, 249); Richardson (1980, 5); Lintott (1992, 245). Kaser (1942, 9) and Crawford (1996, 171) doubt that *ager privatus vectigalisque* existed outside of Africa, but this was not necessarily the case, see De Ligt (2001b, 204; 2007).

granted or assigned . . . to any Roman citizen'. Many scholars have assumed that this means that until 111 the land had not been fully private, and therefore not been entered in the census.³⁵ Since the census counted only private property of citizens, the census qualification of a person who had received land would therefore not have risen above the limit of the fifth class. The possessors of a Gracchan allotment would in that case not have been *assidui* until 111, when the land became private, and therefore not have been liable for military service.³⁶

However, in this case the Gracchan allotments would not have served the main goal of the Gracchan reform, namely to increase the number of soldiers, and this is very unlikely. Some have tried to solve this apparent contradiction by suggesting that holdings of public land were also inscribed in the census.³⁷ However, this would not have made sense;³⁸ registration in the census was only possible for private land, as is indicated by the *Lex agraria* of 111, which states in line 8 that the privatized land mentioned above is to be inscribed in the census just as other private land. Similarly, Cicero specifies registration in the census as a precondition of private ownership: 'Are those estates capable of being returned in the census, are they in your formal possession or not, do they admit of legal right, can they be entered as a surety at the treasury or with the censor?'³⁹ The same applied to citizenship: this was not conferred until a new citizen was assigned to a *tribus* and counted in the census (see Ch. 2.3.11).

³⁵ Fraccaro (1947, 262); Bernstein (1969, 33–4); Richardson (1980, 5); Shochat (1980, 87); Rich (1983, 300); Lintott (1992, 212). Boren (1968, 47) thinks the land did not become private, but that since the census qualification was so low, the Gracchan settlers still had enough to qualify as *assidui*; however, if they did not have any private land, it is unlikely they would have owned sufficient property to be counted as *assidui*.

³⁶ It is likely that even before 133 proletarians sometimes served in the army (Ch. 4 n. 180). However, the ongoing lowering of the census qualification shows that it was in fact of some importance; if the limit had been totally disregarded, there would have been no need to lower it.

³⁷ Boren (1968, 80). Shochat (1980, 36) suggests that not the land itself, but the income gained by working *ager publicus* was counted in the census. Zancan (1931–2, 78) proposed that occupation of *ager publicus* counted as *privata possessio* and was therefore counted in the census, but this is very unlikely, see Bozza (1939, 43). It is possible that the censors also recorded holdings of public land, but since these, at least in theory, were liable to confiscation by the state, it is unlikely that holdings of public land could qualify someone as an *assiduus*.

³⁸ Kontchalovsky (1926, 170); Bozza (1939, 78).

³⁹ 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?* Schol. Bob. *Flac.* 80 (Stangl p. 106) explains: 'Lands which are not held legitimately according to law cannot be entered in the treasury nor registered with the censor' (*Praedia autem quae iure legitimo non habentur neque apud aerarium subsignari neque apud censorem possunt*). Festus 50 L states: 'We call lands "liable for inclusion in the census" which can be bought and sold according to civil law' (*Censui censendo agri proprie appellatur, qui et emi et venire iure civili possunt*). Since buying and selling are generally considered the privileges of ownership (but cf. the *ager privatus vectigalisque*, which could not be sold), it seems that land had to be fully private in order to be counted in the census.

Therefore, to make sure that the holders of Gracchan allotments qualified for military service, the plots must have counted as private property and been recorded in the census.⁴⁰ This hypothesis is in fact in line with the *Lex agraria*: some kinds of land, which at first sight seem to have been declared private by the *Lex agraria*, appear already to have been so before 111: in line 19 land is mentioned that '[according to statute or plebiscite] or according to this statute *has been* or shall have been made private'. Apparently some land existed which had already been privatized before 111, and here we may think of the Gracchan allotments. Line 3 may then be a confirmation of already existing rights to this land.

The imposition of a *vectigal* does not contradict the theory that the Gracchan assignments were private. In fact, it would make sense if the Gracchan allotments became private on the condition that a *vectigal* on them was paid, in other words, that they became *ager privatus vectigalisque*. As long as the *vectigal* was paid, the land counted as private property and was included in the census. The only restriction was that the land could not be sold; this was done to protect the settlers against those who may have nurtured a desire to occupy their land. It is to be expected that not all Gracchan settlers were successful; if former small farmers were set up with new land, this did not automatically solve the problems which had caused them to become proletarians in the first place. If they could not earn sufficient income from their allotments, there is a strong chance that they would have abandoned them. If the holdings had been alienable by sale, the settlers could have sold the land to whomsoever they pleased. In this way, more land would have become available for large farmers, from whom it had been taken in the first place. Making the land inalienable and subject to a *vectigal* would have prevented this from happening. In this case, when the settler stopped working the land or was unable to pay the *vectigal*, it reverted back to the state,⁴¹ which could then assign it to another settler. In this way the state retained control over the land even after it had been alienated to the settlers. When the state was unable to retake control immediately when a settler stopped paying the *vectigal*, the inalienability of the land made sure that the holders would still qualify for military service. Even if the land was not worked, its value would still have been enough to qualify its owner for military service.⁴² Only when

⁴⁰ Earl (1963, 37); Badian (1972, 673); Rathbone (2003, 165).

⁴¹ De Ligt (2001a, 130); Rathbone (2003, 165). Contra: De Martino (1956, 571); Jehne (2006, 81).

⁴² Badian (1972, 673); Schneider (1977, 79–80). However, for the sake of clarity, the state would have preferred to take the land away as soon as possible; moreover, if a settler did not work his land, he would not have had money to buy his own military equipment (or at least those parts of it that he was expected to buy for himself).

the land was retaken by the state and granted to a new settler did the first recipient forfeit the right of ownership; in this way, the number of settlers would never fall below the number given land by the *Lex Sempronia*.

If the land was simply abandoned by the settler and occupied by a rich man, the occupier would not have had secure tenure of the land, as he would have had had he been able to buy the land from the small farmer. This was a strong disincentive to occupy the land and invest in it (Ch. 3.3.1), especially now that *ager publicus* had recently been taken away by the state. In this way the state maintained control over its former public land, and the risk of the land ending up in the hands of the rich was reduced. All this would mean that the allotments, even if they were inalienable and subject to a *vectigal*, had become the private property of the settlers, and therefore were counted in the census. Since the property qualification of an *assiduus* was quite low in the Gracchan period (Ch. 4 n. 180 and 5.2.5), a grant of even a small plot of land as private property would have turned the settlers into *assidui*, making them liable for military service.

While the land assigned to the Gracchan settlers became private, the *veteres possessores*, those who had held *ager publicus* before 133, did not obtain full property rights over the land they held.⁴³ Instead, they were granted security of tenure on a maximum of 500 *iugera* (with the additional amount for children), a situation best defined as *possessio perpetua*.⁴⁴ A *vectigal* was not required from them until 118 BC, when the holdings were turned into *ager privatus vectigalisque* (see below, Ch. 5.3.1).⁴⁵ This is attested by Gracchan *cippi* showing land assigned to *veteres possessores concessus immunitis*, meaning ‘free from *vectigal*’ (see Ch. 5.2.5). Some think that those who possessed less than 500 *iugera* did not receive a secure title,⁴⁶ but it would be very strange if those who possessed the maximum of 500 *iugera* received a secure title to the land, and those who possessed less did not. The *Lex agraria*, moreover, declares all land private ‘provided that its size be not greater than what [it was lawful] for one man to take [or keep] for himself according to statute or plebiscite’.⁴⁷ This means that all holdings of land within the limit of 500 *iugera* were recognized as private in 111, and therefore it is highly likely that the rights granted by Tiberius also applied to holdings smaller than 500 *iugera*.

⁴³ Meister (1974, 95). However, Johannsen (1971, 65) thinks the land of the *veteres possessores* did already become private in 133.

⁴⁴ De Ligt (2001a, 127).

⁴⁵ Contra: Zancan (1934, 94–5), Earl (1963, 35), and Sacchi (2006, 303), who think that the *veteres possessores* had to pay a *vectigal* from 133 onwards.

⁴⁶ Stockton (1979, 41).

⁴⁷ *Lex agraria* l. 2. See De Ligt (2001a, 127).

It is unclear whether Tiberius' law also included regulations on the maximum number of animals to be grazed on public land and on the number of free labourers to be employed, as Appian describes for the pre-Gracchan law. It is sometimes assumed that the Gracchan law included such regulations as well,⁴⁸ but there is nothing in the existing sources that would indicate that this was part of the Gracchan legislation.

It was clear from the start that the law would be opposed by those possessing more than 500 *iugera* of *ager publicus*. In earlier times those possessing land above the limit of 500 *iugera* were punished only with a fine, while their actual holdings remained undisturbed; in practice even the fine was seldom collected, leading to universal disregard of the law. Tiberius Gracchus was the first who actually proposed to take the excess land away from the rich and give it to the poor. Therefore, according to Cicero, 'the nobles strove against it, because they saw that discord was excited by it; and because, as the object of it was to deprive the wealthy men of their ancient possessions, they thought that by it the republic was being deprived of its defenders.'⁴⁹ This more than anything else was the revolutionary part of Tiberius' legislation; at least one *lex de modo agrorum* had been issued before, but never had *ager publicus* actually been taken away from its possessors and distributed to the poor.

During the second century most holders of *ager publicus* had assumed that their land would not be taken away, and had invested considerable sums of money in it. Appian describes the consternation caused by Tiberius' law:

They gathered in groups, deploring their situation and supporting their case against the poor by pointing to the work they had put in over many years, their planting, their building. Some had bought land from their neighbours—were they to lose the money as well as the land? Some had family tombs on the land or said that holdings had been treated as fully owned and divided up on inheritance. Others claimed that their wives' dowries had been invested in such lands, or that it had been given to their daughters as dowry, and moneylenders could show loans made on this security. In short, there was a babel of protest and lamentation.⁵⁰

⁴⁸ Bauman (1979, 396); Tipps (1988–9, 335). Compatangelo (1989, 83) states that after the Gracchan law *veteres possessores* were allowed to have 1,800 *iugera* of grazing land, but the regulations on cattle were never expressed in land surface area. Tibiletti (1948–9, 204) thinks pastures were included in the 500-*iugera* maximum, so that extra land for cattle was not allowed, but this would have made the amount of land to be held by one person after 133 very small. Flach (1990, 44) says that Tiberius abolished the grazing rights for 100 large and 500 small beasts, and that he thereby robbed the great stockbreeders of 1,800 *iugera*. However, if the maximum was simply abolished by the law, the stockbreeders would have had the right to graze as many animals as they wanted, since public pastures were not private property.

⁴⁹ Cic. *Sest.* 48.103. See also Cic. *Agr.* 2.5.10; *Aug. Civ. D.* 3.24.

⁵⁰ App. *BC* 1.10.

Florus also demonstrates the injustice of the measure, for ‘how could the common people be restored to the land without dispossessing those who were in occupation of it, and who were themselves a part of the people and held estates bequeathed to them by their forefathers under the quasi-legal title of prescriptive right?’⁵¹

Whatever the situation, during the second century possessors of *ager publicus* had used the land as if it was their private property: they had invested money in it, had sold it, bequeathed it, given it as dowries, or made loans with the land as pledge. At the time of the Gracchi the land which had been confiscated after the Second Punic War had been public for seventy years, and some *ager publicus* had even been confiscated earlier. Clearly most people had not expected to be dispossessed after such a long time, and had invested anyway. Tiberius Gracchus acknowledged the injustice of the situation, and according to Plutarch the holders initially ‘were to be compensated for quitting the land they had unjustly acquired’.⁵² If this compensation was made at market value, the possessors would at least have recouped the value of their investments, since the state would in effect buy back its own lands. However, Plutarch states that Tiberius later withdrew the compensation, leaving only security of tenure on 500 *iugera* of land, plus the additional amount for children.⁵³ For those possessing more than this amount, this would have constituted a serious loss of assets, and one which was, moreover, totally unexpected. Therefore, although the state theoretically had the right to take away *ager publicus* from its possessors, the proposal of Gracchus actually to do this caused far more protest than would have been expected simply looking at the terms of the law.

In the forefront of the opposition were large landholders, who stood to lose the most from the law. It is impossible to establish how many rich men possessed *ager publicus* and where; as we have seen, in the second century the size of many estates was still small (Ch. 4.3.1), and most estates in central Italy consisted of private land, but it is possible that the Roman elite possessed considerable amounts of *ager publicus* in other areas. The maximum of 500

⁵¹ Flor. 2.3.13.7: *Et reduci plebs in agros unde poterat sine possidentium eversione, qui ipsi pars populi erant, et tum relictas sibi a maioribus sedes aetate quasi iure possidebant?* Taking away land which had been possessed for a long time, even without a legal title, was also considered unfair by Agennius Urbicus 32.14–16: ‘If the occasion of a legal transfer of property has already been forgotten, legal procedure normally intervenes and prevents surveyors from introducing disputes of this type, and does not permit them to disrupt the settled peace of such a lengthy possession.’ However, whereas during the Empire ancient possessions were apparently recognized, the Gracchi only partly acknowledged such possessions.

⁵² Plu. *TG* 9.2.

⁵³ Plu. *TG* 10.3.

iugera of both public and private land had been a reasonable limit to the possession of land in the fourth century, but it was certainly completely out of date at the time of the Gracchi. It is usually assumed that many people possessed far more land in 133, which caused fierce protests against the Gracchan law. However, only two large possessors are known to us by name: Octavius, the tribune who opposed Tiberius' law most fiercely, and Scipio Nasica, the man who was responsible for his death.⁵⁴

However, resistance against him did not come to a head until Tiberius attempted to use the bequest of the Pergamene king Attalus to finance the distributions. It is not certain for what purpose he wanted to use this money: Plutarch states that it 'should be given to the citizens who received a parcel of the public land, to aid them in stocking and tilling their farms',⁵⁵ while Livy's epitomizer says that 'when there turned out to be less land than he could divide without incurring the wrath of the plebeians—Gracchus had made them so greedy that they hoped for a large amount—he announced that he would promote a law to divide the money which had been bequeathed by King Attalus among those who would, according to his first law, have been given land'.⁵⁶

This sounds rather strange: Tiberius could hardly have been aware of the shortage of *ager publicus* so quickly, since determining which land was public and distributing it would prove to be a very time-consuming task. Furthermore, Gracchus could find better purposes for his money; stocking the new farms of the settlers would be a more logical purpose,⁵⁷ or paying the commission's expenses, since, according to Plutarch, they received only nine obols a day.⁵⁸ In any case, Tiberius was now meddling in matters which were traditionally the task of the Senate, namely matters of finance and international politics. The Senators feared that by handing out money to the people he would gain a great deal of personal power, and fiercely opposed this plan, even to the point of accusing him of royal aspirations. His attempt to be re-elected added to the impression that he was trying to gain more power.⁵⁹ It

⁵⁴ Plu. *TG* 10.5, 13.3. It is usually assumed that many people held more than 500 *iugera*: Gabba (1979a, 160); Cornell (1989b, 329); Finley (1999, 101).

⁵⁵ Plu. *TG* 14.1.

⁵⁶ Liv. *Per.* 58.3. Oros. 5.8.4 and Flor. 2.3.15.2 also state the money was to be distributed to the people. Gargola (1995, 152) and Rosenstein (2004, 165) suggest there was not much *ager publicus* left, and that Tiberius therefore proposed to distribute money as well as land. However, even if this were the case, Tiberius could not have known this when he proposed his law.

⁵⁷ Boren (1961, 362–3); Hopkins (1978, 63).

⁵⁸ Plu. *TG* 13.3. Crawford (1974, 624) argues this was equal to three *asses*, while Perrin (1914) gives nine sesterces. In any case, the amount was ridiculously low.

⁵⁹ Plu. *TG* 14.2; Sall. *Iug.* 31.4; Cic. *Lael.* 12.41, *Mil.* 27.72, *Rep.* 6.8, *Off.* 2.12.43, 2.23.80, *Phil.* 8.4.13; Macrob. *Sat.* 3.14.6, *Comm.* 1.4.2; Val. Max. 6.3.1b–1d. See Boren (1961, 362–4); Badian (1972, 713–15); Bernstein (1978, 200); Bleicken (1988, 281–2).

was therefore not his agrarian law, but his subsequent actions which aroused the most resistance.

Although Tiberius was killed during his tribunate, the land commission continued to function: ‘The same Senate commendably voted that land be divided individually among the people by a Board of Three according to Gracchus’ law, simultaneously removing both the cause of a very serious internal conflict and its instigator.’⁶⁰ Most of the *cippi* which have been found throughout Italy carry the names of Gaius Gracchus, Appius Claudius Pulcher, and Publius Licinius Crassus, who formed the triumviral commission from the death of Tiberius in 133 until the deaths of Crassus in 131 and Claudius in 130. Tiberius himself was therefore not involved in the distribution carried out under his law.⁶¹

However, the Senate still persisted in opposing the law, and tried to limit the powers of the agrarian commission as soon as possible. The occasion presented itself in 129, when the Italian allies complained that lands were taken from them. It is probable that the agrarian commission had first concentrated its activities on *ager publicus* held by Roman citizens, but that in 129 it realized more land was needed.⁶² As we have seen, many Italians had held *ager publicus* by occupation for a long time, and had invested much time and money in their holdings. They had assumed that, as long as they were loyal to the Romans, they would be allowed to retain their land (see Ch. 2.5.2). However, now that the Roman population was growing, the Romans needed the land for themselves, and legally they had every right to take it from the Italian possessors. Even if Italian *veteres possessores* were also allowed to retain 500 *iugera* (Ch. 5.2.4), the loss of the excess land was an unexpected blow to them. The Italians could therefore argue with some justice that it was unfair to take away land from people who had held it for so long.

The Italians, moreover, had an additional reason for protest, because the measurements made by the land commission were done very quickly, and not always very accurately.⁶³ According to Appian:

⁶⁰ Val. Max. 7.2.6b.

⁶¹ Nine stones mention C. Gracchus, Ap. Claudius Pulcher, and P. Licinius Crassus, which means they date from 133–130 BC; five, mainly from Apulia, mention C. Gracchus, M. Fulvius Flaccus, and C. Papirius Carbo, and therefore date from 123–122. See Campbell (2000, 452–3).

⁶² Badian (1972, 730–1); Mouritsen (1998, 144–5).

⁶³ App. BC 1.18. Mouritsen (1998, 149) argues that ‘unlike the Roman holdings in Southern Italy, the [Italian] holders will often have owned private land adjoining the public domains, gradually blurring the borderline.’ It is not clear, however, why Romans would have been able to acquire large contiguous domains, while Italians would not. As we have seen (Ch. 4.3.6) Italians often held a larger proportion of their land as *ager publicus* than Romans.

All this then, and the haste with which judgments were given on these disputes, was more than the Italians could bear, and they chose Cornelius Scipio [Aemilianus], who had sacked Carthage, to be spokesman for their grievances. . . . He examined its problems in detail and proposed that the legal actions should be heard not by the land commissioners, since they were regarded as prejudiced by the litigants, but by others. He carried this point all the better because it seemed to be a fair one, and the consul Tuditanus was appointed to hear the cases. However, after making a start on the task and realizing how difficult it was, Tuditanus led a campaign against the Illyrians and made this an excuse for not giving judgement; on the other hand the land commissioners were inactive, since nobody came before them to obtain judicial decisions.⁶⁴

Until 129 the Gracchan commission had functioned quite well. It had been able to judge which land was *ager publicus* and which was not, and it had had the power to take occupied *ager publicus* away from the possessors if they held more than the prescribed amount. After 129, however, Scipio's legal stratagem made it impossible for the commission to continue its work. Only a law of the people could deprive it of its power to distribute land, and in fact the commission still had powers to distribute *ager publicus* about which there was no conflict.⁶⁵ However, since most of undisputed *ager publicus* had already been distributed by 129, there was no more land that could easily be used. Therefore the commission was now dependent on the consuls as the legal authority to assign them the land they could use, but since the consuls eschewed their task—at least one of them did; we do not hear anything about the other consul—the commission did not have any means of acquiring new lands. The lack of Gracchan *cippi* dating from after 129 suggests that the commission was unable to carry out any distributions after that date.⁶⁶

This also means that Gaius Gracchus did not need to propose a totally new law if he wanted to continue the work of his brother. He could simply hand the jurisdiction over *ager publicus* back to the commission to make it fully functional again.⁶⁷ In fact, the sources are rather vague about the agrarian activities of Gaius. Plutarch only says that 'one [law], on land-settlement, distributed the common land among the poor.'⁶⁸ Livy's epitomizer says only that he proposed

⁶⁴ App. *BC* 1.19. See Cic. *Lael.* 3.12; Schol. *Bob. Mil.* 16 (p. 118 Stangl).

⁶⁵ Pani (1976–7, 135–6); Bauman (1979, 405–8).

⁶⁶ Some have argued that the commission did not stop its activities after 129, e.g. Muschietti (1972, 244); Bauman (1979, 408). However, there is no source that indicates they were still active after this date. The statement in Cass. Dio 24.84.2 that after death of Scipio in 129 'the land commissioners ravaged at will practically all Italy' does not seem to be based in fact. Cf. Liv. *Per.* 59.19.

⁶⁷ Molthagen (1973, 449).

⁶⁸ Plu. *CG* 5.1.

‘a land bill like that of his brother’.⁶⁹ His recorded agrarian activity is quite limited: Appian and Plutarch describe in some detail the foundation of a colony in Carthage;⁷⁰ Plutarch states ‘further legislation saw to the foundation of colonies abroad’.⁷¹ *De viris illustribus* names Gaius’ colonies as Capua and Tarentum, to which Velleius adds Scolacium Minervium.⁷² The foundation of a colony in Capua is debated (see Ch. 2.2.5); the other two places can safely be assumed to have been colonies. Other towns often considered Gracchan ‘colonies’, based on the *Liber Coloniarum*, should not be regarded as such.⁷³ For the foundation of colonies a separate law would have been required,⁷⁴ but for viritane distributions Gaius could simply revive his brother’s law. Some Gracchan *cippi* dating to the period 123–122 (see n. 61) show that Gaius Gracchus indeed succeeded in distributing land, especially in Apulia.

It is certain that Gaius not only reintroduced his brother’s law, but also promulgated a law containing new regulations. The *Lex agraria* of 111 constantly refers to ‘that land, whose division was excluded or forbidden according to the statute or plebiscite which C. Sempronius, son of Tiberius, tribune of the plebs, proposed’.⁷⁵ Apparently Gaius issued a law which stated which kinds of *ager publicus* were not to be distributed. This would have been a sensible measure, since arguments up until then had focused mostly on which lands were to be distributed and which were not.⁷⁶ In view of the problems which had arisen when taking land away from the allies, Gaius may have decided to leave disputed *ager publicus* alone and that founding colonies was a more sensible measure. Even then, the number of colonies founded in Italy was small; in fact, Gaius was the first to establish a colony of Roman citizens outside of Italy.⁷⁷ Gaius apparently was the first to realize that the

⁶⁹ Liv. *Per.* 60.8. See Oros. 5.12.5; Vell. 2.6.2; Flor. 2.3.15.2.

⁷⁰ App. *BC* 1.24; Plu. *CG* 10.2–11.2; Vell. 2.7.7–8. Even though the colony is described as a failure in the sources, it seems as if land was distributed here, see App. *Pun.* 136; Obs. 33; Fronto *Ad Marc.* 2.1. A possibly Gracchan boundary stone was found here (see Ch. 5.3.2).

⁷¹ Plu. *CG* 6.3; see 9.2 and App. *BC* 1.23.

⁷² Vell. 1.15.4; *Vir. ill.* 65; Plin. *HN* 3.10.95. See Salmon (1969, 119); Gargola (1995, 164–5).

⁷³ See Roselaar (2009c). Many, e.g. Brunt (1971, 358) and Accardo (2000, 29), fail to make a distinction between viritane distribution and colonization. It is by no means the case, however, that all places mentioned in the *Liber* were colonies, even if land distribution took place there.

⁷⁴ The *Lex Rubria*, for example, was passed in order to make possible the colony in Carthage (*Lex agraria* line 55).

⁷⁵ *Lex agraria passim: extra eum agrum, quei ager ex lege plebeive scito, quod C. Sempronius Ti. f. tr. pl. rogavit.* See Stockton (1979, 131); Mouritsen (1998, 143–4).

⁷⁶ We may think of *ager censorius* (especially the Ager Campanus), *ager quaestorius*, if any still existed, *ager in trientabulis*, land assigned to colonies and other communities, and *ager scripturarius*. See Crawford (1996, 157).

⁷⁷ Molthagen (1973, 454); Stockton (1979, 51). Hermon (1982, 262) assumes that the twelve colonies proposed by Drusus were actually founded, but there is no evidence for this. In 118 the

amount of land in Italy was insufficient to provide for all inhabitants of the peninsula. There simply was not enough land, or at least not enough which could be used for distributions. From the time of Caesar, the foundation of colonies outside of Italy became standard policy (Ch. 5.4.3).

From the above we can conclude that the Gracchan land distributions were an important step in the process of privatization of *ager publicus*. The land distributed to the poor became their private property through distribution, but with an ingenious legal construction which allowed the state to retain some measure of control over this land. The *veteres possessores* did not receive full property, but were granted security of tenure over a considerable piece of *ager publicus*, thereby rewarding their efforts in exploiting this land and stimulating further investments in it. In the course of the assignments after 133 the amount of land to be distributed proved insufficient, since to take away the land from the Italian allies would have wrought serious damage to their interests. This led Gaius Gracchus to explore new possibilities of land distribution; he returned to the time-honoured method of establishing colonies in Italy, but was also the first to found a colony outside the peninsula. This would in time prove to be the only adequate method of finding enough land for the continuously growing population of the Italian peninsula.

5.2.4. The Gracchan land distributions and the Italians

In the introduction to his *Civil Wars* Appian gives a general picture of the economic and social problems of Italy in the second century. What has puzzled many scholars in this description is the role attributed to a group called ‘Italians’, or in the original Greek, *Ἰταλιῶται*. The most natural understanding of this term would be ‘Italian allies’, the people living in peninsular Italy without possessing Roman or Latin citizenship. As the text stands, the problems of small farmers described by Appian seem to have been present all over Italy: *ager publicus* confiscated in the wars could be worked against payment of a part of the harvest, and according to Appian ‘[the Romans] did this to increase the numbers of the people of Italy (*τοῦ Ἰταλικοῦ γένους*), whom they considered exceptionally tough, so that they would have their kin to fight alongside them’ (BC 1.7). However, the rich took possession of the undistributed land, occupied the plots of the small farmers, and established large estates. Appian then states: ‘The Italian people were suffering from depopulation and a shortage of men, worn down as they were by poverty

colony of Narbo Martius was the next colony to be located outside of Italy, see Eutrop. 4.23; Cic. *Brut.* 43.160.

and taxes and military service' (1.7). Later Appian again emphasizes the Italian aspect of the Gracchan reform: Tiberius delivered speeches 'about the people of Italy, saying that they were excellent fighters and related to the Romans by blood, but declining slowly into poverty and depopulation and had not even the hope of a remedy' (1.9). He believed that 'nothing better or more splendid could possibly happen to Italy' (*Ἰταλίᾱς*) (1.11) than his plan, and when his attempts were blocked by his fellow tribune Octavius, Tiberius begged him 'not to throw into chaos a project that was morally right and of the greatest utility to all Italy' (1.12). He was escorted home from the assembly by the crowd, 'as though he were the founding father, not of one city, or of one clan, but of all the peoples of Italy' (1.13).

Plutarch mentions Italy twice; in describing the problems Italy faced, he states that 'all over Italy there was a noticeable shortage of free men for hire, while the place was teeming with gangs of foreign slaves' (*TG* 8.3). Tiberius inveighed against this situation in a speech, in which he argued that 'those who fight and die for Italy have nothing—nothing except the air and the light' (9.5). The conclusion to be drawn from these sources appears to be that the actions of Tiberius Gracchus were aimed not only at the Roman citizens, but also, even especially, at the Italians.

Some have therefore argued that Tiberius wanted to give the allies land. This is based on a statement in Velleius, who says that Tiberius wanted to grant the allies citizenship; since it is often assumed that by law only Roman citizens could receive land, this must have meant that he also wanted to give them land.⁷⁸ On the other hand, Velleius is unreliable in many respects, and it may be that he misunderstood his source, for example by confusing Tiberius and Gaius. If Tiberius proposed to give the allies citizenship, this clearly did not materialize, since in the following years repeated proposals for granting them citizenship were made.

In fact, the Italians do not seem to have profited in any direct way from the Gracchan reform: the assignments of land which took place as a result of the Gracchan reforms most likely benefited only Roman citizens, while Italians did not receive land. The strongest argument for this is the fact that the *Lex agraria* only mentions land distributed to citizens: '[whatever land or piece of land] a IIIvir according to statute or plebiscite granted or assigned from that land or

⁷⁸ Vell. 2.2.2–3: *Mucio Scaevola L. Calpurnio consulibus abhinc annos centum sexaginta duos descivit a bonis, pollicitusque toti Italiae civitatem, simul etiam promulgatis agrariis legibus*. See Hands (1976, 176–80); Richardson (1980, 3–8); Shochat (1980, 88). It has even been argued that Appian says that the Italians were also given land, e.g. Göhler (1939, 73–5); Gabba (1989, 240); Bleicken (1990, 111). However, Appian never actually says that the Italians received land from the Gracchi. Uggeri (2001, 56) argues the author of the *Elogium Pollae* (see Ch. 4.3.3) gave land to Italians, but there is no evidence for this.

piece of land to any Roman citizen by lot.⁷⁹ Contrary to the opinion held by some, therefore, the Italians are never actually mentioned as recipients of land from the Gracchan commission. The majority of scholars therefore believe that the Italians did not receive land in the Gracchan land distributions.⁸⁰

Moreover, even in Appian's account the Ἰταλιῶται soon disappear from the picture as possible beneficiaries of the scheme. They are presented from Chapter 1.19 only as victims of the Gracchan distributions: when the Gracchan land commission started its work, it was the Italians who launched the fiercest protests. After Scipio had blocked the distributions in 129 there was 'a proposal that all the allies, who were making the most vocal opposition over the land, should be enrolled as Roman citizens, so that out of gratitude for the greater favour they would no longer quarrel about the land' (1.21). After the beginning of Appian's account, therefore, the Italians disappear as (apparent) beneficiaries of the Gracchan scheme, but are instead presented as its most important victims.

Furthermore, those supporting Tiberius Gracchus are never the Italians, but only the Roman people (δῆμος), and more specifically the rural plebs, as we have seen. Except for the one occasion where Tiberius was escorted home by the crowd, Appian never states that the allies supported him; it is possible that there were Italians among those Appian indicates as 'the poor' and 'the people',⁸¹ but this is not made explicit. It seems therefore as if Gracchus' greatest support came from the Roman citizen plebs, whereas the allies were opposed to him.

The prominence of the Italians in the introduction to Appian's text, combined with the fact that the allies did not receive land from the Gracchan land commission, has led some scholars to look for an alternative interpretation of the term Ἰταλιῶται. It has been suggested that at least in some cases this term should not be translated as 'Italian allies', but as *plebs rustica*, in

⁷⁹ *Lex agraria* l. 1.3: *quem agrum locum] quoieique de eo agro loco ex lege plebeive scito IIIvir sortito ceivi Romano dedit adsignavit*. Again in l. 15–16: *eius ag/r/r/i IIIvir a(gris) d(andis) a(dsignandis) ex lege plebeive scito sortito quoi ceivi Roma[no quod dedit adsignavit]*. Shochat (1970, 30–3) argues that the specification *sortito* implies that there was also other land, distributed by other methods, and that this may have been allotted to Italians as well; in l. 31 of the *Lex agraria*, for example, colonies are mentioned in which Italians may have been included. However, there is no reference to other distributions of land, and it seems that *sortito* was simply the standard way of distributing land among settlers. Schol. Bob. *Sest.* 103 (Stangl p. 135) says of Tiberius 'he who distributed *ager publicus* to the Roman plebs' (*ille, ut ager publicus Romanae plebi divideretur*).

⁸⁰ Carcopino (1929, 6); Salmon (1962, 109); Badian (1972, 701); Molthagen (1973, 430); Bernstein (1978, 138); Bringmann (1985, 27); Wulff Alonso (1986, 744–5); Kukofka (1990, 52); Lintott (1992, 44).

⁸¹ Shochat (1970, 44). Contra: Wulff Alonso (1986, 503); Bleicken (1990, 108).

other words, Roman citizens living outside the city of Rome.⁸² Bleicken points out that the words *Italia* and ‘Italians’ had various meanings during the third and second centuries: politically *Italia* designated the Ager Romanus, as opposed to the city of Rome. *Ἰταλιῶται*, on the other hand, could also be used to indicate the combined group of Romans and Italians living outside of Italy. The Roman citizens and their Italian allies presented themselves to the outside world as *Italici*, or in Greek *Ἰταλικοὶ*, as is attested most clearly in a number of inscriptions from the trading centre at Delos.⁸³ In the second century this led to the development of the idea of Italy as a geographic unit and its people as a homogeneous group. After the Social War, when there was no longer any legal difference between Italians and Romans, the two terms became practically synonyms. Bleicken therefore argues that Appian used the term *Ἰταλιῶται* in the same way it was used in his own day, namely as a synonym for Roman citizens living in Italy.⁸⁴

However, in my view this conclusion is extremely unlikely. It is clear that Appian knew that the word *Ἰταλιῶται* could mean ‘Italian allies’, and this clearly emerges from his discussion of the struggle for citizenship by the Italian allies. When talking about Flaccus’ proposal of 125 to give the Italians citizenship, the word Appian uses is *Ἰταλιῶται*: it was proposed that ‘the Italians gladly accepted this’ (the citizenship) (BC 1.21). Appian consistently designates the rebels in the Social War with *Ἰταλιῶται* to distinguish them from the Romans. From Chapter 1.21, where it is first proposed to give the Italians citizenship, it is unmistakably obvious that the *Ἰταλιῶται* are the Italian allies. It is indeed likely that, if the word had had any other meanings before the first century BC, Appian was unaware of this, but I argue that he was very much aware of its meaning ‘Italian allies’ and that he used it accordingly throughout his account. In this case the word would mean ‘Italian allies’ in all its occurrences.⁸⁵

There are no compelling arguments in the text itself that would make this interpretation impossible; in all instances a translation of *Ἰταλιῶται* with Italian allies makes perfect sense. In the introduction the limit on the possession of *ager publicus* and the levy of a tax on its use are stated to be for the benefit of the Italian race ‘so that they would have their kin as allies’ (*συμμάχοι*). Later on, the Italian race is stated to be ‘related to the Romans by blood’. Both references make it clear that the Italians were considered a separate group from

⁸² Kontchalovsky (1926, 173); Galsterer (1976, 37–40).

⁸³ Hatzfeld (1912).

⁸⁴ Bleicken (1990, 113–20) with literature; see also Toynbee (1965, ii. 366–9); Mouritsen (1998, 45–58); Sacchi (2006, 72–9).

⁸⁵ Thus Göhler (1939, 76–82); Badian (1970–1, 403–4); Shochat (1970, 40–1); Wulff Alonso (1986, 735); Kukofka (1990, 55–6).

the Romans. The *plebs rustica* were not ‘related by blood’, they were of the *same* blood. Similarly, they were not *συμμάχοι*, but fought alongside their urban compatriots in the same legions. Appian often translates Latin technical terms into Greek, but *Ἰταλιῶται* would be a strange translation of *plebs rustica*. However, it would be perfectly acceptable for ‘Italian allies’. It seems, then, as if the word *Italia* refers to the whole peninsula—at least the southern part, since in 1.36 Appian says ‘the Etruscans and Umbrians shared the same fears as the Italians.’⁸⁶ There is therefore no other option but to conclude that Appian uses the word *Ἰταλιῶται* to indicate the Italian allies throughout.

This brings us back to the problem of Tiberius Gracchus’ plans for the Italians. The assumption that *Ἰταλιῶται* means ‘Italian allies’ seems irreconcilable with Appian, who presents Tiberius Gracchus as favouring the interests of the allies, because there is no recorded benefit that the Italians would have received from the Gracchan land reforms.

A clear distinction must be made between rich and poor Italians. We have already seen that large tracts of land in southern Italy were transformed into *ager publicus*, and the Italian elite, who had previously owned large holdings as private land, may therefore be expected to have continued to hold this land, even if it was now Roman public land. Such people stood to lose heavily when this land was distributed to the Roman poor. Poor Italians, who are presented in the sources as being as destitute as the Roman plebs, and as having lost access to land, apparently did not receive any land from the Gracchan land commission.

Why, then, does Appian present Tiberius as favouring the ‘people of Italy’? This question has long puzzled scholars, leading to such interpretations as that Tiberius wanted to distribute land to the allies, but never got around to it, or that he was inspired by the situation in the whole of Italy, but planned to give land only to Romans.⁸⁷ Another option would be that Appian’s source was more pro-Italian than the sources used by other authors, and that this influenced the way he portrayed them,⁸⁸ or that Appian used a different source for his introduction than for the later parts of his account. However,

⁸⁶ Appian’s definition of ‘Italia’ becomes clear from *Hann.* 8: ‘The Apennines extend from the centre of the Alpine range to the sea. The country on the right-hand side of the Apennines is Italy proper. The other side, extending to the Adriatic, is now called Italy also, just as Etruria is now called Italy, but is inhabited by people of Greek descent, along the Adriatic shore, the remainder being occupied by Gauls, the same people who at an early period attacked and burned Rome. When Camillus drove them out and pursued them to the Apennines, it is my opinion that they crossed over these mountains and made a settlement near the Adriatic instead of their former abode. Hence this part of the country is still called Gallic Italy.’ Apparently he did not consider Etruria to be part of Italy proper, and this may be the explanation for his distinction between Etruria and Umbria and the ‘real’ Italians.

⁸⁷ Shochat (1970, 42–4); Bernstein (1978, 145–59); Stockton (1979, 45–6).

⁸⁸ Kukofka (1990, 60). See Bleicken (1990, 109–11) for various possible sources.

it is very likely that Appian used the same source as Plutarch, who puts much less emphasis on the Italians (Ch. 1.3). The whole discussion has led to endless debate as to the possible sources for Appian's work, and various increasingly ingenious interpretations of his words.

However, I think there is a possible solution to this impasse. Even if the Italians did not receive land as new Gracchan settlers, they were in fact treated quite generously by the Gracchi. An important question in this respect is whether the Italian *veteres possessores*—the Italians holding Roman *ager publicus* before 133—were also allowed to keep a maximum of 500 *iugera* of *ager publicus*, just like the Romans. At first sight this would seem to have been unlikely, since Italians did not have any formal rights of access to *ager publicus* (Ch. 2.5.2). On the other hand, the *Lex agraria* seems quite generous when it comes to the rights of Latin and Italian allies. In lines 20–3 it describes how, if an ally had to hand over his holdings of *ager publicus* so that a colony could be founded there, he would receive other tracts of *ager publicus*, which would then become his private property: '[Whichever] Roman citizen or ally or member of the Latin name . . . [granted] public [land] or a piece of land of the Roman people from his possession . . . whatever land or [piece of land] he shall have received?' in return . . . that land is to be private.⁸⁹

It is likely that the *ager publicus* previously held by the allies and *not* exchanged for other land had also become private under the *Lex agraria*; this is moreover supported by the fact that line 2—which, however, is very fragmentary—declares that any occupations within the limit held by *unus homo* were to be private.⁹⁰ This term does not distinguish between Romans and Italians, which is remarkable in contrast with the rest of the *Lex agraria*, which is usually very specific about who are touched by its regulations. For instance, in the case of the Gracchan assignments mentioned in line 3 Roman citizens are expressly mentioned. It may be therefore that allies were also included in the regulations of line 2. Since the law of 111 in this respect confirmed the Gracchan law, it is likely that the law of 133 also granted security of tenure to Italian holders of *ager publicus*. Moreover, in lines 16–18, setting out the rights of the *veteres possessores*, the law does not mention Roman citizens specifically, although it does so in the previous line when referring to the land assigned by

⁸⁹ *Lex agraria* l. 21–3: *quei in eo agro loc[o ceivis] Romanus sociumve nominisve Latini . . . [agrum lo]cum publicum populi Romanei de sua possessione vetus possesor prove vetere posseso[re dedit - - quo in agro loco oppidum coloniave ex lege plebeive scito constitueretur de duceretur conlocaretur] . . . is ager privatus esto, que[m IIIvir . . . pro eo agro loco, qu]o coloniam deduxsit ita utei s[upra] s[criptum] est, agrum locum aedificium dedit reddidit adsignavit.*

⁹⁰ In the *Lex agraria* l. 59–60 *homines* are mentioned as colonists in Carthage, and they were not necessarily citizens, since according to App. BC 1.24 Italians were also included in this colony.

the Gracchan land commission. Therefore it is likely that Italian *veteres possessores* were also granted secure tenure of a maximum of 500 *iugera* (possibly plus 250 for each of their children).⁹¹ Thus, elite Italians in fact gained heavily from the Gracchan land reforms: security of tenure and, by 118, full property of up to 500 *iugera* of former Roman *ager publicus* (Ch. 5.3.1).

The only problem with this theory is that there appears to have been no real legal basis for giving land to non-citizens. Land was a *res Mancipi*, and therefore could only be legally transferred to people with the *ius commercii*. If Italian allies did not have this right, it would be difficult for them to receive *ager publicus* in full ownership. If they did not possess this right, the problem could have been solved by giving them Roman citizenship, but this did not happen until after the Social War, when most of the land had already been privatized. However, since *ager publicus* was the property of the Roman citizens, its distribution required a law ratified by the popular assembly. In the early second century, when land was abundant and there were many assignments to citizens, such a law could easily have been passed (see Ch. 2.5.2), but it is not to be expected that Roman citizens in 133 would vote for a law that would assign some of the already scarce land to the allies.

On the other hand, the land granted to the Italians in 133 was not in fact alienated: they were granted security of tenure, but the land still counted as *ager publicus* of the Roman state. Citizenship or *ius commercii* was not required for receiving rights to public land in 133 BC. The status of the land only changed in 118, when by the second post-Gracchan law the public land was actually privatized to its possessors (Ch. 5.3.1). We know that the *Lex Thoria*, which arranged this, was passed by the assembly of the Roman people, and it was therefore possible to fully alienate land to those not possessing *ius commercii* by this law. In fact, therefore, Italians did not suffer as much from the Gracchan reform as is often supposed, and it may be that Appian had this in mind when emphasizing the importance of Tiberius' activities for the whole of Italy.

Even if rich Italians were treated generously by the *Lex Sempronia*, Appian also records that it was especially the Italian allies who complained about the Gracchan land distributions. This is by no means surprising if we look at the location of the distributions made by the Gracchi: most of them took place in the south of Italy. This was the area where after the Second Punic War a large amount of *ager publicus* had become available. We have seen that in many allied territories a large part of the land had been declared *ager publicus*, and

⁹¹ Johannsen (1971, 200); Molthagen (1973, 429); Flach (1990, 51). Contra: Riecken (1911, 172); Richardson (1980, 9–10); Lintott (1992, 44); Mouritsen (1998, 145–8). Carcopino (1929, 5) states that the Italians had to give up their *private* holdings above the limit of 500 *iugera*, plus all their *ager publicus*, but this was certainly not the case.

that this was often the best land held by the allied community (Ch. 2.4). In some areas there must have been hardly any land available apart from the Roman *ager publicus*. It is to be expected, therefore, that on average Italians held a larger percentage of their holdings as public land than the Romans did, who were concentrated mainly in the old *Ager Romanus* where most of the land was private (Ch. 4.3.6). Many Italians had simply continued to use the land that was officially confiscated; by now, this situation had lasted seventy years, and the Italians expected to be able to keep the land as long as they did not rebel against Roman overlordship. It may even be that they were allowed by treaty to keep this land for as long as the Romans did not need it, and that they felt that this gave them some permanency in their right to the land (Ch. 2.5.2). If, as Appian states, ‘the passage of time put everything on a fresh basis’ (BC 1.18), even some private land held by the allies may have been in danger of confiscation and distribution to Roman settlers.⁹²

For these reasons the Italians were understandably angry when the Gracchi wanted to take the land away from them. Probably those actually complaining in Rome were the rich occupiers, since they were to lose the land held above the limit of 500 *iugera*. Many small farmers may have been in danger as well, since Appian records that the measuring of the land was often done in haste and inaccurately. Even if dispossessed allies received other land in return, as is suggested by the *Lex agraria*, this may not have been land of equal quality: according to Appian some received ‘land which was uncultivated or marshy or liable to flooding’ (BC 1.18). Even if the allied sufferings were not quite as serious as has been assumed in previous scholarship, they still had some reason to complain against the Gracchi.

The question remains as to what benefit poor Italians received from Tiberius Gracchus; if, as the sources state, Tiberius was especially concerned with the fate of the poor Italians, he must have made some provision for them. All those holding less than 500 *iugera* of land now received security of tenure, even small farmers, but the sources seem to indicate that many Italians had become completely landless. Although we do not know much about the patterns of landholding in pre-Roman times, there is a possibility that, upon the change of status of the land into *ager publicus*, rich Italians had begun to occupy land which had previously been held by the poor, by the process I have sketched in Chapter 4. We have seen (Ch. 4.3.6) that some cash crop estates in southern Italy were owned by local elites. The sources do not record any benefit for landless Italian allies, who did not receive land from the Gracchi; nor can I think of any indirect advantages that may have accrued to them.

⁹² Toynbee (1965, ii. 548–50).

I think therefore that the emphasis placed on the sufferings of poor Italians, expressed in the beginning of Appian's and Plutarch's accounts, should be explained by the rhetorical nature of these passages. Certainly Tiberius' argument would have come across more forcefully if he argued that the problems he described were prevalent in the whole of Italy. The Italian allies were an important part of the Roman army, and if they were declining in numbers, Roman politicians may indeed have worried about their manpower supply. We do not have any record of actual benefits for poor Italians; it may be that Tiberius intended to give them citizenship, as his brother would later propose, which would entitle them to land distributions. However, we have no evidence for this.

Furthermore, as we have seen, Appian's and Plutarch's accounts may derive from a source favourable to the Gracchi. It may be that Gaius Gracchus, aware in hindsight of the problems which had arisen when the commission had wanted to take *ager publicus* away from the allies, tried to represent Tiberius' intentions as designed to benefit Italy in general, instead of the Roman citizens only. This was indeed possible, since the Italians had profited in many ways from the *Lex Sempronia* of Tiberius. It is likely, therefore, that Appian, whose source was clearly pro-Gracchan, derived his information mainly from the works of Gaius Gracchus, who had much to gain by presenting his brother's scheme as beneficial to as many people as possible.

Notwithstanding the apparent concerns of Tiberius for the fate of the Italians, it seems therefore as if—apart from the grant of secure tenure of 500 *iugera*—they received no other tangible benefits from the Gracchan reform. We may conclude that any Italian allies who held Roman *ager publicus* were not treated much less favourably than Roman *veteres possessores* by the *Lex Sempronia*. However, its terms, though equal to both groups in theory, may have had more severe consequences for the allies, who were more dependent on *ager publicus* than Romans. Thus we can see that the Gracchan period brought with it important changes in the status of the land held by the allies, whose holdings were privatized in many cases, but at the same time that there were some issues which may have led to resentment among the allies. Thus the Gracchan reform was important for the creation of tensions between Romans and allies, which would increase in the subsequent period.

5.2.5. Conclusion: the result of the Gracchan land reforms

I have argued that the aim of the Gracchi was to increase the number of soldiers by restoring small farmers to the land and encouraging them to have children. However, there is some difference of opinion as to the results of the reform. There are many who believe that the Gracchan distributions did not

have much success, in that they failed in the distribution of land to a large number of small farmers. Some suppose that the Gracchi were unable to distribute much land, because there had hardly been any *ager publicus* available to start with.⁹³ Others simply assume that much of the distributed land quickly returned to the hands of the rich and that the reforms therefore failed their aim of restoring the class of small farmers.⁹⁴

In my view, however, the results of the Gracchan reforms were quite impressive.⁹⁵ If we look only at the sheer size of the centuriations they created, we can see that the Gracchan land commissioners achieved a great deal within a very short time. As appears from finds of Gracchan *cippi*, they surveyed land in Picenum, Campania, Lucania, and Apulia (see Figure 5.1); this is also supported by references to Gracchan activity in the *Liber Coloniarum*.⁹⁶ Furthermore, there are many centuriation grids visible in these areas. If we add up the size of all centuriations in Italy which have been ascribed to Gracchan activity,⁹⁷ we arrive at a total size of 3,268 km² or 1,307,200 *iugera*.

Moreover, some traces of centuriation may have disappeared, since Gracchan boundary stones have also been found in locations, for example in Picenum, where no centuriations are visible. If we assume that each settler received ten *iugera*, this amount of land could have accommodated 130,720 settlers.

We must remember, however, that not all the centuriated land was meant for Gracchan settlers: *veteres possessores* often retained their previous holdings, while the land around them was granted to new settlers, while other *veteres possessores* received new land in exchange for their previous holdings. Such grants may well have been located within the visible centuriations. Some of the Gracchan *cippi* found at Rocca San Felice in Lucania mention the letters FVP or FP VET, short for *fundus veteris possessoris*, or FPVCI, which is understood to mean *fundus possessori veteri concessus immunis*.⁹⁸ Therefore the size of the centuriations does not give any indication of the actual number of settlers. The total number of new settlers who profited from the Gracchan

⁹³ Stockton (1979, 80). Others, e.g. Burdese (1952, 98), point out that a great deal of *ager publicus* was left after the Gracchan reforms and the Gracchi therefore cannot have been very successful. However, since the aim of the Gracchi was not primarily to privatize *ager publicus*, this is not an adequate indication of their success.

⁹⁴ Lintott (1992, 49); Accardo (2000, 41–5).

⁹⁵ Thus also Bleicken (1992, 65); Rathbone (2003, 159).

⁹⁶ See Roselaar (2009c) for the reliability of these statements. A possible Gracchan settlement has been identified near Fiocaglia di Flúmeri, close to the find spots of Gracchan *cippi* at Rocca San Felice; see Johannowsky (1991).

⁹⁷ e.g. Compatangelo (1989, 231). The centuriations are those pictured in Barrington's Atlas to the Greek and Roman world. I have measured the size of the territory covered by the centuriations as they are pictured in the atlas.

⁹⁸ Warmington (1940, 168–73). See Nagle (1973, 374).

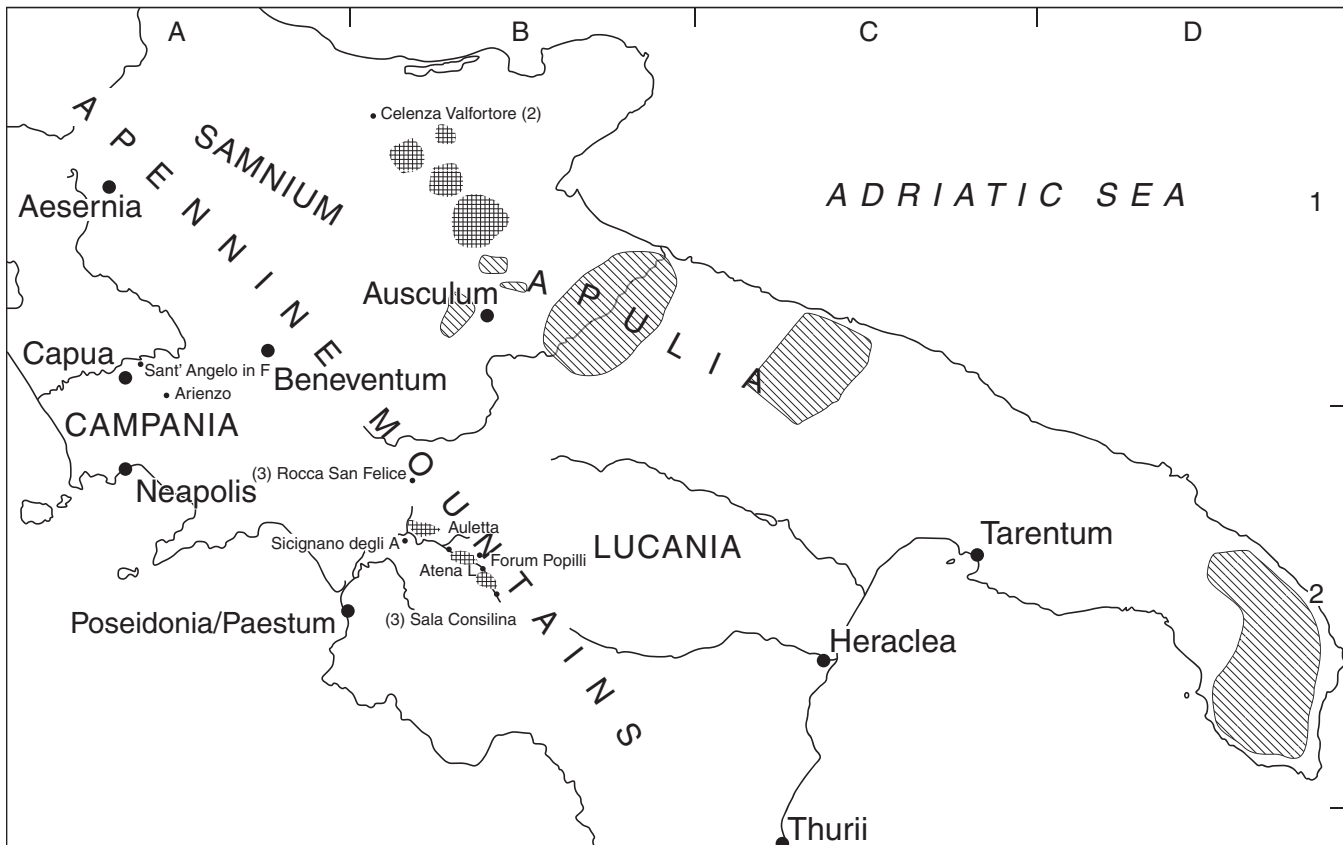


Figure 5.1. Attested (squared) and likely (hatched) Gracchan land distributions and the location of Gracchan *cippi*

distributions has been estimated around 15,000, and this seems a reasonable amount.⁹⁹ This would fit with the idea that most of the land assigned by the Gracchi in fact came to the *veteres possessores*, who could receive 500 *iugera* of *ager publicus* in secure tenure.

The Gracchan land distributions are often linked to the census figure of 125/124 BC. Since this showed an increase of 75,913 people compared to the previous census, the Gracchi are thought to have distributed land to the same number of people.¹⁰⁰ That this rise occurred only in 125/124 and not in the previous census of 131/130 may be explained by the fact that it took a few years before the poor actually received land from the Gracchi; the status of the land had to be clarified before it could be measured and assigned.¹⁰¹ However, this theory assumes that only *assidui* were counted in the census, for only in that case would a rise in the number of landowners have caused an increase of the census figure. We have already seen, however (Ch. 4.3.5), that all adult male citizens were counted, at least in theory.

Others have sought the explanation for the increase in the greater willingness of proletarians to register at the census. This theory would fit the previously suggested theory of increased under-registration: as the second century progressed, a larger proportion of the target population had avoided registration, as is shown by the stagnation of the census figures over time. Now these people suddenly reappeared (Ch. 4.3.5). This can be explained by two developments: either they were more willing to register, or the censors made more efforts to register them. Possibly both factors were at work: on the one hand, proletarians were more eager to register, hoping to get land from the Gracchi. On the other hand, the censors were likely to count more people: proletarians were usually counted less carefully than other groups,

⁹⁹ Various estimates of the number of Gracchan settlers place the number between 10,000 and 15,000: Bringmann (1985, 23–4); Flach (1990, 41); Schubert (1996, 121). Unfortunately, it is not clear what these estimates are based on. Molthagen (1973, 446) argues that the census of 131/130 showed 900 people more than the previous one, and that, if Gracchan activity had continued at this pace, the total number of Gracchan settlers would have been about 3,000 (compensating for the continued decline of population which he presupposes). This would assume that only *assidui* were counted in the census, but this is incorrect. Garnsey (1976, 100) assumes there were only 400 settlers, the difference between the censuses of 125/124 and 115/114.

¹⁰⁰ Shatzman (1975, 14–15); Hopkins (1978, 64 n. 88); Bauman (1979, 408); Finley (1999, 101). Carcopino (1929, 11–12) suggests that the rise in the census may be attributed to the inclusion of a large number of freed slaves, but there is no evidence for this.

¹⁰¹ Boren (1968, 75); Brunt (1971, 79). Muschietti (1972, 244) suggests that in 125 the Gracchan commission regained its juridical powers, and that it therefore continued its activities in this year, but there is no reason to believe that this was so. Shochat (1980, 142) suggests that the distributed land itself was not counted in census, but its proceeds were, and that therefore the recipients had acquired enough wealth to be counted as *assidui* after a few years of saving. It seems unlikely, however, that small farmers would have been able to save much money.

since their importance for the state was limited, and they were therefore under-represented in the census. Some proletarians (but certainly not 76,000) had been transformed into *assidui* by the Gracchan reforms, and they were therefore counted more carefully. The censors also may have felt that it was necessary to compile an accurate list of Rome's manpower, to ascertain whether the shortage of soldiers was actually as serious as it seemed to be. If this were not the case, the Senate might have been able to use this as an argument against further distributions of land.

However, if people were eager to register themselves in the hope of obtaining land, and the censors were more active in registering them, why did they not do so in 131 instead of in 125, when the Gracchan commission had not been active for four years? A possible explanation may lie in the fact that the majority of land distributions carried out by the commission had taken place between 131 and 129. It is possible that in 131 many people were not yet convinced that the Gracchan law would provide them with land. When this did indeed prove true, they registered themselves in 125, hoping that the distributions would be recommence in the near future.¹⁰²

It makes sense that people may have believed that the distributions of land, which had halted four years previously, would recommence in 125. Should Flaccus' proposal to give the allies citizenship (App. BC 1.21) succeed, a grant of citizenship might make the allies more willing to relinquish their holdings of *ager publicus* and therefore more land would become available for distribution. When Flaccus' attempt failed, Appian explains, 'the populace, who had clung for so long to the hope of land, were in despair. Being in this frame of mind, they welcomed the candidature for the tribunate of one of the land commissioners, Gaius Gracchus.'¹⁰³ First Flaccus' attempt to give the allies citizenship, and then Gaius Gracchus' tribunate may have induced more people to register.

However, a rise of 76,000 seems too large to be explained only by greater enthusiasm to register. An additional explanation of the sudden rise has therefore been sought in the lowering of the census qualification: Gabba suggested that around 129 the qualification for the fifth class was lowered, so that more people were classified *assidui* and therefore were included. From the 4,000 *asses* given in Polybius,¹⁰⁴ the threshold would have been reduced to 1,500 *asses*, the amount given by Cicero, Gellius, and Nonius.¹⁰⁵ Even if the

¹⁰² Toynbee (1965, i. 470); Bernstein (1969, 41).

¹⁰³ App. BC 1.21. Vanderspoel (1985, 103–4) suggests that in 125 and 124 Gaius Gracchus was already campaigning for his tribunate, and that many people registered in order to be able to vote for him.

¹⁰⁴ Polyb. 6.19.2 gives 400 drachmas, the equivalent of 4,000 *asses*.

¹⁰⁵ Cic. Rep. 2.22.40; Gell. NA 16.10.10–3; Non. 228 L. See Gabba (1949, trans. 1976, 5–8); Brunt (1971, 77); Molthagen (1973, 443–5); Bernstein (1978, 75); Shochat (1980, 42); Bring-

census in theory counted all citizens, a lowering of the census qualification may have increased the group of people to be counted, since the censors probably paid more attention to counting *assidui* than proletarians. Unfortunately, no lowering of the census qualification is recorded in this period, and this theory must remain hypothetical.

Since none of the three explanations brought forward—proletarians being turned into *assidui* by the Gracchan distributions, the same happening because of the lowering of the census qualification, and greater willingness to register—is in itself sufficient to explain a rise of the census figure by 76,000, it is likely that a combination of these three factors was responsible for this increase. Unfortunately, it is impossible to reconstruct the relative importance of each of these factors.

If we take into account the difficulties the Gracchan commission encountered in its endeavours to survey *ager publicus*, we cannot but conclude that their achievements were indeed impressive. As Appian describes, it was very difficult for the Gracchi to obtain reliable information about the status of land: indeed, if most of the land available to the Gracchi had been *ager publicus* since the Second Punic War, the majority of people (Italians and Romans) would simply have occupied it and worked it as if it was their own, as we have seen (Ch. 2.5.2). After seventy years, the difference between public and private land would have become very hard to discern. The problems confronting the Gracchan commission naturally increased after 129, when its judicial powers were abrogated. To have measured and assigned some 1.3 million *iugera* within only four years is certainly an impressive achievement.

5.3. THE POST-GRACCHAN LEGISLATION

Appian describes briefly what happened to the *Lex Sempronia agraria* after the death of Gaius Gracchus:

Not long afterwards a law was passed permitting holders of the land, over which they were quarrelling, to sell it (for this too had actually been forbidden by the elder Gracchus), and immediately the rich started to buy from the poor or find pretexts to

mann (1985, 28); De Ligt (2006, 17–18). Contra: Rich (1983, 308–16); Lo Cascio (1988, 281–2). Gellius gives a different valuation for the *capite censi*, who supposedly were rated at 375 *asses*; this has led some to assume that a decrease of the qualification from 1,500 to 375 took place, e.g. Kontchalovsky (1926, 184), Nicolet (1967, 105). However, this theory may safely be discarded, since the figure 375 is most likely to be explained by a calculation error from 1,500 *asses* to sesterces, see Gargola (1989, 233–4); Rathbone (1993a, 142–4).

evict them by force. The situation continued to deteriorate for the poor, until Spurius Thorius [MS: Borius], as tribune, brought in a law which put an end to the process of allotting the land, and made it the property of its current holders, who were to pay a rent for it to the people, this money to be used for public distributions. This was indeed some consolation to the poor, thanks to the distributions, but it did nothing to increase the population. And once the Gracchan law, an admirable law which would have been of the greatest service had it been possible to enforce it, had been undermined by these tricks, another tribune very soon abolished the rents, and the people had been deprived of absolutely everything. For this reason the numbers of both citizens and soldiers diminished still more, as did the returns from the public land, and the distributions, and legislation < . . . > the court hearings [or: the people, or: the Gracchan land commission] coming to a standstill about fifteen years after Gracchus passed his law.¹⁰⁶

The lack of detail in this statement has led to a variety of reconstructions of the post-Gracchan legislation. Fortunately, one post-Gracchan law, the *Lex agraria* of 111 BC, has been preserved, and this may be used to reconstruct the fate of *ager publicus* after the Gracchan reform.

5.3.1. The three post-Gracchan laws in Appian

The first law which Appian mentions ‘permitt[ed] holders of the land, over which they were quarrelling, to sell it (for this too had actually been forbidden by the elder Gracchus)’. This simple sentence raises many questions: When was this law passed? Who were the holders? Which lands were now permitted to be sold? What exactly had been forbidden by the law of Tiberius?

It is usually thought that this refers to the land which had been distributed to the Gracchan settlers: Appian had stated earlier that Tiberius had forbidden this to be sold, and this was now allowed.¹⁰⁷ This would seem logical in

¹⁰⁶ App. BC 1.27: νόμος τε οὐ πολὺ ὕστερον ἐκυρώθη τὴν γῆν, ὑπὲρ ἧς διεφέροντο, ἐξείναι πιπράσκειν τοῖς ἔχουσιν· ἀπειρήτο γὰρ ἐκ Γράκχου τοῦ προτέρου καὶ τότε· καὶ εἰθὺς οἱ πλούσιοι παρὰ τῶν πενήτων ἔωνοῦντο, ἢ ταῖσδε ταῖς προφάσεσιν ἐβιάζοντο. καὶ περιὴν ἐς χεῖρον ἔτι τοῖς πένησι, μέχρι Σπούριος Θόριος δημαρχῶν εἰσηγήσατο νόμον, τὴν μὲν γῆν μηκέτι διανέμειν, ἀλλ’ εἶναι τῶν ἐχόντων, καὶ φόρους ὑπὲρ αὐτῆς τῷ δήμῳ κατατίθεσθαι καὶ τάδε τὰ χρήματα χωρεῖν ἐς διανομᾶς. ὅπερ ἦν μὲν τις τοῖς πένησι παρηγορία διὰ τὰς διανομᾶς, σφέλος δ’ οὐδὲν ἐς πολυπληθίαν. ἅπαξ δὲ τοῖς σοφίσμασι τοῖσδε τοῦ Γρακχέου νόμου παραλυθέντος, ἀρίστου καὶ ὠφελιμωτάτου, εἰ ἔδύνατοπραχθῆναι, γενομένου, καὶ τοὺς φόρους οὐ πολὺ ὕστερον διέλυσε δημαρχος ἔτερος, καὶ ὁ δῆμος ἀθρόως ἐξεπεπτώκει. ὅθεν ἐσπάνιζον ἔτι μᾶλλον ὁμοῦ πολιτῶν τε καὶ στρατιωτῶν καὶ γῆς προσόδου καὶ διανομῶν καὶ νόμων, πεντεκαίδεκα μάλιστα ἔτησαν ἀπὸ τῆς Γράκχου νομοθεσίας. . . ἐπὶ δίκαις ἐν ἀργίᾳ γεγονότες. The insertion of a lacuna in this translation is doubtful (Ch. 5.3.2).

¹⁰⁷ Burdese (1952, 89); Molthagen (1973, 456); Develin (1979, 48); Stockton (1979, 202); Perelli (1993, 229); Crawford (1996, 57); Sacchi (2006, 31–2). This is also the translation chosen

connection with the next sentence: when the poor were allowed to sell their allotments, many sold them to the rich, and so the poor lost the lands they had received. However, in my view this not what was intended. The wording ‘this too (καὶ τὸδε) had actually been forbidden by the elder Gracchus’ suggests that what Appian says here is something he has not said before. If he were referring back to the ban on selling the allotments, he could simply have said something like ‘as the elder Gracchus had forbidden’. It would therefore seem that the ban on sales mentioned here was different from the aforementioned ban on the sale of Gracchan allotments. Moreover, Appian says that it was allowed to sell the lands ‘about which they had quarrelled’. This is a strange way to describe the Gracchan allotments: there may have been quarrels about them before they were distributed, but once they were allotted, they belonged to the persons to whom they were granted. The quarrels which Appian has mentioned so far—and his wording here suggests that he refers to something mentioned previously—mainly concerned *ager publicus*, the status of which was debated and had aroused a storm of litigation.

Moreover, the *Lex agraria* strongly suggests that sales of land made by Gracchan settlers before 111 were not acknowledged:

[Whatever] of that land a IIIvir for the granting and assigning of land [granted or assigned] by lot to any Roman citizen according to statute or plebiscite, [whatever of that land neither he—] has or shall have alienated nor his heir has or shall have alienated [nor the person to whom it has or shall have passed by inheritance . . . the person having jurisdiction] is to decree so as to grant possession in favour of the person or his heir, to whom that land has been granted or assigned by lot, whatever of that land shall not have been alienated as is written down above.¹⁰⁸

Line 17 mentions the *veteres possessores* or ‘whoever has bought from any of them’, and grants possession to both these groups; apparently *veteres possessores* were allowed to sell their land even before 111. The fact that the law does not mention sale explicitly in the case of the new settlers suggests that they had not been allowed to alienate their lands by sale, but that alienations by other methods, e.g. by grants as a dowry or gift, may have been acknowledged. If this is correct, and before 111 Gracchan settlers had not been

in most editions; e.g. Veh (1989): ‘Sofort begannen die Reichen, die Landlose der Armen aufzukaufen’; Combes-Dounous (1993–2000): ‘On fit une loi pour autoriser les assignataires à vendre leur propre lot.’

¹⁰⁸ *Lex agraria* ll. 15–16: *eius agllrli IIIvir a(gris) d(andis) a(dsignandis) ex lege plebeive scito sortito quoi ceivi Roma[no quod dedit adsignavit, quod eius agri neque is - - abalie]navit abalienaritve neque heres eius abalienavit abalien[eritve neque is quoi hereditati obvenit obvenieritve . . . is de ea re ius deicito d]ee<e>rnto que utei possessionem secund<um>eum heredemve eius det, quoi sorti is ager datus // adsignatusve fuerit, quod eius agri non abalienatum erit ita utei s(upra) s(criptum) est.*

allowed to sell their land, it is impossible that the first post-Gracchan law applied to them.¹⁰⁹

In my view, therefore, it is more likely that the first post-Gracchan law applied to the *veteres possessores*.¹¹⁰ This would fit far better with what Appian has told us so far: one of the problems the Gracchi encountered when trying to distribute *ager publicus* was that the land had been treated as private property by its possessors, who had bought, sold, and bequeathed the land as if it was their own, with the result that it had become unclear which land was private and which public. It makes perfect sense therefore that Tiberius Gracchus should have forbidden the sale of *ager publicus* by its holders, to make sure that such problems were avoided in the future. The Gracchan commission would measure the land and record which *ager publicus* was held by *veteres possessores*, and to avoid future confusion between public and private land it forbade them to sell the land they held at the moment of this registration. With this interpretation the land can very well have been equal to ‘the land over which they were quarrelling’, since many lawsuits had sprung up concerning the status of the land held by the *veteres possessores*. Under the first post-Gracchan law *veteres possessores* were again allowed to sell the *ager publicus* they held. This permission to sell the land did not necessarily mean that it now became private land; this probably happened only by the second post-Gracchan law. Appian may in fact have thought that this law referred to Gracchan settlers, but notwithstanding the modern translations the Greek simply says ‘immediately the rich began to buy from the poor’ (καὶ εὐθὺς οἱ πλοῦστοι παρὰ τῶν πενήτων ἐωνοῦντο), without reference to any specific type of land. There is a strong possibility that moderately rich *veteres possessores*, holding less than 500 *iugera* and therefore allowed to acquire more, began to buy holdings of *ager publicus* held by other *veteres possessores*.

There has been some confusion between the first post-Gracchan law mentioned in Appian, allowing ‘the land’ to be sold, and the law mentioned in Plu. CG 9.2, by which Drusus removed rents placed on the land distributed by Gaius Gracchus.¹¹¹ There is no immediate connection between these two laws, and it is therefore prudent to treat them as two different laws. It is possible that the *vectigalia* abolished by Drusus included not only those set on land distributed by Gaius Gracchus, but also those on assignments made by the land commission between 133 and 129 (see Ch. 5.2.3).¹¹² In that case, one of the limitations on private ownership of the Gracchan allotments had already been abolished

¹⁰⁹ Lintott (1992, 48); Sacchi (2006, 31–2).

¹¹⁰ Thus Lintott (1992, 45); De Ligt (2001a, 139–42); Sacchi (2006, 302).

¹¹¹ Boren (1968, 113); Perelli (1993, 229).

¹¹² Muschietti (1972, 248); Lintott (1992, 47); Sacchi (2006, 6).

during Gaius Gracchus' lifetime, or shortly afterwards. There is, however, no reason to assume that the two laws involved the same land or the same group of people: the law mentioned by Appian probably targeted *veteres possessores*, while the one mentioned by Plutarch concerned the holders of Gracchan allotments.

The meaning of the second law—to be dated to around 119/18, as we shall see below—seems clearer: there were to be no more distributions of *ager publicus*, and those who still held public land were to pay a rent on it, which would benefit the poor. It is likely that this made the land private; the Greek text says 'to belong to the holders' (εἶναι τῶν ἐχόντων).¹¹³ The phrase *esse plus genitive* in Latin usually indicates property rights, and it is likely that Appian simply translated this phrase from his Latin source, most likely as a direct translation of *privatus esto*.¹¹⁴

There has been much discussion about who exactly were to pay a *vectigal* from now on. Some assume it was the Gracchan settlers,¹¹⁵ but this is unlikely, since in my view their land had already become private and had had a *vectigal* imposed on it in 133. I think that this law again applied to the *veteres possessores*, both those holding land within the limit of 500 *iugera* and those still occupying land above the limit.¹¹⁶ Their land therefore also became *ager privatus vectigalisque* by this law. The third post-Gracchan law abolished this newly introduced *vectigal*; this removed all remaining limitations on the holdings of formerly public land. As we shall see, there are good reasons to equate this third post-Gracchan law with the epigraphic *Lex agraria* of 111 BC.

In short, the three post-Gracchan laws were further steps in the privatization process, especially with respect to the land held by the *veteres possessores*. The first law allowed them to sell the land they held; the second completely ended distributions of public land and decreed that the land became the private property of those who held it against payment of a rent. The third law abolished this *vectigal*. In this way, within a period of twenty-two years *veteres*

¹¹³ Uggeri (2001, 59). Contra: De Ligt (2001a, 126–7). Badian (1964, 240) argues that the *Lex Thoria* wanted to set a *vectigal* on grazing land held above the limit; however, there is no evidence at all that this was the case.

¹¹⁴ Saumagne (1927, 78). However, Flach (1990, 51) and Lintott (1994, 87) assume the land of the *veteres possessores* did not become public until 111.

¹¹⁵ Rossi (1980, 155).

¹¹⁶ Johannsen (1971, 72); Stockton (1979, 203); De Ligt (2001a, 141–2). See Gabba (1956, 63 n. 2); he assumes, however, that all land above the limit was turned into *ager scripturarius* and therefore automatically taxed, but this was not the case. Burdese (1952, 87–9) thinks only those occupying land above the limit were to pay a *vectigal*. D'Arms (1935, 240 n. 53) and Douglas (1956, 391–2) argue that it would be strange if this tax applied to the *veteres possessores*, since they would not accept having to pay a tax after being free of tax from 133 to 118. However, if they had never paid tax before (since taxes on *ager occupatorius* were most likely not paid before 133), they may have expected to be able to evade this tax after 118 as well.

possessores had acquired full ownership of a plot not larger than 500 *iugera* (or more if they had children).

5.3.2. The three laws of Appian and the *Lex agraria* of 111

The relationship between the three laws of Appian and the *Lex agraria* of 111, which is preserved on a bronze inscription of which several pieces have been found, is one of the most complicated problems in the history of the *ager publicus*. Can this epigraphic law be identified with any of the laws mentioned by Appian? And if so, is the epigraphic law the first, second, or third of the laws which Appian mentions? Each of these theories has found its supporters, and some have even argued for other possibilities.

The question is made particularly complex by two pieces of evidence: Appian ends his discussion of the three post-Gracchan laws with the statement that ‘the people were reduced to idleness about fifteen years after Gracchus passed his law’. The sentence as it stands does not make much sense, which has led some scholars to assume a lacuna and suggest that not the people, but the activities of the Gracchan land commission and the lawsuits carried out before it came to a standstill.¹¹⁷ However, it is problematic to fit a fifteen-year period into the time span covering the activities of the Gracchi and the three laws of Appian. It is unclear to which of the Gracchi he refers; if he meant Tiberius, the fifteen-year period would have ranged from 133 to 119/118;¹¹⁸ if Gaius, then from 123 to 109/108 BC.¹¹⁹ Where then do the three post-Gracchan laws and the *Lex agraria* fit into the fifteen-year period? It seems at first sight that Appian means to say that the end of the Gracchan programme coincided with the third of the laws, in which case the third law should be dated fifteen years after one of the two brothers. This might allow us to say something about the identity of the epigraphic law. However, on closer examination it is not at all clear that Appian considered the third post-Gracchan law the end of the fifteen-year period (see below).

Another problem arises from Cicero’s reference to the *Lex Thoria*: *Spurius Thorius satis valuit in populari genere dicendi, agrum publicum vitiosa et inutili lege vectigali* [MS: *vectigale*] *levavit*.¹²⁰ Had its meaning been clear, this

¹¹⁷ Gabba (1956, 66–7); Meister (1974, 88); Gargola (1997, 573).

¹¹⁸ D’Arms (1935, 239); Carcopino (1967, 163); Johannsen (1971, 86–91); Molthagen (1973, 457); Meister (1974, 90); Develin (1979, 49–50); Stockton (1979, 204); Gargola (1997, 561); De Ligt (2001a, 133).

¹¹⁹ Carcopino (1929, 13); Gabba (1956, 65); Mattingly (1971, 288); Crawford (1996, 57–60); Sacchi (2006, 18).

¹²⁰ Cic. *Brut.* 36.136.

passage could have given us valuable information about the (presumed) second post-Gracchan law. As it stands, unfortunately, the passage can be translated in a number of ways, which has led to endless debate about the identity of Thorius (or Borius), the contents of the *Lex Thoria*, and its relationship with the *Lex agraria*. Because it is important to determine exactly how *ager publicus* was privatized by the Gracchan and post-Gracchan laws, it is unfortunately necessary to go into this debate in some detail, in order to reconstruct the events of this crucial period.

Many scholars believe that the epigraphic *Lex agraria* of 111 was the third of the laws, mentioned by Appian, abolishing the rents on *ager publicus*.¹²¹ As there are several strong arguments pointing in this direction, I think that this is indeed the most likely possibility. The most important clue is that the *Lex agraria* seems to abolish rents on the land made private by that law:

[Whatever of that land according to statute or plebiscite] or according to this statute has been or shall have been made private, for that land, piece of land or building or for *scriptura* on livestock, which is grazed on that land, after the *vectigalia* shall have been settled, which [shall be those to have been settled next] after [the proposal] of this statute, [no one is to act to the effect that anyone] should pay or be obliged to pay [the people or] a *publicanus* money, *scriptura* or *vectigal*, nor is anyone [to act to the effect that—] or to the effect that anything be given to or exacted by the people or a *publicanus* on that account, nor is anyone <to be> obliged to pay anything to the people or a *publicanus* after the *vectigalia* shall be settled, which shall be those to have been settled next after the proposal of this statute, on account of those [lands, pieces of land or buildings or on account of scripture on livestock, which] shall be grazed [on those lands].¹²²

This passage seems to state that no one should pay *vectigalia* after the passage of the law in 111, and in this case the *Lex agraria* would have been the third law, which abolished the *vectigalia*.

This would mean that the last post-Gracchan law was passed in 111, but many scholars have seen this as a problem: Appian seems to consider the third

¹²¹ This was first suggested by Mommsen (CIL I², p. 77), and is accepted, among others, by Zancan (1934, 66); Burdese (1952, 98); Gabba (1956, 7); Mattingly (1971, 284); Molthagen (1973, 457); Flach (1974, 276–7); Meister (1974, 92); Stockton (1979, 204). Discussion of this theory in Johannsen (1971, 63–6).

¹²² *Lex agraria* ll. 19–20: *quod eius agri ex lege plebeive sci]to exve h(ac) l(ege) privatum factum est eritve, pro eo agro loco aedificio proque scriptura pecoris, quod in //e//o agro pascitur, postquam vectigalia constiterint, quae post h(anc) l(egem) [rog(atam) primum constiterint, nei quis facito quo quis populo aut p]ublicano pequnia(m) scripturam vec(t)igalve det dareve debeat neive quis f[acito quo - -] quove quid ob eam rem populo aut publicano detur exsigaturve, neive quis quid postea quam [vect]igalia consistent, qua post h(anc) l(egem) rog(atam) primum constiterint, ob eos ag[ros locos aedificia obve scripturam pecoris, quod in eis ag]reis pascetur, populo aut publicano dare debeat.*

post-Gracchan law to have marked the definitive end of the Gracchan reform, but if this law is to be identified with the *Lex agraria* of 111, it is impossible to fit into the fifteen-year period.¹²³ If the fifteen-year period runs from 133 to 119, the *Lex agraria* of 111 cannot have been one of the three laws; if the period ran from 123 to 109, then 111 is too early to have been the last law.¹²⁴ This problem has led to various alternative reconstructions, to which we shall return later. In my view, however, it is clear that Appian considers the *second* law he mentions, which he calls the *Lex Thoria*, to be the end of the Gracchan reform attempts: 'by these devices the law of Gracchus was frustrated once and for all'. That the rent introduced by this second law was later abolished by another law comes in only as an afterthought. The important point of the passage is that the distribution of land was halted by the *Lex Thoria*, and as a result of this 'the plebeians lost everything'. It is therefore highly possible that Appian considered the second post-Gracchan law, *Lex Thoria*, to be the end of the Gracchan distributions, dating the fifteen-year period accordingly.

We therefore need to establish the date of the *Lex Thoria* to determine whether this can have been passed fifteen years after Tiberius Gracchus. That the fifteen-year period started from 133 is reasonably clear from Appian, who always takes the agrarian law of Tiberius Gracchus as the starting point for his account; in fact, this is the only agrarian law he mentions. Consequently, he calls Tiberius 'the lawgiver' (*ὁ νομοθέτης*), mainly to distinguish him from his brother.¹²⁵ In the crucial chapter 1.27 he refers to Tiberius' law three times, the first time adding that it was 'the law of the elder Gracchus'. The next two times Appian simply says 'the law of Gracchus', without doubt referring to Tiberius. If in these two cases he meant a law of Gaius Gracchus, he ought to have made this explicit to avoid confusion. But since he does not, 'the law of Gracchus' must mean the agrarian law of Tiberius. This conclusion is backed by the fact that he never actually mentions an agrarian law promulgated by Gaius; apart from his activities in founding colonies, Appian does not say much about Gaius' agrarian policy.

Therefore, fifteen years after 'the law' means fifteen years after 133, and this should be the dating of the much-discussed fifteen-year period. This would mean that the land distributions ended in 119/118 BC, which would then be the date of the *Lex Thoria*. This is generally accepted by those who assume the

¹²³ D'Arms (1935, 244–5); Douglas (1956, 390); Develin (1979, 50).

¹²⁴ This is why some, e.g. Carter (1996), have argued for the insertion of lacuna in Appian's text of BC 1.27, arguing that not the people 'came to a standstill', but the court hearings or the activities of the Gracchan land commission.

¹²⁵ App. BC 1.13: 'The first men elected to carry out the distribution were Gracchus himself, *ὁ νομοθέτης*, his brother of the same name, and the proposer's father-in-law Appius Claudius.' 1.21: 'Gaius Gracchus, the younger brother *τοῦ νομοθέτου*'. See D'Arms (1935, 244); Johannsen (1971, 85); Molthagen (1973, 457); Meister (1974, 89); Develin (1979, 49); Gargola (1997, 561–2).

Lex Thoria was the second post-Gracchan law.¹²⁶ This is in fact very possible; if the first post-Gracchan law was passed immediately after the death of Gaius Gracchus in 121, then it is certainly possible that the *Lex Thoria*, which ended the land distributions, was passed a few years later.

There are other indications that the land distributions had ended by 119/118. After the deaths of Gaius Gracchus and Fulvius Flaccus in 121 no new members were elected for the land commission.¹²⁷ It could continue to function with only one member; however, in 119 the only remaining member, Carbo, was summoned to court and committed suicide.¹²⁸ Therefore, all the evidence points to a fifteen-year period running from 133 to 119/118, when the activities of the Gracchan commission were ended both by the *Lex Thoria* and by the death of its last remaining member. There is no need to assume that the *Lex agraria* of 111 should fit into this period in order to be the third of the laws.¹²⁹

At this point we must consider the evidence of Cicero, who refers to the *Lex Thoria* rather ambiguously. Grammatically a number of different translations are possible for the crucial sentence *agrum publicum vitiosa et inutili lege vectigali levavit*; those often supported are 'Thorius freed the *ager publicus* from a flawed and useless law by means of (imposing) a *vectigal*', 'Thorius freed the *ager publicus* from a *vectigal* by means of (imposing) a flawed and useless law', and 'Thorius freed the *ager publicus* from a flawed and useless law about a *vectigal*'.¹³⁰ There has been heated discussion about which 'flawed and

¹²⁶ Gabba (1956, 72) dates the *Lex Thoria* to about 113/112 instead of the more widely accepted 119/118, but there is no reason to do so.

¹²⁷ An inscription found in Carthage (CIL 1² 696 = ILS 475) records a triumvirate of Carbo, L. Calpurnius Bestia, and Ser. Sulpicius Galba, who apparently distributed land here. It is possible that they were chosen as replacements for Gaius Gracchus and Flaccus, see Develin (1979, 49), but the inscription is heavily damaged. It is therefore not certain that new commissioners were elected after 121. See Molthagen (1973, 437); Gargola (1995, 239 n. 29).

¹²⁸ Cic. *Brut.* 27.103, 43.159. The commissioners had been sacrosanct when they were in function, as is attested by the *Lex repetundarum* ll. 8–9: 'A trial shall not take place concerning these men, while they shall hold a magistracy or *imperium*'; it specifically mentions 'IIIviri for the granting and assigning of land' as holders of magistracies. The commission therefore must have stopped functioning to make it possible for Carbo to be indicted, see Johannsen (1971, 91). From the sources it appears, however, that Tiberius was determined to be re-elected, because he feared for his personal safety: 'Gracchus would be sorry, as soon as he became a private citizen, that he had committed an outrage against a sacred and inviolable office' (App. *BC* 1.13; see Oros. 5.8.4). This would suggest that his sacrosanctity depended on his position as a tribune and not as a land commissioner. It is possible that Appian had forgotten about the sacrosanct status of the land commissioners. It would therefore make sense if the commission simply stopped functioning after the deaths of Gaius and Flaccus, and that Carbo had somehow also lost his protected status before he was indicted. See Carcopino (1967, 258–9); Molthagen (1973, 456); Develin (1979, 49).

¹²⁹ Johannsen (1971, 88–91); Molthagen (1973, 457); Meister (1974, 89–90).

¹³⁰ Mattingly (1971, 287) chooses to translate Cicero's passage as 'who reduced the amount of *ager publicus* by a flawed and useless law about a *vectigal*', because by the second law Thorius

useless' law Cicero meant, and which *vectigal* was abolished or imposed by the *Lex Thoria*. In my view, the most likely translation would be 'Thorius freed the *ager publicus* from a flawed and useless law by means of (imposing) a *vectigal*'. This, first of all, has the advantage of being in agreement with Appian, who also says that Thorius imposed a *vectigal* on the land, and with the *Lex agraria*, which abolishes this *vectigal*.

If this translation is correct, the flawed and useless law mentioned by Cicero would be the *Lex Sempronia* of 133. This would match well with Cicero's ideas about the Gracchi and *ager publicus*. Cicero did not have a very high opinion of the Gracchi; he was no friend of the people, and did not support land distributions (see Ch. 1.3). He may well have called the *Lex Sempronia* useless, since it only repeated a law which already existed, and flawed, because it encroached upon the possessions of rich landholders and because it had been passed against usual legal procedure. A law which ended the land distributions would therefore, in Cicero's eyes, indeed have freed the *ager publicus* from the Gracchan law. It would therefore make sense if the 'flawed and useless law' was the *Lex Sempronia*.¹³¹ Consequently, a reconstruction in which the *Lex Thoria* was the second post-Gracchan law, passed in 119/118, and the *Lex agraria* of 111 was identical to Appian's third law, seems to be the most likely.

Nevertheless, many scholars have proposed alternative theories. Rathbone, for example, thinks the *Lex agraria* was the same as the *first* of Appian's laws. His main argument for this thesis is that the law of 111 does not refer to 'any legal amendment to the Gracchan laws prior to this one'; in other words, the *Lex agraria* does not mention any laws passed between 123 and 111 and can therefore only have been the first post-Gracchan law. He argues moreover that 'the general spirit of the *Lex* of 111 was to develop, not frustrate, the Gracchan scheme', and points out that most of the measures introduced by the Gracchi were confirmed by the *Lex agraria*. Rathbone therefore suggests that after the *Lex agraria* of 111 two further agrarian laws were passed; a second post-Gracchan law is dated by him to c.109, and in this law 'by imposing a rent on *ager publicus* still unallocated after the Gracchan scheme . . . Thorius legitimated existing occupation and made the land unavailable for distribution'. The *vectigalia* collected by this law were, according to Rathbone, used for the distributions of grain instituted by Gaius Gracchus. He argues that by a third post-Gracchan law, which he dates to 107/106, holdings of *ager publicus* were

turned *ager publicus* into *ager privatus vectigalisque*, but this seems rather far-fetched translation of *levavit*. We must remember that Cicero would have expected his audience to understand his meaning, and in this case this does not seem likely.

¹³¹ Various scholars have argued against this, e.g. D'Arms (1935, 236); Burdese (1952, 98); Johanssen (1971, 64).

fully privatized by ‘an extension to the law of 111’. The flawed and useless law would then be the second law, which was flawed since the rich were taxed to pay for the grain distributions, and useless because it was soon abolished.¹³²

Although this reconstruction is ingenious, it is not convincing. First of all, although the law of 111 does not mention laws between 123 and 111, this does not imply that there were no laws relating to agrarian issues before 111. In fact, the *Lex agraria* refers many times to earlier laws, not by name, but by saying ‘whatever happened according to statute or plebiscite’. In line 19 it refers specifically to land which ‘according to statute or plebiscite or according to this statute has been or shall have been made private’, which must mean that there had been laws that privatized land between 133 and 111. Any pre-111 laws can easily have been covered by this general phrase. It is also entirely possible that in 111 a law was issued which ended all remaining confusion, while retaining useful elements from the Gracchan law; this is indeed generally assumed to have been the purpose of the *Lex agraria*.¹³³ Furthermore, Rathbone assumes that the Gracchan allotments were privatized by a third law, which he dates to 107/106 BC, but it is expressly stated in the law of 111 that the Gracchan allotments are to be private from this moment—if they had not already been so since 133, as I believe. It seems very strange to discard the law explicitly attesting the privatization of the Gracchan allotments, namely the *Lex agraria*, in favour of some unattested law supposedly passed after 111. Nor is there any evidence for the existence of the other law postulated by Rathbone.

Another theory, which has found more supporters, is that the third law of Appian was identical with the *Lex Thoria*, and that *both* were the same as the law of 111.¹³⁴ Obviously, in this case Appian must have made a mistake in calling the *Lex Thoria* the second law. Again it is noted that the *Lex agraria* never mentions the *Lex Thoria*, and that therefore the *Lex Thoria* cannot have been passed before the *Lex agraria*.¹³⁵ Since the *Lex Thoria* was not superseded by a later law, it must therefore have been the last of the laws. The main argument in favour of this theory is that in Cicero’s *De oratore*, which has a fictional date of 91 BC, the *Lex Thoria* is mentioned as still being in force:

When there was a debate in the Senate about the lands in public ownership and the *Lex Thoria*, and Lucilius [or Lucullus] was being attacked by members who asserted that his herd was being grazed on the lands in question, [Appius Maior] said: ‘No, that herd does not belong to Lucilius; you are making a mistake’—this sounded as if he

¹³² Rathbone (2003, 164–6).

¹³³ D’Arms (1935, 240); Hinrichs (1966, 298); Johannsen (1971, 283); Gargola (1997, 573).

¹³⁴ Rudorff (1852, 313); Zancan (1934, 58); Kaser (1942, 16–17); Douglas (1956, 385); Badian (1964, 241); Johannsen (1971, 69–78).

¹³⁵ Johannsen (1971, 70).

was speaking in Lucilius' defence—'my own view is that it is a herd that's got free—it grazes freely where it pleases'.¹³⁶

According to the supporters of this theory, this must mean that the debate was held under regulations for judicial procedures which were described in the *Lex Thoria*, and that therefore the *Lex Thoria* must have been the last of the laws passed. In this case, the *Lex Sempronia* would again have been the flawed and useless law, because it limited the number of animals which could be pastured on *ager publicus*. The *Lex agraria*, and therefore also the *Lex Thoria*, would have abolished this maximum.¹³⁷

However, if all this were true, Appian's description of the *Lex Thoria* cannot be correct, since he says that it imposed instead of abolished *vectigal*. To make this reconstruction possible, either the contents of the *Lex agraria* or the translation from the *Brutus* must be adjusted;¹³⁸ it seems unnecessary to do so when the text as it stands makes perfect sense. Even more importantly, there is no record of a maximum set on the number of animals by the *Lex Sempronia*. It is true that the *Lex agraria* stipulates that ten large and (possibly) fifty small animals could be grazed on *ager publicus* free of charge, but larger numbers could be grazed against payment of *scriptura*.¹³⁹ A real maximum therefore did not exist after 111, and we do not know whether such a maximum had ever been stipulated by a Gracchan law (Ch. 5.2.3).

Furthermore, the argument that the debate in the Senate was held under the regulations in the *Lex Thoria* and not those of the *Lex agraria* makes no sense; first of all, if the *Lex agraria* and the *Lex Thoria* were identical, the argument that the debate must have been held under the *Lex Thoria* and not under the *Lex agraria* is not valid. This would only have been possible if the *Lex Thoria* had been passed *after* the *Lex agraria*, and had replaced the regulations of 111. In any case, new laws did not necessarily supersede older ones, unless they expressly changed older regulations, so certain provisions of the *Lex Thoria* may still have been in force even after the passing of a later law. For example, the *Lex Sempronia* was not completely abrogated until three laws had passed pertaining to it, and even then many of its elements were retained;

¹³⁶ Cic. *De or.* 2.70.284: *Cum ageretur de agris publicis et de lege Thoria et peteretur Lucullus ab eis, qui a pecore eius depasci agros publicos dicerent, 'non est' inquit 'Luculli pecus illud; erratis';—defendere Lucullum videbatur—'ego liberum puto esse: qua libet pascitur'*. West (1928, 252) identifies the man in this passage as the poet Lucilius, while David (1997, 90) thinks he is L. Licinius Lucullus.

¹³⁷ Johannsen (1971, 78).

¹³⁸ D'Arms (1935, 244–5) argues that Cicero's passage should be translated as 'Thorius freed the *ager publicus* from a *vectigal* by means of (imposing) a flawed and useless law'; thus the *Lex Thoria* would have abolished instead of imposed a *vectigal*.

¹³⁹ *Lex agraria* ll. 14–15.

therefore the *Lex Thoria* need not have been abrogated by the *Lex agraria*.¹⁴⁰ Therefore, even if the *Lex Thoria* had been superseded by the law of 111, there may still have been discussions about it in the Senate at a later date. In fact, it is not even sure that the debate mentioned by Cicero took place after 111; it may have been held before the law of 111 was passed. Most importantly, however, the debate mentioned in Cicero did not concern a lawsuit, but simply a debate about policy. The *Lex agraria* stipulates the details of lawsuits about *ager publicus*, but a debate about cattle could of course have taken place in the Senate at any time.¹⁴¹

Finally, from *De oratore* it appears that the *Lex Thoria* did mention pasture rights, but we are not sure how. Appian does not mention pastures at all in connection with the *Lex Sempronia* or the *Lex Thoria*. It therefore seems wrong to base a reconstruction mainly on pasture rights when the contents of the relevant laws are so imperfectly understood. In any case, from *De oratore* it is not at all clear what the issue under debate was; it may not even have been about the maximum number of animals to be grazed. In short, this theory suffers from so many weaknesses that it cannot be accepted.

Another popular theory, recently supported by Crawford and Sacchi, assumes that the *Lex Thoria* was identical to the *Lex agraria*, and that both were identical to the *second* post-Gracchan law.¹⁴² To make this theory possible, these scholars argue that lines 19–20 of *Lex agraria* are mutilated, and that these lines did not abolish, but actually *imposed* a *vectigal*.¹⁴³ There are several advantages to this theory: as does the previous theory, it would explain why the *Lex Thoria* is not mentioned in the *Lex agraria*. Moreover, it would allow the fifteen-year period to run from 123 to 108. This is necessary for those who argue that the Gracchan commission did not become inactive until the third post-Gracchan law. These scholars argue that if the fifteen-year period would have run from 133, the three post-Gracchan laws must have been passed between 121 and 119/118, but this period seems to have been too short to have allowed the passage of all three laws mentioned by Appian; and, in this case, the *Lex agraria* cannot have been the last of the three.¹⁴⁴ They

¹⁴⁰ Meister (1974, 94–6).

¹⁴¹ Douglas (1956, 385). D'Arms (1935, 243–4) maintains that the *Lex agraria* and the *Lex Thoria* cannot be the same, because the procedure in *De or.* 2.70.284 differs from that prescribed in the *Lex agraria*; however, even if he is right that the two laws were not the same, the difference in procedure is irrelevant. Furthermore, *De or.* does in fact not say much about legal procedure at all, compared, for example, to the *Lex agraria*.

¹⁴² Saumagne (1927, 76); Badian (1962, 213); Crawford (1996, 57–60); Sacchi (2006, 26–7, 31–2). Discussion of this theory in Johannsen (1971, 66–8) and Meister (1974, 93).

¹⁴³ Especially Saumagne (1927, 59–61), but see Levi (1929, 46–7); Johannsen (1971, 252–4); Crawford (1996, 164).

¹⁴⁴ D'Arms (1935, 245); Develin (1979, 50).

have therefore argued in favour of a fifteen-year period running from Gaius Gracchus in 123 to 109/108. If it is considered impossible that Appian would have said that the period from 123 to 111 lasted fifteen years,¹⁴⁵ then a third law must have followed in 109/108; this third law is sometimes identified with a *Lex Mamilia*, which supposedly abolished *vectigalia* on all private lands.¹⁴⁶

However, this theory is also fraught with problems. First of all, some have identified the *Lex Mamilia* with the epigraphic fragments of a law preserved as the *Lex Mamilia Roscia Peducaea Alliena Fabia*.¹⁴⁷ However, the surviving parts of the *Lex Mamilia Roscia* deal mostly with lands in colonies, especially the boundaries, and do not say anything about *vectigalia*. There is no reason to date this law to 109/108 or to identify it with the third post-Gracchan law.¹⁴⁸

Moreover, this reconstruction would mean either that the *Lex agraria* imposed a *vectigal* on *ager publicus*, since this was also done by the *Lex Thoria*, or that the contents of the *Lex Thoria* must have been misrepresented by Appian. However, although the relevant passage of the *Lex agraria* is fragmentary, it is in fact quite clear that it abolished all *vectigalia* and did not impose any.

Furthermore, we have already noted that Appian seems to have regarded the second post-Gracchan law to have marked the end of the land distributions. There is therefore no need to assume that all three laws mentioned by him were passed within the period 121–119 BC. It is highly probable that only the first two laws were passed in these years, and the last, the *Lex agraria*, some years later. Because in Appian's account it is invariably Tiberius Gracchus who is indicated as 'the lawgiver', it is very unlikely that the fifteen-year period was calculated from Gaius. Finally, it is quite unclear what the content of a post-

¹⁴⁵ Gabba (1956, 74) and Badian (1962, 212–13) consider the possibility that Appian would have considered the period 123–111 roughly equal to fifteen years. Gabba (1956, 65–6) points out a passage in Sall. *Iug.* 31.2, where C. Memmius says in 111: 'How during the past fifteen years you (the plebs) have been the sport of a few men's insolence' (*His annis quindecim quam luditio fueritis superbia paucorum*). Gabba suggests that the fifteen years in Sallust correspond to those in Appian, and should therefore be counted from Gaius Gracchus in 123.

¹⁴⁶ Fabricius (1924/5); Douglas (1956, 389); Sacchi (2006, 30). Cic. *Leg.* 1.21.55 says: 'In fixing the boundaries we shall follow the prescripts of the Twelve Tables, which require three arbiters, instead of the *Lex Mamilia*, which calls for only one', and so does not mention *vectigalia* either. Mattingly (1971, 288–9) suggests that the speech of Memmius was delivered not in 111, but in 109 before the *Quaestio Mamilia*, and therefore a period of 123–109 is possible. However, the *Quaestio Mamilia* is mentioned in Sall. *Iug.* 40.1 as dealing with those who had acted against the common interest during the Iugurthine War (see Cic. *Brut.* 34.128), but this apparently had nothing to do with the *Lex Mamilia*.

¹⁴⁷ Published in Crawford (1996, 763–7) and Campbell (2000, 216).

¹⁴⁸ See Hardy (1925, 186–90), who argues decisively against the thesis of Fabricius and identifies this law as a *Lex Iulia agraria*. This is supported by Crawford (1989) and Bispham (2008, 233–7).

111 law should have been. The *Lex agraria* is acknowledged by most scholars to have been a definitive law, covering a wide range of issues concerning *ager publicus*. As we have seen, there is no record of another law pertaining to land after 111. All this makes it very difficult to accept this theory.

For various reasons others have maintained that the *Lex Thoria* and/or the *Lex agraria* cannot be identified with any of the three laws mentioned by Appian. D'Arms for example has pointed out difficulties with the dating of the *Lex Thoria*. The orators in Cicero's *Brutus* are organized more or less chronologically, and the place of Thorius in the *Brutus* would suggest that he was active considerably later than the Gracchi; Thorius is surrounded by men known to have been active in the period 112–104 BC. It is therefore unlikely that the *Lex Thoria* was passed in 118.¹⁴⁹ Moreover, if the first two laws were passed in 121 and 118 and the third in 111, the amount of time passed between 118 and 111 would be too long to allow Appian's use of the words *οὐ πολὺ ὕστερον* ('a little later the rent itself was abolished'). Therefore the third law must have been passed before 111.¹⁵⁰

These objections have led to various alternative dates for the *Lex Thoria* and the third law of Appian: D'Arms thinks the third law of Appian was passed in 118, and that the *Lex agraria* was a fourth law, not to be identified with any of Appian's laws; the *Lex Thoria*, he argues, was issued after the *Lex agraria* and dealt only with pasture rights.¹⁵¹ Develin notes that the manuscript of Appian has Borius instead of Thorius, and that Appian does not refer to pasture rights in connection with the law which he calls the *Lex Boria*. He therefore assumes that the *Lex Boria* of Appian was not the same as the *Lex Thoria* mentioned by Cicero, and argues instead for a Furius as the instigator of Appian's second law, while the *Lex Thoria* was issued at some later date, and dealt only with grazing rights and not with *ager publicus*.¹⁵²

¹⁴⁹ D'Arms (1935, 241–2). See Douglas (1956, 377–81); Sumner (1973, 90–1); Develin (1979, 51).

¹⁵⁰ D'Arms (1935, 235); Develin (1979, 50–3).

¹⁵¹ D'Arms (1935, 245).

¹⁵² Develin (1979, 53–5). Other arguments have been brought forward: Gargola (1997, 559) argues that the *Lex agraria* cannot have been one of the three laws, since he believes that the abolition of the *vectigalia* in the *Lex agraria* was valid only for lands which had been made private by the law itself, not for land previously privatized. However, the *Lex agraria* explicitly abolishes rents on lands already privatized. Granet (1989, 146) argues that it was logical that no *vectigalia* were to be paid on private land, and that no law was necessary to emphasize this. Therefore he thinks that the *Lex agraria* cannot have been one of the three laws of Appian. However, there were many other matters which needed clarification, and in many respects the *Lex agraria* repeated earlier legislation. Willcock (1982) emends Cicero's *levavit* to *locavit*, so that his crucial sentence would read: 'Thorius let out the public land for a rent by means of a flawed and useless law.' This would accord with the second law as described by Appian, since

In my view, none of these arguments is conclusive. It has been pointed out that the chronological order of the orators in Cicero is by no means as clear-cut as some have claimed, and it is therefore possible that Thorius was active in 119/118.¹⁵³ Regarding the idea that Appian's words 'not much later' cannot refer to an event occurring seven years later, I think that this usage is not exceptional. Appian often skips considerable periods of time in a few words; after describing the post-Gracchan laws he says, 'at this same time the consul Scipio (or Caepio) pulled down the theatre which Lucius Cassius had begun... As censor, Quintus Caecilius Metellus tried to demote Glaucia, a senator, and Appuleius Saturninus.'¹⁵⁴ It is not exactly certain when the theatre to which Appian refers was demolished; if it was in the consulship of Scipio in 111, this would fit nicely with the date of the third post-Gracchan law, but the consulship of Caepio in 106 is also possible.¹⁵⁵ In any case, Metellus was censor in 102, which is either nine or four years later than the destruction of the theatre, and certainly not 'at the same time'. I think therefore that it would be unwise to attribute much weight to the rather vague words 'not much later'.

In my view the only possible reconstruction is that the *Lex Thoria* was the second post-Gracchan law, passed in about 119/118, and that the *Lex agraria* of 111 was the third. The problems with this reconstruction are the easiest to overcome, and it does not require any significant emendations in the sources. All other possibilities raise difficulties which can be solved only with the help of secondary assumptions which cannot be verified.

5.3.3. The *Lex agraria* of 111

The *Lex agraria* of 111 is undoubtedly one of the most important documents in the legal and agrarian history of the Roman Republic. Despite its fragmentary state, it gives a wealth of information about the status of public and private land at the end of the second century. However, notwithstanding its importance, there are many misconceptions surrounding this law.

The main purpose of the *Lex agraria* was to set out clear regulations concerning *ager publicus* in Italy, Africa, and perhaps Corinth. After the upheavals of the Gracchan period and the post-Gracchan laws, it was designed

Thorius apparently put a *vectigal* on public land. However, if the land became private by this law, the phrase *locavit* is hardly appropriate.

¹⁵³ Badian (1964, 241–2 n. 11).

¹⁵⁴ App. *BC* 1.28. See Develin (1979, 50).

¹⁵⁵ See the Appendix item 31. North (1992) argues that the theatre was destroyed in 107/106, during the consulship of Caepio.

as a definite law which would be in force for some time, and would lay down a strong foundation from which future lawmakers could work. It begins by declaring to be private certain categories of land, some—but not all—of which had been public up until then. These categories were: (1) Land held by *veteres possessores* within the limit which had been laid down by Tiberius Gracchus, the size of which is unfortunately not specified in the preserved part of the law; (2) The allotments distributed by the Gracchi; (3) Land called *redditus*—this was probably *ager publicus* which had been exchanged with people who possessed *ager publicus* needed in the Gracchan distributions; (4) Lands in towns or cities distributed by the Gracchan commission.

All this was declared fully private:

There is to be [sale of that land,¹⁵⁶ 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 shall be—] is; nor is anyone to act to the effect that [the person,] whose land, piece of land, building or possession it is or shall be appropriate for it [to be] according to statute or plebiscite, [should not use, exploit, have or possess] that land, [piece of land, building or possession,] nor is anyone [to raise] that matter in the Senate [—nor is anyone in the Senate] or a *iudicium* to speak or deliver his opinion to the effect that any of those persons, whose land, piece of land, building or possession it is [or shall be] appropriate for it to be according to statute or plebiscite, [should not have or possess that land, piece of land, building or possession,] or to the effect that possession [should be removed] against his will [or in the case of death against the will of his heirs—].¹⁵⁷

¹⁵⁶ The word [. . .]o in the first sentence is often reconstructed as *possessio*. However, it may actually have been [*venditio*] instead of [*possessio*]o, since it would be strange to grant *possessio* of private land. In the rest of the law *possessio* is used as a substantive next to *locus*, *agrum*, and *aedificium*, as if it were a right which had now become private. The possibility of sale was an important right that an owner could have over private land, and it would be sensible if the law made this right explicit, just as the other conditions applying to private property (inclusion in the census, protection of property in the court of law, and the right to bequeath property to heirs) were stated in detail. In fact, Mommsen, in his edition in the CIL, had already restored *emptio venditio*, but this suggestion became neglected in favour of *possessio*. Crawford's (1996, 158) statement that *venditio* would be 'pointless, since it would follow anyway from the land's being private' makes no sense, since this is equally applicable to the other elements of full property rights which are mentioned.

¹⁵⁷ *Lex agraria* ll. 8–11: *Venditio ita, uti ceterorum locorum agrorum aedificiorum privatorum est, esto, censorque, quaequoque erit, facta ita uti is ager locus aedificium qui ex hac lege privatus factus est erit in censum referatur, deque eo agro loco aedificio eum quomodo [is ager locus aedificium erit [- - -] est; neve quis facito quo, quomodo eum agrum locum aedificium possessionem ex lege plebeve scit [o esse] oportet oportebitve, eum agrum [locum aedificium possessionem is minus oetatur fruatur habeat possideatque] neve quis de ea re ad sen[atum] referto - - -] [- - - neve quis in senatu iudiciove sententia[m] deicito neve fert, quo quis eorum, quomodo eum*

All powers which a person could have over his private property were granted to the possessors of this land, which now became private, or was acknowledged to be private. It is probable that some of it had already been private before 111, for example the Gracchan assignments and the land of the *veteres possessores*.¹⁵⁸

In line 17 people called *pro vetere possessore* occur, who seem to have had equal rights as normal *veteres possessores*. These were probably people who had held *ager publicus* earlier, and had exchanged this for other public land through the activities of the Gracchan commission. Since they had not held this land for any lengthy period of time, they could not be called *veteres possessores*, but they were granted the same rights to the land as real *veteres possessores*.¹⁵⁹ Although lines 1–2 do not mention them, it is likely that their land was privatized as well.

When public land had been taken away from its current possessors and assigned to colonists, other public land was assigned in return for the land that was taken away. This land was now also to become private:

[In whatever land or piece of land a IIIvir for the granting and assigning of land constituted, founded or settled the town or colony in question according to statute or plebiscite, whatever land or [piece of land he shall have received] in return for the land or piece of land in question from the land or pieces of land which were the public property of the Roman people . . . that land is to be private, which [a IIIvir for the granting and assigning of land] granted, restored or assigned, whether land, piece of land or building, [just as it is written down above, in return for that land or piece of land, where] he founded a colony.¹⁶⁰

Thus such people received better rights than they had held before 133. This probably applied only to land within the limit of 500 *iugera*, in order to ensure that people holding land within the limit were now able to claim as private land the same amount they had held as *veteres possessores*. When private land

agrum locum aedificium posse[sio]nem ex lege plebeive scito esse oport[et oportebitve, eum agrum locum aedificium possessionem minus habeat possid]eatque, quove possessio invito mor[tuove eo hereditibus eius inviteis auferatur.]

¹⁵⁸ Crawford (1996, 153). Kaser (1942, 15) and Burdese (1952, 80) think that all categories of land mentioned here had already been private before 111, while Hinrichs (1966, 264) thinks that none of the land mentioned (including Gracchan assignments and land of *veteres possessores*) had been privatized before 111.

¹⁵⁹ Lintott (1992, 219); Crawford (1996, 154); Sacchi (2006, 99). Johannsen (1971, 201) takes these to be people who could not prove their rights to the *ager publicus*, but since an official right to *ager publicus* did not exist, it is difficult to imagine what kind of rights we should understand these to have been.

¹⁶⁰ ll. 22–3: [*quo in agro loco IIIvir a(gris) d(andis) a(dsignandis) i]d oppidum coloniamve ex lege plebeive sc(ito) constituit deduxitve conlocavitve, quem agrum [locum]ve pro eo agro loc<o>ve de eo agro loco . . . is ager privatus esto, que[m] IIIvir a(gris) d(andis) a(dsignandis) ita 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.*

was taken and used for distributions, public land was converted into private land in exchange, and this was now also declared private:

[Concerning that land or piece of land, which land or piece of land any magistrate] has converted [from public into private], in return for which land or piece of land he has converted as much land or (as large a) piece of land from private into public, [that land or piece of land] is to be private to its owners, just as (land or a piece of land) is private to anyone with the fullest rights.¹⁶¹

There has been some debate about the exact legal nature of the land which was privatized by the *Lex agraria*. Sacchi points out that in lines 27–8 the land is declared ‘private to anyone with the fullest rights’ (*uti quoi optuma lege privatus est*). He argues that the concept of *dominium ex iure Quiritium* was not fully developed until the mid-first century BC, and that *optimo iure* must therefore mean something like ‘according to current regulations’.¹⁶² Saumagne argued that the Gracchan assignments privatized in 111 became *privata possessio*, a form of possession between *possessio* of public land and *dominium ex iure Quiritium*.¹⁶³ However, there is no evidence for the existence of such a category of land.¹⁶⁴ Even if the concept of *dominium ex iure Quiritium* had not fully developed in the late second century, the powers granted by the *Lex agraria* over the land declared private seem to incorporate all elements of *dominium*: the owner could now sell and bequeath the land, uphold its ownership against all other claimants, and the land was to be entered in the census, which would assure its private status. Perhaps the purpose of the phrase *optimo lege* in line 27 was to describe the rights stated in lines 7–10;¹⁶⁵ someone who had the land as ‘private with the fullest rights’ would have the rights mentioned in these lines, and the provision in line 27 wished to grant these same rights to people who received land in exchange for private land they had given up. It was therefore made explicit that the land exchanged had exactly the same status as all other land that was fully private.

It was moreover allowed to take thirty *iugera* of land for agricultural purposes, which would then become private: ‘[—If anyone after the proposal

¹⁶¹ l. 27: [*de eo agro loco, quem agrum locum quis mag(istratus) ex publico in privatam c]ommutavit, quo pro agro loco ex privato in publicum tantum modum agri locci commutav[it, is ager locus do]mneis privatus ita, uti quoi optuma lege privatus est, esto.*

¹⁶² Sacchi (2006, 348–66). From Cic. *Agr.* 3.2.9–3.10 it becomes clear what the definition of *optimo iure* was in the first century BC: free from all burdens such as mortgages, taxes, servitudes, and the like.

¹⁶³ Saumagne (1927, 73); Zancan (1934, 69).

¹⁶⁴ Kaser (1942, 3); Johannsen (1971, 228). Cic. *Cluent.* 59.161 says that ‘Habitus’ bailiffs defended their master’s property and right of occupancy’ (*privata possessio*). This, however, refers to pasture, not arable land, and it is unclear what exactly these rights entailed.

¹⁶⁵ Hinrichs (1966, 258 n. 13).

of this statute for the purpose of agriculture] shall possess or have not more than thirty *iugera* of land in that land, that land is to be private.¹⁶⁶ This line presents somewhat of a problem: in line 2 the land of the *veteres possessores* had already been declared private, so anyone who possessed 500 *iugera* or less had been granted private ownership of his land. Who then were these people receiving ownership? The most logical conclusion would be that this referred to people who did not possess any *ager publicus* before 111, and so did not have the status of *vetus possessor*.¹⁶⁷ In order to provide for people who acquired *ager publicus* only after 111, it was stipulated that such occupations, provided they be no larger than thirty *iugera*, would become private. It does not therefore refer to people who had already been granted private ownership of *ager publicus* to a maximum of 500 *iugera*; they could not simply add another thirty to their already existing possessions. It may be argued that this is illogical because it would have entailed an ‘open-ended’ regulation, in the sense that there would be changes in the status of land even after the passage of the *Lex agraria*. However, the stipulation is quite clear: once someone had occupied more than thirty *iugera* of land, he could not occupy more. In this way the law also provided for new occupations of remaining *ager occupatorius*.

Certainly not all or even most of the *ager publicus* had been privatized by 111, as is sometimes assumed;¹⁶⁸ there were still large pieces of public land, both arable and pasture. The law goes on to enumerate a variety of types of land that remained public: (1) The land of *viasii vicanei*, who were appointed to take care of roads;¹⁶⁹ (2) The land that was ‘contracted out [according to] a

¹⁶⁶ ll. 13–14: [*e]xtraque eum agrum, quem vetus possessor ex lege plebeive [scito - - sei quis post hanc legem rogata]m agri colendi cau]sa in eum agrum agri iugra non amplius (XXX) possidebit habebitve<i>s ager privatus esto.* Flach (1974, 277) assumes that the *Lex Thoria* had guaranteed the possession of thirty *iugera* of land, but there is no evidence whatsoever for this.

¹⁶⁷ Zaccan (1934, 70), Lintott (1992, 52), and Sacchi (2006, 250) think anyone was allowed to take an extra thirty *iugera*, even if he already held some land. Flach (1990, 58) thinks that occupiers of land above the limit which had not been confiscated could continue to occupy this, but did not have to pay rent on the first thirty *iugera* of such land. Johannsen (1971, 241) thinks this applied to people who between 133 and 111 had taken occupation of no more than thirty *iugera*, but in my view such people were already included in the group mentioned in line 1, who had taken land within the limit and therefore had received private ownership. If this stipulation was also valid for people who already owned private land, they could simply have taken another thirty, which would then become private, then taken another thirty, and so on. It is therefore more likely that only those who did not possess any land at all could take thirty *iugera*, or, conceivably, those who in 111 owned less than thirty could take an amount which would give them a total of thirty.

¹⁶⁸ Fraccaro (1914, 75); Schubert (1996, 90).

¹⁶⁹ ll. 12–13. Zaccan (1934, 70) thinks the land of the *viasii vicanei* became private. However, that the land remained public is clear from the phrase *uti frui habere possidere*, which according to Kaser (1942, 22) indicated ‘Besitz als tatsächliche Herrschaft, und weiter, zur vollen Ausübung dieser Herrschaft, den tatsächlichen Gebrauch und die tatsächliche Nutzung’; it was not used for full property.

decree [of the Senate] on 20 September, together with the land which is beyond the Curio'.¹⁷⁰ It is not clear exactly what land was meant by this line or where the Curio was located; Crawford takes it to be part of an exception clause, which exempted certain public lands from distribution.¹⁷¹ (3) Private land that had been converted into public land was to remain public just as all other public land before 133 had been.¹⁷² (4) Land which was 'leased in the censorship [of L. Caecilius and Cn. Dom]itius (115–114 BC) with the censors, whoever they shall be appointed hereafter, they are to see that [whoever of them] shall wish may have it leased *pro patrito* for as much, and that they register security in property'.¹⁷³ This probably referred to land which was on long-term lease, and could also be inherited;¹⁷⁴ the censors were to make sure that this land was again leased out to those whose families had already possessed it, and were to secure the possession of this land. We may think especially of the Ager Campanus. (5) The *ager in trientabulis*, which apparently still existed, was to remain with the current possessors (see Ch. 3.3.2).¹⁷⁵

Another important category of public land was pastures, which probably constituted the largest share of the remaining *ager publicus*. In lines 23–5 it is stipulated: 'nor is that land to be shared pasture-land (*ager compascuus*), nor is anyone in that land to have fenced off or enclose land, to the effect that it may [not] be possible for [whoever] may wish to pasture'.¹⁷⁶ It was allowed to graze ten large animals and a certain number of small animals (maybe fifty) without paying *scriptura*.¹⁷⁷ This does not mean that it was not allowed to graze more than that number, but for the animals exceeding the limit a payment was required. Payment was not required for animals in transit on

¹⁷⁰ l. 21: *ex s(enatus)] c(onsulto) a(nte) d(iem) <(undecimam)> k(alendas) Octobris oina quom agro, quei trans Curione est, locaverunt . . .*

¹⁷¹ Crawford (1996, 164). Hinrichs (1966, 275 n. 58) assumes that it was a mountain or river located in the territory of Tarentum or Scolacium, but he does not give evidence.

¹⁷² ll. 27–8.

¹⁷³ l. 28: [*Quei ager publicus populei Romanei in terra Italia P. Mucio L. Calpurnio co(n)s(ulibus) fuit, quanti quid pro patrito L. Caecilio Cn. Dom]itio cens(oribus) redemptum habe[a]t, censoribus, queiquomque posthac facteis erunt, ei faciunt[ut] [ut] [quei eorum] volent, tantidem pro patrito redemptum habeant, p(raedia) supsignent.*

¹⁷⁴ Hinrichs (1966, 304–5); Johannsen (1971, 270); Sacchi (2006, 368).

¹⁷⁵ ll. 31–2: *Quei in trientabule[is] est, quod eius agri - - ob]venit obveneritve, quibus ante h(anc) l(egem) rog(atam) agrum locum con]ductum habere frui possidere defendere licuit . . . id, utei quicquid quoieique ante h(anc) l(egem) r(ogatam) licuit, ita ei habere [frui possidere defendere] post h(anc) l(egem) rog(atam) liceto*].

¹⁷⁶ l. 25: *Neive is ager compascuus esto, neive quis in eo agrum o<q>upatum habeto neive defendito quo mi[nus] quei v]elit compascere liceat.* Although the *Lex agraria* never mentions the term *ager scripturarius*, it is clear that the land mentioned here belonged to this category. Corbier (1991, 163) thinks this refers to land which was limited in use to neighbouring farms, but the whole point of this clause is that use of public pasture lands could *not* be limited to specific people.

¹⁷⁷ ll. 14–15.

the *calles* to and from the summer pastures.¹⁷⁸ Therefore it was expressly stipulated that public pastures were not to be enclosed, and that they should be open to anyone wanting to graze his animals.

Latins and allies were treated quite generously by the *Lex agraria*, as we have seen. Although they technically did not have any rights to *ager publicus*, they could receive land in private ownership under various circumstances. The stipulation already cited that a *vetus possessor* who had surrendered land from his possessions so that a colony could be founded on it, and who then in return received land that would become private, applied to '[whichever] Roman [citizen] or ally or member of the Latin name, from whom [they are accustomed to demand troops in the land of Italy] according to the list of the *togati*.'¹⁷⁹ This means that any Latin or ally who had to give up *ager publicus* because it was needed for a colony, received land in return, which then became his private property. Hence it was possible for Latins and allies to receive private rights to *ager publicus*, just as Roman citizens could.

Moreover, the law declares:

[—Whatever according to this statute,] just as it is written down above, in the lands which are in Italy, which [were] the public property of the Roman people in the consulship of P. Mucius and L. Calpurnius (133 BC), it shall be lawful for a Roman [citizen] to do, it is likewise to be lawful for a Latin and a foreigner to do without personal liability, for whom it was lawful [to do it in the consulship of M. Livius and L. Calpurnius (112 BC) [in those lands which are written down above, according to statute] or plebiscite or treaty.¹⁸⁰

The law then specifies in lines 29–31 that Latins and *peregrini* were protected by law should their rights as outlined in this stipulation be infringed upon. It is not immediately clear what actions exactly that were 'lawful for a Roman [citizen] to do' were now permitted to Latins and *peregrini*. It is to be noted that in line 21 the law mentions *socii nominisve Latini*, specified as being those subject to the *formula togatorum*, while in line 29 instead of *socii* the word

¹⁷⁸ l. 26. Badian (1964, 240) argues that l. 25 imposed a *vectigal* on pasture land above the limit, but it establishes a *scriptura* on the *number* of animals above the limit, not on the land itself.

¹⁷⁹ l. 21: *quei in eo agro loc[o ceivis] Romanus sociumve nominisve Latini, quibus ex formula togatorum [militēs in terra Italia inperare solent . . . In ll. 12–13 the *viasii vicanei* are mentioned; many roads along which they could have received land ran through allied territory, and therefore many of the *viasii vicanei* must have been allies. Therefore they were also granted a holding of *ager publicus*, although in their case the land was to remain public.*

¹⁸⁰ l. 29: [- - - *quod ex h(ac) l(ege), i]ta uti s(upra) s(criptum) est, in agreis qu[ei in Ita]lia sunt, quei P. Mucio L. Calpurnio co(n)s(ulibus) publiceis populi Ro[m]ane fuerunt, c(eivei)] Romano facere licebit, item Latino peregrinoque, quibus M. Livio L. Calpurnio [co(n)s(ulibus) in eis agreis quei s(upra) s(criptei) sunt id facere ex lege pleb]eive sc(ito) exve <f>oedere licuit, sed<f> raude sua <f>acere liceto.*

peregrini is used. It may be that the term *peregrini* incorporated both Italian allies and non-Italians who had rights to *ager publicus* in 112.¹⁸¹ 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. This line therefore does not give *all* Latins, allies, and strangers the same rights to *ager publicus* as Romans, but most likely only confirmed the rights of those people who before the passage of this law already had rights to it, whether under earlier laws or by treaties.¹⁸² It therefore only confirms earlier treaties or personal grants concerning public land (Ch. 2.5.2).

It is clear that the *Lex agraria* was another great step toward the privatization of *ager publicus*. Various kinds of land which had been exchanged during the distribution of land now became private. Alongside Roman citizens, allies could also profit from these regulations. *Ager publicus* had not completely disappeared, but the land still left over was mostly pasture or land which had been assigned to specific people (e.g. through long-term leases or to *viasii vicanei*) and could not therefore be distributed. It had never been the aim of the Gracchi to privatize all *ager publicus*; although it was recognized that more control over land would be welcomed by many people, especially in the light of the economic developments of the second century, they did not intend to privatize all *ager publicus*. However, through the laws passed after 123 a large amount of former public land was eventually privatized, and the *Lex agraria* marked a decisive step in this process. It is clear as well that the drafters of this law had tried to anticipate any situation concerning landholding that might possibly arise. All holders of (former) *ager publicus* were covered by the law: Gracchan settlers, *veteres possessores*, Italians holding *ager publicus*, and those who did not yet hold *ager publicus*, but were to acquire this in the future.

5.4. AGER PUBLICUS AFTER 111

After the *Lex agraria*, *ager publicus* continued to fuel plenty of discussion. Despite the comprehensive nature of the law it did not take long before new attempts at land distribution were made. A large amount of land had been privatized by the Gracchan and post-Gracchan laws, thereby being made unavailable for distribution. However, since the population continued to

¹⁸¹ The *peregrini* included the *socii*; in the Tarentum fragment ll. 12–19 (Crawford (1996, 214) the *praetor peregrinus* is given jurisdiction over the *socii nominisve Latini*.

¹⁸² Sacchi (2006, 113).

grow, a large number of people demanding land remained. This was especially the case after proletarians became regular army recruits; these men expected to be provided for when they were discharged, and the granting of land to veterans became standard practice in the first century. However, the amount of *ager occupatorius* which could be made available for distribution had become too small after the Gracchan period, and land had to be found in other ways.

5.4.1. *Occupatio* of public land after 111

The nature of the remaining *ager publicus* has often been discussed. Some have argued that pasture lands (*ager scripturarius*) were the only kind of public land left over after the Gracchan period.¹⁸³ However, this was not the case: various categories of arable *ager publicus* still remained. Some kinds, e.g. *ager in trientabulis*, *ager patritus*, and the land of the *viasii vicanei*, were effectively under the control of the possessors, but others, such as the remaining *ager occupatorius*, were still under the control of the Roman people and were, at least in theory, open to all citizens. It is sometimes argued that after 111 *occupatio* of arable land was forbidden, and that therefore, in effect, *ager occupatorius* no longer existed.¹⁸⁴ Support for this thesis is sought in lines 25–6 of the *Lex agraria*, which says, ‘nor is anyone in that land to fence off or to enclose land’. However, this refers only to public pasture lands, not to all *ager publicus*, since it continues ‘to the effect that it may [not] be possible for [whoever] may wish to pasture’. In view of lines 13–14 it is likely that the limit for new occupations was effectively lowered from 500 to thirty *iugera*: existing holdings of fewer than 500 *iugera* were privatized, while those who possessed no land at all were allowed to occupy thirty *iugera*, which was then also privatized. Occupation of *ager publicus*, therefore, was still possible after 111.¹⁸⁵ The law does not say anything explicit about *veteres possessores* whose land had not been confiscated by the Gracchan commission, whether Romans or Italians; nevertheless, it is likely that holders of such land could simply continue their possession.

¹⁸³ Gabba (1956, 63 n. 2); Pasquinucci (1979, 104); Granet (1989, 141–5).

¹⁸⁴ Kaser (1942, 30); Crawford (1996, 161, 165); Sacchi (2006, 274).

¹⁸⁵ It may be that there is a time limit included in ll. 13–14, which would mean that occupations had to be relinquished before a certain date, see Triebel (1980, 205–8), who cites Cic. *Off.* 2.21.73 and *Att.* 1.19.4 as proof, but this is not conclusive. It is more likely that occupation of *ager publicus* was still allowed (Ch. 5.3.3), see Johannsen (1971, 195); Lintott (1992, 52); Crawford (1996, 160–1); Sacchi (2006, 250).

It is likely that there were indeed many holders of *ager publicus* who still possessed the land they had held before the Gracchi set to work. There were areas in Italy where the Gracchi had not been active at all, such as Etruria and Umbria. Apparently those who continued their occupation of *ager publicus* had not been treated with any greater severity now than they had been before the Gracchan era, and many long-standing occupiers therefore simply retained their holdings.¹⁸⁶ It may be that by law such occupations had become illegal, since they should have been confirmed by the Gracchan land commission, but that this had never happened, since the Gracchi had not been active in Etruria and Umbria. Even if this were the case, the state had not deprived current holders of such occupations. It is unlikely that the Roman state had been able to distribute all *ager occupatorius* available in 133 BC; after the death of Gaius Gracchus no further attempts at land distribution had succeeded, and the land still held by *veteres possessores* whose holdings had not been officially acknowledged had not been taken away from them.

That *occupatio* of *ager publicus* still continued is clear from Appian's account of the Social War. In 91 there were protests from Italians against the distribution plans of M. Livius Drusus, which would affect 'the land belonging to the Roman state which was still unallocated, and which they were farming either clandestinely or after forcible seizure'.¹⁸⁷ Appian makes it seem as if the Italians were illegally occupying *ager publicus*, which may in fact have been the case in the letter of the law. However, the Italians had occupied this *ager publicus* since the Second Punic War at the latest, and had therefore ample reason to be angry about Drusus' plans.

Another possible explanation for this passage would be that all remaining *ager occupatorius* had officially been turned into pasture land. In this case, the people who were holding land 'either clandestinely or after forcible seizure' were those who had illegally occupied pasture land and turned it into *ager compascuus* or privately worked arable land.¹⁸⁸ However, this is unlikely: it would not have made much sense if the state had forced people to turn perfectly fertile arable land into *ager scripturarius*, just to be able to collect a rent from it. It is more likely that those still holding *ager publicus* were allies who had simply continued to work *ager occupatorius* they had always held, because during the Gracchan and post-Gracchan period no one had taken it away from them.

¹⁸⁶ Kaser (1942, 11); Hinrichs (1966, 257).

¹⁸⁷ App. BC 1.36: *ὡς τῆς δημοσίας Ῥωμαίων γῆς, ἣν ἀνέμητον οὖσαν ἔτι οἱ μὲν ἐκ βίας, οἱ δὲ λαυθάνοντες ἐγεώργουν, αὐτίκα σφῶν ἀφαιρεθησομένης, καὶ πολλὰ καὶ περὶ τῆς ἰδίας ἐνοχλησόμενοι.*

¹⁸⁸ Flach (1990, 67).

Shortly after 111 several new attempts at distributing land occurred. Not all of these are equally well recorded; in 104, for example, Philippus proposed an agrarian law, adducing the argument that ‘there were in the state not two thousand people who owned any property’. Cicero firmly denounces this attempt: ‘That speech deserved to lose him his civil rights, pointing as it did to an equalization of goods. What greater plague could there be than that?’¹⁸⁹ Apparently Philippus wanted to distribute land to the poor in order to cut back the number of large estates, which still existed in great numbers. The only land which could be distributed was *ager occupatorius*, which apparently still existed. As it was, this law came to nothing, and the possessors retained their holdings.

5.4.2. The Social War

The importance of the Gracchan activities and their aftermath was not confined to Roman citizens, but, as we have seen, also affected many landholders among the allies. The Gracchan land distributions may be considered an important factor in the growing dissatisfaction of the allies. After the Second Punic War, initially their lives had continued much as they had before, except that the land they worked had now been turned into *ager publicus*, technically belonging to the Romans, but in fact remaining untouched. The *Lex Sempronia* had treated richer Italians quite generously: they were granted security of tenure on holdings up to 500 *iugera*, which was privatized in 111, and under the *Lex agraria* they also received private ownership of land which had been exchanged for land used in the distributions. Moreover, previous treaties granting them rights to *ager publicus* were observed. Still, those possessing more than 500 *iugera* had lost the excess. As we have seen, in some areas of Italy large tracts of land had been turned into public land, and those living there had no other option but to work *ager publicus* (Ch. 4.3.6). The allied rich, therefore, who had owned more than 500 *iugera* of private land before the Second Punic War, lost the land they considered to be rightfully theirs. Moreover, Appian explains that the surveys carried out by the Gracchan commission were not always done correctly, and that the private property of allies was sometimes endangered. In short, their loyal behaviour throughout the second century had earned them nothing, or at least it had not ensured them the complete enjoyment of the land they had always considered their own: the land they had worked for so long as a *beneficium* from the Romans was confiscated after all. Legally, rich allies did not lose

¹⁸⁹ Cic. *Off.* 2.21.73. See Ch. 2.1.

much more than rich Roman occupiers of *ager publicus*, but since a higher proportion of their holdings consisted of such land, they may have felt that they were doubly punished, although they had been loyal. Landless allies are not recorded to have received any benefits from the Gracchi, and their resentment may have influenced their local leaders.

In 125 it was proposed for the first time to give the allies citizenship, in the hope that they would be more willing to give up their land if they were granted this.¹⁹⁰ In fact, this is a rather strange idea, since Roman citizenship did not offer any tangible (economic) benefits which would have compensated for the loss of the land. It is possible that the allies hoped that the acquisition of Roman citizenship would protect them against such discrimination as they had experienced in the Gracchan period, and that they therefore became more susceptible to the idea of receiving citizenship. Of course, the benefits of receiving citizenship were not the same for the poor Italians as they were for the rich; both groups would profit by no longer having to pay *tributum*, but the advantage of being able to vote was probably only useful for the rich, since the poor would not have been able to cast a vote in Rome.¹⁹¹ Having more rights to land was important only for very poor Italians, who may have hoped to receive land from the Roman state.

In 91 the tribune M. Livius Drusus brought forward a new proposal to distribute *ager publicus*, and simultaneously to give the allies citizenship:

At the request of the Italians he promised to put forward once again legislation on the subject of citizenship, because this was what they most wanted, and they thought that by this single thing they would immediately become masters instead of subjects. With this in mind, he won over the people and wooed them in advance with many colonial settlements in Italy and Sicily, which had been authorized some time previously but never set up.¹⁹²

Some Italians were not ready to give up their lands:

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

¹⁹⁰ App. BC 1.21. See for the relation between the Italians, their holdings of *ager publicus*, and the citizenship question Badian (1970–1, 385–6) and Van Dooren (2008, 278–333).

¹⁹¹ Van Dooren (2008, 176–84).

¹⁹² App. BC 1.35. See Liv. Per. 71.1; Flor. 2.3.17.6; Vir. ill. 66; Vell. 2.14.1; Sen. Brev. 6.1–2. See Salmon (1962, 109–17); Mouritsen (1998, 142–3).

consuls—into the city, ostensibly to complain, but in reality to destroy Drusus, and they openly opposed the law.¹⁹³

We have seen that there was still *ager publicus* in Italy which was occupied by Italian allies with no more claims to it than the right of *occupatio*. It is likely that the Etruscans and Umbrians especially held large areas of *ager publicus*, since the Gracchi had not been active at all in their region.

Some of the Italians had at first wanted citizenship in exchange for land, but after Drusus' murder 'the Italians . . . considered it intolerable for those who were politically active on their behalf to be treated in this way any longer, and as they saw no other method of realizing their hopes of gaining Roman citizenship, decided to secede from the Romans forthwith and make war on them to the best of their ability'.¹⁹⁴ The Italians realized that they would not gain anything from the Romans, and that diplomacy would not help to improve their situation. Since they did not have anything to lose, they were willing to try to gain their independence through war. Whereas during the second century the possession of *ager publicus* had made them reluctant to disagree with the Romans, they now realized that even their loyalty would not protect them against the eventual confiscation of the land by the Romans. Consequently they did not have much to lose in a conflict with Rome, and therefore felt less inclined to maintain friendly relations.

It has been suggested by some that those peoples in the forefront in the Social War were those living in the areas where the Gracchi had been most active.¹⁹⁵ Unfortunately, the comparison is not watertight: the groups named as the initiators of the war are the Piceni, Marsi, and Paeligni, while other groups which joined were the Vestini, Marrucini, Frentani, Samnites, Lucani, some Oscan peoples from Campania, the Apulians, and the Latin colony Venusia.¹⁹⁶ It is true that the Apulians and the Lucani had lost large amounts of *ager publicus* during the Gracchan period, but most of the other peoples mentioned had not. Nevertheless, it would seem that the Etrurians and Umbrians, who apparently still held *ager publicus* and so did have something to lose, were the most reluctant to go to war. They joined only relatively late, and quickly accepted citizenship.¹⁹⁷ Even though the geographical locations of the Grac-

¹⁹³ App. BC 1.36. Drusus' fate is recorded on an inscription (ILS 49): *M. Livius M. f. C. n. Drusus pontifex tr. mil. Xvir stlit. iudic. tr. pl. Xvir a.d.a. lege sua et eodem anno Vvir a.d.a. lege Saufe[i]a in magistrate occisus est*. Apparently, the Etruscans especially held large areas of *ager publicus*, see Salmon (1962, 117).

¹⁹⁴ App. BC 1.38. See Gabba (1994, 112).

¹⁹⁵ Carcopino (1929, 14).

¹⁹⁶ Liv. Per. 72.1; Flor. 2.3.18.5; Eutrop. 5.3.1; App. BC 1.39; Oros. 5.18.8. See Gabba (1994, 115).

¹⁹⁷ App. BC 1.49; Liv. Per. 74.5 reports Etruscan and Umbrian war activities not before 89. See Keaveney (1987, 89–90). Van Dooren (2008, 226–7, 326–7) reconstructs the role of *ager*

chan distributions and the Social War insurgents do not match completely, it may be assumed that the loss of *ager publicus* by Italian allies was one of the causes of the Social War, since it deprived the Romans of an important instrument by which they had previously ensured their allies' loyalty.

5.4.3. Land in first-century politics

Land continued to play an important role in first-century politics. Marius was the first to admit large numbers of proletarians into his army, and his soldiers, to a greater extent than those of previous generals, depended on their leader to provide for them after their discharge. Land would have been a welcome gift, since it would have enabled a veteran to make a living for himself, whereas a simple gift of money would soon have been spent. To keep their soldiers satisfied, the generals had to promise them land, and to secure their ongoing support after discharge, they actually had to find this land. However, so much *ager publicus* had already been privatized in the late second century that it became increasingly hard to find land for the huge numbers of soldiers that were enlisted in the first century. Florus for example exclaims: 'What land could the Roman people give [the Cimbri] when they were on the eve of a struggle amongst themselves about agrarian legislation?'¹⁹⁸ Marius already used land in Africa and Corsica, instead of Italy, for distributions to his soldiers.¹⁹⁹ He refrained from confiscating land in Italy, and also left the remaining *ager publicus* in Italy untouched.

Some argue that the greatest transformation of land from public to private did not occur until the Sullan period instead of the Gracchan.²⁰⁰ It is true that a large shift in landholding patterns occurred during the Sullan period, since at this time much land passed into different hands. However, the Gracchan era was clearly more important in respect of the change from public to private; certainly by 111 a great amount of land had already been privatized. During Sulla's reign therefore the remaining amount of *ager publicus* proved insufficient to serve his purposes. In order to make sure that all Italy would

publicus in the outbreak of the Social War as follows: the Italians were happy to accept citizenship in exchange for land, but the distribution of the *ager publicus* they held had commenced before the law about citizenship had been passed. After Drusus' death they feared the law would be ineffectual, and they would have lost their land without reward. Cf. Mouritsen (1998, 148–51), who largely reaches the same conclusion.

¹⁹⁸ Flor. 1.3.3.3: *Sed quas daret terras populus Romanus agrariis legibus inter se dimicaturus?*

¹⁹⁹ App. BC 1.29; Plu. Mar. 29.1; Liv. Per. 69.1; Vir. ill. 73; Plin. HN 3.6.80. See Salmon (1969, 192 n. 244); Lintott (1992, 55–6); Gabba (1994, 110).

²⁰⁰ Lintott (1992, 57–8).

support his regime, Sulla settled his veterans in every corner of the peninsula: 'With the same object in view for Italy, he allotted to the twenty-three legions that had fought for him a large quantity of land belonging to the towns, some of which had never been distributed for cultivation and some of which was taken from them as penalty.'²⁰¹ In App. BC 1.104 the number of soldiers receiving land is specified as being 120,000.²⁰² Sulla was trying to punish those communities which had supported his enemies, but also wanted to spread his soldiers throughout Italy, and therefore also used land in towns which had not opposed him. It is therefore likely that he would have used any land he was able to lay his hands on, including all *ager occupatorius* still in existence.

In 77 a rebellion by Lepidus was supported by poor people from whom Sulla had taken land; evidently he had not only taken it from the rich, but also from small farmers. Part of the land was apparently taken from Italians, since 'in an attempt to win additional support, Lepidus promised to give the Italians back the land which Sulla had taken away from them.'²⁰³ It may be that this was especially the *ager publicus* which they had been afraid to lose in 91, but for so many soldiers confiscations of land belonging to cities or private individuals had also been necessary. Indeed Sulla often simply declared land to be *ager publicus*, in other words confiscated it, as he did the territories of Arretium and Volaterrae.²⁰⁴ There were, however, certain categories of *ager publicus* that he did not touch, such as land on long-term lease.

All remaining arable *ager occupatorius* was thus privatized in the Sullan era.²⁰⁵ Most of the land distributed by Sulla was turned into the private property of those who received it, although there was also land which was confiscated by him but never officially distributed. This was occupied by the so-called *Sullani possessores*: soldiers who had received land from Sulla, but for some reason had an insecure title; and people who lived on land which had been confiscated by Sulla but had never then distributed.²⁰⁶

The Sullan period had important consequences for the pattern of land-holding, since his confiscations of land from political enemies caused a marked increase in the number and size of large estates. We have already

²⁰¹ App. BC 1.100.

²⁰² Schneider (1977, 127) estimates the actual number at 70,000–120,000.

²⁰³ App. BC 1.107; see Gran. Lic. 36.37–8, Sall. Hist. 1.65–9.

²⁰⁴ Cic. Fam. 13.4.1, 13.5.2, Dom. 30.79, Cat. 2.9.20, Agr. 3.1.3; Plu. Sul. 31, 33; App. BC 1.96; Cass. Dio 41.11.2; Sall. Cat. 36.1; Gran. Lic. 36.35–6; Liv. Per. 89.4, 89.17; Flor. 2.3.21.27; Plin. HN 14.8.62. See Salmon (1969, 192 n. 244); Keaveney (1982, 182); Keppie (1983, 52).

²⁰⁵ Brunt (1971, 305).

²⁰⁶ The inhabitants of Volaterrae and Arretium were especially insecure of their possessions, since their land had been confiscated by Sulla but never been distributed, see Cic. Fam. 13.4.1, Att. 1.19.4. See Drummond (2000).

seen that the greatest increase in *villae* in Italy occurred after the 80s BC, and it is probable that this had something to do with the confiscations made by Sulla (Ch. 4.3.1). Many men now had the opportunity to accumulate land at prices far lower than the actual value, and this enabled them to establish large contiguous estates.

Yet even after this period there was still some *ager publicus* left. It is impossible to say how much *ager publicus* still existed; in 60 Cicero proposed to exclude 'such land as was public in the consulship of P. Mucius and L. Calpurnius' (133) from a law to distribute public land. It is remarkable that Cicero chose 133 as the starting date of his proposal; apparently he felt that this would best protect the interests of the current holders, since he disapproved of any action taken by the Gracchi or later distributors. On the other hand, 133 is also the starting point of the *Lex agraria* of 111, and may have become the standard for all agrarian laws. Cicero preferred to buy land instead of distributing public land, since in that way the interests of his party, consisting of 'rich landholders' (*hominum locupletium*), would be best served.²⁰⁷

We may assume that apart from public pasture lands the only significant tract of arable *ager publicus* left was the Ager Campanus, which had been exempted from all distributions so far. This amount of land available, however, proved hopelessly insufficient for the large numbers of people requiring land in the first century. Pompey and Lucullus, who had promised their veterans land after the eastern campaigns, were therefore unable to make good their promise.²⁰⁸ Several politicians in the first century promised distributions of land—Titius, Plotius, Flavius, Rullus, and Catilina²⁰⁹—but all these attempts came to nothing.

The generals of the later first century therefore had to find other methods of satisfying their veterans. Caesar finally privatized all remaining arable *ager publicus*:²¹⁰ the Ager Campanus was distributed to 20,000 people in 59

²⁰⁷ Cic. *Att.* 1.19.4.

²⁰⁸ Cass. Dio 27.49.2, 38.5.1. Cic. *Att.* 2.15.4 seems to indicate that both Atticus and Terentia possessed public land: 'She does not know that you are championing the common cause of public land occupiers. But you do pay something to the tax farmers, she won't even do that' (*Nescit omnino te communem causam defendere eorum, qui agros publicos possideant; sed tamen tu aliquid publicanis pendis, haec etiam id recusat*). This may refer to public pasture lands, however. According to Serv. *Georg.* 4.127, Pompey distributed land, perhaps *ager publicus*, in Calabria to the pirates he had defeated.

²⁰⁹ Titius: Cic. *Or.* 2.11.48; Cass. Dio 27.25.4; Val. Max. 8.1.damn.3; Obs. 46. See Keppie (1983, 59). Plotius: Cic. *Att.* 1.18.6. See Brunt (1962, 79). Flavius: Cic. *Att.* 1.18.6, 1.19.4. Rullus: Cic. *Agr. passim*; Plin. *HN* 8.78.210. From Cic. *Agr.* 2.2.4–5 it becomes clear that most of the public property which Rullus wanted to put up for sale was located in the provinces, not in Italy; however, from 2.18.48 it appears that there was also some in Italy. See Keppie (1983, 49); Carsana (2001, 260). Catilina: Sall. *Cat.* 16.4; Cic. *Cat.* 2.9.20; Cass. Dio 27.30.2.

²¹⁰ Cass. Dio 43.47.4. See Sacchi (2006, 7).

bc.²¹¹ He apparently also auctioned off all other kinds of arable *ager publicus* still in existence, bought land for distribution, and distributed his own private land.²¹² Even distributing all remaining arable *ager publicus* could not accommodate all the people clamouring for land. This prompted Cicero to exclaim desperately: 'One point I cannot make out, how a scheme can possibly be devised for providing enough land without exciting opposition.'²¹³ Indeed, some of the veterans were settled on inferior land, which was not very suitable to agriculture.²¹⁴ It has been estimated that between the age of Sulla and 25 bc about 250,000 individuals received land in Italy,²¹⁵ and the remaining amount of *ager publicus* was clearly insufficient to accommodate such numbers.

While Caesar had tried to leave existing landholders undisturbed, the triumvirs were not so scrupulous: they resorted to large-scale confiscations of land.²¹⁶ Augustus later reverted to the purchase of land, but also chose to give veterans money instead of land.²¹⁷ However, with the continuous population growth of the second and first centuries, there was simply not enough land to accommodate everyone. New locations had to be found to satisfy all demands made on the land in the first century bc. Colonization of new territories in such situations is often the most practical solution; in the early modern period the exploitation of colonies and the emigration to these colonies, especially North America, provided new room for the growing

²¹¹ The number 20,000 is reported in Suet. *Iul.* 20.3; Vell. 2.44.4. Cic. *Att.* 2.16.1 states that the Ager Campanus could only accommodate 5,000 settlers. See for this distribution also Cic. *Att.* 8.10.4, 11.20.3, *Fam.* 8.10.4, Q. 2.1.1, 2.5.1, 2.6.2, 2.8, *Sest.* 4.9, *Agr.* 1.6.18; App. *BC* 2.10; Plu. *Cat. Mi.* 33.1; Plin. *HN* 7.52.176; Var. *R.* 1.2.10; Cass. Dio 38.7.3. See Salmon (1969, 132); Brunt (1971, 315); Carsana (2001, 260).

²¹² App. *BC* 2.94; Cass. Dio 38.1.2, 42.54.1, 43.47.4. Suet. *Iul.* 38.1 emphasizes that Caesar placed his veterans where there was land available, so that current holders did not have to give up any lands.

²¹³ Cic. *Att.* 2.15.1: *Illud tamen explicare non possum quidnam inveniri possit nullo recusante ad facultatem agrariam.* See Salmon (1969, 129); Lintott (1992, 57).

²¹⁴ Cic. *Phil.* 13.15.31. For later complaints see Tac. *Ann.* 1.17. See Keaveney (1982, 184); Dyson (1992, 85).

²¹⁵ App. *BC* 5.5; Cass. Dio 42.55.2; Strab. 4.6.6–9; 6.1.6. See Salmon (1969, 132–4); Schneider (1977, 127); Hopkins (1978, 66–7); Keppie (1983, p. ix); Brunt (1988, 79–81).

²¹⁶ Cic. *Phil.* 2.17.43; App. *BC* 2.120, 3.22, 4.3, 4.13, 4.31, 5.12–13; Plu. *Brut.* 46.2, *Ant.* 16.4, 55.2; Suet. *Aug.* 13.3, 46; Cass. Dio 38.1.4, 48.6.3, 49.14.5; Vell. 2.46.2; Prop. 4.1b.121–30; Hor. *Epist.* 2.2.47–53, *Sat.* 2.2.133–4; Verg. *Ecl.* 1.70–1; Probus *Vit. Verg.* 7; Servius *Vit. Verg.* 22; *Vir. ill.* 19; Liv. *Per.* 125.4; Florus 2.4.5.1. See Schneider (1977, 163); Chouquer and Favory (1991, 129–35); Gargola (1995, 177–8). During the war between Octavian and Antony at some time it was proposed to 'sell the property that belongs to the state, and I [Agrippa] observe that this has become vast on account of the wars': Dio 52.28.3. It is possible, however, that this referred to state land in the provinces. The same applies to Dio 48.7.2, where L. Antonius points out there was still *ager publicus* left.

²¹⁷ RG 15–6; Suet. *Aug.* 46; App. *BC* 3.23; Cass. Dio 49.14.5. See Salmon (1969, 138); Keppie (1983, 40).

population of European countries.²¹⁸ Of course, the long-term ecological and economic effects on the colonized regions can be devastating, but this does not seem to have been the case in the Roman Empire. As long as the total population of the conquered territories did not reach carrying capacity, the provinces formed a welcome outlet for the growing population of Italy itself. Gaius Gracchus had already tried to establish colonies in the provinces, but Caesar was the first politician to do this on a large scale, and this policy was continued by Augustus and later emperors. This constituted a large drain on the Italian population and mitigated the effects of population growth in the Italian peninsula itself. This policy was continued by later emperors, who distributed land almost exclusively in the provinces.

The first century BC was therefore the period which saw the eventual disappearance of all arable *ager publicus*. There were some distributions of land in Italy by later emperors, but these were on a small scale, never involving more than adding a few settlers to cities whose population had declined.²¹⁹ In some earlier distributions *subseciva* had been left over, and these were eventually privatized by Vespasian and Domitian: ‘Parcels of land which were left unoccupied here and there after the assignment of lands to the veterans he granted to their former holders as by right of possession.’²²⁰

The only considerable amount of *ager publicus* now in existence was public pasture, *ager scripturarius*, which continued to exist for a long time. Moreover, many cities still owned land which was public; Vespasian, for example, restored the *ager publicus* of the town of Canusium, which had been occupied by shepherds.²²¹ Such land, however, was not the same as arable *ager publicus populi Romani*, which by now had truly disappeared.

5.5. CONCLUSION

In this chapter we have seen the importance of the Gracchan period for the disappearance of the arable *ager publicus*. The Gracchi were the first to act on the notion that public land was not a suitable system of landholding for Italy in their time, a country with a growing population and growing competition for land—even though they themselves did not recognize population growth

²¹⁸ Wrigley (2006, 470).

²¹⁹ Tac. *Ann.* 13.31, 14.27; Plin. *HN* 14.8.62; Suet. *Ner.* 4. Keppie (1984) gives a survey of land distributions in Italy in the first century AD.

²²⁰ Suet. *Dom.* 9.3; see Hyginus (1) 56.23–5, 98.22–6.

²²¹ *AE* 1945, 85; 1959, 267. See Grelle (1981, 213).

as one of the causes of the increasing poverty of the small farmer. Instead of giving the poor access to public land, they chose to provide small farmers with private ownership of land. The efforts of the *veteres possessores* were simultaneously acknowledged by granting security of tenure on a maximum of 500 *iugera* of land, thereby encouraging them to invest in land they could now call their own. It was not until the *Lex Thoria* of 118 that the land of the *veteres possessores* became fully private, but in effect it had already become so by the law of 133.

The Gracchan reform had a serious impact on the relationship between the Romans and their Italian allies. During the second century the allies had continued to hold the land which they had always held, but instead of holding it in private ownership they now held it without legal title: they could keep it only as long as the Romans did not need it. When this had continued for some time, the allies assumed that they would be able to keep the land as long as they did not rebel against the Romans, and in this way *ager publicus* served as a tool to ensure the allies' loyalty. However, the economic situation in Italy did not leave the Romans any choice but to actually use all the land they owned, and the Gracchi now took some land away even though the allies had never disobeyed the Romans. This demonstrated to them that their loyal behaviour had not saved them from losing part of their holdings.

Even after the passage of the *Lex agraria* in 111 BC there was still a considerable amount of arable *ager publicus* left, occupation of which was still allowed, and some of which was still held by allies without any legal rights. However, those allies who had lost some of their *ager publicus* were disappointed in the way they had been treated by the Romans. They recognized that their loyalty had not ensured the continued possession of their lands, and therefore were willing to fight for their independence. Thus the problems of possession of public land were a direct cause of the Social War.

Most of the remaining *ager occupatorius* was finally privatized by Sulla, and the other arable *ager publicus*, consisting of the *ager censorius* in Campania, by Caesar. However, the amount of *ager publicus* still left in Italy was not enough to provide all veterans with land, and an increasing number of them was settled in the provinces, or were granted money instead of land. The Italian population had finally become too large to be accommodated in Italy itself: demand for land had outstripped available resources, and it was therefore necessary to provide new outlets in the provinces for the surplus population.

Conclusion

Although it has long been acknowledged that *ager publicus* played an important role in the history of the Republic, it has never been realized exactly how large this role was. Furthermore, the relation between *ager publicus* and wider developments in Roman society has not always been adequately understood. Older research focused mainly on the legal status of public land, and relatively little attention has been paid to questions concerning the importance of this type of land for economic, social, and political developments in Republican Italy. Notwithstanding the importance of studies such as those by Bozza, Zancan, and Burdese, they do not tell us anything about why, throughout the Republic, *ager publicus* appears to have been a central issue in Roman political debate. Those studies which do discuss *ager publicus* in a wider context often prove to be defective, since ancient historians have sometimes found it difficult to make sense of the complicated legal issues connected to the various types of public land. Therefore I have concentrated on the role played by *ager publicus* in Roman economy and society, especially during the second century BC, without losing sight of the legal conditions pertaining to this kind of land.

One of the factors hindering an exact appreciation of the role of *ager publicus* has been the lack of even an approximate estimate of the amount of land pertaining to this category. Its presence has been taken for granted by most historians; however, if we want to be able to say anything with certainty about its importance in the Republic, a more detailed estimation of its size and location would be very welcome. Various older studies, especially those of Beloch and Afzelius, have tried to make estimates about the amount of public land controlled by the Romans, but *ager publicus* does not appear as a separate category in these works. Moreover, the assumptions on which these scholars base their estimates prove to be seriously flawed, especially their idea that the whole of Italy was assigned to the jurisdiction of towns or other legal bodies. I have tried to give a clearer view of its location by making a list of the conquests undertaken by the Romans, with a very rough estimate of how much land was privatized and how much remained in the hands of the state. Unfortunately, the information in our sources is insufficient to allow an exact

reconstruction of the amount and location of *ager publicus* in existence. Often we can do no more than conclude that *ager publicus* existed because of references to later distributions of land in the area, which could only take place on public land. At this point, I do not see how these problems can be overcome; if new source material were to be discovered—we may think, for example, of more Gracchan *cippi*—it might become possible to arrive at a more detailed analysis of the location of *ager publicus*. However, it is unlikely that we will ever be able to fully reconstruct the ‘map of the *ager publicus*’ of the Roman Republic.

Even though we are unable to arrive at exact estimates of the amount and location of *ager publicus*, it is certain that, while conquering Italy, the Romans acquired large tracts of territory. Contrary to the recent hypothesis put forward by Rathbone, we can conclude that much of the confiscated *ager publicus* was not privatized immediately after its conquest, but often remained in the hands of the state for very long periods of time. This happened not only after the Second Punic War, for which period the presence of large tracts of *ager publicus* has generally been accepted, but was already the case in the fourth and third centuries. However, it can be established with reasonable certainty that most of the public land in central Italy—Latium, Etruria, Campania, and Sabinum—was privatized shortly after the Second Punic War at the latest, and that therefore most *ager publicus* was located in the Italian periphery—Lucania, Bruttium, Apulia, Calabria, Picenum, and Cisalpine Gaul.

Much *ager publicus* therefore was situated in areas in which the majority of the population was of allied instead of Roman or Latin status. Although this has been recognized by previous writers, the consequences of this situation have not been thought through towards their logical conclusion. I have argued that *ager publicus*, which remained theoretically in the hands of the state for a very long time, was in fact often used by the people from whom it had been confiscated. It was by no means the case that all public land was occupied by the Roman elite; in light of the small market in the fourth and third centuries we may assume that only land located relatively close to Rome was in demand among those producing for the central market. Small farmers would have found that only public land in the vicinity of their own private plots was useful, and since most Roman citizens lived in central Italy, where most land had been privatized relatively early, most public land will not have been accessible to them. This would mean that large tracts of public land outside central Italy will not have been occupied by Romans at all, but will simply have remained in the hands of the local population.

The presence of the allies on *ager publicus* must be connected to new reconstructions of the mid-Republican colonial landscape: instead of viewing

colonies as large-scale, well-organized enterprises, which exerted a large influence on the surrounding countryside, as is done by Brown and Gargola, it is now time for a new reconstruction of the pre-Hannibalic colonial landscape. Colonies may in fact have been simple garrison outposts of Roman citizens, which occupied only such land as they could work, without much physical or cultural influence over the surrounding territory and its inhabitants. Unfortunately, the exact role of local groups in Roman colonies is still very poorly understood, since the source material for the fourth and third centuries is scanty in this respect. Further research into this topic would be extremely welcome; a combined study of literary, archaeological, and technical sources may be able to shed more light on the fate of the original inhabitants of the *ager publicus* confiscated by the Romans.

For the second century the sources explicitly tell us that much *ager publicus* remained in the hands of local inhabitants, at least in southern Italy. It is possible that the Romans considered *ager publicus* an instrument in regulating relations between the Romans and their allies. In numerous cases after the Second Punic War public land was assigned to allies as a reward for loyalty. Other allies were simply allowed to retain use of any *ager publicus* which was not immediately distributed to Roman citizens, although this was probably not regulated by treaty. It has sometimes been argued that the Roman state 'forgot' that its *ager publicus* was held by the allies, but I argue that this was in fact done deliberately. In this way a situation was created in which the allied population worked the land on Roman sufferance: their livelihood now depended on being permitted to work *ager publicus* in their region, which they had previously owned. As long as the Italian population remained loyal, they could be reasonably sure that the land would not be taken away from them. Consequently, the presence of *ager publicus* served as a constant reminder of the presence of Roman state, and prevented the allies from rising against their Roman overlords.

In the pre-Hannibalic period the occupation of *ager publicus* had already become problematic for various reasons. Even in the late third century Rome may have had as many as 200,000 inhabitants, who formed a considerable market for agricultural products, mainly grain, but also wine, oil, and textiles. At this time most of these goods were still produced in Italy itself, more specifically in central Italy. With the exception of wool, which could be produced in the more peripheral regions of the peninsula, transport costs of most foodstuffs were so high that their production far from Rome would not be profitable—except in the vicinity of other towns which served as markets. Those wishing to produce for the central Italian market are therefore likely to have wanted to acquire land in the vicinity of Rome. Much of the land in this area was private, and could therefore simply be bought, but other land was

still public. However, investing in public land could be dangerous: the only kind of public land existing before the early third century was *ager occupatorius*, which could be taken away by the state when it was needed for distribution. Occupation of public land was an unsatisfactory method of possession for those wishing to profit from the increasing opportunities for market agriculture; people would have thought twice before investing if the basic necessity, land, was not held with a secure title. However, growing opportunities for commercial production are likely to have led to a larger demand for security on holdings of public land. A limit on the possession of land had been set by the *Lex Licinia* in 367 BC; contrary to the view held by the majority of scholars, I argue that this concerned both private and public land, and that a limit of 500 *iugera* is therefore possible for the fourth century. However, this limit was universally ignored by both state and occupiers alike, and any rents which may have been due in theory were not collected.

To satisfy the demand for land with a secure title in the third century the state created new forms of possession for *ager publicus*. The first of these was *ager quaestorius*, probably created in the early third century. This provided a secure title on land sold by the quaestors, and could probably be taken back by the state only on the initiative of the buyer. In the Second Punic War it was joined by *ager in trientabulis* and *ager censorius*. All these forms of possession granted increased security of tenure to the holder of the land. *Ager quaestorius* and *ager in trientabulis* tended to end up especially in the hands of the elite; since they were all located—as far as we know—in the vicinity of Rome, they must have been very attractive for commercial producers. This creation of new forms of tenure shows the remarkable flexibility the Roman state could exercise in the administration of public land: the system of possession was adjusted when economic or social circumstances required this. The amount of land assigned to these three categories, however, was small, and it was all located in the vicinity of Rome. This means that *ager publicus* in other regions could still be occupied freely; the allies who possessed this land were not affected by the creation of these new forms of tenure, and the land they worked remained *ager occupatorius*.

In the second century favourable economic circumstances at the beginning of the century had stimulated rapid growth of the Roman citizen population, which led to a growth of the demand for land in central Italy. Initially excessive pressure on the land was prevented by the removal of the surplus population from central Italy to colonies in the north and south. However, after the 170s distributions of land ceased, while the population continued to grow. Influenced by the ancient sources, earlier scholars such as Toynbee, Brunt, and Hopkins maintained that *ager publicus* was gradually occupied by the Roman elite, creating large slave-staffed estates; they are followed by many

scholars even today. This supposedly led to the exclusion of small Roman farmers from the land, leading to general misery among landless proletarians. Beloch and Brunt among others have argued that this led to an absolute decline in the number of the Roman citizen population. However, it is now generally accepted by such scholars as De Ligt and Lo Cascio that the second century was a century of population growth, although the precise rate of this growth remains hotly debated—I argue that the so-called ‘low count’ is more probable than the ‘high count’, but we should keep an eye out for alternative possibilities. It was this population increase which caused problems for small farmers; however, these problems were the most severe in central Italy, where population grew faster and demand for land was higher than in other regions. Archaeological evidence shows that in most parts of Italy the local economy was booming in the second century BC, and there is therefore no reason to believe in a widespread decline of Italian subsistence farming.

The location of *ager publicus* creates difficulties for the traditional interpretation that small farmers suffered from the accumulation of public land by the elite. Most land in central Italy had been privatized by the early second century at the latest. The *ager publicus* still present in central Italy had been assigned to individual holders by the creation of various forms of secure tenure in the third and second centuries, and therefore the only *ager publicus* still free for occupation was located in northern and southern Italy. Since it is generally accepted that the social problems of the second century were the most severe in central Italy, a re-examination of the role of *ager publicus* in these developments has been a crucial purpose of this study. In this region there was little public land left; the main problem was that in central Italy there was simply not enough land to accommodate both a growing population and an increasing demand for land by those wishing to produce for the expanding market. It is to be expected that many small farmers suffered from increasing fragmentation of their private holdings, making it harder to support a family on them. However, since land in central Italy was in high demand, a small plot could fetch a reasonable price, which made it attractive to sell the land and move to Rome, where the booming economy provided many opportunities for wage labour. Therefore, it was the private land of small farmers that was accumulated by the rich, not public land.

At the beginning of the century the migration of people to the city of Rome did not cause problems; there were abundant opportunities for wage labourers to support themselves, especially in construction, but other branches of the economy were prospering as well. Small and landless farmers who had remained in the countryside could make a living by working as wage labourers or tenants on large estates. For many young men the army was the main source of work; indeed the early second-century wars reaped large

profits even for low-ranked soldiers. Nevertheless, as the century progressed living by wage labour became increasingly difficult. First, the wars fought later in the century were not as attractive as the earlier ones. This caused increasing reluctance to join the army, and thereby led to a large number of men remaining in Italy who would normally have left. Furthermore, there are indications that the economic situation in the city of Rome from about 140 became more precarious: problems with the food supply may have led to higher prices, while there seems to have been a slack in the number of new public buildings and therefore in opportunities for wage labour. Simultaneously the population continued to grow, while no colonization schemes were devised which could have relieved central Italy of its excess population. In short, in the second half of the second century a large number of people were looking for work at exactly the time when this was difficult to find.

The lack of land in the heart of Italy was at the centre of the problems described in the literary sources: increasing proletarianization of small farmers had led to a growth in the rural and urban proletariat. This in turn led to under-registration in the census, which created a picture of a declining population, while in fact the problems were being caused precisely by population growth. This situation may not have been recognized by contemporary politicians; because the census figures for this period show a steady decline, they may actually have believed that the population was falling. The occupation of public land by the elite had been a well-known theme in politics from the time of the early Republic—even if this had in some measure been influenced by Gracchan rhetoric—and it is therefore not surprising that this was again adduced to explain the problems occurring in the later second century.

This was a situation in which such a reformer as Tiberius Gracchus could easily gain support. It is extremely hard to reconstruct exactly the reasons which motivated him to propose his agrarian bill; probably they were a mixture of genuine concern about the perceived shortage of citizens and soldiers and the growth of large slave-staffed estates, quickened by personal feelings of revenge and ambition. To alleviate the problems of the small farmer, Tiberius naturally looked to the undistributed *ager publicus* located in the periphery of the peninsula. Therefore, even though it is hard to maintain that *ager publicus* was the *cause* of the problems of the second century, its distribution was naturally seen as the *solution* to these problems. As in many early modern states, the privatization of public land occurred in a situation of population growth: those having access to the public land wanted to safeguard their rights by distributing public land as private property, thereby excluding those without rights of access from their means of subsistence.

Tiberius proposed to distribute *ager publicus* to those citizens who did not have the means to support themselves. However, he was not just playing on the emotions of his audience to advance his goals. In fact, his proposal was quite sophisticated: to prevent the beneficiaries of this land from losing it again immediately, he made the land private, but inalienable and burdened with a *vectigal*. Under this construction, the Roman state could reclaim the land in the case of failure by the recipient. The *veteres possessores* received security of tenure over a maximum of 500 *iugera* of public land, with an added 'bonus' (compared to its precursor, the *Lex Licinia*) of 250 *iugera* for each child.

However, the land to be distributed was not empty; most of it was in the hands of the Italian allies. They may have forgotten that they were in fact working Roman public land, and the proposal to take away the land from them therefore came as an unpleasant surprise. Many Italians had held their land since before the Second Punic War, and had not been disloyal to the Romans at any time. They naturally felt they had rights to this land, even though in legal terms it was the property of the Romans. Tiberius was therefore forced to recognize the rights of the Italian *veteres possessores*, who also received security of tenure on land within the legal maximum. The post-Gracchan laws gradually completely privatized the land granted to the *veteres possessores*, and removed any limitations still present on both their land and that of the Gracchan settlers. The period 133–111 therefore saw the privatization of a large part of the arable *ager publicus* in Italy. Thus the privatization of public land can be directly related to demographic and economic developments in Roman society: increased demand for land in the third century had already led to the creation of various new forms of tenure on the public land in the vicinity of Rome, while in the second century the continued pressure on the land caused by population growth led to the full privatization of *ager publicus* in the periphery of Italy.

Despite these allocations there was still some *ager publicus* left. The most important category of public land was now *ager scripturarius*, public pasture lands. These were not implicated in any privatization schemes, and remained an important source of revenues for the state into the imperial period. Some arable land, however, was still public as well: the *Lex agraria* of 111, the third and last of the post-Gracchan laws as mentioned by Appian, set out the regulations concerning the remaining public land in detail. Some of this land appears still to have been *ager occupatorius*, of which new occupations of thirty *iugera* or fewer were allowed. The remaining *ager occupatorius* was to play an important role in the relationship between the Romans and their allies in the period leading up to the Social War. Although the allies had been granted private ownership of some of the land they had held before the

Gracchan reform, many of them had sustained significant losses. It is likely that many Italian elites held a relatively high percentage of their land as *ager publicus*; since in many areas so much land had been turned into public land, not much else was available. This also meant that some of them had lost more land in the Gracchan reform than most Roman citizens had. The allies felt unfairly treated, and moreover now realized that, even if they were loyal to the Romans, they might still lose their land. This made them less reluctant to revolt against Rome, and this may have been one of the reasons behind the Social War. Anxiety about *ager publicus* still in their hands was, moreover, one of the immediate causes of the war.

The remaining *ager occupatorius* was privatized during the period of Sulla, when large areas of land were needed for distributions to veteran soldiers. After this period we never hear of it again. The only public land still available was the *ager censorius* in Campania, which was eventually privatized in 59 BC. In short, in a period of less than one hundred years, an end had been made to an institution which had been of fundamental importance throughout the Roman Republic, from its earliest expansion in Latium to its development into an empire spanning the Mediterranean.

APPENDIX

The Location of *Ager Publicus*

In this Appendix, I attempt to give a systematic overview of additions to Roman territory in Italy of land classified as *ager publicus*. For each occasion the date, place, and circumstances are given. I then indicate how much land was privatized by colonization or viritane distribution within five years. Five years seems a reasonable period in which to assume the task of distributing land could have been carried out, if it was begun immediately after the conquest. If privatization took place more than five years after conquest, the state must have waited before commencing the distribution of land. References to the later presence of *ager publicus* are indicated, as well as to later privatizations of land.

As indicated (Ch. 2.3.1) it is impossible to arrive at actual figures, and any figures in this Appendix are therefore speculative and only indicate a possible order of magnitude. This Appendix only serves to give an indication of the location and amount of *ager publicus* existing in various periods of Republican history, which is essential if we want to make any valid statement about the role of public land in Roman society.

Measurements of territories in modern Italy were made using Google Earth Pro, which allows for accurate measurements of surfaces; however, as it is often not clear which land exactly belonged to ancient territories, these figures serve only as an indication. The discussion starts with the conquest of Veii in 396 BC; as we have seen, the events in the regal and early Republican period are extremely difficult to reconstruct.

1. Year: 396

Place: Veii

Circumstances: After several earlier wars Veii was finally defeated in 396. Its population was sold as slaves, with the exception of those loyal to Rome (Ch. 2.5.2).¹

Amount confiscated: Apparently the whole territory of the city was confiscated. Estimates for the size of this area vary; Beloch estimates its size at 562 km²; Afzelius at 610 km².² An amount of about 600 km² (240,000 *iugera*) must be in the right order of magnitude.

¹ Liv. 5.21–2.

² Beloch (1926, 620); Afzelius (1942, 68). Cornell (1995, 329) estimates that two-thirds of Veii's territory were taken and that this amounted to 112,000–150,000 *iugera*.

Amount privatized within five years: Each citizen received seven *iugera* in 393; in 390 loyal Veientanes also received land. Four new *tribus* were established to accommodate these settlers.³

Amount of *ager publicus* left: It is generally accepted that some of the Veientane territory remained *ager publicus*. However, scholars do not agree on the amount of this land.⁴

Amount privatized later: In 383 the colonies Sutrium and Nepet were founded.⁵ Afzelius states that their total size was 330 km²,⁶ but this seems too large.

In 340 the leaders of Velitrae were displaced into territory that had belonged to Veii,⁷ and in 329 the same happened to the leaders of Privernum.⁸

In 210 disloyal Campanians were deported to the territories of Veii, Sutrium, and Nepet.⁹

Possibly some of the *ager in trientabulis* was located here.

2. Year: 387/358

Place: Ager Pomptinus

Circumstances: The Ager Pomptinus fell into Roman hands after a war with the Volsci. However, the territory was not secured until after another war with the Hernici in 358.¹⁰

Amount confiscated: Apparently the whole Ager Pomptinus was confiscated.

³ Liv. 5.30.8, 6.4.4–5; Diod. Sic. 14.102.3–4. See Liverani (1984, 36). The size of the allotments in the Ager Veientanus differs in the sources: Liv. 5.30.8 says it was seven *iugera*, Diod. 14.102.3 says that it was ‘four *plethra*, but according to other accounts, twenty-eight’. It is possible that some authors used the *plethrum* as one quarter of a *iugerum* (although in fact a *plethrum* measured 0.38 *iugera*) and that this has led to a multiplication of seven by four. In any case, it would be more likely that the number in Livy, a Roman source, is correct. De Martino (1980, 26–7) estimates the number of recipients at 4,400, Hermon (1994, 502) at 5,000, and Oakley (1997, 657) at 2,500, but there is no evidence for this.

⁴ Burdese (1985, 49) estimates the amount of *ager publicus* left over at 100,000 *iugera*; Bozza (1939, 166) at 200,000 *iugera*. Some, e.g. Liverani (1984, 39), think that there was not much *ager publicus* left, since most of the original inhabitants were allowed to keep their land. However, even though the statement that the majority of the inhabitants were sold as slaves is probably exaggerated, it is attested that only those who had been loyal received land. A territory of 240,000 *iugera* would allow for 34,285 plots of seven *iugera* each. If all Roman citizens and their wives and children received a plot, which is suggested by Livy, plus some of the former inhabitants of Veii, the amount of *ager publicus* left cannot have been very large.

⁵ Nepet: Liv. 6.21.4; Sutrium: Diod. Sic. 14.98.5. Vell. 1.14.2 mentions the foundation of Nepet in 373. Beloch (1926, 306–7) argues that the territory of these two colonies had belonged to Falerii, and that this was confiscated in a war in 357–351. However, if the colonies were really founded at the dates recorded in the sources, the land must have belonged to Veii.

⁶ Afzelius (1942, 190).

⁷ Liv. 8.14.5–6 (see Appendix item 6).

⁸ Liv. 8.20.9 (see Appendix item 9).

⁹ Liv. 26.34.7–10. See Ch. 2.5.2.

¹⁰ Liv. 6.5.1–5, 7.15.9.

Amount privatized within five years: In 383 a commission was appointed to settle people on the land. However, it is unclear whether this actually happened at this date.¹¹ Beloch sets the size of the *tribus* Pomptina and Publilia at 392 km².¹²

Amount of *ager publicus* left: It may be that some *ager publicus* was left over after the establishment of the *tribus*, but it is impossible to calculate its size.¹³

Amount privatized later: There are no references to later *ager publicus* in the area. Possibly some of the *ager in trientabulis* was located here.

3. Year: 340

Place: Privernum

Circumstances: Privernum had attacked the Roman colonies Setia and Norba. The town was captured, but returned to the Privernates.¹⁴

Amount confiscated: Privernum lost two-thirds of its territory; Beloch estimates its former territory at 477 km², Afzelius at 340 km²,¹⁵ but this seems too large.

¹¹ Liv. 6.21.4 mentions the distribution in 383, but only in 358 were two new *tribus* created, the Publilia and the Pomptina (Liv. 7.15.12). This has led many people to believe that the Ager Pomptinus was not privatized until 358, e.g. Beloch (1926, 357–8); Toynbee (1965, i. 375). The main reason to question the early date is that the area was not secured until 358, after another war with the Hernici. It was probably only after this war that the territory for the *tribus* Publilia was confiscated, Ross Taylor (1960, 52); Humbert (1978, 152); Cornell (1989b, 317–20). Moreover, a census was conducted in 363: if land had been distributed before that, a *tribus* should have been created then and not in 358. However, *tribus* could only be established in pairs, and it may be that the Ager Pomptinus had already been distributed in 383, but that the creation of the two *tribus* did not occur until sufficient land had been confiscated to create two *tribus* (see Ch. 2.3.11). Some Roman citizens had already settled on the Ager Pomptinus in 386, probably on their own initiative (Liv. 6.6.4).

¹² Beloch (1926, 620); Afzelius (1942, 95). The amount of land drained in modern times (located between Cisterna, Circeii, and Sezze) measures about 680 km² (272,000 *iugera*), but it is likely that much of this land was unsuitable for agriculture in antiquity. Bozza (1939, 166) thinks the *tribus* Pomptina and Publilia measured only 40,000 *iugera* (100 km²), which would allow for 5,714 settlers with seven *iugera*. This is more likely than Beloch's high estimate. Hantos (1983, 59) assumes that the average *tribus* contained no more than 5,000 men; if this is correct, the distributed land may have measured 70,000 *iugera*.

¹³ Ross Taylor (1960, 50) thinks much of the Ager Pomptinus remained undistributed, but if much of it was probably not suitable for agriculture, this does not mean that a great amount of land remained available for occupation.

¹⁴ Liv. 7.42.8, 8.1.1–3. Beloch (1926, 390) thinks the account of 340 is a duplicate of events in 329, since a triumph over Privernum is only recorded in the *Fasti Triumphales* for 329 and the *tribus* Oufentina was not created until 318, while between 341 and 329 one or two censuses had taken place, see Afzelius (1942, 140). Humbert (1978, 171) does not doubt the historicity of the account. Salmon (1967, 198 n. 7) and Cornell (1989a, 362) believe the episode happened only in 340 and was duplicated in the record for 329. However, it seems certain that some land was taken in 340, since Livy records distributions of it to Roman citizens.

¹⁵ Beloch (1926, 620); Afzelius (1942, 140). It is likely that the Ufens Valley belonged to Privernum, but some of the mountains around it, which rise to over 1,000 metres, may not have been considered part of its territory.

Amount privatized within five years: In 338 Roman citizens received 2 *iugera* each. The *tribus* Oufentina was established in 318.¹⁶

Amount of *ager publicus* left: Some land was left for later distribution.

Amount privatized later: In 329 the colony Terracina was founded (see Appendix item 9).

4. Year: 338

Place: Latium

Circumstances: After the Latin War some land was confiscated from towns which were granted full citizenship.¹⁷

Amount confiscated: Some land was confiscated.

Amount privatized within five years: Two *iugera* each were distributed to Roman citizens; a new colony was founded at Antium.¹⁸

Amount of *ager publicus* left: Some *ager publicus* may have been left.

Amount privatized later: Possibly some of the *ager in trientabulis* was located here.

5. Year: 338

Place: Campania

Circumstances: After the Latin War some land was confiscated from the Campanians.

Amount confiscated: The Ager Falernus was confiscated in its entirety. Its territory is estimated by Afzelius at 225 km² and by Beloch at 198 km².¹⁹ An amount of approximately 200 km² is probably correct.

¹⁶ Liv. 8.11.14: *Bina in Latino iugera ita ut dodrante ex Privernati complerent data*. Livy's words are rather unclear, since he seems to imply that people received two *iugera* in Latin plus three-quarters of a *iugerum* in Privernian territory, as is assumed by De Martino (1980, 37 n. 27) and Hantos (1983, 30). However, it would be impractical to have two *iugera* in Latium and three-quarters somewhere else. It is therefore more likely that those settled in Latin territory received two *iugera* and those in Privernian 2 $\frac{3}{4}$. If the *tribus* Oufentina contained 5,000 settlers, then the distributed territory would have been only 13,750 *iugera* (34,375 km²).

¹⁷ This is not stated explicitly in the sources. The size of the towns Lavinium, Lanuvium, Aricia, Tusculum, Pedum, Nomentum, and Labicum is calculated as 530 km² by Beloch (1926, 620), which is the same amount which Afzelius (1942, 153) allows for these same cities plus the *tribus* Maecia and Scaptia. Apparently these authors assume that some land had been taken from the incorporated towns, and distributed to citizens. However, Livy states that many inhabitants of the towns who now received citizenship were inscribed in these two new *tribus*. Yet the *tribus* must have had some actual territory, and this is located by Beloch and Afzelius to the south of Aricia and Velitrae; see also Cornell (1989a, 362). Livy also states that some land in Latium was distributed to Roman citizens, and since there is no other location where this could have taken place, it is likely that some old Roman citizens were settled in these two new *tribus* as well. Some of the *priscoe Latinae coloniae* (Signia, Norba, Setia, Ardea, and Circeii) retained their status of Latin colonies, while the others were turned into *municipia* and received Roman citizenship; it is possible that these new citizens were also inscribed in the two new *tribus*. See Toynbee (1965, i. 135); Humbert (1978, 172). If each *tribus* contained 5,000 people and half of them were original Romans, then only 35,000 *iugera* may have been distributed; the amount may very well have been less.

¹⁸ Liv. 8.11.14, 8.14.8.

¹⁹ Beloch (1926, 620); Afzelius (1942, 153). The territory between the Voltturnus River, Francolise, Mons Massicus, Agnena, and the sea measures some 190 km² (80,000 *iugera*).

Amount privatized within five years: Three *iugera* each were distributed to individual Roman citizens. The *tribus* Falerna was established for them.²⁰

Amount of *ager publicus* left: Apparently no *ager publicus* was left in this area.

Amount privatized later: None.

6. Year: 338

Place: Velitrae

Circumstances: Velitrae had joined the rebellion in the Latin War. The land of its Senators was confiscated and they were deported to the other side of the Tiber.²¹

Amount confiscated: Some land was confiscated for distribution.

Amount privatized within five years: Colonists were sent to the land previously owned by the Senators. This can only have been a relatively small area.²²

Amount of *ager publicus* left: There are no later references to *ager publicus* in this area.

Amount privatized later: Possibly some of the *ager in trientabulis* was located here.

7. Year: 338

Place: Tibur and Praeneste

Circumstances: Tibur and Praeneste remained *civitates foederatae*, but had to give up some land, because they had earlier been allied with the Gauls.²³

Amount confiscated: Some land was confiscated.

²⁰ Liv. 8.11.13–14: *Latinus ager Privernati addito agro et Falernus, qui populi Campani fuerat, usque ad Volturnum flumen plebi Romanae dividitur. . . . Terna in Falerno quadrantibus etiam pro longinquitate adiectis.* The text of Livy has caused some misunderstanding: some have assumed that the settlers in the Ager Falernus received $3\frac{1}{4}$ *iugera* of land, e.g. De Martino (1980, 37 n. 27). However, Livy's text (*terna in Falerno*) clearly means that each man received three *iugera*. The one-quarter which was 'added' refers then to the fact that the settlers in the Ager Falernus received one-quarter more than those in the territory of Privernum; see Vallat (1983a, 192). Some believe that the Ager Falernus was not distributed until 318, because the *tribus* Falerna was created in that year, e.g. Vallat (1983a, 195), but it often happened that a *tribus* was not established until several decades after the distribution of the land (see Ch. 2.3.11). It is unclear how many people received an allotment. If the *tribus* Falerna consisted of 5,000 people, the distributed area cannot have been larger than 35,000 *iugera*; if Romans who remained in their old *tribus* also received land, it may have been higher. There are no references to distributions of land in the area later, and the whole Ager Falernus therefore seems to have been distributed.

²¹ Liv. 8.14.5–7.

²² If we estimate that there were fifty Senators, and that each owned fifty *iugera* of land, only 2,500 *iugera* may have been confiscated. This was apparently all distributed, since Livy says: 'Colonists were sent on to the land they had possessed, and their numbers made Velitrae look as populous as formerly.' It is possible that these colonists were inscribed in the *tribus* Maecia and Saptia, which were located immediately to the south of Velitrae.

²³ Liv. 8.14.9. Beloch (1926, 380) does not believe that land was confiscated from these towns, since there are no records of later assignments of land; however, it is very possible that the land remained *ager publicus*: Oakley (1998, 567).

Amount privatized within five years: None.

Amount of *ager publicus* left: There must have been some *ager publicus* left, since there are no references to distributions of land here.

Amount privatized later: Possibly some of the *ager in trientabulis* was located here.

8. Year: 334

Place: Samnium

Circumstances: The Aurunci and Sidicini were defeated and fled to Cales. The city was besieged and captured with the help of an escaped Roman prisoner.²⁴

Amount confiscated: Some land was taken from the Sidicini; Afzelius estimates their territory at 440 km², but there is no evidence for this.

Amount privatized within five years: The colony Cales was founded in 334 with 2,500 colonists. Its territory is estimated by Afzelius at 100 km².²⁵

Amount of *ager publicus* left: It is possible that some *ager publicus* was left here.

Amount privatized later: In 183 additional colonists were sent to Cales.²⁶

9. Year: 329

Place: Privernum

Circumstances: Privernum attacked the Roman colonies of Setia, Norba, and Cora. The city was besieged and the walls destroyed. Its Senators were deported to the other side of the Tiber.²⁷

Amount confiscated: The land for the colony Terracina was confiscated (but cf. item 3).

Amount privatized within five years: The colony Terracina was established with 300 colonists, who each received two *iugera*. Afzelius estimates its size at 140 km²,²⁸ but this is too much.

Amount of *ager publicus* left: There are no references to later *ager publicus* in this area.

Amount privatized later: None.

10. Year: 328?

Place: Volsci

²⁴ Liv. 8.15.1–6.

²⁵ Liv. 8.16.13–4; Vell. 1.14.3. Beloch (1926, 536); Afzelius (1942, 157). If all 100 km² (40,000 *iugera*) were distributed to the 2,500 settlers it would mean that each received sixteen *iugera* of land. This is assumed by Vallat (1981, 82), but in fact there is no evidence for this. If they received only ten *iugera* each, 25,000 *iugera* would have been distributed.

²⁶ ILS 45. However, they may have been settled on land which had been abandoned by the previous colonists.

²⁷ Liv. 8.20.9; *Fasti Triumphales* 329/328.

²⁸ Liv. 8.21.11; Vell. 1.14.4. Afzelius (1942, 191). However, the 300 colonists would only receive 600 *iugera* (1.5 km²) of land. The valley in which Terracina is located measures 20 km² (8,000 *iugera*), which would allow them an adequate amount of land to support themselves.



Figure A.1. The territory of Terracina

Circumstances: Land had been taken from the Volsci, probably in 328 or shortly before.²⁹

Amount confiscated: Unknown, but sufficient for a colony.

Amount privatized within five years: In 328 a colony was founded in Fregellae.³⁰ Afzelius estimates its territory at 305 km², but this is certainly too high. About half of this is more likely.³¹

Amount of *ager publicus* left: No references exist to later *ager publicus* in this area.

Amount privatized later: None.

²⁹ Beloch (1926, 380) suggests this happened in 329, when they submitted themselves to Roman rule in exchange for protection against the Samnites, although it is not clear why a voluntary *deditio* would have led to the confiscation of land.

³⁰ Liv. 8.22.2; App. *Samn.* 4.5. Beloch (1926, 395, 408) thinks the colony Fregellae cannot have been founded until 313, at the same time as the other colonies in the Liris Valley. In 313 the town was again conquered by the Romans and the leading citizens executed, see Diod. Sic. 19.103.3. Liv. 9.24.13, however, connects this story with Sora (see n. 41).

³¹ Beloch (1926, 529–30); Afzelius (1942, 157). It may, however, be that not all the mountainous terrain which Afzelius includes in his estimation formed part of the colony's territory, in which case the territory would have been much smaller. The valley between modern Pico, Colfelice, Pofi, Castro dei Volsci, and Pastena measures about 160 km². If there were 4,000 colonists who each received ten *iugera*, the amount necessary was 40,000 *iugera* (100 km²).

11. Year: 315

Place: Samnium

Circumstances: In the Second Samnite War land was confiscated from the Caudini.³²

Amount confiscated: Some land was confiscated.

Amount privatized within five years: The Latin colony Saticula was founded in 312. Afzelius estimates its size at 195 km², but this is most likely too large.³³

Amount of *ager publicus* left: There are no later references to *ager publicus* in this area.³⁴

Amount privatized later: None.

12. Year: 314

Place: Apulia

Circumstances: The Roman garrison at Luceria was betrayed and murdered by the Samnites. The inhabitants of Luceria and the Samnites were killed and a colony was sent to Luceria.³⁵

Amount confiscated: Unknown, but sufficient for a colony.

Amount privatized within five years: The colony Luceria was founded with 2,500 colonists.³⁶

Amount of *ager publicus* left: Land in Apulia was distributed by the Gracchi, which may have been confiscated at this time.

Amount privatized later: None.

13. Year: 314

Place: Campania

³² Liv. 9.22.11.

³³ Vell. 1.14.4; Festus 458 L. Beloch (1926, 541); Afzelius (1942, 17). The fertile valley in which Saticula is located, between Moiano, Melizzano, Castel Campagnano, Limatola, and Bagnoli, measures about 100 km². If there were 2,500 colonists who received ten *iugera* each, 25,000 *iugera* (62.5 km²) may have been distributed.

³⁴ Grelle (1994, 255–6) argues that the land in Celenza Valfortore on which the later Gracchan distributions took place was confiscated at this time, but there is no evidence for this. He also suggests, however, that the area around Celenza may have been part of the Ager Taurasinus, which was confiscated after the Third Samnite War.

³⁵ Liv. 9.26.1–5; Polyb. 3.88.5.

³⁶ Diod. Sic. 19.72.8; Vell. 1.14.4. Beloch (1926, 549) assumes ‘im Westen reichte es ohne Zweifel bis an den Kamm der Berge, die Apulien von Samnium trennen’. Afzelius (1942, 170) therefore estimates its territory at 790 km². However, it is very unlikely that the colony Luceria would have had such a large territory at the time of its foundation, and especially that the steep mountains bordering on Samnite territory would be part of the colony. Its territory is therefore likely to have been much smaller in the mid-Republican period. Two thousand five hundred colonists would need only 25,000 *iugera* (62.5 km²), if each received ten *iugera*.

Circumstances: The Aurunci had submitted to Roman rule in the Latin War, but in the Second Samnite War they joined the Samnites. Beloch assumes that all their land (693 km²) was confiscated.³⁷

Amount confiscated: Land was confiscated for several colonies.

Amount privatized within five years: The Latin colonies Interamna and Suessa were founded in 313 and 312 respectively; Beloch estimates Interamna at 195 and Suessa at 271 km²; Afzelius sets the combined territory size at 445 km².³⁸ However, they may have been much smaller. A colony was settled on the Pontian Islands in 313, which cannot have been larger than 10 km².³⁹

Amount of *ager publicus* left: Some land was left for the later colonies.

Amount privatized later: The Roman colonies Minturnae and Sinuessa were founded in 295, possibly with 300 colonists each who received two *iugera*. Beloch estimates Minturnae at 120 km² and Sinuessa at 107 km², but this seems too large.⁴⁰

14. Year: 306

Place: Volsci

Circumstances: Roman colonists in Sora had been killed by the Volsci. It was retaken in 306 (but cf. n. 30).⁴¹

Amount confiscated: Unknown, but sufficient for a colony.

³⁷ Liv. 9.25.9; Diod. Sic. 18.90.2. Beloch (1926, 620); Afzelius (1942, 152–3). There is, however, no need to assume that all Auruncan territory was confiscated.

³⁸ Liv. 9.28.7–8; Vell. 1.14.4; Diod. Sic. 19.105.3; Cic. *Phil.* 13.8.18; CIL 9.5074. Beloch (1926, 620); Afzelius (1942, 170). Again, it is unlikely that the mountainous terrain which these authors include in the territory of the colonies, especially that to the south of Interamna and the east of Suessa, was included at the time of the foundation, so that a size of 300–350 km² for the two colonies is more likely. The valley between modern Roccamonfina, M. Pecorano, Cellole, and the Liris River (around Suessa) measures only 85 km², and the territory between the Liris, Vallemaiolo, and S. Giorgio (around Interamna) is roughly the same size. Interamna had 4,000 colonists; if we assume the same for Suessa and suppose that they received ten *iugera* each, then 80,000 *iugera* (200 km²) in total would have been distributed.

³⁹ Diod. Sic. 19.101.3.

⁴⁰ Liv. 10.21.7–10; DH 1.9.2; Vell. 1.14.6; CIL 1².1578. See Beloch (1926, 620); Afzelius (1942, 191). The colonists would, again, have needed only 1.5 km² per colony. The centuriation between Minturnae, Sinuessa, and Suessa measures 110 km² in total. The centuriation visible here was probably created after the third century, but smaller and most likely older grids have also been found here: Chouquer et al. (1987, 169–80). The valley between modern Scauri, Ausonia, the Liris, Cellole, M. Massicus, Mondragone, and the Volturnus River measures about 150 km². If we assume that the territory of each colony was the same size as that of Terracina, then about 16,000 *iugera* (40 km²) may have been distributed.

⁴¹ Liv. 9.23.1–2, 9.24, 9.44.16. Beloch (1926, 410); Afzelius (1942, 167). Oakley (2005a, 292) believes that Sora was not colonized until 303, and that the ‘colonists’ who were killed according to Livy may have been a Roman garrison. However, it is possible that the Samnite population had continued to live in the town, even though Roman colonists were also sent there.



Figure A.2. The territory of Sora

Amount privatized within five years: The Latin colony Sora was founded in 303 with 4,000 colonists. Afzelius estimates its size at 230 km²,⁴² but it was most likely smaller.

Amount of *ager publicus* left: There are no references to later *ager publicus* in this area, but it is possible that much of the mountainous terrain remained public.

Amount privatized later: None.

15. Year: 306

Place: Frusino

Circumstances: Frusino was accused of having exhorted the Hernici to revolt. Those responsible were executed.⁴³

⁴² Liv. 10.1.1–2; Vell. 1.14.5. Beloch (1926, 527–8); Afzelius (1942, 170). It is unlikely that the very high mountains (up to 1,900 m) around the plain in which Sora is situated were considered part of the territory. The valley between Sora, Campoli, and Isola del Liri measures only about 70 km². If the 4,000 colonists each received ten *iugera*, at least 100 km² were needed to provide them with land; the amount distributed may therefore have been smaller, or they may have been settled further away from Sora or on the lower hills.

⁴³ Liv. 10.1.3.

Amount confiscated: Frusino had to give up one-third of its territory. The Hernici lost the land around Anagnia.⁴⁴ Beloch estimates the size of Frusino at 190 km², one-third of which would have been 63 km².⁴⁵

Amount privatized within five years: The *tribus* Teretina was founded in 299 on land having belonged to Frusino.⁴⁶

Amount of *ager publicus* left: There are no references to later *ager publicus* in this area.

Amount privatized later: None.

16. Year: 305

Place: Samnium

Circumstances: Diodorus records the confiscation of land from the Paeligni.⁴⁷

Amount confiscated: Unknown.

Amount privatized within five years: None.

Amount of *ager publicus* left: There are no references to later *ager publicus* in this area.

Amount privatized later: None.

17. Year: 304

Place: Sabinum

Circumstances: Livy records the grant of citizenship to Trebula.

Amount confiscated: According to Beloch the land where Forum Novum was established later was confiscated in this year. He estimates the size of this territory at 1,015 km².⁴⁸

Amount privatized within five years: None.

Amount of *ager publicus* left: There are no references to later *ager publicus* in this area.

Amount privatized later: Forum Novum was founded at some unknown date.

⁴⁴ Beloch (1926, 417); Afzelius (1942, 169), on the basis of the fact that Festus 262 L mentions a *praefectura* Anagnia. However, it is unclear whether the land became *ager publicus* or that the Anagnians were given the *civitas sine suffragio* and were governed in a *praefectura*, as is argued by Humbert (1978, 214).

⁴⁵ Beloch (1926, 620). Afzelius (1942, 455) calculates the size of Arpinum and Frusino together at 455 km²; this would allow about 200 km² for Frusino. One-third of this would be about 60 km² (24,000 *iugera*).

⁴⁶ Liv. 10.9.14; Diod. Sic. 20.80.4; Festus 262 L. See Ross Taylor (1960, 58) (24,000 *iugera* would allow for 3,428 seven-*iugera* plots).

⁴⁷ Diod. Sic. 20.90.3. Oakley (1998, 396) doubts the statement.

⁴⁸ Beloch (1926, 424–5) argues that the Trebula mentioned by Livy is Trebula Mutuesca, and that this was defeated in a war recorded in the *Fasti Triumphales* as *de Samnitibus*. He argues that this victory was accompanied by the confiscation of land on which Forum Novum was founded. However, there is no information as to when Forum Novum was founded or even whether it was a settlement of Roman citizens or of native inhabitants. The size of its territory is impossible to estimate, but 1,015 km² is surely far too large.

18. Year: 304

Place: Aequi

Circumstances: The Aequi were offered either Roman citizenship or war, and chose war. Thirty-one towns were captured and most of them destroyed. All of their land is believed to have become *ager publicus*, and this is estimated at 1,445 km²,⁴⁹ but this seems too much.

Amount confiscated: Unknown, but sufficient for colonies and *virgatae* distribution.

Amount privatized within five years: The Latin colony Alba was founded in 303 with 6,000 colonists and Carseoli in 298 with 4,000 colonists.⁵⁰

The *tribus* Aniensis was founded in 299 for Roman citizens.⁵¹

Amount of *ager publicus* left: There are no references to later *ager publicus* in this area, but some of the mountainous terrain may have remained *ager publicus*.

Amount privatized later: None.

19. Year: 299

Place: Umbria

Circumstances: Nequinum was besieged and, after a long siege, captured by treason.⁵²

Amount confiscated: Unknown, but sufficient for a colony.

Amount privatized within five years: The colony Narnia was founded in 299. Afzelius estimates its size at 185 km², but this seems too much.⁵³

Amount of *ager publicus* left: Unknown.

⁴⁹ Liv. 9.45.5–18. Beloch (1926, 620) states that the territory of the Aequi in the Anio Valley measured 507 km², while Afzelius (1942, 178) states that this measured 740 km², which leaves 233 km² for the *tribus* Aniensis.

⁵⁰ Liv. 10.1.1; Vell. 1.14.5. In Liv. 10.3.1 Carseoli is called a colony in the territory of the Marsi and reported to have been founded in 302, while in 10.13.1 it is mentioned as having been founded in the territory of the Aequiculi in 298. Beloch (1926, 422–3) points out that there is no reliable record of war against the Marsi, Paeligni, Frentani, and Marrucini at any time in the Republic (as is stated by App. *BC* 1.46, but cf. Diod. Sic. 20.90.3), and therefore no land can have been taken from any of these peoples. In any case, Carseoli was located in the territory of the Aequi, not that of the Marsi.

The colonies Alba and Carseoli together measured 705 km², according to Afzelius (1942, 178). However, it seems very unlikely that all the mountains (up to 1,700 m) in the area were considered part of the territory of the colonies. It is more likely that only the valleys near Alba and Carseoli were part of the territories, and therefore that the size of the colonies was much smaller. The valley to the south of Alba measures about 150 km² (60,000 *iugera*), which is the size which would have been necessary if 6,000 colonists received ten *iugera* each. The centuriation in this valley measures only about 80 km². In Carseoli the 4,000 colonists would have needed 100 km² (40,000 *iugera*); however, it is located in a narrow valley measuring only about 40 km², where there seems to have been hardly enough room for such a large number of people.

⁵¹ Liv. 10.9.14. Beloch (1926, 422), Afzelius (1942, 174), and Ross Taylor (1960, 56) locate it to the south-west of Carseoli, in the Anio Valley. If there were 5,000 settlers with ten *iugera* each, 50,000 *iugera* (125 km²) would have been necessary.

⁵² Liv. 10.10.1–5; *Fasti Triumphales* 299/298.

⁵³ Liv. 10.10.5. Beloch (1926, 426); Afzelius (1942, 181). If there were 4,000 settlers who received ten *iugera* each, 40,000 *iugera* (100 km²) would have been needed.



Figure A.3. The centuriated plain south of Alba Fucens



Figure A.4. The territory of Carseoli

Amount privatized later: In 199 Narnia received 1,000 new colonists.⁵⁴ It is possible that they replaced previous colonists who had died, so that there need not have been additional *ager publicus* available here. Land may have been distributed here in 200.⁵⁵

20. Year: 295

Place: Umbria

Circumstances: The Umbrians were defeated in war.⁵⁶

Amount confiscated: Apparently some land was confiscated around the towns Fulginiae, Plestia, Nuceria, and Tadinum.⁵⁷

Amount privatized within five years: It may be that some land was distributed in viritane assignations, but there is no secure evidence for this.⁵⁸

Amount of *ager publicus* left: Some land was left for later colonization.

Amount privatized later: The colony Spoletium was founded in 241. Its territory is estimated by Beloch at 265 km², and by Afzelius at 430 km², but both seem too high.⁵⁹

21. Year: 291

Place: Apulia

Circumstances: Venusia, a Samnite town in Apulia, was captured by storm during the Third Samnite War.

Amount confiscated: Some land was confiscated to establish a colony.⁶⁰

Amount privatized within five years: In 291 the colony Venusia was founded. Its territory is estimated by Afzelius at 800 km², but this seems too large.⁶¹

⁵⁴ Liv. 32.2.6.

⁵⁵ Sisani (2007, 136–9, 218–19) assumes that veterans of Scipio were settled here. However, his arguments are not convincing.

⁵⁶ Liv. 10.30.5.

⁵⁷ Beloch (1926, 443, 604); Afzelius (1942, 177). Beloch cites Cic. *Var. fr.* 4 as proof that Fulginiae was a *praefectura* and argues that Plestia's *octoviri* show that it was a *praefectura*. However, land could also be administered in *praefecturae* if it had not been confiscated, when its original inhabitants had received citizenship; therefore, there is no real evidence that all these places became *ager publicus*.

⁵⁸ Bradley (2000, 193–5) thinks that about 40,000 people (12,500 men) received viritane allotments in Umbria in the third century, which would mean 87,500 *iugera* if each received seven; see also Sisani (2007, 230). Because of these distributions 'the amount of unassigned *ager publicus* is likely to have been considerably less here than in the south', Bradley (2000, 195). However, the number of attested colonies in both Etruria and Umbria is small; no viritane divisions are attested. It would be more likely that many Umbrians were simply left on the lands they had always possessed and only a small amount was distributed to settlers. Bradley (2000, 129–38) also argues Interamna Nahars was a Latin colony, but there is no evidence for this.

⁵⁹ Liv. *Per.* 20.2; Cic. *Balb.* 21.48; Vell. 1.14.8. Beloch (1926, 620); Afzelius (1942, 181). These amounts seem too large; even if the colony had 6,000 colonists who each received ten *iugera*, the necessary amount of land would have been only 150 km² (60,000 *iugera*).

⁶⁰ Fronda (2006, 401) argues that the Apulians had already lost land when they were first defeated by the Romans in 318/317, but there is no evidence for this. See Cornell (1989a, 380).

⁶¹ Vell. 1.14.6; Hor. *Sat.* 2.1.35. Beloch (1926, 544); Afzelius (1942, 181). The number of colonists in this colony has aroused much debate: DH 17/18.5.2 mentions the extremely high

Amount of *ager publicus* left: The Gracchi distributed land here, which may have been confiscated in this period or after the Second Punic War (see Appendix item 41).

Amount privatized later: In 200 Venusia received new colonists.⁶²

22. Year: 290

Place: Sabinum

Circumstances: Sabinum was conquered in war.⁶³

Amount confiscated: Unknown, but sufficient for virgane distribution.

Amount privatized within five years: The soldiers of Dentatus received seven *iugera* each.⁶⁴ Some land was sold as *ager quaestorius* (see Ch. 3.3.1). In 241 the *tribus* Quirina was established.⁶⁵

number of 20,000. Most scholars believe this is an error of transmission and that the actual number was lower. It is possible that an original numeral for 2,000 has become corrupt in transmission. The city could accommodate only 2,000 people inside its walls; on the other hand, it would not have been necessary for all colonists to have lived in the city. Salmon (1967, 277) puts the number of colonists at 6,000, because, as he argues, this was more often the case when colonies were founded in hostile territory further away from Rome. However, the only other recorded case in which 6,000 colonists were sent out was Alba Fucens, which is hardly comparable in location with Venusia. Some suppose that the number was actually 20,000, but that this was reached by including the local inhabitants in the number of colonists as well, either as *adtributi* (inhabitants without official rights) or as official colonists. This would be supported by the fact that many previous settlements disappeared after the foundation of the colony; see Compatangelo (1989, 49); Torelli (1999a, 94). This is, however, unparalleled in the history of Roman colonization; usually the number of colonists includes only the Roman citizens sent out, even if *adtributi* were also admitted in the colony. It would be unwise to accept this solution for Venusia without further evidence. Even if there actually were 20,000 colonists and they received ten *iugera* each, only 200,000 *iugera* (400 km²) would have been necessary.

⁶² Liv. 31.49.6. Some assume they were settled on land taken after the Second Punic War, but this is not necessary; it may have been land which had already been taken in the third century, but had not yet been distributed. If the number of colonists had declined during the war, new colonists may have been settled on land left vacant by those departed. It is possible that some of the new Venusian colonists were soldiers of Scipio, since these are mentioned as receiving land in Apulia and Samnium in this period, see Volpe (1990, 219).

⁶³ Liv. *Per.* 11.6.

⁶⁴ Colum. *R.* 1.pr.14; Plu. *Apophth. M'. Curii* 1; Front. *Strat.* 4.3.12; Cass. Dio 8.37.1; Plin. *HN* 18.4.18; *Vir. ill.* 33; Flor. 1.1.15.3; Oros. 3.22.11. Some Sabines received full citizenship, others the *civitas sine suffragio*. Beloch (1926, 429, 598) estimates the size of Sabinum, plus the Vestinian territory of Aveia and Peltuinum, at 3,659 km² (of which 640 belonged to the Vestini, the rest to the Sabines); Afzelius (1942, 178–81) estimates it at 3,965 km²; see Humbert (1978, 222–6). Cornell (1989a, 403) assumes 20,000–30,000 colonists were settled by Dentatus, but there is no evidence for this. If this is correct, and they received ten *iugera* each, the amount of distributed land may have been 300,000 *iugera* (750 km²), but this seems too much.

⁶⁵ Liv. *Per.* 19.15. Apart from the soldiers of Dentatus it is not clear whether and how many other Roman citizens were settled in Sabinum. The territory of the *tribus* Quirina was large, but many of its citizens would have been native Sabines: Hermon (2001, 187–9, 196). Contra: Ross Taylor (1960, 66).

Amount of *ager publicus* left: There are no references to later *ager publicus* in this area, but some of the mountainous terrain may have remained *ager publicus*.

Amount privatized later: Some of the *ager in trientabulis* may have been located here.

23. Year: 290

Place: Praetuttii

Circumstances: The Praetuttii were conquered in war.

Amount confiscated: Unknown, but sufficient for a colony.⁶⁶

Amount privatized within five years: The colony Hadria was founded in 286. Afzelius estimates its territory at 380 km²,⁶⁷ but this seems too large.

Amount of *ager publicus* left: There are no references to later *ager publicus* in this area, but part of the mountainous terrain may have remained *ager publicus*.

Amount privatized later: None.

24. Year: 290

Place: Samnium

Circumstances: Third Samnite War.

Amount confiscated: There is great confusion about which parts of the Samnite territory were confiscated. Some land in western Samnium apparently became *ager publicus*, but it is unclear when this happened.⁶⁸ The Ager Taurasinus was also confiscated after the Third Samnite War.⁶⁹

⁶⁶ Most of the Praetuttii received the Roman citizenship. Beloch (1926, 620) estimates the Praetuttian territory at 1,089 km², Afzelius (1942, 181) at 1,770 km². However, the area included by Afzelius is occupied mainly by the Gran Sasso d'Italia, a mountain range more than 3,000 metres high, and it is unlikely that any people had a secure claim to this land.

⁶⁷ Liv. Per. 11.7. See Beloch (1926, 556); Afzelius (1942, 181). See also Azzena (1987, 101–3). This would mean that according to Afzelius the Praetuttii had lost 22% of their land; according to Beloch 35%. However, it is likely that some of the mountains to the south of Hadria were not considered part of the colony's territory, in which case this may have been much smaller. If there were 4,000 colonists who received ten *iugera* each, the territory would have been only 40,000 *iugera* (100 km²).

⁶⁸ Cic. *Planc.* 8.19 mentions a *praefectura* Atina, which suggests that the land had become *ager publicus* or the Samnites had become *cives sine suffragio*. Toynbee (1965, ii. 120 n. 2) and Salmon (1967, 277–8, 288–90) think the confiscated communities were Casinum, Atina, Cominium, and Rufrae, and that they were confiscated after the Third Samnite War. Beloch (1926, 472), Afzelius (1942, 188), and Tagliamonte (1996, 148) think that after the Pyrrhic War Atina, Casinum, Venafrum, Allifae, and Aufidena became *praefecturae*. Humbert (1978, 245) assumes this area was not confiscated until the Samnite rebellion in 268. In any case, it is not clear whether these lands became *ager publicus*, or that the inhabitants were granted *civitas sine suffragio* and left on their lands.

⁶⁹ It is not completely certain that the Ager Taurasinus was confiscated in this period, but this is usually assumed based on the inscription on the sarcophagus of L. Cornelius Scipio Barbatus: *Taurasia Cisauna Samnio cepit* (ILS 1), see Salmon (1967, 289); Grelle (1994, 255); Tagliamonte (1996, 147). Ferone (2005, 116–20) argues that the 'Lucania' mentioned in the inscription was part of the territory of the Hirpini, bordering on the Ager Taurasinus, not the whole of later Lucania. Toynbee (1965, ii. 119) assumes the Ager Taurasinus was taken only after the Second Punic War. Beloch (1926, 590–1) thinks the Ager Taurasinus was confiscated in 298, but that it was not completely secured until after the Second Punic War. They suppose that if the Romans had been able to use this land earlier, they would have done so. However, it often occurred that land remained *ager publicus* for a long time after its confiscation without being used.

Amount privatized within five years: None.

Amount of *ager publicus* left: Some land was left for a viridane distribution.

Amount privatized later: In 200 some land was distributed to soldiers of Scipio.⁷⁰

In 180 the *Ager Taurasinus* was distributed to 40,000 Ligures, with a further supplement of 7,000 in 173.⁷¹

25. Year: 283

Place: Picenum

Circumstances: The Senones had killed Roman emissaries. According to the sources, they were completely wiped out and all their land confiscated.⁷²

Amount confiscated: The whole of the *Ager Gallicus* was confiscated as *ager publicus*. Its size is estimated by Beloch and Afzelius at 2,580 km².⁷³ This order of magnitude is most likely correct.

Amount privatized within five years: The colony *Sena Gallica* was founded in the 280s, and possibly *Castrum Novum* as well.⁷⁴

Amount of *ager publicus* left: After the foundation of *Sena* and *Castrum Novum* about 2,500 km² were left.

⁷⁰ Liv. 31.4.1–3. However, it may be that this land was confiscated only after the Second Punic War.

⁷¹ Liv. 40.38.3–8, 40.41.3–4. It is likely that the 40,000 people included women and children: Toynbee (1965, ii. 279); Salmon (1967, 310). If there were 40,000 men with additional women and children, the total number would have been over 100,000, which is unlikely. Kolendo (1993, 184), however, believes the total number was 300,000 people. Still, if the 47,000 people formed some 15,000 families, which each received ten *iugera*, the total amount distributed would have been 150,000 *iugera* (375 km²).

⁷² Polyb. 2.19.9–12; Liv. *Per.* 15.4; DH 19.13.1; App. *Gall.* 11, *Samn.* 6.1; Oros. 3.22.13–14. Even if the Senones were not all ejected from their lands, this does not mean that their land cannot have been made *ager publicus*; in fact it happened often that land was made *ager publicus* without the previous inhabitants being expelled. For the fate of the Senones see Ch. 2 n. 201.

⁷³ Beloch (1926, 621); Afzelius (1942, 190). The territory between the Aesis River and Ariminum measures some 2,500 km².

⁷⁴ Liv. *Per.* 11.7. If there were 300 colonists who received two *iugera* each, then 1.5 km² would have been needed. It is possible that, as I have assumed for Terracina, the territory measured 20 km² (8,000 *iugera*). There has been some discussion as to the location of the colony *Castrum Novum*, which Livy *Per.* 11.7 records for the 280s, but Vell. 1.14.8 for 264. Beloch (1926, 429), Luni (1995, 483), and Antonelli (2003, 76) assume the colony *Castrum Novum* to be the city of the same name in Picenum. A foundation on the coast of Etruria in the First Punic War, on the other hand, fits in nicely with the other maritime colonies founded here in this period, see Salmon (1963, 21–3); Mansuelli (1988, 33). However, since Velleius is notoriously unreliable when it comes to dates, it is likely that Livy is right about the foundation of the colony in the 280s. In that case it would be more likely that the colony was indeed established in Picenum. Guidobaldi (1995, 215) states that the archaeological information suggests that the city was founded in the early third century. Its territory may have measured about 20 km², as we assumed for other Roman colonies.

Amount privatized later: The colony Ariminum was founded in 268. Its territory is estimated by Afzelius at 650 km²,⁷⁵ but this seems too large. After this distribution about 2,000 km² of *ager publicus* were still available.

In 232 the Ager Gallicus was distributed in a *virittane* distribution.⁷⁶

In 184 the colony Pisaurum was established, with probably 2,000 colonists who received ten *iugera* of land each. This would have involved at least 50 km² (20,000 *iugera*).⁷⁷

In Fanum Fortunae a Gracchan *cippus* has been found, and the name of Forum Sempronii also suggests Gracchan activity.

26. Year: 281

Place: Etruria

Circumstances: The southern Etruscan cities were defeated in war.⁷⁸

Amount confiscated: Much land was taken from these cities.⁷⁹

Amount privatized within five years: None.

Amount of *ager publicus* left: Unknown, but a large amount.

⁷⁵ Liv. *Per.* 15.5; Vell. 1.14.7; Eutrop. 2.16; Zonar. 8.18. Afzelius (1942, 190). If the colony had 6,000 colonists who each received ten *iugera*, 60,000 *iugera* (150 km²) would be needed. There is no reason to assume that the colony would receive a further 500 km² as common land. There has been much debate on the territory of Ariminum; Foraboschi (1992, 77) states that the territory was located between the Rubicon and Conca Rivers. The visible remains of the earliest centuriation measure about 110 km².

⁷⁶ Val. Max. 5.4.5; Polyb. 2.21.7–8; Cic. *Brut.* 14.57, *Sen.* 4.11, *Inv.* 2.17.52, *Acad. Pr.* 5.13; Cato fr. 43 (Var. R. 1.2.7). There has been much discussion as to which land exactly was meant. Polybius calls it 'Picenum, the land from which they had ejected the Senones when they conquered them', which seems to refer to the Ager Gallicus alone. Valerius Maximus also mentions only the Ager Gallicus. Cato calls it 'the land lying this side of Ariminum and beyond the district of Picenum, which was allotted to colonists, is called the Roman Ager Gallicus' (*Ager Gallicus Romanus vocatur, qui virittim cis Ariminum datus est ultra agrum Picentium*). Notwithstanding Cicero's use of the words *Ager Gallicus et Picenus* in *Brut.* 14.57, it is therefore more likely that Flaminius distributed only the Ager Gallicus. Apparently Cicero misunderstood his source (that he knew the difference between the Ager Gallicus and Picenum is clear from *Cat.* 2.12.26 and *Sull.* 19.53); since Polybius and Cato are the older sources, we should trust them, see Delplace (1993, 25–6); Oebel (1993, 31–2). Some, however, assume that both the Ager Gallicus and Picenum were distributed: Humbert (1978, 237); Luni (1995, 485); Sisani (2007, 133). Bandelli (1999, 194) estimates the number of people receiving land at 20,000–30,000 (including women and children), but does not give evidence.

⁷⁷ Liv. 39.44.10.

⁷⁸ Liv. *Per.* 12.4; *Fasti Triumphales* 281/280; Flor. 1.1.21.

⁷⁹ Caere is often assumed to have lost all its land, which Afzelius (1942, 190) estimates at 840 km² and Beloch (1926, 620) at 640 km². However, Cass. Dio 10.33 states that it lost only half of its land. Telamon and Volsinii are also assumed to have lost all their land, estimated by Afzelius at 1,240 km². Tarquinii lost half of its land, estimated by Afzelius at 640 km² and by Beloch (1926, 620) at 663 km². Vulci lost 440 km² according to Afzelius, which would have been about one-third of its total territory. The total amount confiscated from all cities would have been 2,960 km² (1,184,000 *iugera*).

Amount privatized later: The colony Cosa was founded in 273. Its territory is estimated by Afzelius at 330 km²,⁸⁰ which seems slightly too large. The colonies Alsiurn, Pyrgi, and Fregenae were founded during the First Punic War on the territory that previously had belonged to Caere.⁸¹

Statonia seems to have been distributed as a *virittane* settlement some time during the third century.⁸²

In 210 disloyal Campanians were deported to southern Etruria.⁸³

In 200 the *ager in trientabilis* included Etruria south of Graviscae.

In 197 Cosa received extra colonists.⁸⁴

The colony Saturnia, with possibly 2,000 colonists who received ten *iugera* each, was founded in 183.⁸⁵

Graviscae, with possibly 2,000 colonists who received five *iugera* each, was founded in 181; Afzelius assumes its territory measured 100 km².⁸⁶

Heba was possibly founded as a colony in the second century.⁸⁷

28. Year: 273

Place: Lucania

Circumstances: Pyrrhic War.

⁸⁰ Liv. *Per.* 14.8; Vell. 1.14.7. Afzelius (1942, 190). Dyson (1978, 255) improbably estimates it at 500–600 km². Celuzza (2002a, 121) estimates its territory at 550 km², which is 25% of Vulci's former territory. However, even if all the mountainous terrain in the area, as well as M. Argentario, is included in the territory, its size does not seem to be larger than about 250 km². Celuzza and Regoli (1985, 49) assume there were 4,000 colonists, who received either eight or sixteen *iugera* each. If we accept this number of colonists, and assume that they received eight *iugera*, the distributed amount would have been 32,000 *iugera* (80 km²).

⁸¹ Fregenae: Liv. *Per.* 19.5; Vell. 1.14.8; Alsiurn: Vell. 1.14.8. The foundation of Pyrgi is not mentioned in any source, but Liv. 36.3.6 mentions it as an existing colony, and it makes sense if it was established in the First Punic War.

⁸² Statonia was administrated as a *praefectura* (Vitruv. 2.7.3), but it is not known if and when the land here was distributed. Beloch (1926, 455), Afzelius (1942, 117), and Toynbee (1965, i. 131) assume that it became *ager publicus* and was distributed to Roman citizens, but this is not securely attested. It is possible that local inhabitants were granted citizenship and that the area therefore became a *praefectura*.

⁸³ Liv. 26.34.10 (see also Appendix item 1 for their settlement in the former territory of Veii).

⁸⁴ Liv. 33.24.8–9.

⁸⁵ Liv. 39.55.5. Harris (1971, 156 n. 7) states that plots in Saturnia measured fifty *iugera*, but there is no evidence for this. Ten *iugera* each for 2,000 colonists would have meant 20,000 *iugera* were distributed. See for its territory Fentress and Jacques (2002, 124–6).

⁸⁶ Liv. 40.29.1; Vell. 1.15.2; ILS 45. Afzelius (1942, 190). However, his estimate may be too high.

⁸⁷ The date 128 has been suggested by Salmon (1969, 114), but there is no evidence for this. Harris (1971, 150) believes it should be dated to the same period as Auximum, which according to Vell. 1.15.3 was founded in 157. Eck and Pack (1981, 159–61) point out that there is no clear evidence that Heba ever was a colony in the Republican period at all. If Heba had the same number of settlers as Graviscae, these two colonies would have required 20,000 *iugera* in total. Gracchan activity in this part of Etruria is unlikely, see Campbell (2000, 407–9); Roselaar (2009c). Contra: Harris (1971, 205); Mansuelli (1988, 141).

Amount confiscated: Some land was confiscated on the coast of Lucania.⁸⁸

Amount privatized within five years: The colony Paestum was founded in 273; its territory measured 540 km² according to Afzelius, but this seems too much.⁸⁹

Amount of *ager publicus* left: Some *ager publicus* was still available.

Amount privatized later: In 268 the Ager Picensinus was distributed, which measured 1,000 km² according to Afzelius, but this seems too large.⁹⁰

28. Year: 272

Place: Bruttium

Circumstances: Pyrrhic War.

Amount confiscated: One-half of the Sila Forest was confiscated.⁹¹

Amount privatized within five years: None.

Amount of *ager publicus* left: The Sila Forest remained an important part of *ager publicus* until the late Republic.

Amount privatized later: None.

29. Year: 272

Place: Apulia

Circumstances: Pyrrhic War

Amount confiscated: It may be that some land was confiscated in Apulia after the Pyrrhic War.⁹²

Amount privatized within five years: None.

Amount of *ager publicus* left: Unknown.

Amount privatized later: None.

30. Year: 268

Place: Samnium

⁸⁸ Afzelius (1942, 187) and Gualtieri and Fracchia (2001, 125) assume that more than half of Lucania was confiscated, but there is no evidence for this.

⁸⁹ Liv. *Per.* 14.8; Vell. 1.14.7. Afzelius (1942, 191). Even if the colony had 6,000 colonists who each received ten *iugera*, the amount of land necessary would have been only 150 km². The fertile valley between the Sele River, Altavilla, Roccadaspide, Capaccio, Giungano, Cilento, and the sea measures about 180 km².

⁹⁰ Strab. 5.4.13; Plin. *HN* 3.5.70. Afzelius (1942, 191). Some believe that the story of the displacement of the Pidentes was contrived to provide an explanation for the name of the area and never actually took place, e.g. Beloch (1926, 475); Giglio (2001, 129–30). On the other hand, Salmon (1967, 288) and Antonelli (2003, 79) accept the displacement of the Pidentes. The territory as assumed by Afzelius seems too large; 1,000 km² would have allowed for 40,000 ten-*iugera* plots, but it is unlikely that so many Pidentes would have been deported.

⁹¹ DH 20.15.1. Beloch (1926, 471) and Toynbee (1965, ii. 121) think the Sila forest was not confiscated until the Second Punic War. However, there is no reason to doubt Dionysius' statement.

⁹² Beloch (1926, 589) assumes no land was confiscated here until the Second Punic War. On the other hand, some land in Lucania was confiscated as well, and it is possible that this also happened in Apulia.

Circumstances: Rebellion against Roman control.⁹³

Amount confiscated: Unknown, but sufficient for colonization.

Amount privatized within five years: The colonies Beneventum and Aesernia were founded in 268 and 263 respectively.⁹⁴

Amount of *ager publicus* left: It is possible that some of the mountainous terrain remained *ager publicus*.

Amount privatized later: None.

31. Year: 268

Place: Picenum

Circumstances: Picenum was conquered in war; some of its people were deported to the Ager Picentinus in Lucania.⁹⁵

Amount confiscated: Unknown, but sufficient for colonies.⁹⁶

Amount privatized within five years: The colony Firmum was founded in 264.⁹⁷ Some viritane distributions probably took place.⁹⁸

Amount of *ager publicus* left: Some land was left for later colonization.

Amount privatized later: Pisaurum and Potentia were founded in 184, both possibly with 2,000 colonists who received six *iugera* each.⁹⁹

Auximum was founded at an unknown date.¹⁰⁰

⁹³ Zonar. 8.7; DH 20.17.1–2.

⁹⁴ Liv. *Per.* 15.5, 16.7; Vell. 1.14.7–8; Eutrop. 2.16. Beloch (1926, 450) dates the confiscation of this land to the Pyrrhic War, Afzelius (1942, 188) to 268. The territory of Aesernia is estimated at 385 km² (154,000 *iugera*), that of Beneventum at 575 (230,000 *iugera*) by Afzelius (1942, 191). However, Beloch (1880, 149) estimates the territory of Beneventum at 100 km² (40,000 *iugera*). In the case of Aesernia, it is unlikely that all the mountainous terrain surrounding the city was included in the territory; the valley between Sant'Agapito, Forli del Sannio, and Macchia d'Isernia measures about 75 km² (30,000 *iugera*). If each colony had 4,000 colonists who received ten *iugera* each, then 80,000 *iugera* (200 km²) would have been needed for the two colonies.

⁹⁵ *Fasti Triumphales* 268/267.

⁹⁶ Humbert (1978, 237) assumes that the whole of Picenum became *ager publicus*, but it is more likely that many of the Picentes were granted the Roman citizenship. See Beloch (1962, 474); Afzelius (1942, 48).

⁹⁷ Vell. 1.14.8. The territory depicted on Beloch's map measures about 420 km². This seems too large: if the colony had 4,000 colonists who received ten *iugera* each, then 40,000 *iugera* (100 km²) would have been needed. Vell. 1.14.8 also mentions Aefulum as a colony, which some have taken to refer to Aesis, e.g. Harris (1971, 247); Luni (1995, 483); Antonelli (2003, 84). However, it is not at all certain that Aesis is meant, see Delplace (1993, 13); Bandelli (1999, 193).

⁹⁸ In 241 the *tribus* Velina was established in Picenum, which makes it likely that land in Picenum was distributed to Roman citizens. However, it is also possible that many of the members of this *tribus* were Picentes who had received the Roman citizenship: Beloch (1926, 601–2); Afzelius (1942, 22–3).

⁹⁹ Vell. 1.15.2–3. For Potentia and Pisaurum together only 60 km² would have been necessary.

¹⁰⁰ There has been much debate as to the foundation date of Auximum. The year 157 is given in Vell. 1.15.3, who states that it happened 'one hundred and eighty-five years ago, three years before Cassius the censor began the building of a theatre beginning at the Lupercal and

Gracchan activity is shown by the find of a *cippus* near Fanum Fortunae.¹⁰¹

32. Year: 267

Place: Apulia

Circumstances: The Messapii and Sallentini were conquered in war.¹⁰²

Amount confiscated: Unknown, but sufficient for a colony.

Amount privatized within five years: The colony Brundisium was founded c.266.¹⁰³

Amount of *ager publicus* left: It is possible that some *ager publicus* remained.

Amount privatized later: Some land distributed after the Second Punic War may have already been confiscated at this time.

The Gracchi were active in this region as well.¹⁰⁴

33. Year: 241

Place: Sarsina

Circumstances: A victory over the Sassinates is recorded.¹⁰⁵

Amount confiscated: It is possible that land was confiscated in the area.¹⁰⁶

Amount privatized within five years: None.

facing the Palatine. But the remarkable austerity of the state and Scipio the consul successfully opposed him in its building.' Oros. 4.21.4 dates the destruction of the theatre to 154 as well. The year 157 is accepted by many, e.g. Beloch (1926, 474); Delplace (1993, 13–14); Luni (1995, 483); Antonelli (2003, 88). App. BC 1.28, on the other hand, says that 'at this same time [around 106 BC] the consul Scipio pulled down the theatre which Lucius Cassius had begun'. Appian may have taken Caepio, the consul of 106, for a Scipio. Salmon (1963, 6–13) suggests that Auximum was founded in 128, which was three years before the censorship of a Cassius and a Caepio. North (1992) argues that theatres were destroyed in both 154 and 106, in which case Appian's passage is not relevant to the dating of the colony of Auximum. Velleius is notoriously unreliable when it comes to dates, and 157 would be unlikely, since at that time there had been no colonies established for twenty years.

¹⁰¹ The *Liber Coloniarum* mentions distributions by *limites graccani* in Auximum and Ancona. Delplace (1993, 28) points to the Gracchan *cippus* found in Fanum as evidence for the statement of the *Liber*. However, Fanum is not anywhere near Auximum and Ancona, see Campbell (2000, 410–11); Roselaar (2009c), but this does not exclude the possibility of Gracchan involvement in Picenum.

¹⁰² *Fasti Triumphales* 267/266. See Yntema (2006, 92).

¹⁰³ Liv. Per. 19.5; Vell. 1.14.8; Cic. Att. 4.1.4, Sest. 53.131. Afzelius (1942, 191) estimates its territory at 375 km² (150,000 *iugera*). If there were 4,000 colonists who received ten *iugera* each, at least 100 km² (40,000 *iugera*) would have been necessary, and there is no reason why the territory should have been much larger.

¹⁰⁴ Barium and Lupiae are both the centres of very large centuriation grids, and the *Liber Coloniarum* mentions Lupiae, Austranum, and Barium as having been distributed by means of *limites graccani*. This makes a Gracchan date for these centuriations likely, see Compatangelo (1989, 55–60); Bonora Mazzoli (2001, 62–70); Uggeri (2001, 38–50); Roselaar (2009c). Others object that there is no external evidence for this, e.g. Jones (1980, 91); Campbell (2000, 405), but the combined evidence of the *Liber* and the centuriation grids seems convincing.

¹⁰⁵ *Fasti Triumphales* 266/265.

¹⁰⁶ Chevallier (1980, 45). He locates the confiscated territory in the valleys of the Ronco, Savio, Bidente, Marecchia, and Montone Rivers, between Ariminum and the territory of Bononia. However, since the *fora* in this area were all founded after the Second Punic War, it is possible that the land here was not confiscated until the war. See Ewins (1952, 57–9).

Amount of *ager publicus* left: Some *ager publicus* may have been left.

Amount privatized later: There are several records of the establishments of *fora* (Forum Livii, Forum Popillii, Forum Cornelii, Faventia) in the area, but it is not certain these were established for Roman citizens.

34. Year: 241

Place: Falerii

Circumstances: Falerii Vetus rebelled against the Romans. 15,000 people were killed; the rest of the inhabitants were moved to a new city.

Amount confiscated: Falerii lost one-half of its land.¹⁰⁷

Amount privatized within five years: The new city was probably founded on the half that was not confiscated.¹⁰⁸

Amount of *ager publicus* left: There are no later references to *ager publicus* here.

Amount privatized later: Possibly some of the *ager in trientabulis* was located here.

35. Year: 225

Place: Cisalpine Gaul

Circumstances: The Boii and Insubres were defeated in war.¹⁰⁹

Amount confiscated: Unknown, but sufficient for colonization.

Amount privatized within five years: The colonies Cremona and Placentia were founded in 218 with 6,000 colonists each.¹¹⁰

Amount of *ager publicus* left: Unknown.

Amount privatized later: In 190 both colonies received 3,000 extra colonists, maybe because of depopulation.¹¹¹

36. Year: 210

Place: Campania

Circumstances: Capua had joined Hannibal in the Second Punic War. Its disloyal inhabitants were expelled.

¹⁰⁷ Zonar. 8.18; Polyb. 1.65.2; Eutrop. 2.28.1. According to Beloch (1926, 610) the southern half of territory around Mount Soracte was confiscated. Afzelius (1942, 41) on the other hand thinks the northern part was taken.

¹⁰⁸ Potter (1979, 98).

¹⁰⁹ *Fasti Triumphales* 225/224, 223/222; Liv. *Per.* 20.8–11; Zonar. 8.18, 8.20.

¹¹⁰ Polyb. 3.40.5; Liv. *Per.* 20.8, 20.10–11; Vell. 1.14.8; Asc. 3C; Tac. *Hist.* 3.34. The size of these colonies is not known. If the 6,000 colonists each received ten *iugera*, each colony would have required at least 150 km². Tozzi (1972, 20) states that the colonists received twenty-five *iugera* each, although there is no evidence for this. According to my measurements the visible centuriation around Cremona measures 848 km², although Tozzi (1972, 20) and Garnsey (1979, 13) put it at 400 km² and Baldacci (1986, 94) at 450. That around Placentia measures 293 km². However, it is likely that these centuriations were carried out not at the foundation of the colony, but at some later date, for example when the towns were resettled by colonists in the triumviral period.

¹¹¹ Liv. 37.46.9–47.2.

Amount confiscated: Capua lost its whole territory, the Ager Campanus, which measured about 450–500 km².¹¹²

Amount privatized within five years: A small amount of land was sold as *ager quaestorius*.

Amount of *ager publicus* left: About 400 km².

Amount privatized later: The colonies Puteoli, Volturnum, Liternum, and Salernum were founded in 194, possibly each with 300 colonists who received two *iugera*.¹¹³

The Ager Campanus was distributed to Roman citizens in 59.¹¹⁴

37. Year: 200

Place: Lucania

Circumstances: The Lucanians had joined Hannibal in the Second Punic War.

Amount confiscated: A large amount of land was confiscated here.¹¹⁵

Amount privatized within five years: The colonies Castrum Hannibalis and Buxentum were founded in 199 and 194 respectively, possibly with 300 colonists who received two *iugera* each.¹¹⁶

Amount of *ager publicus* left: Most of the land confiscated here remained *ager publicus*.

Amount privatized later: Much land was distributed by the Gracchi, especially in the Tanager Valley.¹¹⁷

38. Year: 200

Place: Bruttium

¹¹² Liv. 26.16.6–8; App. *Hann.* 43. The centuriation grid visible here measures about 346 km²; this was most likely executed in 59 BC, but since the land distributed at that time was the same as that measured in 165 BC (see Ch. 3.2.3), it is likely that the original Ager Campanus had measured some 450–500 km² (350 plus the land sold as *ager quaestorius* and that used for the colonies of 194). See for the boundaries of the Ager Campanus Levi (1921–2, 70–6); Frederiksen (1981, 265–79).

¹¹³ Liv. 34.45.1–2; Vell. 1.15.3. The size of these colonies is not known; if they each contained 300 colonists who received two *iugera*, they were no larger than 1.5 km² each. With some added common land the size of Puteoli, Liternum, and Volturnum together cannot have been larger than 60 km², since there is simply no more room on the coast of Campania. Salernum will have been of the same order of magnitude. Sherwin-White (1973, 78 n. 4) states that plots in these colonies measured six *iugera*, but there is no evidence for this.

¹¹⁴ Cic. *Att.* 2.16.1, 8.10.4, 11.20.3, Q. 2.1.1, 2.6.2, 2.8, *Sest.* 4.9, *Agr.* 1.6.18; App. *BC* 2.10; Suet. *Iul.* 20.3, 81; Vell. 2.44.4; Plu. *Cat. Mi.* 33.1; Plin. *HN* 7.176; Cass. Dio 38.7.3 (see Ch. 5.4.3).

¹¹⁵ Toynbee (1965, ii. 119) assumes more than half of Lucania became *ager publicus*, but there is no evidence for this.

¹¹⁶ Liv. 32.7.3, 34.45.2. Buxentum had been abandoned only eight years after its foundation, and had to be settled with new colonists in 186 BC: Liv. 39.23.3–4.

¹¹⁷ In Volcei, Atina, Consilinum, and Tegianum *cippi* of the Gracchan land commission have been found. Grumentum and Clampetia are mentioned in the *Liber Coloniarum* as being measured by *limites Graccani*. See Campbell (2000, 403); Roselaar (2009c).

Circumstances: The Bruttians had joined Hannibal in the Second Punic War.

Amount confiscated: A large amount of land was confiscated.¹¹⁸

Amount privatized within five years: None.

Amount of *ager publicus* left: All public land was left for later distributions.

Amount privatized later: The colony Thurii Copia was founded in 193; Croton, Tempa, and Vibo were founded in 192.¹¹⁹

Some Bruttian land was distributed by the Gracchi; Gaius founded the colony Scolacium Minervium.¹²⁰

39. Year: 200

Place: Etruria

Circumstances: Rebellion against Roman rule.

Amount confiscated: It is possible that some land was confiscated after a rebellion in the Second Punic War.¹²¹

Amount privatized within five years: None.

Amount of *ager publicus* left: All land here was left for later distributions.

Amount privatized later: Possibly some land in Arretium was distributed by the Gracchi.¹²²

¹¹⁸ App. *Hann.* 61. Salmon (1969, 165 n. 2) claims it was more than one-third; Ghinatti (1977, 148) claims it was more than one-half; however, these estimates are based on the idea that either one-third or one-half was a 'standard amount' taken by the Romans, and that the Bruttians lost more than usual. Kahrstedt (1959, 189) assumes that the whole of Bruttium was made *ager publicus*, but there is no evidence for this.

¹¹⁹ Liv. 34.45.3–4, 34.53.1–2, 35.9.7–9, 35.40.5–6; Vell. 1.14.8; Strab. 6.1.5, 6.1.13. Croton and Tempa probably received 300 colonists with two *iugera* each, which would mean only 1.5 km² per colony. Even if they also received communal land, and both measured 20 km², only 40 in total would have been needed. Thurii was settled with 3,000 infantry who received twenty *iugera* each and 300 centurions who received forty *iugera* each, a total of 180 km², with the express statement that extra, unassigned land was granted to the colony, 'to be used to enlist new colonists if that was wanted' (Liv. 35.9.9). Vibo received 3,700 infantry with fifteen *iugera* each and 300 centurions with thirty *iugera* each, a total of 161.25 km². Vell. 1.14.8 states that a colony in Vibo was settled in 239, but this is probably an error, although Colicelli (1998, 114) believes the statement.

¹²⁰ Vell. 1.15.4; see Ch. 5.2.3.

¹²¹ In 208 there were rumours of a rebellion in Etruria and Umbria, started by the city of Arretium. The Romans took the Etruscan rebellion seriously, since they later launched an investigation into which cities exactly had been trying to revolt. Many individual Etruscans who had tried to betray Rome were punished, and their possessions confiscated (Liv. 27.21.6–7, 27.24, 28.10.4–5, 29.36.10–12; Zonar. 9.6; Plu. *Marc.* 28.1). It may be that some of the land owned by these Etruscans became *ager publicus*; Sisani (2007, 224) locates it around Mevaniola and Urvinum Mataurense, but these places are not mentioned anywhere as having been involved in the rebellion. In any case not a great amount of land can have been confiscated, since only individuals seem to have been involved.

¹²² The presence of *limites gracconi* in Arretium, attested in the *Liber Coloniarum*, lends some credence to a confiscation of land here, see Harris (1971, 205); Roselaar (2009c).

40. Year: 200

Place: Samnium

Circumstances: The Samnites (except for the Pentri) had joined Hannibal in the Second Punic War.¹²³

Amount confiscated: Some land was confiscated here.

Amount privatized within five years: Some land in Samnium was distributed to the veterans of Scipio.¹²⁴

Amount of *ager publicus* left: Some *ager publicus* was left.

Amount privatized later: Some land in Samnium was distributed by the Gracchi.¹²⁵

41. Year: 200

Place: Apulia

Circumstances: The Apulians had joined Hannibal in the Second Punic War.¹²⁶

Amount confiscated: A large amount of land was confiscated in Apulia.¹²⁷

Amount privatized within five years: The colony Sipontum was founded in 194.¹²⁸

Land was distributed to the veterans of Scipio in 200 (see Appendix item 24).¹²⁹

Amount of *ager publicus* left: Much *ager publicus* was left for later distribution.

¹²³ Liv. 22.61.11.

¹²⁴ Liv. 31.4.1–3. We do not know how many people profited from this distribution scheme; it is usually put at 40,000, e.g. Brunt (1971, 292). However, this is based on the total number of soldiers in Scipio's army, not all of whom were Roman citizens, and so would not all have received land. The veterans received two *iugera* per year of service, which would mean that in theory they could receive as much as thirty-six *iugera*, if they had served during the entire war. Some of them may indeed have served this long, since part of Scipio's army consisted of the *legiones Cannenses*, which had been levied in 218–216. But this group made up only a small proportion of the army, so it is probable that the average allotment measured about ten *iugera*. Still, if 20,000 soldiers received ten *iugera* each, this would have amounted to 200,000 *iugera*, or 500 km², see Frederiksen (1970–1, 348). Toynbee (1965, ii. 240 n. 7) claims two million *iugera* (5,000 km²) were divided among Scipio's veterans in Apulia alone, but this huge number is extremely unlikely.

¹²⁵ Three *cippi* of the Gracchi have been found in Rocca San Felice, which is located in the territory of the Hirpini on the border between Lucania and Samnium. Compsa, very close to Rocca San Felice, is mentioned in *Liber Coloniarum* as being divided *limitibus Graccanis*. See Tagliamonte (1996, 153); Campbell (2000, 452–3; Roselaar (2009c). Beloch (1926, 494–5) assumes that the colonies Herculia Telesia and Allifae were founded by the Gracchi and Veneria Livia Augusta Abellinum by Livius Drusus, because they often named their colonies after gods. This is, however, very unlikely; moreover, the colonies promised by Drusus were probably never established.

¹²⁶ Liv. 22.61.11.

¹²⁷ Desy (1993, 78) thinks not much land was confiscated in Apulia, but that is unlikely in view of the Gracchan activity here, see Grelle (1981, 193); Volpe (2001, 316).

¹²⁸ Liv. 34.45.3; CIL 9.699. It was abandoned only eight years after its foundation, Liv. 39.23.3–4. If it had 300 colonists who each received two *iugera*, the total distributed amount was 1.5 km²; with added land this may have been no more than 20 km².

¹²⁹ Liv. 31.4.1–2, 31.49.5, 32.1.6. Silvestrini (2001) locates these distributions in the territories of Vibinum, Venusia, Luceria, Herdonia, and Canusium, based on the fact that the *tribus* Galeria has been recorded in all these areas and that this *tribus* was the one usually assigned to Scipio's veterans.

Amount privatized later: Much land in Apulia was distributed by the Gracchi; Gaius founded the colony Tarentum.¹³⁰

42. Year: 191

Place: Cisalpine Gaul

Circumstances: The Gallic tribes were conquered in war and deported from their lands.¹³¹

Amount confiscated: The Boii lost half their land. The Insubres also had to give up some land.¹³²

Amount privatized within five years: The Latin colony Bononia was founded in 189.¹³³

Amount of *ager publicus* left: A large amount of land was left here for later colonization.

Amount privatized later: The Roman colonies Mutina and Parma were founded in 183.¹³⁴ Aquileia was founded in 181.¹³⁵

In 173 a large viritane distribution took place, involving apparently all the remaining *ager publicus*.¹³⁶ In 169 Aquileia received 1,500 new colonists.¹³⁷

¹³⁰ A large number of centuriation grids are visible in Apulia, and many areas here are mentioned in the *Liber Coloniarum* as having been distributed by the Gracchi; it is likely that most of these are indeed Gracchan. Three Gracchan *cippi* have been found in Celenza Valfortore in northern Apulia. Campbell (2000, 404–5) and Bonora Mazzoli (2001, 64–7) doubt the references in the *Liber*, but there is no real reason to do so, see Roselaar (2009c). Tarentum is recorded as a Gracchan colony in Plu. *CG* 8.3, *Vir. ill.* 65, and Plin. *HN* 3.10.95; see Keppie (1983, 83); Campbell (2000, 167). Beloch (1880, 117) assumes Tarentum and Scolacium both received 3,000 colonists, but there is no evidence for this.

¹³¹ *Fasti Triumphales* 191/190. See Ch. 2 n. 210.

¹³² Liv. 36.39.3; Zonar. 8.18, 8.20. Williams (2001, 218) thinks no land in Transpadane Gaul was confiscated at this time, except for the land used for Cremona and Aquileia, to which Càssola (1991, 17) adds Eporedia.

¹³³ Liv. 37.57.7–8; Vell. 1.15.2. The colony had 3,000 infantry who received fifty *iugera* each and 300 centurions who received seventy *iugera* each, a total of 427.5 km². Chevallier (1980, 71) states the territory measured 393 km², but this seems too small. The visible centuriation around Bononia measures 519 km².

¹³⁴ Liv. 39.55.5–6; Vell. 1.15.2; Cic. *Phil.* 13.9.20; Strab. 5.1.8; CIL 1².621. Mutina had 2,000 colonists who received five *iugera* each, a total of 25 km². Parma had 2,000 colonists who received eight *iugera* each, or 40 km² in total. The visible centuriation around Mutina measures 165 km², that around Parma 361. Corti (2004, 87) argues that this centuriation took place during the general viritane distribution in 173, but it is more likely that their eventual size was reached when these towns were resettled in the triumviral period.

¹³⁵ The Latin colony Aquileia received 3,000 infantry with fifty *iugera* each, 300 centurions with 100 *iugera* each, and sixty *Equites* with 140 *iugera* each, a total of 471 km² (188,400 *iugera*). There are no large centuriations in the area.

¹³⁶ Liv. 42.4.3. Toynbee (1965, ii. 198) and Corti (2004, 80) think all land which still was *ager publicus* was now distributed. Ewins (1952, 61), Baldacci (1986, 98), and Broadhead (2000, 154) think the towns of Dertona, Pollentia, Valentia, Industria, Potentia, and Hasta developed as a result of the land distribution in 173, but there is no evidence that land was distributed in this area at that time. Bandelli (2007, 19–20) argues the distribution in 173 did not take place in this area, but near Mutina and Parma.

¹³⁷ Liv. 43.17.1; Flor. 1.2.3.4–5.

43. Year: 180

Place: Liguria

Circumstances: The Ligurians were conquered in war.¹³⁸ They were deported to the Ager Taurasinus.

Amount confiscated: Some land was confiscated.

Amount privatized within five years: In 179 the Friniates and other Ligurians were deported from the mountains to the plains.¹³⁹

Amount of *ager publicus* left: Some land was left for later distribution.

Amount privatized later: In 173 land in the Ager Ligustinus was distributed (see item 42).

44. Year: 180

Place: Liguria

Circumstances: In 180 the town of Pisae offered the Romans land on which to found a colony, because they wanted Roman protection against the Ligurians.¹⁴⁰

Amount confiscated: Unknown, but sufficient for a colony.

Amount privatized within five years: The colony Luna was founded in 177 with 2000 colonists who received 6.5 (or 51.5) *iugera* each.¹⁴¹

Amount of *ager publicus* left: There are no references to later *ager publicus* in this area, but is possible that some of the mountainous terrain remained *ager publicus*.

Amount privatized later: Unknown.

¹³⁸ Liv. 39.2.9, 40.53.3; *Fasti Triumphales* 175/174. See Appendix item 24.

¹³⁹ Liv. 42.22.5–6. This does not necessarily mean that the land to which they were displaced was Roman *ager publicus*; it may simply have been other land in their territory. However, it shows that the Romans had final authority over what happened to the Ligurian land.

¹⁴⁰ It is sometimes assumed that Pisae itself was a colony as well, especially in modern tourist guides etc.; however, no source mentions Pisae as such.

¹⁴¹ There has been much confusion between the colonies at Luna and Luca, both located on land taken from the Ligurians and both reportedly founded in 177. Liv. 41.13.4 mentions Luna as a colony: *Et Lunam* (MS: *et unam*) *colonia eodem anno duo milia civium Romanorum sunt deducta*. Vell. 1.15.2 only mentions Luca, but Plin. *HN* 3.5.50 mentions only Luna. Modern scholars differ: Beloch (1880, 66) and Salmon (1969, 109) think that only Luna was a colony. Toynbee (1965, ii. 534–40), Coarelli (1985–7, 27–8), and Williams (2001, 209) think that both were colonies. In any case, the only thing we can be reasonably sure about is that Luna was a colony founded in 177; Luca may have been colonized around the same time or later, since it was apparently a colony in Pliny's time. Foraboschi (1992, 86) thinks that the total number of colonists for both places was 5,000; Bandelli (1999, 205) and Baldacci (1986, 97) think Luca received 3,000 colonists and Luna 2,000, but there is no evidence for this.

Another issue is the amount of 51.5 *iugera* which was apparently distributed. Although large allotments were handed out in other colonies in this period, the number 51.5 is strange; moreover, such large allotments were more characteristic of Latin colonies, not of Roman, as Luna is usually assumed to have been, see Galsterer (1976, 63); Broadhead (2001, 77). It has therefore been emended by Tibiletti (1950, 203) to 6.5 *iugera*, which would be the result of a likely error of transmission from VI to LI. This would fit into the pattern of Roman colonies of this period much better, with land grants between five and ten *iugera*. Toynbee (1965, ii. 539) and Coarelli (1985–7, 29), however, argue that in such dangerous territory 6.5 *iugera* would have been too small an amount. If there were 3,000 colonists and they received 6.5 *iugera*, the total amount distributed would have been 19,500 *iugera* (about 50 km²); in the case of 51.5 it would be 154,500 (386 km²).

45. Year: 177

Place: Ligurians (Statielli)

Circumstances: The Statielli were defeated in 177.¹⁴²

Amount confiscated: Some land was taken.¹⁴³

Amount privatized within five years: In 172 the Statielli received land on the other side of the Po in compensation for land taken from them.¹⁴⁴

Amount of *ager publicus* left: Some *ager publicus* seems to have been left over.

Amount privatized later: In 109 the colony Dertona was founded, apparently on land previously taken from the Statielli or the Salassi.¹⁴⁵

46. Year: 140

Place: Salassi

Circumstances: The Salassi were defeated in 143.¹⁴⁶

Amount confiscated: Some land was taken.

Amount privatized within five years: None.

Amount of *ager publicus* left: Some *ager publicus* seems to have been left.

Amount privatized later: It is possible that the land for the colony Dertona, founded between 123 and 118, was confiscated at this time.¹⁴⁷ In 100 the colony Eoredia was founded, but it is possible that the land for this colony had not been securely confiscated until the Cimbrian War (105–101 BC), since the Cimbri were defeated in this area.

¹⁴² Liv. 41.16.8.

¹⁴³ Corti (2004, 81).

¹⁴⁴ Liv. 42.22.5–6. See Càssola (1991, 17); Foraboschi (1992, 87). It is likely that the land used for this was *ager publicus*, since Livy says that ‘they were transported across the Po where land was assigned to them’. Baldacci (1986, 97) states the land which the Statielli received had earlier been taken from the Boii, not from the Statielli themselves; Corti (2004, 81) likewise assumes that the Statielli did not receive back their own land, but were given other tracts of *ager publicus*. She assumes that the land taken from the Statielli was included in the distribution to Romans and Latins that had started in 173.

¹⁴⁵ Salmon (1969, 121).

¹⁴⁶ Strab. 4.6.7.

¹⁴⁷ Denti (1991, 38) and Foraboschi (1992, 92) think the land had been taken from the Salassi in 143, and that there were 2,000 colonists who received fifty *iugera* each, although there is no evidence for this.

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