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Éditorial

Jean-François GERKENS

Voici déjà le troisième volume de la RIDA dans son nouvel emballage... auquel nous espérons que les lecteurs se sont désormais habitués. Après un numéro 62 (en hommage à Jacques Henri Michel) finalement paru en janvier 2017, cette année pourrait bien devenir l'année des trois RIDA, dès lors que d'après nos prévisions (faut-il écrire espoirs ?), le numéro 64 devrait encore paraître avant la fin de l'année 2017.

Le présent numéro comporte les rubriques habituelles, avec un retour d'une chronique de la SIHDA plus complète que dans le numéro précédent, incluant à nouveau les résumés de la plupart des conférences prononcées. Comme le lecteur peut l'imaginer, la différence vient ici en partie de la discipline des conférenciers et des organisateurs de la SIHDA. J'ai dès lors fourni une traduction en français de tous les résumés dont je disposais.

Rendez-vous est maintenant donné pour la 71^e session de la SIHDA à Bologne et Ravenne, dont le thème central sera : La liberté et les interdictions dans les droits de l'Antiquité. Elle se tiendra du 12 au 16 septembre 2017. Dans l'espoir de vous y rencontrer nombreux, je souhaite à chacun une bonne lecture !

Chaufontaine, le 15 juin 2017
Jean-François Gerkens

Market and Ownership in Iron Age Latium

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1. Introduction

Traditionally, when analysing socio-legal developments, the close relations that link markets and property have been neglected¹. Nevertheless, both institutions are somehow so intimately related, that the second, ownership, is a requirement for the first to evolve and develop. It is due to the ‘abstract’ character of ownership² — its ability to cover at least all types of corporal goods — that a wide range of goods are bound to a similar set of rules that regulates their circulation and appropriation, allowing their transference through market mechanisms. For this reason, during the codification movements in the 19th century, it became a bourgeoisie aspiration of the French revolution to define and regulate property in a homogeneous manner, unifying the different property rights that existed in the *Ancien Régime*. Therefore, ownership is one of the key institutions for the existence of markets for Neo-Institutionalism economic thought³.

Although in Rome ownership was never systematized into a formal definition, maybe for reasons related to the work methods of the Roman jurists⁴, we can confidently say that the word *dominium* began to be used technically to denote

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1. Even in the comprehensive study of Frier and Kehoe, regarding the relations between legal institutions and economy, when treating property, they tend only to underline the limitations of the Roman notion of *dominium*, rather than connect the institution with market. See: B.W. FRIER and D.P. KEHOE, «Law and Economic Institutions», in *The Cambridge Economic History of the Greco-Roman World*, Cambridge, 2007, pp. 113–143.
2. L. CAPOGROSSI-COLOGNESI, «Das Eigentum in Rom vom Ende der patriarchalischen Ordnung bis zur Blütezeit der Sklavereiordnung», in *Scritti scelti*, Napoli, 2010, pp. 299–323.
3. For instance, see R.H. BATES, «Social Dilemmas and Rational Individuals. An assessment on the new institutionalism», in *The New Institutional Economics and Third World Development*, New York, 1995, pp. 27–48.
4. The well known *dictum* from *Iavolenus* should suffice: D.50.17.202.pr: *Idem libro undecimo epistularum. Omnis definitio in iure ciuili periculosa est.*

ownership at least during the last century of the Republic⁵, a time that matches with the highest point of commerce during Antiquity, whichever economic perspective is taken into account⁶.

Nevertheless, the concept of ownership as an all encompassing institution which is able to comprehend all kinds of goods, whether of capital or consumption, separated from its factual elements, which are relegated to possession, and protected with an action *in rem*, is the result of a process of evolution that took centuries to develop and that it only emerges by the end of the Republic. The main objective of the paper is to study the beginnings of the process and especially the relations between the emergence of markets in the Iron Age Latium and the first attempts to develop property rights over the factors of production. We will try to establish a model that is able to explain the social and economic relations of the inhabitants of Latium by the time of the emergence of proto-urban centers in order to draw a picture of their legal relations regarding the control of goods and their first notions of property.

2. Commerce in a Gentile Society (Latial Culture I–II, c. 1000–770 BC)

On the emergence of Rome as a political entity, most of the details provided by the tradition are mythical and hardly reliable. Although some of them might correspond with the data that Archaeology presents, it is quite different to establish from this coordination the attainability of the tradition as a whole⁷. For this, in order to present some socio-economic features of Latial society during its earliest

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5. It appears in legal language, for the first time in Alfenus Varo's work (1st c. BC) in the context of servitudes (D.8.3.30). See: M. BRETONE, *La nozione romana di usufrutto*, Napoli, 1962, p. 23; M. KASER, «Der römische Eigentumsbegriff», in *Ausgewählte Schriften*, v. 2, Napoli, 1976=1962, pp. 49–71; A. WATSON, *The Law of Property in Later Roman Republic*, Oxford, 1968, pp. 91–92; L. CAPOGROSSI COLOGNESI, *La struttura della proprietà e la formulazione dei iura prediorum nell'età repubblicana*, Milano, 1969, pp. 473–488; G. PUGLIESE, «Res corporales e res incorporales», in *Scritti giuridici scelti*, v. III, Napoli, 1985, p. 252; G. FRANCIOSI, *Famiglia e persone in Roma antica*, Torino, 1992, p. 46; O. SACCHI, «Le nozioni di stato e di proprietà in Panezio», *RIDA* 52 (2005), pp. 325–357.
 6. As is commonly known, since the early '70s, after the publication of Finley's classic, *Ancient Economy*, the economic history of Antiquity has been under a rather harsh debate between the so called 'primitivists', who minimize the role of markets in Antiquity, and the 'modernists' who tend to maximize it. Although Finley himself was not as skeptical regarding the role of trade and markets, his critique to economic thought in the Classical era has become so influential that almost every aspect of Ancient Economic history is under debate. On the matter see: R. SALLER, «Framing the debate over growth in the Ancient Economy», in *The Ancient Economy*, New York, 2002, pp. 251–269.
 7. For instance, from the well known fact that traces of three huts were found at the top hill of the Palatine that can be dated to the middle of the 8th century, we cannot validly deduce existence of such an improbable character as Romulus. See: T.J. CORNELL, *The Beginnings of Rome and Italy from the Bronze Age to the Punic Wars (c. 1000–264 BC)*, London/New York, 1995, pp. 72–73

History, we will really on archeological material. This is, nevertheless, quite limited and it consists, mainly, on material found in graveyards. Anyhow, restricted as it is, it enables us to make some inferences about the socio-economic conditions of the communities that lived in Latium towards the beginning of the Iron Age (Latial Culture I–II, c. 1000–770 BC), a time when many cultural features of Italian peoples developed⁸.

Settlements had populations that varied from tens of people to a few hundreds, so they could appropriately be labelled as villages⁹. Some will develop into cities during the Archaic period, or will be absorbed by larger nuclei that will become cities (as Practica di Mare and Lavinium, or Osteria dell’Osa and Gabii), though others will not continue their development and will eventually disappear, as is the case of the many settlements in the Alban hills. These villages will centre their agricultural production in different types of wheat and pulses, such as lentils, beans and peas. The diet was based on cereals, complemented by swine meat (apparently a luxury item¹⁰), and also including elder bovine and ovine that had reached the end of their productive cycle¹¹. There is no evidence of vines or olive, two of the most important elements of Mediterranean arboriculture, so they were probably introduced in latter times.

The villages were composed of round wattle and daube huts, light and easy to built, though their occupation was not temporary. In fact, these settlements could last for centuries and the huts built could be used for several decades. The settlements were usually located close to each other forming nuclei of habitation, as in

and G. FORSYTHE, *A Critical History of Early Rome*, Berkeley, 2006, pp. 84. For the opposite view see: A. CARANDINI, *Rome. Day One*, Princeton and Oxford, 2011, pp. 7–9.

8. M. PALLOTTINO, *A History of Earliest Italy*, London, 1984=2014, p. 46.
9. G. FORSYTHE, *o.c.* (n. 7), p. 54. In Etruria settlements are larger and the nucleization process develops earlier. See: G. BARKER and T. RASMUSSEN, *The Etruscans*, Oxford & Carlton, 1998, pp. 53–55. Therefore, the estimated population for Osteria dell’Osa is about a hundred people. See: A. BIETTI SESTIERI, *The Iron Age community of Osteria dell’Osa. A study of socio-political development in central Tyrrhenian Italy*, Cambridge, 1992, pp. 146–148 and T.J. CORNELL, *o.c.* (n. 7), p. 54.
10. G. BARKER and T. RASMUSSEN, *o.c.* (n. 9), p. 74.
11. These simple archeological data should suffice to discard the existence of a mainly pastoral economy in the Latial area. Anyhow, it is a still common idea among legal historians to use such a model in order to explain Rome’s primitive organization. For instance, De Martino believes there would be an original patrician society dedicated to shepherd, in contrast to the more progressive plebeian group, which would have a mainly agricultural economy. See: F. DE MARTINO, «La gens, lo stato e le classi in Roma antica», in *Diritto economia e società nel mondo romano*, v. 3, Napoli, 1997, pp. 25–49. Another example is Serrao, who believes that the *res Mancipi* could not have being a truly archaic institution, for it encompasses mainly assets related to agriculture, while the original Rome would have being a city of shepherds. See: F. SERRAO, *Diritto privato economia e società nella storia di Roma*, v. 1, Napoli, 2006, p. 60. For a complete study on the origins of the idea of a primitive pastoral economy in Rome see: A. MARCONE, *Storia dell’agricoltura romana*, Roma, 1997, pp. 102–103.

the case of lake Castiglione, the Alban Hills or Rome herself¹². There is no evidence of defensive works in this period and the settlements do not seem to be located strategically from a military point of view. This is something that could point to a low level of belligerence between communities, though this might be misleading.

Most of the items found seem to be produced by the households themselves on a family level. In fact, the pottery found in the different necropolis shows small but significant stylistic variations from group to group, something that is compatible with family self production¹³. The pottery was made without a potter's wheel, using non-purified clay, with incisions as it's only decorative element.

Some relevant information about the internal organization of the settlements has been produced by Bietti Sestieri's research on the necropolis of Osteria dell'Osa, which is compatible with the information gathered from other funerary complexes found in the Latial area. The author points that the graves belonging to this period are grouped in complexes that include twenty to thirty individual burials that could correspond to two or three generations using the same complex¹⁴. The differences between the grave goods found in each burial are related exclusively to sex and age. Since the earliest period of use (Latial Culture II), the necropolis is divided around an imaginary line that runs from east to west, according to which there would be two groups that perform different funerary rituals, one at the north (the North Group) and one at the south (the South Group). The differences between the funerary complexes in the north and in the south of this line are of ritual and style, something that makes Bietti Sestieri think that they correspond to two different lineages that composed the community of Osteria dell'Osa. Inside each area there are different nuclei that seem to follow the North or the South group's traditions, depending on their position regarding the original line. The Bietti Sestieri believes that these are lineages that descend from the original groups.

The ritual coherence of each group is striking. A particular order appears from the burials, which seems to relate to the specific social order of the community that inhabited Osteria dell'Osa. For instance, in the South Group most of the corpses were buried, with the exception of eight graves which were cremated and lay in the centre of the group, all males in military age (between 18 and 40 years old)¹⁵. Each of these were buried with symbolical weapons that cannot be used in real combat, specifically miniature spears. This can be indicative of their social position as warriors. The rest of the community was buried around this funerary group, whether they were men out of this age class or women. The youngest members

12. M. TORELLI, «Archaic Rome Between Latium and Etruria», in *The Cambridge Ancient History*, v. 7.2, Cambridge, 1989, p. 34; A. BIETTI SESTIERI, *o.c.* (n. 9), p. 72; N. TERRENATO, «The essential Countryside», in *Classical Archeology*, Malden/Oxford, 2012, p. 145.

13. M. TORELLI, *l.c.* (n. 12), p. 34; A. BIETTI SESTIERI, *o.c.* (n. 9), p. 35; T.J. CORNELL, *o.c.* (n. 7), p. 53; G. FORSYTHE, *o.c.* (n. 7), p. 54.

14. A. BIETTI SESTIERI, *o.c.* (n. 9), pp. 146–147.

15. A. BIETTI SESTIERI, *o.c.* (n. 9), p. 148.

of the group were buried on its east side (near the rising sun?) and the elderly on its west side (with the setting sun?). The differences between the grave goods are related exclusively with age and sex, and they do not seem to reflect socio-economic distinctions among the burials, all equally poor, with one or two clay pots in each grave and spindle whorls for women. An especially interesting item, found in two cremated male graves (130 and 158)¹⁶, are swords. Bietti Sestieri interprets these as marks of military leadership¹⁷. Additionally, the author also identifies an infant male burial that seems particularly well provided with goods as a first born grave. This induces her to postulate a patriarchal character for the group¹⁸. Although the particular rites of each grave group seem to differ, most of the features of the South Group are common to all the grave groups of the period under study.

Generally speaking, there seems to be a relative socio-economic equality in all the grave groups. The only social differences that can be noted are based on age and sex, but not on wealth concentration, that would presumably manifest in richer and poorer grave goods. The differences in individual wealth appear insignificant, being predetermined by the mere course of time. Each individual seems to have a status in the group that is consequence of its age and sex. The most important individuals in the group seem to be the males in military age. They have a distinctive cremation ritual and are marked as warriors by the presence of a bronze cast miniature spear. This particular feature reminds us of the characterization of Roman citizens as 'quirites', that is men armed with spears¹⁹.

A general outlook to this period's Economy points to communities composed by groups larger than nuclear families, maybe by several agnatic families, whose economic focus is on self-production. Most of the goods found in the necropolis and in other archeological sites seem to have been produced by the group itself. Even the pottery seems to have been elaborated by the group, something that leaves little room for commerce. Food also seems to depend exclusively on the productive capacity of each group, as all the other items found in the individual graves. Even the goods that seem to have a certain affinity with the styles of other regions, as some pots that resemble those of the fossa-grave culture of Campania, are probably local imitations and not imports, something that could be compatible

16. A. BIETTI SESTIERI, *o.c.* (n. 9), p. 148.

17. A. BIETTI SESTIERI, *o.c.* (n. 9), p. 150.

18. A. BIETTI SESTIERI, *o.c.* (n. 9), p. 149.

19. *Quirites* was a way to call the body of citizens (Fest. 254.28). It would come from *Quirinus*, a god armed with a spear called *quiris*. See: A. MAGDELAIN, «Quirinus et le droit», in *Jus, imperium, auctoritas. Études de droit romain*, Rome, 1990, pp. 229–269; J.-C. RICHARD, «Patricians and Plebeians: The Origin of a Social Dichotomy», in *Social Struggles in Archaic Rome. New Perspectives on the Conflict of the Orders. Expanded and Updated Edition*, Malden/Oxford/Carlton, 2005, p. 108; C.J. SMITH, *The Roman Clan. The gens from Ancient Ideology to Modern Anthropology*, Cambridge, 2006, p. 199; G. FORSYTHE, *o.c.* (n. 7), p. 136.

with the presence of foreigners inside the groups²⁰, but probably not indicative of commerce.

Although transhumance might have played an important role in the previous period (the so called Apeninic Culture²¹), during the Latial Iron Age, it does not seem to be the main economic activity. Cereal-culture seems to dominate the economic panorama. The meat consumption, by contrast, seems to be rather exceptional, obtained from animals which are at the end of their productive cycle, whose breed would be intended mainly to get byproducts, as milk, or to use their work power in other tasks, as agriculture and transportation.

Capital does not seem to play an important role in the economic dynamics of the inhabitants of the Latial area during LC II. Its two minimum functions, as a wealth reserve and as a factor of production, do not play any significant role in this society²². The technology used in production seems quite limited and common with the first inhabitants of Neolithic Italy, some four thousand years before. Therefore, capital does not play any considerable role in adding marginal productivity to land, something that would imply its social irrelevance. As Marx would put it: circulation of goods is the starting point of capital²³. Therefore, when the productive structures do not back the formation of a wealth reserve it would be paradoxical that legal institutions (and other superstructures) that would back its accumulation would develop. If an individual's social position follow only criteria as age and sex, it is probable that in life, the control of such items would be determined by these factors. In a few words, the possession of goods (its use and eventual disposition) would find legal support also in age, sex and the inclusion of the individual in the group, but not in formal criteria of acquisition, as ownership, which is essentially a formal attribution of possession. Ownership does not seem to find a place in such a society, where the control of goods probably follows different criteria, maybe partially collective (as membership to the group) and partially individual, as age and sex.

The legal terms related to the control of goods or people in Roman legal vocabulary fit badly in the society just described. The term *dominium* simply does not exist, while *potestas*, *manus* and *mancipium*, the three terms used to describe the powers of the *paterfamilias* over the agnatic group, whether they mean some kind of sovereignty or simply the control that he would exert over people and goods²⁴,

20. A. BIETTI SESTIERI, *o.c.* (n. 9), p. 214.

21. M. PALLOTTINO, *o.c.* (n. 8), p. 33.

22. On the functions of capital, see: A. MARSHALL, *Principles of Economics*, New York, 1890=2009, pp. 115–116. For a recent approach see: T. PICKETTY, *Capital in the twenty-first century*, Cambridge, 2014, p. 48.

23. K. MARX, *El Capital*, Madrid, 1972, p. 151.

24. V. ARANGIO-RUIZ, *Le genti e le città*, Messina, 1914; P. VOCI, «Esame delle tesi del Bonfante su la famiglia romana arcaica», in *Studi in onore di Arangio-Ruiz*, v. 1, Napoli, 1953, p. 101; M. KASER, «La famiglia romana arcaica», in *Conferenze romanistiche*, Milan, 1960 and G. PUGLIESE,

do not seem quite promising when interpreting the socioeconomic reality of the end of the 9th century BC. The very proof of the existence of some kind of chiefdom is tenuous at most, which is inferred only by the presence of swords in some adult male graves. Even if we accept it, this leadership would not hold a permanent character, for none of the graves of older individuals contain such prestige marks. There is no evidence of a permanent control exercised over the group by any individual, something to which the words *potestas*, *manus* and *mancipium* point. In fact, the differences between grave goods leads us into another direction, to a society where the individual status is determined by age and sex exclusively and, therefore, a society where the pass of time changes their social positions inside the group. It seems likely that the predominant social position held by men of military age — expressed in their cremation and in their symbolic arms buried with them — is only temporary, and time affects it. In fact, there is no figure that resembles the historical *paterfamilias*, whose powers were perpetual and was usually the eldest man of the agnatic group.

The *heredium* also fits badly into this picture. This small piece of land under individual control that measures two *iugera* is de decomposition of a larger unit, the *centuria*, that comprehends two hundred *iugera*, so it is equal to its hundredth part²⁵. Tradition usually claims its antiquity by linking it to Romulus, while scholars tend to see it as the origin of individual property²⁶. Nevertheless, tradition

«Aperçu historique de la famille romaine», in *Scritti giuridici scelti*, v. 3, Napoli, 1985, p. 11. With a somehow different perspective: F. DE VISSCHER, «*Mancipium et res Mancipi*», *SDHI* 2 (1936), pp. 263–324.

25. Fest.-Paul., sv. *Centuriatus* (L. 47): *centuriatus ager in ducena iugera definitus, quia Romulus centenis civibus ducena iugera tribuit*. 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*. 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 appellarunt. Haec postea centum centuria. Centuria est quadrata, in omnes quattuor partes ut habeat latera longa pedum ∞ ∞ CD. Hae porro quattuor, centuriae coniunctae ut sint in utramque partem binae, appellantur in agris divisivis viritim publice saltus*.

26. For instance see: R. DREYFUS, *Essai sur les lois agraires sous la république romaine*, Roma, 1971=1898, p. 8. According to him, an earlier form of communism would have being replaced with a private property regime. For Bonfante, Romulus' distribution would be an element that points to existence of private ownership from the foundation of the city. See: P. BONFANTE, *Corso di diritto romano, La proprietà*, Milano, 1966, v. II p. 251. Serrao, interprets the legend as indicating that towards the foundation of the city there would be no private ownership (F. SERRAO, *o.c.* [n. 11], p. 45). Anyhow, a bit further (p. 278) he adds that the origins of private ownership would lay in the distribution of *ager publicus* to citizens, following the mythical model of Romulus' land distribution. With a similar perspective see: M. SALAZAR REVUELTA, *Evolución*

holds a later time for the introduction of the *centuria*, during Servius Tullius' ²⁷ reign. In fact, for all ancient testimonies the *centuria* — and in general the whole discipline of field surveying — is a contribution of Etruscan science to Latin society ²⁸. According to Varro, *heredium* is a translation into Latin of an earlier Etruscan survey unit, the *acnua* ²⁹, to which it matches exactly ³⁰. Therefore, if the period usually assigned for the introduction of the *centuria* is featured by a strong Etruscan influence and the *heredium*, as a survey unit, is also originally Etruscan — as the whole Roman surveying methods in general — then it is quite likely that the *heredium*, as an institution, was introduced in a later period than the one under study.

Another expression commonly used to denote property is *meum est*, at least in the formulae of *mancipatio* and *reivindicatio*. Anyhow, this does not seem to suffice by itself to imply the individual control of goods at this stage. As Ankum and Pool observed, *meum est* can be an equivalent of property in the Classical period of Roman law if it is associated to a corporal good. But the expression can be associated to other types of goods, and then it does not mean property, not even in the Classical period ³¹.

When trying to establish ownership rules in 9th century BC Latial society, our situation is awfully similar to Malinowski's attempt with the Trobriand. After getting all kind of implausible answers from the natives on land ownership, he finally realized that the very word ownership had no distinct equivalent in their language, because the individual and exclusive control of land was foreign to their social system. Different individuals had a partial control over it, and either all of them or none, in different senses, could be called owners ³². In a similar manner, the productive structures of the Latin people during the Latial Period II do not seem

histórico-jurídica del condominio en el Derecho romano, Jaén, 2003, p. 56 and M. FUENTESECA DEGENEFEE, *La formación romana del concepto de propiedad*, Madrid, 2004, p. 12.

27. G. DIÓSDI, *Ownership in Ancient and Preclassical Roman Law*, Budapest, 1970, p. 35; M. FUENTESECA DEGENEFEE, *La formación romana del concepto de propiedad* (supra n. 26), p. 69.
28. Fest l. 358: *Rituales nominantur Etruscorum libri, in quibus perscribitum est, quo ritu condantur urbes, arae, aedes sacrentur, qua sanctitate muri, quo iure portae, quomodo tribus, curiae, centuriae distribuantur, exercitus constituent<ur>, ordinentur, ceteraque eiusmodi ad bellum ac pacem pertinentia*. Front., *Lim.* 10, 20: *Limitum prima origo, sicut Varro descripsit, a[d] disciplina[m] <Et>rusca[m]*. Hyg., *Grom. Const.* 131.8: *unde primum haec ratio mensurae constituta ab Etruscorum haruspicum [uel auctorum habet, quorum artificium] disciplina*.
29. Var. R. 1.10.2.
30. S. MAZZARINO, «Sociologia del mondo etrusco e problemi della tarda etruscità», *Historia, Zeitschrift für alte Geschichte*, 6, 1 (1957), pp. 102–103; G. FRANCIOSI, «Gentiles familiam habent. Una riflessione sulla cd. Proprietà collettiva gentilizia», in *Ricerche sulla organizzazione gentilizia romana*, v. 3, Napoli, 1984, p. 47, n. 40.
31. H. ANKUM and E. POOL, «The Development of Roman Double Ownership», in *New Perspectives in the Roman Law of Property. Essays for Barry Nicholas*, Oxford, 1989, p. 12.
32. B. MALINOWSKI, «The Primitive Economics of the Trobriand Islanders», *Economic Journal* 31 (1921), pp. 1–16.

to be compatible with the individual accumulation of capital and, by consequence, with the existence of exclusively individual rights over productive assets. It seems closer with a domestic mode of production³³ where the productive roles are assigned according to age and sex and the control of capital goods is collective. As Bonfante said, it seems to be impossible to deny that in primitive times land neither is nor can be subject of individual appropriation³⁴.

The equality of status shared by all group's members seems to exclude to existence of subordinate work at this time, or at least the existence of formally submitted individuals whose status is diminished inside the group³⁵, something that is rather compatible with a social structure where the producers and controllers of assets are identical.

Bietti Sestieri calls these groups lineages and separates them from the *gentes*, which, in her opinion, would emerge at a later period with the formation of chiefdoms inside the groups³⁶. Nevertheless, we see no reason to exclude these groups from such category. Even more, they seem to adapt quite well to what we know about the historical *gentes*. These groups are numerically larger than nuclear families, they have certain stability through time and have a military capacity of their own that they would probably use to defend their territory. They even show some features that are peculiar to the Roman *gentes*, as the absence of permanent chiefdoms (in opposition to the agnatic family)³⁷ and a collective identity that is evident from their funerary traditions and the presence of common graves³⁸. The relatively

33. On the domestic mode of production see: M. SAHLINS, *Stone Age Economics*, Oxford Kindle, 1974=2011, l. 840–950.

34. P. BONFANTE, *o.c.* (n. 26), p. 248.

35. This seems to be rather common in economic structures with a domestic mode of production. As Godelier says, work does not seem to be a scarce commodity in primitive societies. M. GODELIER, «La 'monnaie de sel' des Baruya de Nouvelle-Guinée», *L'Homme* 9, 2 (1969), p. 36. On a similar perspective, Franciosi also discards the presence of subordinate labor for the most ancient stage of Latin culture. See: G. FRANCIOSI, *o.c.* (n. 5), p. 206. Nevertheless, Smith has casted some shadow on this perspective arguing that the very fact they are buried in the necropolis is, by itself, a mark of status. See: C.J. SMITH, *o.c.* (n. 19), p. 145.

36. A. BIETTI SESTIERI, *o.c.* (n. 9), p. 219. Her position has being generally accepted. See: J.-C. RICHARD, *l.c.* (n. 19), p. 110 and R. ROSS HOLLOWAY, *The archeology of Early Rome and Latium*, London and New York, 1996, p. 166.

37. C. CASTELLO, *Studi sul diritto familiare e gentilizio romano*, Roma, 1972=1942, p. 36; P. FREZZA, «Intorno alla leggenda dei Fabii al Cremera», in *Scritti*, v. 1, Roma, 2000, p. 543; A. MOMIGLIANO, «The Origins of Rome», in *The Cambridge Ancient History*, v. 7.2, Cambridge, 1989, p. 99; T.J. CORNELL, *o.c.* (n. 7), p. 246; C.J. SMITH, *o.c.* (n. 19), p. 39.

38. For the historical period, we can list a number of gentilician graves in Rome. For instance, the Valerii had theirs at the Velian hill (Plut., *Poplicola* 23) and the Fabii at the Quirinal hill (Liv. 5.46; Suet., *Tib.* 1). In these gentilician graves all members of a gens are buried (Cic., *de legibus* 2.22; *Tusculana* 1.7; *de officiis* 1.17.55; Dion. Hal. 2,14; Val. Max. 9.2.1; Suet., *Nero* 50). On the matter see: C. CASTELLO, *o.c.* (n. 37), p. 31; G. FRANCIOSI, *o.c.* (n. 5), pp. 23; O. SACCHI, «Il passaggio dal sepolcro gentilizio al sepolcro familiare e la successiva distinzione tra sepolcri

short period of use of each funerary area (about thirty years), compared to the historical *gentes* that held a theoretically perpetual existence, has been alleged as a fundamental feature to consider these groups not as proper *gentes*, but as mere lineages. Anyhow, this relatively short longevity is of secondary importance. What really lasts thirty years (a rather long period for a society that holds a low life expectancy) is the use of a certain grave area. After this period, there is no sign that the group dissolves, but it probably continues its existence using another grave group in the same area, either to the north or south of the imaginary line, according to its social identity.

The very idea of gentile control of land is quite old³⁹, though it has always faced a large level of skepticism⁴⁰. Nevertheless, this skepticism seems reasonable when gentile ownership is set in a later historical period, as it usually is, either during the later Monarchy or the early Republic, where no clear-cut evidence of gentilician property can be found⁴¹, but at most some rather exceptional cases can be quoted. Among these are the attribution of land to the *Tarquinius* by the middle of the 7th century BC⁴², or to the *Claudii* in 495 BC⁴³, or the existence of the *prata Quintia*⁴⁴ and *Mucia*⁴⁵, which were known until the late Republic by the gentile names or their former owners. Nevertheless, originally the idea of gentilician control of land was not used to explain neither the final phase of the Monarchy nor the early Republic, where only shadowy traces could be detected, but to explain the so called pre-civic stage of the Latin people, previous to the foundation of the city, which would correspond to the period under study⁴⁶. On the other hand, it is not likely that the nature of gentilician control over land would be explicitly referred by a precise legal language⁴⁷, that did nor defined it, as neither did with ownership

familiari e sepolcri ereditari», in *Ricerche sulla organizzazione gentilizia romana*, v. 3, Napoli, 1984, pp. 171.

39. T. MOMMSEN, *Staatsrecht*, Leipzig, 1888, v. 3, p. 166; C. CASTELLO, *o.c.* (n. 37), p. 32; P. BONFANTE, *o.c.* (n. 26), pp. 248–9; G. DIÓSDI, *o.c.* (n. 27), p. 36; F. DE MARTINO, *Historia económica de la Roma Antigua*, T. I, Madrid, 1985, p. 15; D. STOJCEVIC, «Proprietà sociale proprietà feudale e dominium», in *Scritti in onore di Antonio Guarino*, v. 2, Napoli, 1984, pp. 1929; M. SALAZAR REVUELTA, *o.c.* (n. 26), p. 55; F. SERRAO, *o.c.* (n. 11), p. 45.
40. A. MOMIGLIANO, *l.c.* (n. 37), p. 100; C.J. SMITH, *o.c.* (n. 19), p. 247.
41. On the matter, see: S.T. ROSELAAR, *Public Land in the Roman Republic. A social and Economic History of Ager Publicus in Italy, 396–89 BC*, Oxford, 2010, pp. 18–25.
42. Dion. Hal. 3.48.2.
43. Liv. 2.16 and Dion. 5.40. See: G. FRANCIOSI, «Le tribù gentilizie», in *Ricerche sulla organizzazione gentilizia romana*, v. 3, Napoli, 1995, pp. 14 and F. SERRAO, *o.c.* (n. 11), p. 47.
44. Fest. 257.35.
45. Fest. 145.24.
46. P. BONFANTE, «Teorie vecchie e nuove sulle formazione sociali primitive», in *Scritti Guiridici, Famiglia e successione*, Torino, 1916, p. 38.
47. L. CAPOGROSSI COLOGNESI, *La terra in Roma antica*, Roma, 1981, pp. 18–19.

or possession⁴⁸, since the very idea of ownership as an abstract legal institution able to encompass all corporal assets, either for capital or consumption, and distinct to mere possession will not emerge until the late Republic. Until then, different expressions functional to the socioeconomic needs of each historical period were in use. Recently, Smith has put forward a new thesis to explain the emergence of the gentile *agri*⁴⁹. According to him, these would have been formed by the merge of the individual *agri* of each nuclear family that belonged to the clan. This process would have been concluded at some point during the Monarchy. Although the idea is attractive, it does not seem to fit well with the data. It seems clear that the groups that were collectively buried in the Osteria dell'Osa necropolis lived and worked together, and that the social ranks they occupy inside each clan depend on their age and sex. If each clan was composed by economically independent family units, their wealth levels would vary inside each clan according to the economic success of each family unit, and not exclusively in relation to age and sex. On the other hand, the history of Roman legal concepts seems to point in the opposite direction, to the progressive decomposition of an earlier collective control⁵⁰, and not to a collectivization process. In fact, the history of the powers to control assets is a chronic of their progressive individualization and abstraction⁵¹, where *dominium*, the maximally individual and abstract power in the Roman legal horizon, is its conclusion.

The only assets that escape de self-production logic are metal objects. Latium lacks metal ores and therefore it was dependant on external supply, specifically from Etruria⁵². The stylistic homogeneity of all metal items found in archeological contexts (mainly weapons and fibulae) seems to point to a limited group of artisans that produced them for the whole Tyrrhenian area. The most probable hypothesis points to the existence of a group of wandering smiths that traveled around the area exchanging metal artifacts for other products⁵³. Apparently they not only traded these metal goods for agricultural items locally produced, but also repaired broken goods that have been found in archeological sites⁵⁴. In this context, it is perfectly possible that these wandering smiths acquired bits and pieces of broken metal wares in exchange for new items. This way, bronze, whether raw or in the form of bits and pieces of broken wares, became a wealth reserve. This is extremely

48. This is point raised by Smith and Roselaar against Capogrossi's theory, for it a certain ambiguity on the terminological level. See: C.J. SMITH, *o.c.* (n. 19), pp. 241 and S.T. ROSELAAR, *o.c.* (n. 41), pp. 18–25.

49. C.J. SMITH, *o.c.* (n. 19), pp. 241–245.

50. L. CAPOGROSSI COLOGNESI, *o.c.* (n. 47), pp. 20–24.

51. G. FRANCIOSI, *l.c.* (n. 30), p. 44.

52. A. BIETTI SESTIERI, *o.c.* (n. 9), p. 27.

53. A. MOMIGLIANO, *l.c.* (n. 37), p. 66; M. TORELLI, *l.c.* (n. 12), p. 34; A. BIETTI SESTIERI, *o.c.* (n. 9), p. 36; T.J. CORNELL, *o.c.* (n. 7), p. 54; G. BARKER and T. RASMUSSEN, *o.c.* (n. 9), p. 74.

54. G. BARKER and T. RASMUSSEN, *o.c.* (n. 9), p. 74.

interesting, for it escapes the logic of ritualized gift exchanges that are usually considered the main mechanism of exchange during the Archaic Period and it would also imply an early kind of trade through a market mechanism. If bronze worked as a reserve of wealth — a classical feature of capital — this allows us to consider smiths an early group of merchants — probably of Etruscan origin — that during Latial Period II would have used bronze as a mean of exchange, something that would have promoted an early metallization of Latin economy. To sum up, even in the earliest period of Latial history, when economy seems to be operating on the bases of a domestic mode of production and gentilician control of most capital goods, a development of markets is perceptible through small scale trade of bronze products.

Legal and literary texts take account of *aes rude*, bits of bronze used as means of exchange during an obscurely ancient stage of Roman history⁵⁵, which would have been replaced, during the times of Servius Tullius' reign, by cast bronze bars marked with a symbol of their value. Following the tradition, these bits of bronze would explain the need of a scale to perform the *mancipatio*. Without addressing yet the tricky problem of the *mancipatio*, we can establish with some confidence that the need to acquire bronze items would have generated an early market for such goods, where bronze took a central place as a mechanism of exchange and a reserve of wealth.

Many bits of bronze have been identified as *aes rude*, as the ones found in Podere Tartuchino and Ponte di Badia, in the Villanovan area. Their presence has been detected in hoarding contexts, which would make manifest their wealth reserve character, as also in graves, maybe to pay Charon for the passage to the underworld⁵⁶. Although the earliest *aes rude* found are contemporary with Latial Period II, they become frequent only in the subsequent Period III and are in use until the 4th century BC. This has led some scholars to propose that *aes rude* became a dominant type of currency only in the 6th century BC⁵⁷. Anyhow, we think that they already had a central role in the transformations that Latial society experienced

55. Gaius Plinius Secundus, *N.H.* 33.43.4 and Gai 1.122.

56. Regarding the most ancient examples of *aes rude*, see: I. VECCHI, *Italian Cast Coinage*, London, 2013. Also useful: G. BARKER and T. RASMUSSEN, *o.c.* (n. 9), pp. 211–212; K.W. HARL, *Coinage in the Roman Economy, 300 B.C. to A.D. 700*, Baltimore and London, 1996, p. 21; P. PERKINS and I. ATTOLINI, «An Etruscan Farm at Podere Tartuchino», *Papers of the British School at Rome* 60 (1992), pp. 71–134.

57. In a similar sense, although dating the emergence of *aes rude* during the 6th century: J.-P. MOREL, «Early Rome and Italy», in *The Cambridge Economic History of the Greco-Roman World*, Cambridge, 2007, p. 494; H. ZEHACKER, *Moneta. Recherche sur l'organisation et l'art des émissions monétaires de la République romaine (289–31 av. J.-C.)*, Roma, 1973, pp. 199–222; A. DRUMMOND, «Rome in the Fifth Century, I: The Social and Economic Framework», in *The Cambridge Ancient History*, v. 7.2, Cambridge, 1989, p. 124. Delaying the use of metals in trade for the Roman economy until the 5th century BC: L. PEDRONI, *Ricerche sulla prima monetazione di Roma*, Napoli, 1993, p. 191.

around the 770 BC, at the beginning of Latial Period III. Latial Period III (770–740 a.C.) and IVa (740–640 a.C.). The Birth of wealth.

Latial Period III begins with a technologic revolution. Pottery experiences a massive change with the introduction of the potter's wheel, probably imported from Greece⁵⁸, the diaphragm kiln (which allows a better control of temperature) and painted pottery. With these technological improvements, high quality pottery emerges with very different features from the homemade wares of the preceding phase, and the professional potter appears⁵⁹. In fact, stylistic variations cease to be distinctive between grave groups and become common to wider communities. A second specialized laborer appears in the Iron Age, and his status seems to have been quite high, considering the presence of signed vases in the archeological record, as the famous Duenos-Vase inscription⁶⁰.

Ironworks also experiences an important improvement⁶¹, which is apparent is the wider diffusion of iron as the basic metal for weapon and tool production. There is also a technical innovation in bronze items production, which are made with bronze sheets and casts⁶², something that leads to a faster and easier production. The use of iron tools improves significantly agricultural productivity, for their hardness diminishes the amount of effort that must be applied to each productive unit to obtain surplus.

During this same period arboriculture seems to have been introduced in the Tyrrhenian area in the form of vines and olives (maybe from Phoenicians⁶³) to produce wine and oil. This implies a substantial change in agricultural exploitation techniques and the possible emergence of the so called *coltura promiscua* and the Mediterranean triad. In the Villanovan and Latial areas, arboriculture is well established during the 7th century BC⁶⁴, although its presence in the Etruscan area could be quite earlier, especially considering that there is evidence for vine exploitation

58. M. TORELLI, «History: Land and People», in *Etruscan Life and Afterlife*, Detroit, 1986, p. 51.

59. M. TORELLI, *l.c.* (n. 58), p. 51; A. BIETTI SESTIERI, *o.c.* (n. 9), p. 94; T.J. CORNELL, *o.c.* (n. 7), p. 81; G. FORSYTHE, *o.c.* (n. 7), p. 56.

60. In the third line the text says: *duenosmedfecedenmano*. That is to say, «Duenos made me with his hand». For a detailed analysis see: C. PAULI, *Altitalische Studien*, v. I, Hannover, 1883, pp. 34–37; G. PENNISI, «Il trivaso di Duenos», *Studi latini e italiani* 6 (1992), pp. 7–44; G. DUMÉZIL, «Chronique de l'inscription du vase du Quirinal», in *Mariages indo-européens, suivi de quinze questions romaines*, Paris, 1966, pp. 95–113 and F. MARCO SIMÓN and G. FONTANBA ELBOJ, «Sponsio matrimonial en la Roma arcaica: el vaso de Duenos», *RIDA* 43 (1996), pp. 212–268.

61. A. BIETTI SESTIERI, *o.c.* (n. 9), p. 61.

62. A. BIETTI SESTIERI, *o.c.* (n. 9), p. 95.

63. J. MACINTOSH TURFA, «International Contacts: Commerce, Trade, and Foreign Affairs», in *Etruscan Life and Afterlife*, Detroit, 1986, p. 67.

64. M. TORELLI, *l.c.* (n. 58), p. 52; G. FORSYTHE, *o.c.* (n. 7), p. 56.

during the 9th century BC in Gran Carro⁶⁵. This enables us to estimate its first introduction in Latium around the beginning of Period III⁶⁶.

Another important technical advance is the introduction of literacy in Central Italy, where, surprisingly, the oldest inscription of Western Europe in alphabetical characters has been found (c. 770 BC) in Osteria dell'Osa⁶⁷, which is even earlier than the first Greek colony in Ischia⁶⁸.

This technological revolution means that a whole new set of techniques could be applied to the productive processes, which allowed population growth and the expansion of the settlements to previously unseen limits in Central Italy. The settlement patrons widen with the occupation of new lands, especially volcanic soils, which present a comparative advantage for arboriculture. Higher lands also enter into the productive processes, with a sharp expansion⁶⁹. With the introduction of these new technologies (like iron tools) and the rising division of work, land can be used more intensively with a growing marginal productivity for the capital that is applied to the productive process. This would mean economic growth, which might have caused an increase in population and the consequent need to expand the economic area under exploitation by incorporating new land.

As a consequence, during Latial Period III an important process of nucleization takes place. Settlements enlarge and extend their influence into new areas⁷⁰. Smaller settlements are absorbed by larger ones, configuring each settlement's area of influence⁷¹. The villages on the volcanic plateaus of southern Etruria and the Latial area begin a process of fusion. This gave place to larger settlements that are usually described as Proto-urban⁷². It is likely that this process — which is essentially an internal process of the Latial area — was triggered by foreign cultural influence, mainly Etruscan and Greek.

Unrest in the island of Euboea caused a major colonization movement by the Chalcedonian Hellenes both to the East — establishing a colony in Al Mina — and

65. G. BARKER and T. RASMUSSEN, *o.c.* (n. 9), p. 73.

66. T.J. CORNELL, *o.c.* (n. 7), p. 81.

67. It is a globular vase of local manufacture found in the male grave 482. On its surface five letters can be seen. See: A. BIETTI SESTIERI, A. DE SANTIS and A. LA REGINA, «Elementi di tipo culturale e doni personali nella necropoli laziale di Osteria dell'Osa», *Scienze dell'Antichità* 3–4 (1989–90), pp. 65–88 and A. BIETTI SESTIERI, *o.c.* (n. 9), p. 184.

68. R. ROSS HOLLOWAY, *o.c.* (n. 36), p. 167.

69. For a detailed and interesting study on the soils and land occupation from Bronze Age to the Archaic Period see: F. FULMINANTE, «Environment and Settlement Analysis: Investigating the Bronze and Iron Age Latium Vetus Physical and Political Landscape», in *Broadening Horizons, Multidisciplinary Approaches to Landscape Study*, Newcastle, 2007, pp. 152–183.

70. J.-P. MOREL, *l.c.* (n. 57), p. 493.

71. M. TORELLI, *l.c.* (n. 12), p. 35; T.J. CORNELL, *o.c.* (n. 7), p. 90.

72. A. BIETTI SESTIERI, *o.c.* (n. 9), p. 45.

West, where they founded a colony in Ischia, an island in the bay of Naples⁷³. The Euboean example was shortly followed by continental Greeks and, in a matter of decades, the south of Italy became so Hellenized that it became Magna Graecia. The presence of Euboean and Proto-Corinthian pottery became common. These were luxury items that circulated — maybe as princely gifts — throughout Italian communities. The attraction of Etruria's mineral ores for Greek merchants is apparent⁷⁴, and it triggered the fast Hellenization of its local culture. The process of urbanization in the Villanovan area seems to develop under Greek influence⁷⁵.

Greek exchange led to the rise of Etruscan commerce. Soon after the foundation of Pithekoussai in Ischia, Tyrrhenian amphorae (Zit-A or Zentral Italische Amphoram) — possibly to transport wine or oil — are found in different contexts around the Mediterranean, as Cartage, Hispania or Sicily⁷⁶, and a bit later even in continental Greece⁷⁷.

During Latial Period II, the presence of Villanovan goods in Latium is rather scant, except for metal items⁷⁸, while Greek influence and trade goods are simply non-existent. If Latial culture should be related with any other culture during this period, pottery seems to connect it with the *fossa* grave culture of Campania⁷⁹, but not with its Etruscan neighbor. This changes dramatically during Latial Period III. In coastal settlements, as Lavinium-Prattica di Mare, Adrea, Anzio and Satricum, the presence of bronze items of Villanovan origin is abundant and visible from Period IIb⁸⁰, which implies an important rise in exchanges. Apparently, a network of commerce was established through sea, connecting with the inner region of Latium through a terrestrial axis in the Alban Hills and its settlement network. At the beginning of Latial Period III there seems to be a geopolitical change in southern Etruria, where Veii took a leading role in commerce with Latium, superseding neighboring Caere⁸¹. This fueled the use of a fluvial trade route through the Tiber and Aniene rivers, making the site of the future Rome utterly important. The metal items distribution system (and later other goods also) changed with the rise of Veii, and the importance of the Alban Hills as an axis of distribution and exchange diminished drastically in favor of the future Rome. In fact, with the beginning of Latial Period III the stagnation of Alban Hill's settlements became apparent, while the Proto-history of Rome begins. Still during the whole Archaic Period the Latin

73. J. MACINTOSH TURFA, *l.c.* (n. 63), p. 69.

74. M. PALLOTTINO, *o.c.* (n. 8), p. 66; J.-P. MOREL, *l.c.* (n. 57), p. 490.

75. T.J. CORNELL, *o.c.* (n. 7), pp. 86–87.

76. J.-P. MOREL, *l.c.* (n. 57), p. 491.

77. A. BIETTI SESTIERI, *o.c.* (n. 9), p. 45.

78. A. BIETTI SESTIERI, *o.c.* (n. 9), p. 27.

79. A. BIETTI SESTIERI, *o.c.* (n. 9), p. 27.

80. A. BIETTI SESTIERI, *o.c.* (n. 9), p. 71.

81. A. BIETTI SESTIERI, *o.c.* (n. 9), p. 243.

Fairs will be part of Rome's ancestral memory⁸², and one of the key elements to define the identity of the Latin peoples⁸³. They were continuously celebrated during the whole Republican times and even during the Empire, at least until the times of Hadrian⁸⁴, although their economic importance had long since passed. From this time on, Greeks and Phoenicians will sail the Tiber bringing along with their cargo, new cultural horizons to the Latin communities⁸⁵.

In the structure of the necropolis is where the social effects of the changes in production and distribution of goods due to the technological improvements — and consequently the improvements in marginal productivity of capital — can be perceived. During the last period of Latial II, that is IIb (c. 830–770 BC), some important changes in the funerary structure of the Osteria dell'Osa necropolis can be appreciated. For instance, in the group 503–578, that seems to be a continuation of the South Group, military aged men are buried around the perimeter of the group, as if they were defending it from some threat⁸⁶. The group 1–60 also seems different, both because the use of the area is longer (from mid period II until the beginning of Period III) and because it was established in a segregated area of the necropolis⁸⁷. According to Bietti Sestieri, this would imply a growing competition between groups⁸⁸.

Nevertheless, the big change is only perceptible during Period III (770–740 BC). The grave group 230–293, that seems to be a continuation of group 1–60, shows an important difference regarding all previous grave groups. In its center there are two graves, 262 and 259, belonging to an elderly man and a young woman. In the male grave a real weapon was found for the first time (and not only a miniature or a symbolic item). The grave goods of the rest of the group do not follow the traditional criteria of age and sex, but some of the central graves are significantly richer than the rest, others show the usual goods and some others, about a 15 % of the total, do not have goods at all. This difference in grave goods — that does not follow the traditional age and sex distinctions — increases over time. At some point, real treasures were buried in some of the wealthiest graves, increasing social difference to a maximum in the following period, IVa, the so called Orientalising period. During IVa the *tombe principesche* emerge in Tyrrhenian necropolis, where rare items were buried with the deceased, such as ostrich eggs, gold items, fine pottery and even some chariots were found with their former owners. This change in the formal criteria for the inclusion of grave goods shows massive social changes inside

82. On the matter see: T.J. CORNELL, «Rome and Latium to 390 BC», in *The Cambridge Ancient History*, v. 7.2, Cambridge, 1989, pp. 243–308.

83. Tac., *Ann.* 6.11; Liv. 32.1.9.1.

84. SHA, *Ant.Phil.* 4.6.2.

85. R. ROSS HOLLOWAY, *o.c.* (n. 36), p. 165.

86. A. BIETTI SESTIERI, *o.c.* (n. 9), p. 191.

87. A. BIETTI SESTIERI, *o.c.* (n. 9), pp. 194–198.

88. A. BIETTI SESTIERI, *o.c.* (n. 9), p. 241.

some of the clans. Apparently, some individuals were capable of accumulating vast amounts of wealth — those whose graves are now in the center of the group — and its distribution is not cogent with the traditional age and sex criteria. These individuals, who seem to be the leaders of the group — for their position in the grave group and the presence of real weapons seem to mark their superiority — concentrate most of the economic surpluses. Bietti Sestieri interprets the evidence as the rise of gentilician clans and the transit from an extended family system to a gens system⁸⁹. This interpretation has found general agreement⁹⁰, especially because this period (Latial III) is coincident with the emergence of the two name onomastic system (*praenomen* and *nomen gentilicium*) among Romans⁹¹. Nevertheless, we think that there are good arguments to disagree with this interpretation.

Firstly, the changes under discussion point to the emergence of wealth concentration and political leadership inside the group. The leadership is apparently exerted by an elderly man, possibly the *princeps gentis*. Nevertheless, it is not clear, not even for the historical period, that all *gentes* had a leader or *princeps*. There are some *gentes*, as the *Claudii*, where a character usually named Appius (or Attus) appears to be leading, as also in the case of the Tarquins, whose leader goes by the name of Lucius (or Lumcumo, literally leader in Etruscan). Nevertheless, in others, as in the Clelia or the Cornelia, no such character is discernible and they even seem acephalous.

On wealth, we know nothing about the wealth concentration or system of distribution of goods that each gens provided its members. There are some cases where the leader is able to distribute some of its goods, as in the well known case of the gens Claudia, where its leader Appius distributes the *ager gentilicium* among its members⁹², while in others all of their territory or a part of it seems to remain common⁹³. In a few words, the evidence of Osteria dell'Osa does not point to the emergence of the *gens* system in general, but rather to a specific type of *gens*. Some groups seem to experience a change in their sociopolitical structure with the emergence of some kind of permanent leadership — that is, independent of the age of the leader and probably perpetual — and a consequent concentration of wealth in the hands of those leaders.

89. A. BIETTI SESTIERI, *o.c.* (n. 9), pp. 203–204.

90. R. ROSS HOLLOWAY, *o.c.* (n. 36), p. 166.

91. J.-C. RICHARD, *l.c.* (n. 19), p. 110.

92. Plut., *Publicola* 21.9.

93. Some scholars assume that the division of the *ager gentilicium* into *heredia* was made through *nexum*. See: O. BEHREND, «La mancipatio nelle XII Tavole», *IVRA* 34 (1982) p. 91. We do not concur with this thesis, for it implies that *nexum* was something different than an act performed through bronze and a scale. Harmand also supports the idea of the division of all *ager gentilicium* into *heredia*, but for different reasons. He believes that from the case of the gens Claudia one can generalize the division for all clans, something still unproven. See: L. HARMAND, *Société et économie de la république romaine*, Paris, 1976, p. 48.

Regarding the onomastyc system, we truly know nothing about the emergence of the two name system in Central Italy. The information that we have comes from a few inscriptions found in different items, which are hard to explain. If the system emerges at the beginning of Latial Period III, then it is parallel with the introduction of literacy in Italy. Therefore, we have no testimony of the previous period where the *nomen gentilicium* theoretically should not exist. Secondly, if in some inscriptions there is no *nomen gentilicium*, it does not mean that it does not exist. It might have been omitted, for whatever reason including that the object would be used predominantly inside the clan. In fact, the use of gentilician names in an object would be appropriate only when it would be used in a context that included outsiders, not a very common situation for house items. About the absence of gentilician names on many of the mythological characters of Roman legend, as Romulus or Numitor, this is no evidence of the inexistence of gentilician names in an early stage of Latial development. Hercules does not have a gentilician name either, and that does not make him a historical character. The absence of a gentilician name might imply the opposite, that they are late creations that followed the model of ancient Greek heroes that also lack a gentilician name.

To sum up, the evidence of Osteria dell'Osa — which is compatible with evidence from the rest of Latium⁹⁴ — points to two phenomena that are probably related. One is the emergence of permanent chiefdoms and the other is the increasing concentration of wealth. Both features seem to be correlated and any legal model that aims to explain the social context of ancient Latium should encompass both. We believe that the concept of chiefly ownership, developed by Sahlins⁹⁵, could turn useful to describe this socio-legal situation. According to it, a clan leader exerts power over the group, and consequently over the means of production that the clan holds. Therefore, his political power has an immediate economic manifestation that leads to wealth concentration.

In this context, the words *potestas*, *manus* and *mancipium* become meaningful to describe the legal phenomenon that underlies these social developments. These three words are used by Gaius⁹⁶ to describe analytically the powers of the *paterfamilias*. The expression is also used in some statutes of the Early Empire — specifically in chapter 22 of the *lex Salpensana*⁹⁷ — and even of the Republic — as in the case of its controversial mention in the *lex Cincia* of 204 BC⁹⁸. None of these powers

94. T.J. CORNELL, «Rome and Latium Vetus, 1980–85», *Archaeological Reports* 32 (1985– 1986), p. 124; M. TORELLI, *l.c.* (n. 12), p. 39; J.-C. RICHARD, *l.c.* (n. 19), p. 110; G. FORSYTHE, *o.c.* (n. 7), p. 56.

95. M. SAHLINS, *o.c.* (n. 33), l. 1621.

96. Gai., *Inst.* 1.49: *Sed rursus earum personarum, quae alieno iuri subiectae sunt, aliae in potestate, aliae in manu, aliae in mancipio sunt.*

97. P.F. GIRARD and F. SENN, *Les Lois des Romains*, Napoli, 1977, pp. 40–41.

98. FV 298–300. From the early '60s of the 20th century there was increasing skepticism on the inclusion of the expression in the text. Casavola proposed a different reading from Mommsen's

seems to be adequate to describe specifically the relations between a person and his assets. *Potestas* describes the bond between the *pater* and his sons⁹⁹ and slaves¹⁰⁰, *manus*, the relations between him and the wife that has entered his family through *conventio in manum*¹⁰¹, while *mancipium* is the power that the *pater* exerts over a *filiusfamilias* that has entered into his power through *mancipatio*¹⁰². Although legal literature has made great efforts to establish which of these three powers would be the oldest and if any of them would be an equivalent to *dominium*, the question seems beyond any plausible answer. Some scholars believe that these three powers would have emerged from an originally unifying concept that, according to some, would have been called *manus*¹⁰³ and *mancipium* to others¹⁰⁴. Other scholars are rather skeptical on the existence of an all encompassing power over people and assets¹⁰⁵. We will try to examine the different powers that the *pater* held in the historical era to establish if any of these can be of use to explain the concentration of wealth and the dominance that some of the clan members exerted.

traditional one. He preferred to read *potestas matrimoniove*. See: F. CASAVOLA, *Lex Cincia. Contributo alla storia delle origini della donazione romana*, Napoli, 1960, pp. 58–60; P. MEYLAN, «Origine de la formule *in potestate manu mancipioque*», in *Études à Jean Macqueron*, Aix-en-Provence, 1970, pp. 503–513; M. BRETONE, *o.c.* (n. 5), p. 22, n. 4. Nevertheless, there are solid grounds to keep the traditional reading. For the moment, we cannot return to the debate, but most arguments in favor of the traditional version are in: E. VOLTERRA, «Nuove ricerche sulla *conventio in manum*», in *Scritti giuridici*, v. 3, Napoli, 1991, pp. 3–108.

99. Gai, *Inst.* 1.55: *Item in potestate nostra sunt liberi nostri, quos iustis nuptiis procreauimus. Quod ius proprium ciuium Romanorum est...*
100. Gai, *Inst.* 1.52: *In potestate itaque sunt serui dominorum. Quae quidem potestas iuris gentium est: nam apud omnes peraeque gentes animaduertere possumus dominis in seruos uitae necisque potestatem esse, et quodcumque per seruuum adquiritur, id domino adquiritur.*
101. Gai, *Inst.* 1.108–109: *<Nunc de his personis uideamus, quae in manu nostra sunt. Quod> et ipsum ius proprium ciuium Romanorum est. Sed in potestate quidem et masculi et feminae esse solent; in manum autem feminae tantum conueniunt.*
102. Gai, *Inst.* 1.117: *Omnes igitur liberorum personae, siue masculini siue feminini sexus, quae in potestate parentis sunt, mancipari ab hoc eodem modo possunt, quo etiam serui mancipari possunt.*
103. M. VOIGT, *Römisches Rechtgeschichte*, Stuttgart, 1892, v. I, p. 348; P. BONFANTE, *o.c.* (n. 26), p. 230; F. LEIFER, «*Mancipium und auctoritas*», *ZSS* 56 (1936), p. 154; M. KASER, *l.c.* (n. 5), p. 52; F.J. CASINOS MORA, *La noción romana de auctoritas y la responsabilidad por auctoritas*, Granada, 2000, p. 77; M. FUENTESECA DEGENEFTE, *o.c.* (n. 26), pp. 26–135; G. CORNIL, «*Du mancipium au Dominium*», in *Festschrift Paul Koschaker zum 60 Geburtstag*, v. 1, Weimar, 1939, pp. 404–443.
104. F. DE VISSCHER, *l.c.* (n. 24), p. 227; G. DIÓSDI, *o.c.* (n. 27), p. 54; B. ALBANESE, «*Cum nexum faciet mancipiumque*», in *Brevi studi di diritto romano*, Palermo, 1992, p. 60; G. PUGLIESE, *l.c.* (n. 5), pp. 252; F. PACHECO CABALLERO, *Las servidumbres prediales en el Derecho Histórico español*, Lleida, 1991, p. 20; E. LOZANO CORBI, «*Origen de la propiedad romana y de sus limitaciones*», in *Estudios de Derecho Romano en Memoria de Benito María Reimundo Yanes*, t. 1, Burgos, 2000, p. 573; F. SERRAO, *o.c.* (n. 11), p. 196.
105. A. WATSON, *Rome of the XII Tables*, New Jersey, 1975, p. 134 and G. FRANCIOSI, *o.c.* (n. 5), p. 46.

Regarding *potestas*, its technical meaning is linked with a life and death power. In the formula of *adrogationes*, to imply the entrance of one *pater* under the power of another, the *comitia curiata* were asked if they accepted that the former acquired the position of a son of the latter, as if he would have been born from him, and therefore be under his *potestas* of life and death¹⁰⁶. *Potestas* and life and death power seem to be synonymous. Possibly, the term was used to describe the relations between master and slave because the slave was under the life and death power of the master, as the son was too. Its inclusion in the formula of the *adrogatio*, a legal device that uses the *comitia curiata*, points to a very early stage in legal development, for this kind of *comitia* became out of fashion at the eve of the Republic, if not before.

Potestas can also mean power in a political context, as when the texts use the expressions *regiam potestatem*¹⁰⁷, *consularem potestatem*¹⁰⁸, *populi romani potestatem*¹⁰⁹ or *tribunicia potestatem*, although its meaning seems imprecise. Outside the family, it describes powers of a very different nature where no central element is evident. It is not used to refer to assets, save from some very exceptional contexts, as to indicate the power to alienate that the owner has over his assets¹¹⁰. This word seems to be able to describe broadly any kind of power, but in precisely only the power of the *pater* over his sons and slaves.

Although the emergence of the *patria potestas* cannot be dated, this power does not seem relevant to explain the concentration of wealth that develops during the Latial Period III, for this is not a phenomenon experienced inside nuclear family groups, where the *patria potestas* typically operates, but in wider groups that concentrate different nuclear families, as the *gens*. The divergence in burial goods does not take place between older men and the rest of the buried, but among all the buried in the area, where some, whether they are male or female, old or young, have richer burials, while others have less grave goods and some none. Whether the *patria potestas* existed or not at this period, it does not seem to be related to the wealth accumulation process developed during Latial Period III. It did not make older men's burials richer, as one would expect of a power that concentrates on the eldest male of the agnatic group, but some older men have less grave goods than female children that belong to the same group. The process seems indicate that some of the clan members were able to control the surpluses produced by the whole group and concentrate them. This concentration favors the members of their domestic (agnatic) group, whether they are women or children, benefiting them at

106. Aulo Gell., *N. A.* 5.19.9: *Eius rogationis uerba haec sunt: 'Velitis, iubeatis, uti L. Valerius L. Titio tam iure legeque filius siet, quam si ex eo patre matreque familias eius natus esset, utique ei uitae necisque in eum potestas siet, uti patri endo filio est. Haec ita, uti dixi, ita uos, Quirites, rogo.'*

107. Caes., *Gal.* 7.32.3.

108. Cic., *de Orat.* 2.199.8; *Fest.* 241.9, among many others.

109. Quintus Asconius Pedianus, *Mil.* 31.9.

110. Gai. 2.62.

the expense of the rest of the clan. That is to say, concentration of wealth does not operate inside the domestic groups (nuclear or agnatic families), but between the different domestic groups that belong to the clan.

Of the three powers under analysis, the only power that seems to be able to encompass assets and people at the same time is *mancipium*¹¹¹. On this, legal literature is abundant. De Visscher originally put forward the idea that *mancipium* would be equivalent to sovereignty¹¹². Nevertheless, his theory was generally discarded¹¹³, for some of the oldest legal texts seem to give a different meaning to the word. For instance, *mancipium* is used as a synonym of *mancipatio* in some occasions¹¹⁴. In the texts of Gaius there seems to be a systematic replacement of the archaic term *mancipium* for *mancipatio*¹¹⁵. Anyhow, the most significant text where *mancipium* is used in the sense of an act and not of a power are the XII Tables, that regulate in the same disposition *nexum* and *mancipium*:

*cum nexum faciet mancipiumque, uti lingua nuncupassit, ita ius esto*¹¹⁶.

Here it seems quite straight forward that *mancipium* is been used to regard the performance of an action, especially considering its position analogous to *nexum*, and its relation to the verb *facere*, that rules both¹¹⁷. Although there is considerable debate on the matter, it seems quite clear that *mancipium* means *mancipatio* in the text.

111. P. KRETSCHMAR, «Das *Nexum* und sein Verhältnis zum *Mancipium*», ZSS 29 (1908), p. 235.

112. F. DE VISSCHER, *l.c.* (n. 24), p. 286. With a similar perspective: F. LEIFER, *l.c.* (n. 103), p. 154.

113. G. DIÓSDI, *o.c.* (n. 27), p. 52; P. BONFANTE, *o.c.* (n. 26), p. 253; M. BRETONE, *o.c.* (n. 5), p. 23; H. LEVY-BRUHL, «Autour de la *mancipatio familiae*», in *Atti del congresso internazionale di diritto romano e di storia del diritto*, Verona, 27–29.IX.1948, Milano, 1948, p. 71; F. SERRAO, *o.c.* (n. 11), p. 196.

114. For instance: Cic., *De Off.* 3.91.7: *In mancipio vendundo dicendane vitia, non ea, quae nisi dixeris, redhibeatur mancipium iure civili, sed haec, mendacem esse, aleatorem, furacem, ebriosum.*

115. For example, Gaius defines *mancipatio* in the following terms: Gai., *Inst.* 1.121: *mancipatio dicitur, quia manu res capitur*. This seems to come directly from a quotation of Varro, but replacing the original *mancipium* for the newer *mancipatio*: Varr., *L.* 6.85.1: *mancipium, quod manu capitur*. See: F. GALLO, «Studi sulla distinzione fra *res mancipi* e *res nec mancipi*», *Rivista di Diritto Romano* 4 (2004=1958), p. 47; F. SERRAO, *o.c.* (n. 11), p. 194.

116. The text is taken from Festus 173.11: *Nuncupata pecunia est, ut ait Cincius in lib. II de officio iurisconsulti, nominata, certa, nominibus propriis pronuntiata: «cum nexum faciet mancipiumque, uti lingua nuncupassit, ita ius esto»: id est uti nominarit, locutusve erit, ita ius esto*. It seems to be a verbatim quotation of the jurist Cincius, from the 1st century BC. See: B. ALBANESE, *l.c.* (n. 103), p. 50.

117. L. CAPOGROSSI COLOGNESI, *o.c.* (n. 5), pp. 305–308. Nevertheless, some scholars have sustained that even in this fragment *mancipium* would mean a kind of power: M. SARGENTI, «Per una revisione della nozione dell'*auctoritas* come effetto della *mancipatio*», in *Studi in onore di Emilio Betti*, v. 4, Milano, 1962, p. 46.

There is also an important group of cases where the word *mancipium* is used to refer to slaves¹¹⁸, an asset that could be acquired through *mancipatio*. In the same way, a *filius familias* that is acquired through *mancipatio* remains *servorum loco*¹¹⁹, in the position of a slave. The word *mancipium* seems to have been able to point both to the act of acquisition — the *mancipatio* — and the elements acquired through the act, in a typically common manner to refer to the act and its effects with the same concept. This would explain the rather persistent use in non legal language of the term *mancipium* as something similar to property¹²⁰. The emergence of *mancipatio* — originally called *mancipium* — would mark the rise of a power that is exerted over people and assets. This power allows the accumulation of capital and its use in a productive manner.

We will briefly comment on the historical period when *mancipatio* emerged. *Mancipatio*, in Classical law, is a ceremony aimed to transfer some specific goods, the *res mancipi*. It is an imaginary sale where the buyer must grab the asset before a man with a scale (*libripens*) and five witnesses striking the scale with a piece of bronze and declaring some traditional words¹²¹. This ceremony should be performed in order to transfer the *res mancipi*¹²², and it was only appropriate when transferring this kind of goods¹²³. Other assets circulated freely.

The reconversion of ancient *mancipatio* from a real contract to a simple mean of acquiring property must have happen around 269 BC. At that time, approximately, Rome started coining silver currency¹²⁴. It is quite likely that from this moment onwards a tendency to abandon bronze as a payment currency in important

118. Cic., *ad fam.* 7.29.1.

119. Cic., *ad Brut.* 1.16.4.

120. For instance, in the *Altercatio Hadr. et Epicet.* 35: {H.} *Quid est homo?* {E.} *Loci hospes, legis imago, calamitatis fabula, mancipium mortis, vite mora; quo fortuna sepe suos ludos faciet.* For another similar fragment see: Cic., *Fam.* 7.29.1.3.

121. Gai., *Inst.* 1.119: *Est autem mancipatio, ut supra quoque diximus, imaginaria quaedam uenditio: quod et ipsum ius proprium ciuium Romanorum est; eaque res ita agitur: adhibitis non minus quam quinque testibus ciuibus Romanis puberibus et praeterea alio eiusdem condicionis, qui libram aeneam teneat, qui appellatur libripens, is, qui mancipio accipit, rem tenens ita dicit: hunc ego hominem ex iure quiritorium meum esse aio isque mihi emptus esto hoc aere aeneaque libra; deinde aere percutit libram idque aes dat ei, a quo mancipio accipit, quasi pretii loco.*

122. Gai., *Inst.* 1.120: *Eo modo et seruiles et liberae personae mancipantur; animalia quoque, quae mancipi sunt, quo in numero habentur boues, equi, muli, asini; item praedia tam urbana quam rustica, quae et ipsa mancipi sunt, qualia sunt Italica, eodem modo solent mancipari.*

123. Gaius expressly says that things that cannot be transferred neither through *mancipatio* nor *traditio*, can only be transferred through *in iure cessio*. See: Gai., *Inst.* 2.29; 2.32 and 2.34. On the matter, see: V. ARANGIO-RUIZ, *La compravendita in diritto romano*, Napoli, 1987=1956, p. 39. Anyhow, some scholars believe that in an ancient time, this would be possible: F. GALLO, *l.c.* (n. 115), pp. 11–12, n. 4.

124. The information comes from Pliny the Elder (*N.H.* 33.44), although nowadays scholars tend to think that the time period might be earlier. See: F. DE MARTINO, *o.c.* (n. 39), p. 71; K.W. HARL, *o.c.* (n. 56), pp. 21–37.

transactions occurred. Although bronze was abandoned, *mancipatio* persisted as an imaginary sale in order to benefit from its power to transfer property¹²⁵. Sale became a mere contract, and not a real ownership transfer. *Mancipatio* remained as a fossilized legal institution, and this is the starting point for its historical study.

The group of *res Mancipi* seems to point to the same time period¹²⁶. Among them, neither elephants nor camels are present, although they became familiar to Romans due to their conquests around the Mediterranean. Gaius explicitly says that they were unknown when the institution was created¹²⁷. Something similar can be said about the exclusion of provincial real estate from the *res Mancipi*¹²⁸. Although these lands quickly became important for Roman economy, they were never included in the class of *Mancipi*. If the first Roman province was Sicily, created after the first Punic War, then it seems rather natural to assume that the class of *res Mancipi* was closed before this event.

Probably the most significant data to date the *mancipatio* comes from its structure. When it operated as a real sale, the price ought to be paid in brute bronze, a feature that seems even older than the Republic. The presence of a *libripens* implies that the price was not counted, as in the case of coined bronze, but rather weighed. This means that the ceremony was developed before the city would guarantee the weight of the units used in the transaction¹²⁹. Even more to the point, the symbolical act of hitting the scale with the bronze seems to express the mandatory nature of the need to weigh the bronze in the scale, which would have been symbolically performed by hitting it. This takes us back to the *aes rude*, the bits of bronze used as means of exchange from Latial Period II until the 4th century BC. In fact, the need to weigh the bronze and the use of *aes rude* seem to fit in early monarchic Rome, before the appearance of *aes signatum*, cast bronze bars officially marked to symbolize its weight. According to the tradition, Servius Tullius¹³⁰ introduced

125. Gai., *Inst.* 1.122: *Ideo autem aes et libra adhibetur, quia olim aereis tantum nummis utebantur; et erant asses, dipundii, semisses, quadrantess, nec ullus aureus uel argenteus nummus in usu erat, sicut ex lege XII tabularum intellegere possumus; eorumque nummorum uis et potestas non in numero erat, sed in pondere; asses librales erant, et dipundii unde etiam dupondius dictus <est, quia>si duo pondo: quod nomen adhuc in usu retinetur. Semisses quoque et quadrantess pro rata scilicet portione ad pondus examinati erant. <tunc igitur et qui> dabant alicui pecuniam, non numerabat eam, sed appendebat; unde serui, quibus permittitur ad mini<str>atio pecuniae, disp<ensatores> appellati sunt.*

126. L. CAPOGROSSI COLOGNESI, *o.c.* (n. 47), p. 139.

127. Gai., *Inst.* 2.16: *<At> ferae bestiae nec Mancipi sunt, uelut ursi, leones, item ea animalia, quae ferarum bestiarum numero sunt, uelut elefanti et cameli, et ideo ad rem non pertinet, quod haec animalia etiam collo dorsoue domari <sole>n<t>; nam ne <notitia> quidem eorum animalium illo tempore fuit, quod constituebatur quasdam res Mancipi esse, quasdam nec Mancipi.*

128. F. GALLO, *l.c.* (n. 115), p. 29.

129. V. ARANGIO-RUIZ, *o.c.* (n. 123), p. 21.

130. Gaius Plinius Secundus, *N.H.* 33.43: *Servius rex primus signavit aes. antea rudi usus Romae Timaeus tradit. Signatum est nota pecudum, unde et pecunia appellata.*

them in Rome, and archeological research has called them *ramo secco*¹³¹, for they are usually marked with symbols that reminded tree branches. The *asses signata* can be counted, due to the fact that their weight was certified by the city. On the other hand, the mandatory nature of weighing the bonze in *mancipatio* seems to point to the use of *aes rude* in the original ceremony. There is enough evidence, both in archeology and tradition, to date the appearance of *aes signatum* in Tyrrhenic Italy around the early 6th century BC, so *mancipatio* should have started its development before.

Mancipatio seems to normalize the rules of exchange over a specific set of assets, the *res Mancipi*. *Mancipatio* limits the exchange of *res Mancipi*, for it subjects its exchange to the performance of a ritual and limits the possibility of acquiring them to citizens or to Latins with *ius commercium*, for it belongs to *ius civile*. In a way, *mancipatio* is not an institution created to generalize exchange over *res Mancipi*, but quite the opposite, to restrict it and regulate it minutely. In contrast, the *res nec Mancipi* could circulate freely, without weighing the bronze nor needing witnesses of the transaction. In fact, most of the goods that have left archeological remains of its circulation are *nec Mancipi*, as iron and bronze tools, jewelry, pottery and most of the cattle, for only the ones that were tamed (oxen, specifically) were *Mancipi*¹³².

Scholars tend to say that the *res Mancipi* correspond to the capital goods of a family of farmers, for all the *res Mancipi* are related, in one way or another, to agriculture¹³³. This would explain the adjective *pretiosiores* used by Gaius to describe them¹³⁴, although this is not quite true. Almost 80 years ago

131. C. AMPOLO, «*Servius rex signavit aes*», *Parola del passato* 28 (1974), pp. 382–88; M. TORELLI, *l.c.* (n. 58), p. 55; J.-P. MOREL, *l.c.* (n. 57), p. 495.

132. Gai., *Inst.* 2.15: *Sed quod diximus <ea animalia, quae domari solent>, Mancipi esse, n * * * * * * * * statim ut nata sunt, Mancipi esse putant; Nerua uero et Proculus et ceteri diuersae scholae auctores non aliter ea Mancipi esse putant quam si domita sunt; et si propter nimiam feritatem domari non possunt, tunc uideri Mancipi esse incipere, cum ad eam aetatem peruenerint, in qua domari solent.* Scholars usually consider the Proculeian opinion to be older, although we obviously do not have any direct proof. See: V. ARANGIO-RUIZ, *o.c.* (n. 123), p. 42; F. GALLO, *l.c.* (n. 115), p. 22 and P. BONFANTE, *o.c.* (n. 26), p. 204.

133. F. GALLO, *l.c.* (n. 115), p. 25; L. CAPOGROSSI COLOGNESI, *o.c.* (n. 5), p. 358; G. DIÓSDI, *o.c.* (n. 27), p. 57; F. SERRAO, *o.c.* (n. 11), p. 48; M. FUENTESECA DEGENEFTE, *o.c.* (n. 26), p. 24; C. VARELA GIL, «El origen de la *mancipatio*: de medio de publicidad dominical a modo de adquirir la propiedad», *Revista General de Derecho Romano* 9 (2007), p. 4.

134. Gai., *Inst.* 1.192: *Sane patronorum et parentum legitimae tutelae uim aliquam habere intelleguntur eo, quod hi neque ad testamentum faciendum neque ad res Mancipi alienandas neque ad obligationes suscipiendas auctores fieri coguntur, praeterquam si magna causa alienandarum rerum Mancipi obligationisque suscipiendae interueniat. Eaque omnia ipsorum causa constituta sunt, ut quia ad eos intestatarum mortuarum hereditates pertinent, neque per testamentum excludantur ab hereditate neque alienatis pretiosioribus rebus susceptoque aere alieno minus locuples ad eos hereditas <per>ueniat.*

De Visscher¹³⁵ observed that many of the most important assets of a nuclear family and its domestic economy were excluded from *res Mancipi*. Besides the obvious omission of farming tools, it seems rather surprising that neither the cow nor the sow, two key items of domestic economy during all of Antiquity¹³⁶, were excluded. And even if the ox's work power is important in farming, the horse's use in agriculture is somehow more limited¹³⁷, while its whole value becomes evident only as a weapon of war. From the perspective of transhumant sheepherding, the *res Mancipi* do not seem to fit at all, for the pastor's most important assets (the dog, the goats, the sheep and untamed cattle) are out of the set. To sum up, although the set of *res Mancipi* seem to point to a group of assets related to agriculture, this fact does not seem to explain it completely. If we focus on the animals included, the only common feature we find is that discontinuous use is possible over all of them, and therefore, they can be used by shifts. The cow or the sheep liberate their productive power either through their offspring, through the sub-products they generate or by their sacrifice. The ox or the mule, on the other side, liberate their productive power by their use in tillage or in transportation, after which they are idle, and therefore, theoretically could be available for other farmers. In other words, the productive value of *nec Mancipi* animals is liberated in an indivisible manner, while *Mancipi* animals can generate marginal utility in shifts to the benefit of the one that is actually using them. Many producers can benefit from the power of *Mancipi* animals by using them in shifts, while they can support together the rather high costs of their maintenance.

Horses are able, also, to be used in shifts, though their main value seems to be related to their importance in war contexts. Although with the emergence of hoplite strategy in the Tyrrhenian area — by the end of the 7th century — their military importance declined, they were still important as a prestige item in the configuration of aristocracy. The so called *sex centuriae* were the most prestigious chivalry squadrons, whose creation was attributed to Tarquin the Elder¹³⁸. Their names came from the Romulean tribes and the city provided horses for their members¹³⁹. It is interesting to note that the tradition dates the creation of the *sex centuriae* with public horses at the very same time that chivalry is losing importance in Tyrrhenian Italy. It might have made more sense to provide publicly armors to the infantry. Anyhow, the public provision of horses might have a political angle in the struggle for prevalence between the king and the clans by the times of Tarquin and

135. On this matter, De Visscher makes a rather harsh critic to Bonfante's position on the equivalence of *res Mancipi* and *res pretiosiores*. He rightly says that there are other assets that hold a high economic value which are *res nec Mancipi*. Therefore, he concludes, the distinction was not created following economic criteria. See: F. DE VISSCHER, *l.c.* (n. 24), pp. 197–206.

136. A. MARCONE, *o.c.* (n. 11), p. 100.

137. F. DE VISSCHER, *l.c.* (n. 24), pp. 197–206.

138. Liv. 1.36.2.

139. Liv. 1.43.9–10.

Servius Tullius. Until then, chivalry, as an elite activity, was probably composed by the members of patrician clans. With the public provision of horses, the weight of the clans might decline and, in theory, its integration might cease to be a privilege of the *gentes*. This way, the *equites equorum publicorum* would be an instrument for the de-gentilization of chivalry and would point to a significant question, the control that clans might have held over large tamed animals.

Significantly, animals tamed by the neck or the back are the same that may be used in shifts and, therefore, are proper to be under supra-individual control. These capital goods might well be under clan control and the public provision of horses seem to point in the same direction.

To sum up, the legal category of *res Mancipi* tends to limit transactions over certain goods by putting some restrictions to their exchange. On the other hand, the *res nec Mancipi* seem to fit better into market exchange, especially those produced by the first specialized laborers of Antiquity (smiths and potters) and those involved in pastoral economy. One of the oldest assets that belong to the set, large tamed animals, may be used in shifts, while another important element, land, seems to have been under collective control at a very early stage, although it is not clear if it was alienable through *Mancipitio*¹⁴⁰. In Classical times a very sophisticated procedure of symbolic representation was used to transfer it¹⁴¹, which might not fit the Archaic legal mind. The *res Mancipi* had ritualized rules of exchange because they could be considered the economic foundation of the clan and, therefore, they were the most important assets in a gentilician society. The ritual gives certainty on their control (by physically taking the item and pronouncing the prescribed words), the nature of the transaction (by weighing the bronze) and this separates them from other goods that could be freely traded. The *res Mancipi* define the economic frontier of the gens' power, as Bonfante proposed almost a hundred years ago¹⁴². This economic base will back the power of the patricians in later times.

Anyhow, gentilician control of *res Mancipi* does not fully explain the differences in wealth distribution observed in the necropolis of Latial Period III, which will widen through Period IVa. Clan control over some important assets does not imply inequality, unless the distribution of power inside the clan is unequal. In principle, if the means of production are under the control of some kind of association, whoever controls such association will control production. A rise of some

140. T. MOMMSEN, «*Mancipium, manceps, praes., praedium*», ZSS 23 (1902), p. 438; L. CAPOGROSSI COLOGNESI, *o.c.* (n. 47), p. 139; O. BEHREND, *l.c.* (n. 93), p. 46.

141. Gai., *Inst.* 1.121: *In eo solo praediorum Mancipatio a ceterorum Mancipatione differt, quod personae serui<l>es et liberae, item animalia, quae Mancipi sunt, nisi in praesentia sint, Mancipari non possunt; adeo quidem, ut eum, <qui> Mancipio accipit, adprehendere id ipsum, quod ei Mancipio datur, necesse sit; unde etiam Mancipatio dicitur, quia manu res capitur: praedia uero absentia solent Mancipari.*

142. P. BONFANTE, *o.c.* (n. 26), pp. 253–255.

sort of political power inside the clan would explain the unequal distribution of wealth that emerges during Latial Period III and the formation of elites.

To these ends, the concept of *manus* might be important. In historical times, *manus*, in its technical sense, is the power that a man can exert over his wife if she has performed the *conventio in manum*¹⁴³ in one of three ways: *usus*, *coemptio* or *confarreatio*. Although the equivalence between *manus* and marriage has been proposed by several scholars¹⁴⁴, there are no good grounds to sustain it. Marriage was always a *res facti*, while *manus* was not¹⁴⁵. The *conventio in manum* is directly linked to the incorporation of the wife into the group of the husband. Through it, she loses her membership to her original group and integrates as a member of her husband's. The existence or absence of *manus* in a marriage, points to two different economic strategies, one where the group of origin loses one of its members (and its assets), and another one where it keeps both. These strategies make sense in Roman society, where life expectancy is low, and most of the women in marital age do not have a *paterfamilias* alive¹⁴⁶. Therefore, most of marriageable women would have inherited goods from their fathers that would be under the control of their agnatic family. Their exit from the group would mean a massive transfer of hereditary assets to the husband's family through the effect of *manus*, which could be considered disastrous. Therefore, the need of tutorial authorization¹⁴⁷ (in practice, her brothers or the *gens*, by express disposition of the XII Tables¹⁴⁸) to perform the *conventio in manum* is quite logical. If the *pater* was still alive, her exit from the group would be of benefit to the family, for she (and her husband) would

143. Gai, *Inst.* 1.108: <Nunc de his personis uideamus, quae in manu nostra sunt. quod> et ipsum ius proprium ciuium Romanorum est.

144. For instance, there are the classic works of H. DE FRESQUET, «De la *manus* en droit romain», *RHD* 2 (1875), pp. 135–164; A. ROSSBACH, *Untersuchungen über der röm. Ehe*, Stuttgart, 1853; O. KARLOWA, *Die Formen der römischen Ehe und manus*, Bonn, 1868; A. ESMEIN, «La *manus*, la paternité et le divorce dans l'ancien droit romain», in *Mélanges d'histoire du droit*, Paris, 1886. See on the problem: P.E. CORBETT, *The Roman Law of Marriage*, Darmstadt, 1979=1930, pp. 68–70; F. SCHWIND, «Probleme des römischen Eheerchtes», in *Scritti in onore di Contardo Ferrini pubblicati in occasione della sua beatificazione*, v. 4, Milano, 1949, pp. 131–147; J. DECLAREUIL, «Paternité et filiation légitimes», in *Mélanges Paul Frédéric Girard*, v. 1, Darmstadt, 1979, pp. 315–352; B. BIONDI, «Farreo *coemptione usu*», in *Sodalitas. Scritti in onore di Antonio Guarino*, v. 3, Napoli, 1984, pp. 1301–1309; G. PUGLIESE, *l.c.* (n. 24), p. 11; F. BOZZA, *Manus e matrimonio*, Milano, 1942, pp. 111; R. DÜLL, «Studien zur Manusehe», in *Festschrift Leopold Wenger zu seinem 70 Geb.*, München, 1944, pp. 203 & ff., among many others. For the history of the idea see: E. VOLTERRA, «Matrimonio», in *Scritti giuridici*, v. 3, Napoli, 1995, n. 64.

145. E. VOLTERRA, «La *conventio in manum* e il matrimonio romano», in *Scritti giuridici*, v. 3, Napoli, 1995, pp. 205–226; E. VOLTERRA, *l.c.* (n. 98), pp. 3 & ff. and E. VOLTERRA, «Ancora sul problema della familia romana», in *Scritti giuridici*, v. 2, Napoli, 1995, p. 615.

146. The calculations were made by Saller. See: R.P. SALLER, *Patriarchy, property and death in the Roman family*, Cambridge, 1994, Kindle ed., l. 199–250.

147. Cic., *Pro Flacco* 34.84, Gai., *Inst.* 1.115 and 1.195a and finally Ulp., *Frag.* 11.27.

148. Gai., *Inst.* 1.155, 2.47.

be excluded from the hereditary assets and therefore, the dispersion of property would be avoided. These marriage strategies are compatible with the economic framework of the Roman society of the XII Tables¹⁴⁹, although they might be older. What is important for our study is that *manus* was not equivalent to marriage. Women could enter through a *conventio* into the *manus* of her husband's group. In this sense, *manus* seems to be a power that, in the historical period, represented one kind of relation that could be established between husband and wife, but that originally could have being wider.

Gans¹⁵⁰, in the second half of the 19th century, proposed that *manus* could have a wider meaning than the power of a man over his wife. Bonfante¹⁵¹ based his thesis of a wider *manus* of political character on Gans' idea. He proposed that *manus* was the power that the leader of the group exerted over its members. His thesis had wide recognition¹⁵², especially since Kaser¹⁵³ ended supporting it with some minor corrections that excluded its original political overtones.

It is rather impressive that *manus* kept some technical uses that do not seem to fit the power of the husband. The most appealing one is *manus iniectio*, one of the five most ancient legal procedures in Rome¹⁵⁴. If the debtor did not pay the creditor after the sentence, this legal procedure would be performed before the *praetor* (or consul) by proclaiming these words¹⁵⁵:

quod tu mihi iudicatus siue damnatus es sestertium x milia, quandoc non solvisti, ob eam rem ego tibi sestertium x milium iudicati manum inicio

With the technical expression *manum inicio*, I throw you my hand, the creditor literally grabbed the debtor and he came under his power. *Manus*, in this case, seems to mean a power that is thrown to cover the debtor.

The technical expression to liberate a slave or to exclude a son from the *patria potestas* is *manumissio*, a substantive composed by *manus* and the participle of the verb *mittere*, that is, to free someone is to send him away from the *manus*. Something similar can be said about *mancipium*, which would come from *manus* and *capere*, to take with (or in) the hand.

149. M. KASER, *l.c.* (n. 24), pp. 39 & ff.; M. KASER, «Ehe und *conventio in manum*», *IVRA* 1 (1950), pp. 64–101.

150. E. GANS, *Scholien zum Gaius*, Berlin, 1821, pp. 138–140.

151. P. BONFANTE, *Corso di diritto romano, Diritto di famiglia*, Milano, 1963, pp. 14–18.

152. Among others, we can mention L. MITTEIS, *Römisches Privatrecht bis auf die Zeit Diokletians*, Leipzig, 1908, p. 75; A. SÖLLNER, *Zur Vorgeschichte und Funktion der actio rei uxoriae*, Wien, 1969, pp. 12–15; P. VOCI, «Storia della patria potestas da Augusto a Diocleziano», *IVRA* 31 (1980), pp. 37–100; C. LORENZI, «Pap. Coll. 4,8,1: la figlia adultera e il *ius occidendi iure patris*», *SDHI* 57 (1991), pp. 158–180.

153. M. KASER, «Der Inhalt der *Patria Potestas*», *ZSS* 58 (1938), pp. 62–87.

154. Gai., *Inst.* 4.12.

155. Gai., *Inst.* 4.21.

To sum up, in some technical expressions — although admittedly few — the substantive *manus* seems to point to the power of the group over its members. There are those who enter *in manum* and those who exit it. *Manus* could even be the group itself, as when *manus* is used to refer to a group of warriors¹⁵⁶.

This power seems rather shadowy in historical times and its specific intensity is impossible to determine. Anyhow, it seems significant that the most important mean to acquire control of assets, the very same that was able to gain goods that were under gentilician control, the *mancipium*, had a name that derived from *manus*, which seems to have being formed during Latial Period III. The birth of this power, with its political character and exerted by some of the older members of the clan, would have enable them to control gentilician means of production, the *mancipium*, which would have triggered the subsequent concentration of wealth that is evident during Latial Period III and IVa. This power, that would have formally being exerted over the clan, would have derived in a power over the clan's assets, following Sahlins' chiefdom ownership model.

The change from a domestic mode of production of autarchic character to an exchange model, where the surpluses are traded for other goods in market was triggered by two elements. The first is the emergence of bronze as a mean of exchange and reserve of wealth, during the late Latial Period II. This made trade easier and also gave the group a way to keep the production surpluses when they were not immediately consumed in the form of savings by converting them into bronze. The second element is the integration of the Latial area into the Greco-Tyrrhenian technological context, from where it received the technical elements that enabled an increment in capital's marginal productivity, as the potter's wheel, arboriculture and literacy.

In a domestic mode of production, the group lacks interest in the production of surpluses, for if they are not promptly consumed, they do not have the means to accumulate them in the form of capital to use them later. The surpluses last only the natural life of the products. The meat that is not immediately eaten will rotten. Bronze, as a mean of exchange and accumulation, makes possible the application of new technologies that tend to make production maximal. Only then these surpluses can be saved and eventually exchanged for other goods that can be consumed. Such economic structure of accumulation and exchange will be prompted politically and legally by the emergence of chiefdoms inside the clans, whose power will sustain in the control of certain key elements of production, as labor animals and land, which will become part of the group's *mancipium*. It is possible that the power of the group, exerted by its leaders, was called *manus*, although we cannot be certain of it. All we know is that people and assets enter and exit the *manus*, an expression that typically manifests the creation of power relations between the group and these people and goods.

156. For instance, in Caes., *Gal.* 1.37.4; 5.8.6.2; 5.26.2.5, among many others.

The birth of a productive structure based on exchange in the Latial area did not produce an abstract notion of property, as *dominium* will later express, but it did generated the emergence of political control of the group and, as a consequence, of capital.

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