

The Collective Ownership and *Heredium*

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1. Introduction

It is a common place to mention among the origins of property Romulus' distribution of two *iugera* to each Roman citizen reported by Marcus Terentius Varro, Festus and Flaccus Siculus:

Var. R. 1.10.2 iugerum, quod quadratos duos actus habeat. actus quadratus, qui et latus est pedes cxx et longus totidem: is modus acnua latine appellatur. iugeri pars minima dicitur scripulum, id est decem pedes et longitudine et latitudine quadratum. ab hoc principio mensores non numquam dicunt in subsicivum esse unciam agri aut sextantem, si <c> quid aliud, cum ad iugerum pervenerunt, quod habet iugerum scripula cclxxxviii, quantum as antiquos noster ante bellum punicum pendebat. bina iugera quod a Romulo primum divisa dicebantur viritim, quae heredem sequerentur, heredium appellantur. haec postea centum centuria. centuria est quadrata, in omnes quattuor partes ut habeat latera longa pedum α150 α150 c α1119. hae porro quattuor, centuriae coniunctae ut sint in utramque partem binae, appellantur in agris divisis viritim publice saltus.

"A *iugerum* equals to two square *actus*. A square *actus*, which is 120 feet wide and of the same length, is how an *acnua* in Latin is called. The *scripulum* is the smallest division of a *iugerum* that is to say a square of ten feet both of length and wide. From this unit, land surveyors sometimes, when speaking of a bit of land which is left over after they have reached the *iugerum* call it an ounce, or two ounces or whatever it be, for the *iugerum* has 288 *scriptula*, which is what our ancient weighed before the Punic war. A couple of *iugera*, an allotment said to have been

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made first by Romulus to each man to descend to his heir, was called *heredium*. Afterwards, these hundred *heredia* were called *centuria*. A *centuria* is a perfect square, each side of which is 2400 feet long. Four *centuria* joined so that there be two together in every direction are, in the case of allotments to individuals by the State, called a *saltus*".

Fest.-Paul. sv. Centuriatus (L. 47) centuriatus ager in ducena iugera definitus, quia Romulus centenis civibus ducena iugera tribuit.

"*Centuriatus*. A centuriated field is divided in two hundred *iugera*, for Romulus to a hundred citizens two hundred *iugera* gave".

Siculus Flaccus Cond. Agr. 118.1. Centuriis, quarum mentionem nunc facimus, uocabulum datum est ex eo, <quod> cum antiqui [Romanorum] agrum ex hoste captum uictori populo per bina iugera partiti sunt, centenis hominibus ducentena iugera dederunt: et ex hoc facto centuria iuste appellata est.

"About the *centurias*, which we now mention, the word comes from this, when the ancient Romans captured land from the enemy in a victory, it was divided among the people in a ratio of two *iugera*. For to a hundred men two hundred *iugera* were given and, from this fact is that [the distribution] was rightly called *centuria*".

The story is evidently as legendary as its protagonist. It informs us about the relation between the citizen status and land ownership. Romulus is a typically eponym character than Ancient historiography creates in order to justify the existence of Rome and its most Ancient traditions¹. His name seems to be a diminutive adjective of the own city of Rome², where the suffix *ulus* (=poenus/poenulus) is added to the noun Rome. In other words, to express that Rome was founded by Romulus is like saying Rome was founded by the little Roman. Nevertheless, this shall not make us believe that the events that the tradition attributes to his reign are simple falsifications. Its existence is a myth, a story that hides a truth, which's nature is different to mere chronology. It condenses events concerning the development of Roman society in a wide range of time. So, by the middle of the VIII century, exactly when tradition puts the foundation of Rome, a small village over the Palatine can be found. Other parts of the legend correspond to events that also took place, but in later periods, as for instance, by the time of the Etruscan kings. Some examples of these

¹ Var. LL 5.33.3 *Romanus dictus unde Roma ab Romulo*

² See: A.GUARINO, *La rivoluzione della plebe*, Napoli 1975, p.41.

events are the construction of the Temple of Jupiter in the Capitoline Hill³, the occupation of the Forum valley⁴ or the introduction of *imperium*⁵. All these deeds, which traditional historiography attributes to this unlikely character, should be widely placed between the ending of the VII century and the beginning of the VI century. It is rather funny that most of these legendary events do have a correspondence with historical events, although in a much wider time period than the one suggested by the synthetic version offered by tradition.

Generally speaking, the critic has taken two different attitudes towards Romulus' legendary land distribution. On one side, the old hyper-critical scholars used to deny completely its value⁶, but this tendency has mostly fallen into oblivion. Nowadays critic usually gives it some credit as a legendary testimony of the introduction of private property in Primitive Roman social order⁷. On the matter, there was an intense debate on the capacity of such a small piece of land (almost half a hectare) to sustain a family. Doctrine ended accepting Mommsen's theory⁸, according to which, together which

³ Dion. Hal. 2.34.4.

⁴ This is the meaning of the legendary fight between Romulus and Mettius Curtius (Dion. Hal. 2.42), who is an incarnation of the spirit of the swamp that used to cover the Forum. After winning the war (Dion. Hal. 2.50), Romulus supposedly dried the swamp and occupied the Forum valley. Nevertheless, these two last tasks correspond to the Etruscan time, particularly during Tarquin the Elder's reign.

⁵ See: C. AMUNÁTEGUI PERELLÓ, *Tarquino Prisco* in REHJ XXXI (2009) pp.61-85.

⁶ This was the common attitude of the hyper-critic. It was typical of this line of thinking, to deny any value to Roman mythology, as for example declaring that Roman tradition only becomes historical after June 2nd 390 B.C. (the burning of Rome by the Gauls). See: R. MASCHKE, *Zur Theorie und Geschichte der römischen Agrargesetze*, Napoli 1980=1906, p.14.

⁷ For example, see: R. DREYFUS, *Essai sur les lois agraires sous la république romaine*, Roma 1971=1898, p.8. He points that for with this reform Ancient communism would have been replaced by a private property system. For P. BONFANTE, *Corso di diritto romano, La proprietà*, v.II, p.I, Milano 1966, p.251, Romulus' distribution would be a significant fact on private property from the very origins of Rome. F. SERRAO, *Diritto privato economia e società nella storia di Roma*, v.I, Napoli 2006, p.45, believes that the legend asserts that before the foundation of Rome there was no private property. A Little forward, (p.278) he adds that the origins of private property may be found in the distributions of the *ager publicus* to private citizens, following the model of Romulus. In a similar sense, see also: M. SALAZAR REVUELTA, *Evolución histórico-jurídica del condominio en el Derecho romano*, Jaén 2003, p.56 and M. FUENTESECA DEGENEF, *La formación romana del concepto de propiedad*, Madrid 2004, p.12.

⁸ T. MOMMSEN, *Staatrecht*, v.III, Leipzig 1888, p.166.

the *heredium*, of either familiar or personal ownership, there would also exist a different and bigger part of the territory that would remain undivided and publicly owned⁹.

It is very difficult to determine if this mythological event does correspond to some kind of historical event. As Diósdi¹⁰ putted it, Romulus is not a historical character, but probably the sources are giving a legendary origin to plebeian land assignments. The structure of the *bina iugera* concur with a typical narrative condensation of a larger historical process that lead to the transformation of individual farm lands, called *heredia*, into private property. The two *iugera* is an agricultural measure present in several episodes of Archaic Roman history, as for instance in foundation of colonies¹¹ or in land distributions for plebeians¹², even in very late periods, as, for instance, in the Anibalic war¹³. This agricultural measure, equivalent to approximately half a hectare, is called *heredium*, and it seems to have some special significance in Roman Legal tradition. It is mentioned in the XII Tables¹⁴ and it is the basic unit of land distribution. A hundred *heredia* make a *centuria*, that is to say, the territorial dimension of a human unity with a military and political role through the legion and the *comitia centuriata*, which is the base of the Late Monarchic and Early Republican administration.

⁹ For instance: O.BEHRENS, *La mancipatio nelle XII Tavole*, in IURA XXXIII (1982) p.86 believes it to be a first approach to private property.

In a similar sense, F.SERRAO, *Diritto privato economia e società nella storia di Roma*, v.I Napoli 2006, pp.282-3, states that the existence of these Ancient “Romulean” assignments, is not incompatible with the existence of a vast group of land in common ownership, whether they are *ager gentilicium* or *publicus*.

¹⁰ G.DIÓSDI, *Ownership in Ancient and Preclassical Roman Law*, Budapest 1970, p.35.

¹¹ Liv. 4.47.7 *coloni ab urbe mille et quingenti missi bina iugera acceperunt.*

Liv. 6.16.7 *bina iugera et semisses agri adsignati; quod cum et paruum et paucis datum et mercedem esse prodendi M. Manli interpretarentur, remedio irritatur sedatio.*

¹² Liv. 6.36.11 *audentne postulare ut, cum bina iugera agri plebi diuiderentur, ipsis plus quingenta iugera habere liceret ut singuli prope trecentorum ciuitum possidherent agros, plebeio homini uix ad tectum necessarium aut locum sepulturae suus pateret ager?*

¹³ Liv. 31.49.5 *et de agris militum eius decretum ut quot quisque eorum annos in Hispania aut in Africa militasset, in singulos annos bina iugera agri acciperet*

¹⁴ Plin. Sen. Nat. 19.50 *in XII tabulis legum nostrarum nusquam nominatur villa, semper in significatione ea hortus, in horti vero heredium.*

This work will study the complex problem of the *heredium* in order to establish if some historical facts hide behind the legend of Romulus.

2. Latin Economy in the VIII Century B.C.

The relation of men with territory is fundamental in the complex economic control system of means of production in any society. To study the legal relations of land control we must previously make an attempt of defining the economical structure of the historical period. We will avoid words as property or ownership¹⁵ for these correspond to a complex set of social and legal conditions that are not as easily found as one would expect. For instance, there is the need of a central State¹⁶ that is able to assure the control of a specific object for a determined group or person. Also, the power of the owner must be absolute and opposable *erga omnes*. Finally, property is able to describe the power of an owner over any *res*, or at least any *res corporales*. Evidently, in Latium, by the VIII century we cannot find these economic or legal conditions, so it will be safer to use words as control to describe the relations with land, than to use ownership or property, that seem to point to an abstract concept of a later period.

The Latium area by the VIII century was going through the period known as III (c. 850-750 B.C.) which starts with the abandonment of the necropolis of the Forum and the opening of a new inhumation place on the Esquiline Hill. At the same time, a small cabanas village is established over the Palatine Hill were some remains of what could have been a palisade were found. During this period, the progressive enrichment of burials is evident. In the collective tombs appear funerary tumuli for particularly important people, which are surrounded by items buried with them. Sometimes, the luxury of the items can astonish, especially for the burials of the later period, IVa (c. 750-650 B.C.). Gold, ivory and other imported luxury items were

¹⁵ G.FRANCIOSI, *gentiles familiam habento. Una riflessione sulla cd. Proprietà collettiva gentilizia in Ricerche sulla organizzazione gentilizia romana*, G.FRANCIOSI (curator), v.III, Napoli 1995, p.49; D.STOJCEVIC, *Proprietà sociale proprietà feudale e dominium in Sritti in onore di Antonio Guarino*, v.II, Napoli 1984, p.1929.

¹⁶ In this sense, before the existence of State is technically inconsistent to speak of property or ownership. See: G.FRANCIOSI, *Gentiles familiam habento. Una riflessione sulla cd. Proprietà collettiva gentilizia in Ricerche sulla organizzazione gentilizia romana*, G.FRANCIOSI (curator),v.III, Napoli 1984, p.48.

found in graves at Osteria del Osa, marking a sharp class difference in the community. The archeological evidence for the period seems to point to a society of increasing wealth, were part of this economic success is expressed in the growing luxury of gentile burials.

The traditional opinion supports that the predominant activity of early Roman society would have been pasturage¹⁷. There are four main arguments to support this theory¹⁸. Firstly, the fact that the oldest Roman festivities are appropriate for a pastoral society, especially the *Lupercalia*, a very obscure rite performed by the *lupercii*, a kind of young priests that came only from some specific *gentes*, who would run around the city in the *idus* of February dressed with fur, imitating wolfs. Secondly, there is the legend of Romulus and Remo, whom would have been nursed by a she-wolf and are described as shepherds in the traditional account. It has also been mentioned that the ox had a privileged position in Archaic Society, for its slaughtering was prohibited, as it was considered a fellow of mankind¹⁹. Finally, the word *pecunia* is very much in use as meaning wealth, what would relate richness with cattle²⁰.

Although as a whole, it sounds quite convincing, when each argument is taken separately, one's opinion might change. Firstly, there is the derivation of the word *pecunia* from *pecus*, cattle. This is

¹⁷ See: G.DE SANCTIS, *Storia dei romani*, v.I, Kessinger 2009=1907, p.79 and v.II p.465; F.DE MARTINO, *La gens, lo stato e le classe in Roma antica* in *Diritto economia e società nel mondo romano*, v.III, Napoli 1997, p.18, as also in *Historia económica de la Roma Antigua*, v.I, Madrid 1985, p.10. Also: F.SERRAO, *Diritto privato economia e società nella storia di Roma*, v.I, Napoli 2006, pp.109-110 specially for the use of the word *pecunia* as a synonym of ownership.

Especially interesting is F.GALLO, *Studi sulla distinzione fra res mancipi e res nec mancipi* in *Rivista di Diritto Romano*, IV (2004), pp.23-24, for whom the Proto-Latins knew both pasturage and agriculture by the time they entered Italy, although for him sheepherding would have been predominant. The transformation process from a pasturage society to an agricultural one would only be concluded by the beginning of the Republic.

¹⁸ Given its importance, we summarize the opinion of F.DE MARTINO, *Historia económica de la Roma Antigua*, v.I, Madrid 1985, p.10.

¹⁹ See : Var. De re rust. II,5,3; Plin. nat. hist. VII,45(70),180 and finally Colum. De re rust., VI pref. 7.

²⁰ This last argument belongs to F.SERRAO, *Diritto privato economia e società nella storia di Roma*, v.I, Napoli 2006, pp.109-110.

taken from Varro's²¹ testimony, who is a rather fantastic etymologist. Benveniste, in 1969²², subverted the argument indicating the possibility of the exact opposite, that is to say, that the Indo-European **peku* -which would point to movable wealth- by a long process of specification, would have ended up meaning small cattle. Nevertheless, we are not in a position to analyze his theory in all its deepness. For us it is enough to point that the varronian derivation of *pecunia* from *pecus* is discussible and that the exact opposite is also possible.

On the prohibition to slaughter ox, we believe this might point to the exact opposite of pasturage, that is to say, to a predominantly agricultural economy. The ox, as a working animal, is important for its physical power which enables it to farm the land. For societies whose main economic activity is pasturage, the ox would have quite an inferior position to the cow, from which calves are born and milk can be obtained. If primitive Rome had been a shepherd's society, probably the prohibition would have fallen on the slaughter of cows, not ox, whose economical importance is linked to the plow.

On Romulus being a shepherd, we must underline it is an element of the first part of the legend, which relates Romulus with Alba Longa and with the whole Trojan cycle. It seems to be a rationalization of the founder's myth and it might have a better explanation in Greek philosophical thinking, as Marcone²³ points out, than in primitive reality of Latin people. It is probably a reception Dicearchus' theory

²¹ Varr. L.L. 5.92 *quae a fortuna vocabula, in his quaedam minus aperta ut pauper, dives, miser, beatus, sic alia. pauper a paulo lare. mendicus a minus, cui cum opus est minus nullo est. dives a divo qui ut deus ni[c]hil indigere videtur. opulentus ab ope, cui eae opimae; ab eadem inops qui eius indiget, et ab eodem fonte copi[i]s ac copiosus. pecuniosus a pecunia magna, pecunia a pecu: a pastoribus enim horum vocabulorum origo.*

Varr. L.L. 5.95 *haec de hominibus: hic quod sequitur de pecore, haec. pecus ab eo quod [per]pascebant, a quo pecora universa. quod in pecore pecunia tum pastoribus consistebat et standi fundamentum pes (a quo dicitur in aedificiis area pes magnus et qui negotium instituit pedem posuisse), a pede pecudem appellarunt, ut ab eodem pedicam et pedisequum et peculatoriae oves aliudve quid: id enim peculium primum.*

²² See: E.BENVENISTE, *Le vocabulaire des institutions indo-européennes*, Paris 1969; also: A. MARCONE, *Storia dell'agricoltura romana*, Roma 1997, pp.102-3 and M-A.MARECOS CASQUERO, *Pecunia, historia de un vocablo* in Revista de la Facultad de Ciencias Económicas y Empresariales (Universidad de León), 1 (2005) pp.1-12, in http://www3.unileon.es/pecvnia/pecvnia01/01_001_012.pdf

²³ A.MARCONE, *Storia dell'agricoltura romana*, Roma 1997, pp.102-3.

on the pastoral origins of humanity, while agriculture would be a later development.

Finally, we have the Lupercalia; its impressing ancientness is not enough to establish, by itself, the nature of Rome's ancient economy. It is evident that the shepherd of cattle, whether it was ovine, caprine, bovine or porcine, was important in all of Roman history and not only in the Archaic Period. On the problem, Marcone makes an interesting comparison in order to measure the importance of pasturage in Ancient economy. Using the calendar as a reference, which can be dated back to the VI century B.C. for it contains some references to the kings²⁴ that can only come from such a period, he counts the number of festivities related to pasturage. The result indicates a proportion of 25 to one, for of the whole fifty festive days, only two would be consecrated to rites related to pasturage, the Lupercalia and the Parilia. Therefore, it can be concluded with some degree of certainty that pasturage had a secondary importance in religious festivities by the time of the monarchy as probably too in economy. In fact, the Proto-Latin people, as most people of the Bronze Age in Italy, were well aware of agriculture from, at least, the second millennium B.C. To think that their economy was based on pasturage seem out of time, even for the VIII century B.C. Cereal agriculture is a part of rituals of obscure antiquity, as *confarreatio*, where the couple should eat together a cake of spelt. Nobody doubts the ancientness of such a rite²⁵, which tradition also relates to Romulus²⁶

²⁴ Especially for the celebration of the *regifugium* which was on February 24th, as also for March and May 24th that are marked as *Q(uando) R(ex) C(omitivavit) F(as)*.

²⁵ See: B.BIONDO, *Farreo coemptione usu in Sodalitas, Scritti in onore di Antonio Guarino*, v.III, Napoli 1984, p.1301; G.PUGLIESE, *Aperçu historique de la famille romaine* in *Scritti Giuridici Scelti*, v.III, Napoli 1985, p.11; F.BOZZA, *Manus e matrimonio* in Ann. Macerata, 15 (1941), p.111; R.DÜLL, *Studien zur Manusehe* in *Festschrift Wenger*, v. I, München 1944, p.204, and especially C.ST. TOMULESCU, *Le rapports entre le mariage et la manus* in RIDA, XVIII (1971) p.725.

²⁶ Dion. Hal. 2.25.1 Ο δέ Ἡρακλίος οὔτε ἀνδρὶ κατὰ γυναικός ἐγκλήματα δοὺς φθαρείσης ἢ τὸν οἶκον ἀδίκως ἀπολιπούσης οὔτε γαμετῇ κατ' ἀνδρὸς αἰτιωμένῃ κάκωσιν ἢ ἀδίκον ἀπόλειψιν οὔτε περὶ προικὸς ἀποδόσεως ἢ κομιδῆς νόμους θεῖς οὔτε ἄλλο τῶν παραπλησίων τούτοις διορίσας οὐδὲ ὅτιοῦν, ἔνα δὲ νόμον ὑπέρ ἀπάντων εὖ ἔχοντα, ὃς αὐτῷ τὰ ἔργα ἐδίλασε, καταστησάμενος εἰς σωφροσύνην καὶ πολλὴν ἐνκοσμίαν ἤγαγε τὰς γυναικας. ἦν δὲ τοιόχεδε ὁ νόμος: γυναῖκα γαμετὴν τὴν κατὰ γάμους ἱεροὺς συνελθοῦσαν ἀνδρὶ κοινωνὸν ἀπάντων εἶναι χρημάτων τε καὶ ἱερῶν. ἐκάλουν δὲ τοὺς ἱεροὺς καὶ νομίμους οἱ παλαιοὶ γάμους

and that can be connected with Indo-European ceremonies in places as distant as India²⁷.

Primitive Rome could not be an exclusively pastoral society, as the majority of the critic states, for otherwise it would have lacked reasons for establishing in a sedentary way and overcoming the simple nomadic clan. On the other hand, it has been proof that agriculture is older than pasturage, as XIX century Anthropology supposed. As Capogrossi²⁸ puts it, the problem is that the gentile scheme of society does not show accurately the situation of primitive Rome, for the *gentes* were part of bigger groups, like the *pagus*, the *villa* and other communities that preceded the village of the Palatine Hill. By the time of the foundation of the city, we can observe some technological development²⁹, for metal instrument are increasingly abundant, the burial places become richer and a first class distinction becomes quite likely. It was probably an extensive agriculture, mostly of spelt and with a limited presence of arboriculture, mainly of apples and pears, the oldest fruit trees known in Italy, which combined with cattle gave the city its first economical growth.

3. Land and the gente

The situation of land in Primitive Rome has been a heavily debated matter for more than a century. Therefore, bibliography on the problem is outrageously abundant. As a starting point, we should take Mommsen³⁰, who supported the idea that *gentes* controlled most of the agricultural land, given the scarcity of the *bina iugera* distributions attributed to Romulus. Mommsen's argumentation is nowadays universally accepted, for individual lots of such dimensions are only possible if, together with them, there are also extensive

Πρωταίκῃ προσηγορίᾳ περιλαμβάνοντες φαρραχείους ἐπὶ τῆς κοινωνίας τοῦ φαρρός, δὲ καλούμενης ήμετις ζέαν. αὕτη γάρ ήν ἀρχαία καὶ μέχρι πολλοῦ συνήθης ἄπασιν αὐτοῖς ἡ τροφὴ: φέρει δὲ πολλὴν καὶ καλὴν ἡ Ρωμαίων γῆ [τὴν ζέαν].

²⁷ See: J.DUNCAN and M.DERRETT, *Manus, marriage, Indian counterparts to roman law* in IURA, XIX (1968) p.94 and G.HANARD, *Manus et marriage* in RIDA, XXXVI (1989), p.265.

²⁸ L.CAPOGROSSI COLOGNESI, *La struttura della proprietà e la formazione dei iura praediorum nell'eta repubblicana*, v.I, Milano 1969, pp.175-199.

²⁹ L.CAPOGROSSI COLOGNESI, *Diritto e potere nella storia di Roma*, Napoli 2007, p.11.

³⁰ T.MOMMSEN, *Staatrecht*, v.III, Leipzig 1888, p.166.

common lands where the members of the *gentes* could also obtain resources³¹. Nevertheless, Mommsen's thesis is somehow awkward. To accept it we must first approve the individual distribution of land in a small scale made by the mythical founder by mid VIII century, something that might well be an historical anticipation. The scholar deducts the existence of common property from private one. Many parts of the legend of Romulus take us to the Etruscan period and, as we will see, this might also be the case.

Another argument in favor of gentile control of the land is that the names of the primitive tribes correspond to names of *gentes*³², what supposes a strong relation between the *gens* and the territory it occupies. Tradition also reports some cases of attribution of land to a specific *gens*. There is the story of the distribution of land to the *gens Claudia*³³ when they migrated into Rome in 495 B.C., which is pretty late and happens in a time when is clear that together with gentile control of land, there was also an individual or, at least, a family one. To the Tarquin *gens* it was also given a specific territory by king Ancus Marcius, together with integrating them into a curia³⁴. After their expulsion from Rome, that same territory will be consecrated to god Mars and transformed into the *Campus Martius*³⁵. We also know of the existence of the *prata Quintia*³⁶ and *Mucia*³⁷, which are still known by this name in historical times³⁸.

³¹ P.BONFANTE, *Corso di diritto romano, La proprietà*, v.II, p.I, Milano 1966, pp.248-9; G.DIÓSDI, *Ownership in Ancient and Preclassical Roman Law*, Budapest 1970, p.36; F.DE MARTINO, *Historia económica de la Roma Antigua*, v.I, Madrid 1985, p.15; D.STOICEVIC, *Proprietà sociale proprietà feudale e dominium in Sritti in onore di Antonio Guarino*, v.II, Napoli 1984, p.1929; M.SALAZAR REVUELTA, *Evolución histórico-jurídica del condominio en el Derecho romano*, Jaén 2003, p.55; F.SERRAO, *Diritto privato economia e società nella storia di Roma* v.I, Napoli 2006, p.45.

³² F.SERRAO, *Diritto privato economia e società nella storia di Roma* v.I, Napoli 2006, p.47; G.FRANCIOSI, *gentiles familiam habento. Una riflessione sulla cd. Proprietà collettiva gentilizia in Ricerche sulla organizzazione gentilizia romana*, G.Franciosi (curator), v.III, Napoli 1995, p.32 and in detail G.FRANCIOSI, *Totum gentilicium ius in desuetudinem abiisse in Ricerche sulla organizzazione gentilizia romana*, G.Franciosi (curator) v.III, Napoli 1995, pp.85-97.

³³ Livius AUC 2.16 and Dion. 5.40. See: G.FRANCIOSI, *Le tribù gentilizie in Ricerche sulla organizzazione gentilizia romana*, v.III, Napoli 1995, p.14 and F.SERRAO, *Diritto privato economia e società nella storia di Roma* v.I, Napoli 2006, p.47.

³⁴ Dion. Hal. 3.48.2

³⁵ Liv. 2.5.2.

³⁶ Fest. 257.35.

It also seems clear that the *gentes* could behold land for their own ends, as for instance is the case of gentile graves³⁹ and other real estate. In this class we can put the stronghold of the *Fabii* in Cremera or the one of the *Valerii* at Velia⁴⁰. We even know that the *gens* could inherit, according to T.V.4 of the Law of the XII Tables:

Ulp, Coll. 16.4.1 Si intestato moritur, cui suus heres nec escit, adgnatus proximus familiam habeto. Si adgnatus nec escit, gentiles familiam habento

"If [he] dies untested, who *suus heres* does not have, may the nearest agnate have the family. If the nearest agnate does not appear, may the gentiles have the family."

We have an alternative formulation of the norm given by Cicero:

Cic. Inv. 148.7 si paterfamilias intestato moritur, familia pecuniaque eius agnatum gentiliumque esto.

"If a *paterfamilias* dies untested, may his family and *pecunia* the agnate and gentiles have."

Cic Rhet Her 1.23.10 Et lex: si paterfamilias intestato moritur, familia pecuniaque eius agnatum gentilium esto.

"And the law: if a *paterfamilias* dies untested, may his family and *pecunia* the agnate and gentiles have."

We will not enter into the contradiction between both versions -the first one only specifies "*familia*" as a matter for inherency, while the ciceronian version mentions "*familia pecuniaque*"- for we are only interested in the fact that the succession is given collectively to the *gens*⁴¹. The formulation is different from the one that calls the

³⁷ Fest. 145.24.

³⁸ G.FRANCIOSI, *Famiglia e persone in Roma antica*, Torino 1992, p.108.

³⁹ G.FRANCIOSI, *Famiglia e persone in Roma antica*, Torino 1992, p.23; O.SACCHI, *Il passaggio dal sepolcro gentilizio al sepolcro familiare e la successiva distinzione tra sepolcri familiari e sepolcri ereditari* in *Ricerche sulla organizzazione gentilizia romana*, v.III, Napoli 1995, p.171.

⁴⁰ G.FRANCIOSI, *gentiles familiam habento. Una riflessione sulla cd. Proprietà collettiva gentilizia* in *Ricerche sulla organizzazione gentilizia romana*, G.Franciosi (curator), v.III, Napoli 1995, p.42.

⁴¹ A.MANZO, *L'organizzazione gentilizia nelle dodici tavole* in *Ricerche sulla organizzazione gentilizia romana*, G.Franciosi (curator) v.III, Napoli 1995, pp.108-9; L.MINIERI, *Mores e decreta gentilicia* in *Ricerche sulla organizzazione gentilizia romana*, G.Franciosi (curator) Napoli 1995, v.III, p.154; F.SERRAO, *Diritto privato economia e società nella storia di Roma* v.I, Napoli 2006, p.47.

adgantus proximus, for this last the norm gives the whole patrimony to a person, the nearest among the agnates, while in the gentiles case, there is no individual call, but a collective nomination to all the *gens*, for it is impossible to distinguish proximity in gentile kinship. We cannot interpret this succession as a kind of co-ownership, for by the time of the XII Tables it is unlikely that concepts like quota and the rest of the elements of co-ownership even existed.

What it is most likely is that gentile succession was a kind of communitarian control of land, in a somehow different fashion than property of historical times. The *gens* is composed by a high number of people, for the distribution of the inherited goods among them does not seem to be possible for most cases. The goods of the inheritance would be so deeply fragmented that its economical value would disappear. In our opinion, the best alternative is to suppose some kind of control of the inheritance by the *gens* as a community, similar to what we can expect for the land in Early Rome.

Nevertheless, we have some objections to the traditional way of formulating the theory of gentile property. Firstly, there is the problem of qualifying it as property or ownership, for the *gens*' relation with land comes from a Pre-State situation, where we can hardly use these terms. Another problem is that it seems strongly artificial to suppose that all the *gentes* have an identical internal regime of land distribution among its members.

On the exact way the land was used by clan's members, whether land was distributed among them or if it remained undivided and open to any member's use, there does not seem to be only one answer. The problem is that the *gens* is a Pre-State institution, so it is seems to lack a homogeneous internal regime common to all of them. We know that *gentes* had a legislative capacity⁴², so it is possible that they could govern themselves autonomously. In many of them, there seems to be a kind of leader, a *pater gentis*, usually with a fixed *praenomen* that identifies him as the chief of the *gens*. This is the case of the ones named *Appius* among the *Claudii*, the *Lucius* (or *Lucumo*) among the

⁴² Suet. Tib. 1. and Cic. Phil. 1.13.32. With abundant bibliography see: L.MINIERI, *Mores e decreta gentilicia in Ricerche sulla organizzazione gentilizia romana*, v.III, Napoli 1984, p.121.

Tarquins or *Spurius*⁴³ among the *Casii*. Nevertheless, there is another group of *gentes* where this does not seem to be valid, for there is neither a fixed leadership nor name. The *Clelii* or the *Cornelii* have no given *praenomen* repeated among the ones that obtain the most important magistracies in the Republic. Even more, different members of the same *gens* obtain the highest magistracies at the same time. For example, we find an A. Cornelius as consul in 413 B.C. and a Cn. Cornelius as consular tribune in 414 B.C. Since both occupied a mayor public office practically at the same time, we cannot tell whether one of them is the gentile leader or *pater gentis*. The problem becomes even more acute if we look at the gens *Tricipitina*, where we find a L. Lucretius (father of the unfortunate Lucretia) as urban prefect under the last of the Tarquins (c. 509 B.C.), a P. Lucretius as consul in 506 B.C. and a T. Lucretius as a consul both in 509 and in 504 B.C. In other words, we find three people figuring with the most important offices by the end of monarchy and the beginning of the Republic practically at the same time, forbidding us to consider any of them as the leader of one of the most important *gentes* of that time. This is especially interesting because this clan disappears in later times, so the risk of forgery is relatively low.

Although some *gentes* do show a clear internal leadership, this seems not to apply to every, for each clan was a world in itself, with its own traditions, rites and internal authority. Therefore, we cannot establish a clear land regime for every clan. Some, as the *Claudii* did, might have distributed it. We have testimony of such a distribution in 495 B.C., being of two *iugera* for each member and twenty-five for its leader⁴⁴. Others might have left the whole of the territory or a part of it undivided for collective use⁴⁵.

⁴³ Which might be the latinization of *Spur=publicum*, see: S.MAZZARINO, *Sociologia del mondo etrusco e problemi della tarda etruscita* in Historia, Zeitschrift für alte Geschichte, vol 6, N°1 (1957) p.107.

⁴⁴ Plutarch., *Publicola* 21,9

⁴⁵ Some scholars seem to suppose that the division of the *ager gentilicium* in *heredia* was made through *nexum*. See: O.BEHRENDTS, *La mancipatio nelle XII Tavole* in IURA XXXIII (1982) p.91. We do not concur with this idea, for it involves the difficulty of identifying *nexum* with something different to the libral act.

Harmand also believes in the division of the whole gentile land into *heredia*, but for different reasons. He believes that the case of gens *Claudia* can be generalized to every clan, which we believe have proof wrong. See: L.HARMAND, *Société et économie de la république romaine*, Paris 1976, p.48.

Two different kinds of relation to land appear, one of the gens as a whole and another of the individuals that compose it. The first one does not seem to be compatible with property. In fact, we do not know of any legal instrument designed to claim and defend such control before a State authority⁴⁶. It is possible that the relation between the clan and the land is a territorial one⁴⁷, though we will not call it a sovereign one, to avoid a modern concept so embraced of absolutism that it results inefficient to describe Ancient world. A remainder of this Pre-State relation is collective succession, where in historical times gentile control re-expands over the goods of its members that die without heirs⁴⁸.

On the relation of the members of the clan with land, they seem to be entitled to it in an indirect fashion, for their membership to the *gens* is what enables them to use it⁴⁹. Their right to the land is relative, dependent on the collective control that the *gens* holds of the land. It is probably similar to the possessory regime that will be developed in latter times over the *ager publicus*. This last was public property, for the *populus romani* was considered to own it, although its distribution to individuals for them to possess parts of it was under the control of the patrician clans. It is likely that the system of control of the *ager publicus* is an imitation of the internal system of the *gentes* to distribute the *ager gentilicum* among their members. This is even more probable if we consider that, until the *leges Liciniae-Sextiae*, it was the clans who controlled the *ager publicus*⁵⁰.

The *gens* and its relation with land were the bases of patrician power⁵¹. The agricultural history of the Early Republic is the story of the deconstruction of the *gens* through the formation of individual property. Once we have established the gentile control of the land for the Primitive Rome, we can analyze with some detail the story of the

⁴⁶ G.DIÓSDI, *Ownership in Ancient and Preclassical Roman Law*, Budapest 1970, p.38.

⁴⁷ P.BONFANTE, *Corso di diritto romano, La proprietà*, v.II, p.I, Milano 1966, p.256.

⁴⁸ F.SERRAO, *Diritto privato economia e società nella storia di Roma* v.I, Napoli 2006, p.47.

⁴⁹ D.STOJCEVIC, *Proprietà sociale proprietà feudale e dominium in Sritti in onore di Antonio Guarino*, v.II, Napoli 1984, p.1931.

⁵⁰ L.CAPOGROSSI COLOGNESI, *La terra in Roma antica*, Roma 1981, p.10.

⁵¹ F.DE MARTINO, *Historia económica de la Roma Antigua*, Madrid 1985, v.I., p.38.

bina iugera of Romulus and try to determine if it contains some historical events and, eventually, its timing.

4. *Romulus and Land*

Nowadays, most scholars have assumed that the legend of Romulus and his *bina iugera* is a sign of the introduction of private property by the time of the Latin monarchy⁵², although this assumption might have been too quick. If primitive Rome was a confederation of *gentes*⁵³ and those clans controlled its territory without a homogeneous system of land distribution, there seems to be no reasons to believe that in such an early phase there would be an individual distribution of land, for small that it might be, leaving it outside the control of the *gentes*. On the other hand, the legend contains plenty of details that tend to link the story with a latter period. For instance, there is the connection between *heredia* and *centuria*. A hundred *heredia* form a *centuria*, an agricultural unit that is established during the Etruscan Rome as the most important human and territorial division of Rome, superposing itself to the old gentile division of land and men. The *centuria* is related to the major political reforms of Servius Tullius⁵⁴. Nevertheless, Capogrossi Colognesi⁵⁵ has rejected the possibility of identifying Servius Tullius' *centuriatio* and Romulus' *bina iugera*. His main argument is that the distribution of a hundred *heredia* in a curia to create a military unit is rather odd, for these *heredia* would be handed out to the *patresfamiliarum*, what would exclude, generally speaking, young men with a living father, that is to say, the very heart of the hoplite army. He considers there is no difficulty in admitting that the *heredia* in which the *centuria* is divided come from an earlier period, that is to say, from Latin monarchy.

⁵² P.BONFANTE, *CORSO DI DIRITTO ROMANO, LA PROPRIETÀ*, v.II, p.I, Milano 1966, p.251; L.CAPOGROSSI COLOGNESI, *LA TERRA IN ROMA ANTICA*, Roma 1981, p.15; O.BEHRENDTS, *LA MANICAPATIO NELLE XII TAVOLE* in IURA XXXIII (1982) p.86; F.SERRAO, *DIRITTO PRIVATO ECONOMIA E SOCIETÀ NELLA STORIA DI ROMA* v.I, Napoli 2006, p.278.

⁵³ See: C.AMUNÁTEGUI PERELLÓ, *Roma, confederación de gentes* in *STUDI IN ONORE DI ANTONINO METRO*, Milano 2009, pp. 11-23.

⁵⁴ G.DIÓSDI, *OWNERSHIP IN ANCIENT AND PRECLASSICAL ROMAN LAW*, Budapest 1970, p.35; M.FUENTESECA DEGENEFÉ, *LA FORMACIÓN ROMANA DEL CONCEPTO DE PROPIEDAD*, Madrid 2004, p.69.

⁵⁵ L.CAPOGROSSI COLOGNESI, *LA TERRA IN ROMA ANTICA*, Roma 1981, p.236.

We would like to question such an idea. The *heredium* is a way of dividing and limiting the land and, as far as we know, the discipline of surveying and the limitation of the fields is an Etruscan contribution to Roman culture⁵⁶. The testimonies about it are many:

Fest l. 358 Rituales nominantur Etruscorum libri, in quibus perscriptum est, quo ritu condantur urbes, aerae, aedes sacrentur, qua sanctitate muri, quo iure portae, quomodo tribus, curiae, centuriae distribuantur, exercitus constituant<ur>, ordinentur, ceteraque eiusmodi ad bellum ac pacem pertinentia.

“Rituals from the Etruscan books are those which are prescribed in them, where different rites are ordered as how to found cities, to plow, to consecrate buildings, to sanctify walls, where the law of the gates, how should tribes, curias and centurias be distributed, how the army should be constituted and other things which concern both peace and war”.

Front. Lim 10,20 Limitum prima origo, sicut Varro descriptis, a[d] disciplina[m] <Et>rusca[m]

“The first origin of limits comes from Etruscan knowledge, as Varro describes.”

Hyg Grom Const 131.8 unde primum haec ratio mensurae constituta ab Etruscorum haruspicum [uel auctorum habet, quorum artificium] disciplina

“Firstly these ratios and measurements were established by Etruscan haruspices [or under their authority, for they created] the discipline.”

On the other hand, the *bina iugera* themselves correspond to an Etruscan land unit. According to Varro’s testimony⁵⁷, *heredium* is the

⁵⁶ R.DREYFUS, *Essai sur les lois agraires sous la république romaine*, Roma1971=1898, p.12; G.FRANCIOSI, *La limitatio nell’ager campanus in La romanizzazione della Campania antica*, Napoli, 2002, v.I, p.1.

⁵⁷ Var. R. 1.10.2 quoquo versum quadratum. *iugerum, quod quadratos duos actus habeat. actus quadratus, qui et latus est pedes cxx et longus totidem: is modus acnua latine appellatur. iugeri pars minima dicitur scripulum, id est decem pedes et longitudine et latitudine quadratum. ab hoc principio mensores non numquam dicunt in subsicivum esse unciam agri aut sextantem, si<c> quid aliud, cum ad iugerum pervenerunt, quod habet iugerum scripula cclxxxviii, quantum as antiquos noster ante bellum punicum pendebat. bina iugera quod a Romulo primum divisa dicebantur viritim, quae heredem sequerentur, heredium appellarent. haec postea centum centuria. centuria est quadrata, in omnes quattuor partes ut habeat latera longa pedum α150 α150 c α1119. hae porro quattuor, centuriae coniunctae ut sint in utramque partem binae, appellantur in agris divisisis viritim publice saltus.*

translation of an Etruscan agricultural unit called *acnua*⁵⁸. As a matter of fact, a hundred *acnua* is a *centuria*. If the measure unit of the *heredimenta* is Etruscan and the superior unit to which it belongs, the *centuria*, is introduced in Etruscan time, we find rather natural to believe that the *heredimentum* itself is an institution introduced during the Etruscan monarchy. The attribution of the deeds of the Etruscan kings to Romulus, especially those we can demonstrate correspond to Tarquin the Elder⁵⁹, is pretty common in Roman historiography. Livy⁶⁰ tells us a curious story of this period. The god Terminus ends up having his temple in the very heart of Jupiter *Optimus Maximus'* one, for it would not move his. If the temple of the god of land limits is inside of the one of Jupiter, and this last was built by the Tarquins, then is probable the limitation of land for its distribution was introduced by the same Tarquins, for the temple and the cult to it appears as a divinization of the institution.

Nevertheless, not all Roman sources attribute to Romulus an individual land distribution. Dionysius of Halicarnassus tells us that Romulus would have divided all Roman land (the *ager romanus antiquus*) in thirty parts and would have distributed them among the *curiae*:

Dion. Hal. Antiq Rom 2.7.4. διήρηντο δὲ καὶ εἰς δεκάδας αἱ φράτραι πρὸς αὐτοῦ, καὶ ἡγεμῶν ἐκάστην ἐκόσμει δεκάδα, δεκουρίων κατὰ τὴν ἐπιχώριον γλώτταν προσαγορευόμενος. ὡς δὲ διεκρίθησαν ἄπαντες καὶ συνετάχθησαν εἰς φυλὰς καὶ φράτρας, διελὼν τὴν γῆν εἰς τριάκοντα κλήρους ἵσους ἐκάστη φράτρᾳ κλῆρον ἀπέδωκεν ἔνα, ἐξελὼν τὴν ἀρκούδαν εἰς ἱερὰ καὶ τεμένη καὶ τινα καὶ τῷ κοινῷ γῆν καταλιπόν. μία μὲν αὕτη διαιρεσις ὑπὸ Ῥωμύλου τῶν τε ἀνδρῶν καὶ τῆς χώρας <ἢ> περιέχουσα τὴν κοινὴν καὶ μεγίστην ἴσοτητα, τοιάδε τις ἦν.

"He divided the *fratrias* [*curias*] in groups of ten and named one chief to command each, who is called *decurion* in the local language. Once they were all distributed and divided in tribes and *fratrias* [*curias*], he

⁵⁸ S.MAZZARINO, *Sociologia del mondo etrusco e problemi della tarda etruscita* in Historia, Zeitschrift für alte Geschichte, v.VI, N°1 (1957), p.102-103; G.FRANCIOSI, *gentiles familiam habento. Una riflessione sulla cd. Proprietà collettiva gentilizia* in *Ricerche sulla organizzazione gentilizia romana*, G.Franciosi (curator), Napoli 1995, v.III, p.47, n.40.

⁵⁹ See: C.AMUNÁTEGUI PERELLÓ, *Tarquino Prisco* in REHJ XXXI (2009) pp.61-85

⁶⁰ Liv. 1.55.

divided the land in thirty equal parts, giving one to each *fratelia [curia]*, after reserving an area for temples and sacred buildings and leaving a part of the land for public use. This was the only division of land and men made by Romulus, with the greatest equality”.

Even in his final phrase, he says rather emphatically that this is the only division of land and men that Romulus would have made. This takes us back to a primitive gentile control of land, for the ancient *curiae* (or *fra/traj* for Dionysius) were surely formed by *gentes*⁶¹. Although Varro and Festus attribute to Romulus the first individual distribution of land, another set of testimonies link land distribution with another equally legendary king, Numa Pompilius. He makes individual assignments not of gentile land, which remains under the power of the *curiae*, but of the land that Romulus has previously conquest:

Dion. Hal. Antiq Rom 2.62.4. ἐν τοιούτῳ δὴ κλύδωνι τὸ πράγματα τῆς πόλεως σαλεύοντα ὁ Νόμας καταλαβών, πρῶτον μὲν τοὺς ἀπόρους τῶν δημοτῶν ἀνέλαβε διανείμας αὐτοῖς ἀφ' ἧς Ῥωμύλος ἐκέκτητο χώρας καὶ ἀπὸ τῆς δημοσίας μοῖράν τινα ὀλίγην: ἔπειτα τοὺς πατρικίους οὐδὲν μὲν ἀφελόμενος ὃν οἱ κτίσαντες τὴν πόλιν εὔροντο, τοῖς δ' ἐποίκοις ἑτέρας τινὰς ἀποδοὺς τιμάς, ἔπαυσε διαφερομένους.

“Numa found the public affairs in agitation and confusion. He firstly gave an occupation to the poor plebeians distributing to them the land that Romulus had and a small part of the common lands. Then, without taking away from the patricians anything of what they had gained from the founders of the city, he gave different honors to the new inhabitants and putted an end to the dissensions”.

Cic. de re publ. 2.26 *Ac primum agros, quos bello Romulus ceperat, divisit viritim civibus docuitque sine depopulatione atque praeda posse eos colendis agris abundare commodis omnibus amoremque eis otii et pacis iniecit, quibus facilime iustitia et fides convalescit, et quorum patrocino maxime cultus agrorum perceptioque frugum defunditur.*

“So, the first lands, which had been captured by Romulus, were divided [by Numa] among every citizen and showed them that without depopulating and pillaging, they could posses what is necessary for life cultivating the lands. He inspired them love for peace and repose, under which justice and faith would flourish, under whose protection the farming of the land and gathering of fruits is safer”.

⁶¹ See: C.AMUNÁTEGUI PERELLÓ, *Tarquino Prisco* in REHJ XXXI (2009) pp.61-85.

Tradition also attributes to Numa Pompilius the rules for land limitation⁶², which is coherent with the first individual distribution of land. We insist that the rules for Roman surveying are Etruscan, so the work of the mythical legislator must correspond to a more historical king of the Etruscan period. The fantastic figure of Numa seems to be constructed with elements taken from the Servius Tullius story, which would be based on the more historical Macstrana, as emperor Claudius reports.

Although there is a tradition pointing to king Tullius Hostilius about a land distribution of the personal patrimony of the kings⁶³, it is only with Servius Tullius that the whole Roman territory is reorganized, as one would expect after the introduction of individual land control. At this same historical period, some massive changes in Roman economic structure take place, sufficiently important as to alter the whole ideological superstructure of land control as a mean of production.

For the period where the tradition wants Etruscan king to rule Rome, archeology shows us a wide range of physical alterations in the city, starting with the drain of the Forum (VII century B.C.) and continuing with the construction of the *Regia*, the *Curia*, the *Comitium*, the *Forum Boarium* with its *portus* and the first layers of Jupiter's temple, towards the end of the period VIb (650-580 B.C.). During this phase the stone house appears and the urban area of Rome experiments such an increase that the city is transformed, from a small village of no more than 10,000 people, to a city of nearly 50,000⁶⁴. The introduction of the hoplite army, with its need of central and vertical command, made necessary the creation of new political institutions, as *imperium*, which made the king's position stronger against the old clans.

In this precise moment of Roman history, an economical revolution takes place, thanks to Etruscan cultural influence. Two events provoke a substantial increase in commerce. In the first place, the city gains control of the saltworks at the mouth of the Tiber. In

⁶² Dion. Hal. 2.74.2-3; Plutarch. Quaest. Rom. 15.267.

⁶³ Dion. Hal. 3.1.4-5.

⁶⁴ F.DE MARTINO, *Historia económica de la Roma Antigua*, v.I, Madrid 1985, pp.20-21.

fact, the *via salaria* was constructed at this same time⁶⁵. The importance of this episode is that salt will become an autochthonous good with which Rome will pay for imported goods in exchange. The second important event is that Rome will become, thanks to the Tiberian island, a road knot of caravan trade from northern Etruria to Campania⁶⁶. This increase in commerce made necessary the introduction of the *aes signatum*, as an exchange currency⁶⁷, something that was believed to be just a legend until recent times⁶⁸.

The increase in commerce, the population growth and the massive public facilities construction seem to have promoted the rise of a new class in Rome, eminently urban and independent from the old clans, whose loyalty was to the city and the king. We are evidently speaking of the Plebs.

By this same time, an important agricultural revolution took place. The vine and the olive tree were introduced, which would be fundamental in the centuries to come. The gentile land control system seemed rather unfit for this transformation⁶⁹. Heavy investment is needed to improve productivity of gentile fields, as also the existence of a reserve of subordinated work power is also essential. *Nexum* and *clientela* appeared as the best means to get that manpower, while the individual control of the clan's land permits to canalize investment to agriculture. It is quite possible that the *gens* structure experienced its first internal fracture towards this period.

⁶⁵ C.J.SMITH, *Early Rome and Latium*, Oxford 1996, p.179.

⁶⁶ F.DE MARTINO, *Historia económica de la Roma Antigua*, v.I, Madrid 1985, p.18; L.HARMAND, *Société et économie de la république romaine*, Paris 1976, p.26.

⁶⁷See: F.DE MARTINO, *Historia económica de la Roma Antigua*, v.I, Madrid 1985, pp.67-68; F.SERRAO, *Lotte per la terra e per la casa a Roma in Legge e società nella repubblica romana* Napoli 1981, v.I, p.75 and again in F.SERRAO, *Diritto privato economia e società nella storia di Roma* v.I, Napoli 2006, p.111.

⁶⁸ A side effect of such a discovery is to give us an *ante quam* date for the creation of the *mancipatio*. In the ceremony described by Gaius (Inst. 1.119) the balance is the center of the institution, which must be struck by the cooper in order to produce the transfer of property. By the time when the *mancipatio* was not an *imaginaria venditio*, but a real contract, the bronze must have been truly weight. With the introduction of the *aes signatum* there is no need to pound the cooper, for its weight is guaranteed by the State. In conclusion, the *mancipatio* must have appeared before the Etruscan monarchy, though this is a problem that should be studied with some detail.

⁶⁹ F.DE MARTINO, *La gens, lo stato e le classe in Roma antica in Diritto economia e società nel mondo romano*, v.III, Napoli 1997, p.18.

In the Etruscan period an important territorial expansion takes place, given the military success of the kings. From the modest 150 square kilometers of the *ager romanus antiquus*, the city passed to control nearly 800 at the beginning of the Republic. The king⁷⁰ becomes the key controller of public resources, given his ability to distribute land and construct public facilities. He also became a rather autocratic figure, thanks to the military control that *imperium* grants him. A physical example of the king's control of resources is that through the IVb period, burials impoverish, while the city flourish. The resources once concentrated in clans are now used for public purposes.

The successive conquests by Etruscan monarchy led to the emergence of a new territory which was not under the direct control of the *gentes*, but belonged, at least in principle, to all the community, the *ager publicus*. This cannot be identified with the *ager gentilicium*⁷¹, for one belongs to a specific *gens*, while the other can be occupied and possessed by anyone who can plow it. Apparently, the plebeians were systematically excluded from the *ager publicus*, though we ignore the argument. All we know is that they were excluded *propter plebitatem*⁷².

The introduction of the *heredium* with its modest size, seem to relate with the distribution of conquest land. Servius Tullius makes an important distribution of the land that was once won by Tarquin the Elder⁷³. This is a seriously anti-clan policy and by distributing land individually, instead of keeping it under the *gentes* sphere of influence caused what Livy calls the fury of the *patres*.

⁷⁰ L.CAPOGROSSI COLOGNESI, *Diritto e potere nella storia di Roma*, Napoli 2007, p.49.

⁷¹ L.CAPOGROSSI COLOGNESI, *La terra in Roma antica*, Roma 1981, pp.4-5.

⁷² Non. 149M.17 *Quicumque propter plebitatem agro publico electi sunt.*

⁷³ Liv. AUC 1.46.1 *Seruius quamquam iam usu haud dubie regnum possederat, tamen quia interdum iactari uoces a iuuene Tarquinio audiebat se iniussu populi regnare, conciliata prius uoluntate plebis agro capto ex hostibus uiriliter diuiso, ausus est ferre ad populum uellent iuberentne se regnare; tantoque consensu quanto haud quisquam alius ante rex est declaratus.*

Dion. Hal Antiq Rom 4.10.3. τῶν ἀπηρίθμει τοῖς δανεισταῖς τὰ χρέα. ταῦτα διαπράξαμενος ἐξέθηκεν ἐν φανερῷ διάταγμα βασιλικόν, ἐκχωρεῖν τῆς δημοσίας γῆς τοὺς καρπουμένους τε καὶ ιδίᾳ κατέχοντας αὐτὴν ἐν ὥρισμένῳ τινὶ χρόνῳ, καὶ τοὺς οὐδένα κλήρον ἔχοντας τῶν πολιτῶν πρὸς ἑαυτὸν ἀπογράφεσθαι:

As Romulus is a kind of legendary anticipation of Tarquin the Elder, Numa and Servius Tullius have a similar relation. The attribution to Numa of the distribution of the land conquest by Romulus is an anticipation of the real distribution that Servius did of part of the *ager publicus* that Tarquin the Elder conquest. The *heredium*, a translation of a traditional Etruscan agricultural measure, the *acnua*, the rituals used for field limitation and the deification of god Terminus inside a temple made by Etruscan kings, seem to confirm it. The introduction of the *heredium*, an individually controlled piece of land aimed specially for the plebeians, is another chapter in the fight between the State, represented by the Etruscan kings, and clan aristocracy, which tries to preserve its independence and privileges. All the Etruscan kings of Rome experienced a violent death in which the old traditions of the clans played an essential role.