

# THE OWNERSHIP OF ROMAN LAND: TIBERIUS GRACCHUS AND THE ITALIANS

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The agrarian law of Tiberius Gracchus is on any reckoning a significant piece of legislation in the history of the later Roman republic, and it is a measure of our ignorance of that critical period that it should still be possible to ask who he intended its beneficiaries to be without any immediate prospect of a clear answer. This is of especial concern because the problem affects not only the interpretation of Gracchus himself, and the evaluation of the sources for the period, but also our estimate of the whole complex of attitudes and actions which make up the turbulent half-century which followed his death in 133 B.C.

In so far as there is any agreement among modern scholars, opinion has favoured the view that Roman citizens alone were intended to profit from the law.<sup>1</sup> I wish to suggest here firstly that the connection between land distribution and citizenship is more intimate and more complex than has sometimes been realised, and also that an inclusion of non-Romans among the beneficiaries of Gracchus' law may explain certain puzzling features in the historical tradition about the law itself and its aftermath.

## I

In outline at least, the measure emerges fairly clearly from the sources,<sup>2</sup> though they differ on matters of detail: no one was to be permitted to hold more than 500 *jugera* (about 330 acres) of *ager publicus*, the land held by the state following its seizure during Rome's wars in Italy down to the third century B.C., and augmented after the Hannibalic war by confiscations from states which had sided with the Carthaginians; <sup>3</sup> a further allowance of 250 *jugera* was to be made for each child; <sup>4</sup> the excess was to be redistributed to the needy, in allotments whose upper limit was probably 30 *iugera* (about 18 acres); <sup>5</sup> the work of surveying and allotment was to be undertaken by a three-man board. All this appears certain beyond dispute, but equally gives no indication as to who was to get the newly distributed land, whether Romans alone, or Romans and their Latin and perhaps also Italian allies.

The problem becomes more acute when the sources are examined directly for information about the beneficiaries of the Lex Sempronia. The earliest references to the law in the literary sources come in remarks made from time to time by Cicero, who only mentions the *plebs Romana* as profiting from the land distributions. This, however, is hardly conclusive evidence, as in no case is he attempting to give a complete history of Gracchus' reform, and indeed he is invariably using the *lex agraria* in order to explain Tiberius' popularity with the Roman people, so that the question of Italian participation becomes strictly irrelevant.<sup>6</sup> The same proviso applies to a comment on Cicero's *pro Sestio* in the Bobbian Scholiast,<sup>7</sup> which has been thought to be decisive in favour of a 'Roman citizens only' interpretation of the law.

<sup>1</sup> Thus a standard general history of the period (H. H. Scullard, *From the Gracchi to Nero*, 388 n. 8) makes no mention of the matter; and E. Badian, in a masterly survey of Gracchus' tribunate (in *Aufstieg und Niedergang der römischen Welt*, ed. H. Temporini, I.1 (1972), 701-2 with n. 100) brusquely dismisses the problem. The arguments in favour of Italian participation in the Sempronian *lex agraria* assembled by J. Göhler, *Rom und Italien* (1939), 70-131, are rehearsed in a recent article by Y. Shochat (*Athenaeum* n. s. 48 (1970), 25-45), and attacked by D. Brendan Nagle in the same issue of that periodical (*ibid.*, 372-94). Some unease at the consensus that Romans alone received allotments has been expressed by E. Gabba (in, for example, *RFIC* n.s. 37 (1959), 193-4) and more recently by A. N. Sherwin-White (*The Roman Citizenship*<sup>2</sup> (1973), 217-18). A. H. Bernstein, *Tiberius Sempronius Gracchus* (1978), 137-59, advances the view, suggested by C. E. Stevens, that Italians were originally included in

Gracchus' scheme, but excluded from the final version. D. Stockton, *The Gracchi* (1979), 42-6, surveys earlier scholarship.

<sup>2</sup> Appian, *BC* I. 9. 37 and I. 11. 46; Plutarch, *Ti. Gracchus* 9. 2-3; Livy, *Ep.* 58.

<sup>3</sup> Appian, *BC* I. 7. 26-8; Plut., *Ti. Gracchus* 8. 1-4; A. J. Toynbee, *Hannibal's Legacy* (1965), I. 163 f., II. 556-61.

<sup>4</sup> cf. Badian, *op. cit.* (n. 1), 702-3.

<sup>5</sup> Th. Mommsen, *Gesamm. Schr.* I (1905), 103; Badian, *op. cit.* (n. 1), 704.

<sup>6</sup> Cicero, *de lege agraria* 2. 5. 10; 2. 29. 81; *pro Sestio* 48. 103.

<sup>7</sup> Schol. Bob. on *pro Sestio* 48. 103 (Stangl p. 135): 'Agrariam Tiberius, frumentariam C. Gracchus ferebat: Ille, ut ager publicus Romanae plebi divideretur, quae lex ei magnam conflavit invidiam; C. autem, frater eius, illam frumentariam de qua supra locuti sumus.'

If there can be no certainty about Cicero's opinion on the question, the same is not true of those accounts which give a full narrative treatment of Ti. Gracchus' tribunate, in particular Appian and Plutarch. There can be no doubt that Appian thought that distribution of land to the Italians was an integral part of Gracchus' plan. Originally, he states, *ager publicus* had been distributed to encourage an increase in the population of the Italian race, whom the Romans saw as especially able to withstand hardship, so that they might have allies of their own kind.<sup>8</sup> It is hardly surprising, seen against this background, that, according to Appian, Tiberius introduces his plans to the Roman people with solemn words about the Italian race;<sup>9</sup> that his intention was to increase population rather than wealth, which he saw as of great advantage to Italy;<sup>10</sup> and that, once his measure was passed, he was escorted back to his house by an exultant mob, who saw him as the founder not merely of one city or race, but of all the peoples of Italy.<sup>11</sup> There can be no doubt that, in Appian's view, Gracchus' measure had a substantial Italian dimension, and that he enjoyed considerable Italian support.<sup>12</sup>

Plutarch by contrast gives the whole question of the *ager publicus* a decidedly Roman, non-Italian, setting. In introducing Gracchus' reforms, he explains how the land had originally been distributed to the landless and needy *citizens*;<sup>13</sup> and again how Gracchus himself told those who were holding land in contravention of the old law limiting holdings of the *ager publicus* to hand it over for those who were in need of assistance among the citizens to take up.<sup>14</sup> Moreover he repeatedly describes Tiberius' supporters as being 'ὁ δῆμος', which should refer to the Roman *plebs*.<sup>15</sup> It is true that there are some passages which give the impression that Italy as a whole was involved: for instance, when describing the effects of the gradual take-over of land by the rich, he says that the poor stopped raising families, so that the whole of Italy quickly experienced a dearth of free men;<sup>16</sup> again he reports Gaius Gracchus as having commented on his brother's horror at the deserted fields and the use of slave labour rather than free in Etruria;<sup>17</sup> finally, he puts into Tiberius' mouth a speech which contrasts the state of the wild beasts of Italy, which at least have dens and lairs, with that of those who fight on Italy's behalf.<sup>18</sup> The fact that these last two passages are taken from allegedly contemporary sources (the speeches of Tiberius and the pamphlet of Gaius Gracchus) has suggested to some scholars that the early material which Plutarch, or his sources, had at his disposal contained a strong pan-Italic element.<sup>19</sup> However these minor anomalies, if such they are, need not detain us long. They can carry very little weight against the overwhelmingly 'Roman' view of Gracchus' measure that is clear in Plutarch's whole account, and are just the sort of discrepancy that might be expected in a writer who is two centuries away from the events he is describing; similar anomalies which might be taken to point towards a 'Roman' rather than an 'Italian' interpretation can be detected in Appian's strongly 'Italian' version of the same events.<sup>20</sup>

There is, then, a basic disagreement between our two main historical sources for Gracchus. There is one other historian whose account should be considered at this point, for his is in fact the earliest narrative that has been preserved: that is Velleius Paterculus. Velleius also puts a certain emphasis on the Italians, though not the same emphasis that we have seen in Appian. He writes that in the consulship of P. Mucius Scaevola and L. Calpurnius (133 B.C.) Tiberius Gracchus, whom he has described as a brilliant young man of exceptional gifts, 'descivit a bonis, pollicitusque toti Italiae civitatem, simul etiam promulgatis agrariis legibus, omnibus statim concupiscentibus, summa imis miscuit' and brought the state into

<sup>8</sup> *BC* I. 7. 28

<sup>9</sup> *ibid.*, I. 9. 35 f.

<sup>10</sup> *ibid.*, I. 11. 43.

<sup>11</sup> *ibid.*, I. 13. 56.

<sup>12</sup> The view that by Ἰταλιῶται Appian was referring not to Italians but to Roman citizens in Italy (so M. Gelzer, *Gnomon* 5 (1929), 298-9 = *Kl. Schr.* II. 75; also in *Gnomon* 30 (1958), 218 = *Kl. Schr.* III. 288-9) has been shown to be at variance not only with Appian's language at this point, but also with his understanding of the Gracchan episode in the development of *Civil Wars* I (P. J. Cuff, *Historia* 16 (1967), 177-88).

<sup>13</sup> *TG* 8. 1.

<sup>14</sup> *ibid.*, 9. 2.

<sup>15</sup> e.g. *ibid.*, 9. 3; 10. 1; 12. 6.

<sup>16</sup> *ibid.*, 8. 4.

<sup>17</sup> *ibid.*, 8. 9.

<sup>18</sup> *ibid.*, 9. 5.

<sup>19</sup> Thus Göhler, *op. cit.* (n. 1), 102 f.

<sup>20</sup> Thus Appian, *BC* I. 7. 30 describes the poor Italians as worn out by poverty, taxes (εσφοραί) and military service. Nagle, *op. cit.* (n. 1), 376 claims that this shows that A.'s source referred to Romans, as Italians did not pay *tributum* to Rome. C. Nicolet has argued recently that Appian is referring to taxes paid by Italians in and to their own states (*PBSR* 46 (1978), 1); but even if Appian did intend to refer to *tributum*, the error is hardly of great significance (cf. Gabba's commentary (second edition, 1967) ad loc.).

a critical and dangerous situation.<sup>21</sup> A little later, when describing Gracchus' death, he presents him as being set upon by his attackers while addressing 'paene totius Italiae frequentiam'.<sup>22</sup> The significance of these remarks of Velleius is not derived from his outstanding precision and accuracy as a historian. Indeed his rhetoric is so pronounced that some scholars have discounted his contribution entirely,<sup>23</sup> though, as I hope to show, some genuine information may lurk beneath his dramatic stylistic façade. The real interest lies in the fact that the 'Italian' element should appear in an account written in the late 20s A.D., and moreover in a source of such decidedly anti-Gracchan sympathies as Velleius.

Gelzer postulated a deviant source for Appian, written in the Caesarian or Augustan period, which, as expounded by Badian, added a pro-Italian and populist element to the tradition, which had previously been absent; Badian added the suggestion that this source might have drawn much of its material from the propaganda put out by C. Gracchus after his brother's death, and that it would therefore be unreliable.<sup>24</sup> Although such a source may have existed, the evidence from the extant histories suggests that this is not the whole story. Firstly, while it is not of course an objection to Appian's use of the postulated source that he nowhere cites C. Gracchus,<sup>25</sup> it is strange that Plutarch, by contrast, does cite him,<sup>26</sup> and yet, according to Badian, was not influenced by his source as Appian was. Secondly, it should be noted that Velleius, whose whole account of Tiberius is certainly not pro-*popularis*, and whose ascription of motives to the reformer is much more like that of Plutarch than that of Appian (as might be expected in one descended from the Campanian nobility), also describes the Italians as supporting him.<sup>27</sup> Thus, whether or not the source postulated by Gelzer and Badian existed, the 'Italian' element was not confined to a pro-*popularis* tradition.

Recently Bernstein has attempted to show that the reason for the discrepancy between Appian and Plutarch lies in Gracchus' original intention being to include the Italians; this intention became the basis of Appian's treatment, but he later changed his mind and confined the distribution to Romans only, thus providing the basis for the version in Plutarch.<sup>28</sup> This is an attractive idea, which certainly attempts to preserve as much as possible of the ancient sources. The problem with such a hypothesis is that each source should, according to Bernstein, have seized upon only one stage with apparently no awareness that there was ever an alternative. It is true that Plutarch mentions a change in the proposal, but never that a major part of the adjustment was the exclusion of the Italian allies.<sup>29</sup> Though Bernstein describes the inclusion of the Italians as 'the most crucial and controversial of the Lex Sempronia agraria's possible provisions', he has to assume that the rejection of the clause was either omitted or at least not emphasized by the sources Appian and Plutarch used. While he probably overrates the significance of the inclusion of Italians in terms of a second-century *lex agraria* (see below, p. 4), such a process as he describes is hard to accept.

Unfortunately none of this 'Quellenforschung' helps very much in determining what Gracchus himself thought. As with most source-criticism, the best that can be expected is the clarification of the views held by our extant sources, and the materials out of which those views were constructed. As in this case our earliest extant historian of the period, Velleius, is, by his own calculation, writing 162 years after the event,<sup>30</sup> it is not possible to solve the problem of what actually happened in 133 by simply examining the relations of the sources to each other, important though that is.

<sup>21</sup> Vell. Pat. 2. 2. 2-3, reading 'statim' with Gelenium, rather than 'statum' of the *editio princeps*. As Fraccaro has shown (*Studi sull' età dei Gracchi* (1914), 155 n. 1) there is no significance in Velleius' use of the plural 'legibus', cf. Tacitus, *Ann.* 12. 60.

<sup>22</sup> 2. 3. 2.

<sup>23</sup> Thus Badian, *Foreign Clientelae* (1958), 170 n. 2.

<sup>24</sup> Gelzer, op. cit. (n. 12), 299-300 = *Kl. Schr.* 11. 76-7; Badian, op. cit. (n. 23), 172-3; *contra*, P. Fraccaro, op. cit. (n. 21), 30-4.

<sup>25</sup> Badian, op. cit., 173 n. 1, though Appian is not uniformly silent about sources, thus *Iber.* 88. 382.

<sup>26</sup> *TG* 8. 9.

<sup>27</sup> Thus both Velleius and Plutarch describe

Gracchus as a promising young optimiate who went wrong (Vell. Pat. 2. 2. 1-2; Plutarch, *TG* 2-4; 7. 7), and both ascribe his involvement in the disgrace of Mancinus at Numantia as the basic reason for his entry into 'popularis' politics (Vell. Pat. 2. 2. 1; Plutarch, *TG* 7). Appian has neither of these elements in his account of Gracchus, nor indeed does Gracchus appear in his version of the events surrounding Mancinus' surrender in Spain in 137 (Appian, *Iber.* 80. 346 f.). For Velleius' antecedents, see G. V. Sumner, *HSCP* 74 (1970), 257-65.

<sup>28</sup> Bernstein, op. cit. (n. 1), 137-59.

<sup>29</sup> *TG* 10. 3.

<sup>30</sup> 2. 2. 2.

A second approach may be made to the problem by way of the historical precedents for the type of measure that Gracchus put forward, and the motives attributed to him in the sources for doing so in 133. If laws such as Gracchus' had usually provided for both Italians and Romans, then the lack of specific mention of Italian participation in some of the sources becomes less significant. If, on the other hand, it is possible to show that Gracchus' intentions in passing the law point to Roman beneficiaries only, this will help to resolve the question in favour of the picture presented by Plutarch.

It is far from easy to be certain about Italian holdings of *ager publicus* in the period before the Hannibalic wars, not least because two major sources on the question are the passages of Appian and Plutarch already mentioned.<sup>31</sup> It does seem clear, however, that in the first few decades of the second century non-Romans were obtaining public land from the state. In 194 three colonies of Roman citizens were set up at Puteoli, Salernum and Buxentum, and it is clear from an incident of that year that Italians with Latin rights had been enrolled as members of the colonies.<sup>32</sup> When in 173 land in Cisalpine Gaul was distributed in individual allotments (*virittim*), the board of ten who made the distributions gave ten *jugera* each to citizens and three to 'sociis nominis Latini'.<sup>33</sup> It is unfortunate that Livy's phrase 'socii nominis Latini' is imprecise. *Prima facie* it should mean 'Latin allies', that is, those with Latin rights, and thus of a privileged status compared with other allies. There are, however, several places in which the phrases 'socii nominis Latini' and 'socii ac nominis Latini' (i.e. all the Italian allies, including the Latins) are used interchangeably, and it is impossible to determine which is intended here; recent linguistic investigation seems to show that, if anything, the meaning 'Latins and other allies' is more likely. An individual case suggests that some non-Latin Italians were enrolled in citizen colonies at about this time. The poet Ennius, from Rudiae in Calabria, was given citizenship as a member of one of the two colonies of Potentia and Pisaurum.<sup>34</sup> This cannot be taken as a typical example, and, because of the uncertainties of Livy's usage, we cannot know to what extent non-Romans who were *not* Latins were involved in the extensive founding of Roman citizen colonies in this period. However there can at least be no doubt that by the early second century Roman *ager publicus* was being allotted to non-Roman Italians in both colonies and individual assignments; and that among these Italians were certainly members of the Latin communities, and probably a number of non-Latin allies.<sup>35</sup> Indeed this process, whereby, at least for colonial settlements, obtaining land was dependent upon a change of citizenship, was commonplace in Italy. Whenever a *Latin* colony was established, from the foundation of Caes in 334 onwards, citizens of the new community were drawn from Rome and Italy, abandoning their earlier status in exchange for citizenship of the new colony and a share of its land.<sup>35a</sup>

Apart from the acquisition of full ownership of former *ager publicus*, which provides a direct precedent for Gracchus' own allotments, there is some evidence outside the literary sources that Latins and Italians were farming state land on a 'leasehold' basis during this period. The *lex agraria* of 111, inscribed on the Tabula Bembina, talks of land that remains *ager publicus* in Italy as being farmed by Romans, Latins and *peregrini*, a category which in the Italian context must refer to Italian allies. Although this cannot be adduced as positive proof for the situation before 133, it is at least possible that in the mid-second century, non-Romans and Romans had been farming state land side by side before Gracchus' intervention, as Appian's account suggests.<sup>36</sup>

<sup>31</sup> Appian, *BC* 1. 7. 26 f.; Plutarch, *TG* 8. On the earlier situation, see J. Göhler, *op. cit.* (n. 1), 70 f.; A. Burdese, *Studi sull'ager publicus* (1952), 13 f.

<sup>32</sup> The law setting up the colonies had been passed in 197 (Livy 32. 29. 3-4). Before they were actually founded, some Hernicans from Ferentinum had been claiming Roman citizenship on the grounds that their names were on the roll of the new colonies, a claim which was disallowed by the senate (Livy 34. 42. 5-6; cf. R. E. Smith, *JRS* 44 (1954), 18-20).

<sup>33</sup> Livy 42. 4. 3-4.

<sup>34</sup> On *socii ac nominis Latini*, M. Wegner, *Untersuchungen zu den lateinischen Begriffen Socius und*

*Societas* (1969), 95-104. On Ennius, Cic., *Brut.* 20. 79 and Livy 39. 44. 10.

<sup>35</sup> So Beloch, *Der italische Bund* (1880), 218-20; E. T. Salmon, *Roman colonization under the Republic* (1969), 98-9.

<sup>35a</sup> In general, see Salmon, *op. cit.*, 55 and 174 n. 65. For Romans changing their status see Cic., *pro Caec.* 33. 98, *de domo* 30. 78 and Gaius 3. 55.

<sup>36</sup> *Lex agr.* (*FIRA* 1. 8) line 29: '... agreis, qu[ui] in Italia sunt qui P. Mucio L. Calpurnio cos. publiceis populi R[omane]i fuerunt ceivi] Romano facere licebit, item Latino peregrinoque'.

Thus, if Gracchus had wished to include non-Romans among the beneficiaries of his measure, he could have done so. But is there any indication that he *did* so wish?

The difficulty with this question, or any such question about Gracchus' intentions, is that our evidence is insufficient to answer it without reference to an overall view of Gracchus' political aims and personal character. Thus a recent writer has argued that 'unless we are to believe that the Gracchans were acting for purely altruistic motives, it is difficult to avoid concluding that the main beneficiaries of the law were Romans who could first pass the measure and afterwards show their gratitude in both the tribal and centuriate assemblies.'<sup>37</sup> Such an argument depends on two assumptions: firstly that the popular assemblies acted always and only in their own short-term interests; secondly that Ti. Gracchus and his associates were really only concerned to attract and retain the political support of the popular assemblies, irrespective of the value or otherwise of any proposals they might make when judged by other criteria. The second assumption merely begs the question of Gracchus' intentions. The first seems, *prima facie*, to be simply false. Take, as an instance, the rejection of C. Gracchus' proposal to extend the full Roman citizenship to Latins, and Latin rights to the other Italian allies, an event which might be taken as demonstrating clearly the short-sighted selfishness of the *concilium plebis*.<sup>38</sup> Yet apparently Livius Drusus, in opposing the measure, did so by proposing the lesser privilege of *provocatio* for the Latins,<sup>39</sup> which implies at the very least that even in this case there were a substantial number of people in the assembly who felt that the Latins deserved some improvement in their condition, an improvement which it is difficult to equate with any short-term benefit to the Roman *plebs*.

It is therefore extremely difficult to make any deductions about the intentions of Gracchus' *lex agraria* without prejudging the issue of the identity of its beneficiaries, but there are, for the purposes of the present investigation, certain points worth noting about almost any explanation which involves both an attempt to alter the pattern of land-owning in Italy, and the wider implications of that pattern, whether, for example, in terms of re-establishing peasant farming communities,<sup>40</sup> or of improving the ability of the state to raise troops to meet Rome's increased military commitments.<sup>41</sup> Firstly, if this was the *sort* of problem that Gracchus was attempting to solve, it is, on the face of it, highly improbable that it was confined to the Roman inhabitants of Italy alone, and was not experienced also by their non-Roman neighbours; this observation applies to *both* the explanations I have outlined. Secondly, and in particular, whatever the changes in patterns of land-holding and agriculture were in the second century, we have no reason to believe that they were confined to those acres of *ager Romanus* which were scattered throughout the whole peninsula, and that they avoided the land of the Latins and allies.<sup>42</sup> This is not to say that Gracchus wanted to help them as well as their Roman counterparts, but merely that in all probability they would be suffering from the same problems.

Thirdly, the question of improving manpower for army recruitment. Here the situation is somewhat different, particularly because some scholars have argued that the reason why Tiberius failed to include the Italians in his measure was that he was only interested in helping Roman citizens, who could enrol in the legions.<sup>43</sup> If Gracchus' intention was to improve on a permanent basis the manpower resources of the Roman army, it is argued, he would not have distributed land to non-Romans. There are, however, two major difficulties with this argument: the first is that Appian only refers to the status of Gracchus' supporters *before* they had received their allotment of land; there is nothing to indicate their eligibility or otherwise for recruitment into the legions after they had been provided with their small parcel of *ager publicus* from the triumvirs. Secondly, the figures available to us of Roman armies during the second century make it quite clear that never were more than half of the forces put into the field Roman citizens, and often no more than one-third. The remainder were allies, Latin and Italian.<sup>44</sup> If Gracchus were attempting to relieve a manpower problem

<sup>37</sup> Nagle, art. cit. (n. 1), 378.

<sup>38</sup> Appian, *BC* 1. 23. 98-100; Plut., *CG* 8-9.

<sup>39</sup> Plut., *CG* 9. 5.

<sup>40</sup> So H. M. Last, *CAH* IX. 1-10; G. Tibiletti, *Athenaeum* 27 (1949), 37-41.

<sup>41</sup> So D. C. Earl, *Tiberius Gracchus* (1963), 30-40; Badian, op. cit. (n. 1), 684-90.

<sup>42</sup> A point well made by Earl, op. cit. (n. 41), 21-2; cf. Göhler, op. cit. (n. 1), 124-5.

<sup>43</sup> D. C. Earl, op. cit. (n. 41), 30 f.

<sup>44</sup> Brunt, *Italian Manpower 225 B.C.-A.D.14* (1971), 677-86.

(whether real or imagined), it would have been extraordinary for him to have ignored so important a source of soldiers as the allied communities.

It may be said, and rightly, that talk of Gracchus' aims is inevitably speculative, and that an examination of historical precedents cannot show whether he used or abandoned those precedents. However, enough has been said, I hope, to show that the inclusion of Italians among the beneficiaries of Gracchus' law would not have been an historical absurdity and that Appian's view deserves to be taken seriously. It is on that basis that I wish to proceed.

### III

As Tibiletti has shown with admirable clarity, Gracchus' law was a major departure from the laws which both Appian and Plutarch describe as its predecessors.<sup>45</sup> Those laws, whenever they were passed, were aimed at limiting the holdings of *ager publicus* in the hands of any individual: they were *leges de modo agrorum*. Gracchus' law was concerned not only to impose a restriction of this sort, but to redistribute the resulting surplus to those who needed it. As Appian remarked, it was the setting up of a commission to carry out this work which marked the real departure from previous practice.<sup>46</sup> In essence, he appears to be combining the aims of a *lex de modo agrorum* with those of a law on the distribution of land to individuals. The importance of the second aim for us at the moment is that land distribution involves a change in ownership, and such changes in ownership immediately involve the whole question of land tenure under Roman law.

There can be no doubt of the situation before 133: all the land that would be affected subsequently by Gracchus' legislation was *ager publicus* and belonged to the state. That is to say that the ownership of the land belonged to the state—it was the 'state's land' (*ager publicus*) even though the physical control of the land was in the hands of a private individual, the *possessor*.<sup>47</sup> It is evident from the *lex agraria* of 111 that by that date both the land which Gracchus left in the hands of the large-scale *possessores* and that which had been distributed to the new settlers by his three-man commission was no longer *publicus* but *privatus*.<sup>48</sup> It is probable indeed that both these categories of land changed hands, from state to private ownership, as a direct result of Gracchus' law.<sup>49</sup>

The reason for emphasizing here that a change of ownership had taken place is that, in Roman law, land described by the jurists of the second century A.D. as 'in Italico solo' formed part of the category of 'res Mancipi'. The distinction between 'res Mancipi' and 'res nec Mancipi' is certainly a very ancient one, dating back to a primitive and purely agricultural community,<sup>50</sup> and although it is improbable that it applied to all Italian land before the first century B.C., it will have applied to the *ager Romanus*, and thus inevitably to the *ager publicus*. The importance of the distinction for this discussion is that *res Mancipi* could only be transferred from one owner to another by a formal ceremony known as *mancipatio*, or by the legal devices known as *iure cessio* and *usucapio*, which do not affect this

<sup>45</sup> G. Tibiletti, *Athenaeum* 26 (1948), 173-229; 27 (1949), 3-34; 28 (1950), 183-245; cf. Appian, *BC* 1. 7. 26-8, 34; Plutarch, *TG* 8, 1-4.

<sup>46</sup> *BC* 1. 9. 37.

<sup>47</sup> On *possessio*, see A. Watson, *The Law of Property in the later Roman republic* (1968), 81 f.

<sup>48</sup> *Lex agr.* (*FIRA* 1. 8) lines 1-10. The fundamental nature of the *privatus/publicus* distinction is made very clear by M. Kaser, *ZSS* 62 (1942), 1-26. It should be noted that the question of whether or not *vectigal* was paid on these holdings, or whether it was possible for the owner to buy or sell the land, does not affect the status of the land as *ager privatus*. Though it is quite likely that it would not be 'optima lege privatus' if such restrictions applied, it would still be land held *ex iure Quiritium* (cf. *lex agr.* line 27; Kaser, art. cit., 6-13, 25-6).

<sup>49</sup> Kaser, art. cit., p. 11 and n. 32 argues that the 'veteres possessiones' are still *ager publicus* until 111, because they are not said to have been assigned by

the triumvirs in lines 1-2 (cf. lines 16-17); and that the concession described in Appian, *BC* 1. 11. 46 may be no more than the renunciation of the state's right to recall land (cf. lines 11-12 on the *viasii vicani*). However if this land remained *ager publicus*, it is difficult to see why, in laying down rules for the establishment of a title, the legislator should have concerned himself with sales and (it would seem) testamentary dispositions of those who were *possessores* of *ager publicus* in 133, unless the situation had changed at that date. Neither is it necessary to supplement *lex agr.* lines 4-6 to refer to non-Roman holders of land (as K. Johannsen, *Die lex agraria des Jahres 111 v. Chr.* (Diss. München 1971), 220 f.); indeed, as the following argument shows, such a reference would have been wholly inappropriate in 111.

<sup>50</sup> A. Watson, *Roman Private Law around 200 B.C.* (1971), 60 f.

particular instance.<sup>51</sup> The ceremony involved is described by the legal writer Gaius in these terms, for the sale of a slave: in the presence of at least five witnesses, who had to be Roman citizens of full age, and of another with the same qualifications who held a bronze scale (and was hence called the *libripens*), the man who was to be the new owner held a bronze ingot and pronounced the words HVNC EGO HOMINEM EX IVRE QVIRITIVM MEVM ESSE AIO ISQVE MIHI EMPTVS ESTO HOC AERE AENEAQVE LIBRA, then struck the scale with the ingot and handed it over to the former owner as a formal 'price'.<sup>52</sup> The significance for us lies in the words 'ex iure Quiritium', which demonstrate something that in any case is elsewhere made explicit, that this form of transfer was available only to Roman citizens, or to those who had the right of *commercium* with the Romans, specifically in our period the Latins.<sup>53</sup> The importance of the distinction between *res Mancipi* and *res nec Mancipi* during the second century is illustrated by an incident recorded by Livy in 170 B.C. Ambassadors were received by the senate from three tribes from the north of the Adriatic and from the Gallic King Cincibilis, complaining about the activities of C. Cassius Longinus, the consul of the previous year. Although the senate was unwilling to take cognisance of their complaints before the ex-consul returned from military service in Macedonia, they sent the ambassadors back with a conciliatory reply, and substantial gifts. As these included horses, which were *res Mancipi*, a special grant of *commercium* was made, so that they could take the horses, and remove them from Italy.<sup>54</sup>

Thus the process of conveyance of the land distributed under the terms of the *lex agraria* would appear to exclude all those *peregrini* who did not have the right of *commercium*. Another consideration would seem to restrict its beneficiaries still further. Landownership and citizenship were so closely linked in the ancient world that a change in the nationality of the owner would appear to entail a territorial acquisition by the state to which the new owner belonged. This is illustrated by the story in Servius that when the *pater patratus*, as head of the college of *fetiales*, declared war on Pyrrhus (presumably in 280), a soldier captured from Pyrrhus' army was made to purchase a piece of land which could count as a *locus hostilis* for the purpose of fulfilling the fetial rites.<sup>55</sup> Whatever the truth or falsity of this story, it reflects a legal situation in which the 'nationality' of the land was determined by that of its owner. This observation may be supplemented by Varro's note<sup>56</sup> that the *augures publici* divided all *agri* into five classes: *Romanus*, *Gabinus* (that is, belonging to the Latin community of Gabii), *peregrinus*, *hosticus* and *incertus*. The purpose of the *pater patratus* was to convert *ager Romanus* into *ager hosticus*. Similarly, if land were purchased by a *peregrinus*, it would cease to be *ager Romanus* and become *ager peregrinus*. It is clear that this would be the position if either Latins or non-Latin Italian allies were involved, since Varro points out that *ager Gabinus* is in fact also *ager peregrinus* except that special auspices were used there.<sup>57</sup> The peregrine status of the Latins before the Social War is confirmed by Gaius, who describes them as 'Latinos . . . qui proprios populos propriasque civitates habebant et erant peregrinorum numero'.<sup>58</sup> Although Latins might possess the right of *commercium*, which enabled them to obtain ownership of *res Mancipi*, this did not of course

<sup>51</sup> Watson, op. cit. (n. 47), 17. *In iure cessio* required the transferor and the transferee to appear before the praetor with the thing to be transferred, and was thus inappropriate to land (Gaius 2. 24; cf. I. 121); *usucapio* required that the new owner should have been in possession for two years, which again does not fit the procedures which the land commission is likely to have used (Gaius 2. 42; Ulpian, *Tit.* 19. 8). Note Ulpian's remark 'mancipatio propria species alienationis rerum Mancipi' (*Tit.* 19. 3).

<sup>52</sup> Gaius I. 119.

<sup>53</sup> Ulpian, *Tit.* 19. 4: 'mancipatio locum habet inter cives Romanos et Latinos coloniarios Latinosque Iunianos eosque peregrinos, quibus commercium datum est'. It seems probable that the *ius commercii*, which was one of the privileges of the Latins (A. N. Sherwin-White, op. cit. (n. 1), 109), was not given to the Italians at this date. The only evidence to the contrary that Sherwin-White

produces is Livy 35. 7. 5, which refers to money transactions; as *pecunia* was *res nec Mancipi*, this could have been dealt with under the more flexible jurisdiction of the *praetor inter peregrinos* (Sherwin-White, op. cit. (n. 1), 125-6, cf. F. Serrao *La iurisdictio del pretore peregrino* (1954), esp. pp. 7 f. and 36 f.).

<sup>54</sup> Livy 43. 5, esp. 9: 'illa petentibus data ut denorum equorum iis commercium esset educendique ex Italia potestas fieret'. Cf. E. Weiss, *ZSS* 37 (1916), 141.

<sup>55</sup> Serv., in *Aen.* 9. 52, cf. J. Marquardt, *Röm. Staatsverwaltung* (1885) III, 422-3.

<sup>56</sup> Varro, *L. L.* 5. 33. On the religious importance of the *Romanus/peregrinus* distinction in the second century, see E. Rawson, *CQ* n.s. 21 (1971), 161-3.

<sup>57</sup> Varro, loc. cit.: 'Gabinus quoque peregrinus, sed quod auspicia habet singularia, ab reliquo discretus'.

<sup>58</sup> Gaius I. 79.

amount to citizenship.<sup>59</sup> Thus unless Gracchus was prepared to bring about the legal, political and sacral complexities which would result from patches of *ager Romanus* being transferred to *peregrini*, which seems highly improbable, it is difficult to see how he could have distributed *ager publicus* to Latins and Italians.<sup>60</sup> What then of the Italians who, according to Appian, so strongly supported Gracchus' bill?

There appear to be two ways of resolving the dilemma: either Appian is wrong or, alternatively, those men who supported Gracchus from the Italian communities were in fact Roman citizens by the time that they actually received their allotment of land from the triumviral land commission.

## IV

It is the contention of this paper that Ti. Gracchus did attempt to help the Italians through his agrarian measure, and that those who received land also, of necessity, were granted the Roman citizenship. Such grants to individuals had occurred, though under different circumstances, during the Hannibalic war, when on one occasion 700 soldiers from Praeneste and on another 300 Campanian cavalry were offered the citizenship as a reward for military services; moreover alterations in citizen-status were being effected during the second century, and some of these at least (in particular the grant of the franchise to *cives sine suffragio*) seem to have been in the gift of the *populus* without reference to the senate.<sup>61</sup> In addition, as mentioned above (p. 4) non-Romans (either Latins, or perhaps Latins and other Italian allies) were admitted to citizenship through enrolment in citizen colonies.

But if this is what happened in the case of Gracchus' law, some trace would be expected in the sources, frustratingly incomplete though they are; and there are indeed two places where, I think, just such traces appear. The first is in the very sketchy account given by Velleius.<sup>62</sup> Gracchus' programme is described in two phrases: 'pollicitus toti Italiae civitatem, simul etiam promulgatis agrariis legibus'. It is not always noticed that Velleius is *not* simply stating that Gracchus not only proposed his agrarian measures but also promised citizenship to the Italians (in the way in which Plutarch presents a series of proposals, alleged to be a programme for Tiberius' projected second tribunate).<sup>63</sup> Velleius, unlike Plutarch, places great emphasis on the simultaneity of these two proposals. If what he is recording is a heavily abbreviated version of legislation which offered land to both Romans and Italians, and which enabled the latter to gain citizenship in order to receive the land, then the simultaneity is precisely what we should expect.

The second author who seems to reveal knowledge of what Gracchus was doing is Cicero. There are two places in his dialogue *de republica*, the dramatic date of which is 129 B.C., in which he puts into the mouth of Laelius remarks about Ti. Gracchus, and in both cases the allies and Latins are mentioned. They are as follows:

- (a) nam ut videtis mors Tiberii Gracchi, et iam ante tota illius ratio tribunatus divisit populum unum in duas partis;

and he goes on to describe the effects of the disturbances created by Gracchus and his supporters:

... concitatis sociis et nomine Latino, foederibus violatis, triumviris seditiosissimis aliquid cotidie novi molientibus, bonis viris locupletibus perturbatis (*de rep.* 1. 19. 31).

- (b) \*\*Asia Ti. Gracchus perseveravit in civibus sociorum nominisque Latini iura neclexit ac foedera (*de rep.* 3. 29. 41).

The second of these two passages has been taken to show that Gracchus confined his

<sup>59</sup> M. Kaser, 'Vom Begriff des "commercium"', in *Studi Arangio-Ruiz* II (1953), 131 f., esp. 134-52.

<sup>60</sup> The position is expounded by Mommsen, *Rom. Staatsr.* III. 824-32, though he denies the conclusion adopted here (*ibid.*, 831 n. 1).

<sup>61</sup> Livy 23. 19. 16-20. 2; 23. 31. 10 (cf. G. Tibiletti, *Athenaeum* 28 (1950), 212 f.); on the franchise, Livy

38. 36. 7 (cf. Badian, *op. cit.* (n. 1), pp. 694-6). Note also the case of the Carthaginian deserter, Valerius Muttines, who was given citizenship and a house in Rome during the Hannibalic War (Livy 27. 5. 7; Asconius 13 C).

<sup>62</sup> Velleius 2. 2. 2 (cf. above p. 2 f.).

<sup>63</sup> Plutarch, *TG* 16. 1.



attentions to citizens, and therefore was not interested in Italian allies ('perseveravit in civibus').<sup>64</sup> Unfortunately the sentence follows immediately on a lacuna in our text which makes it virtually impossible to tell in which context Gracchus 'perseveravit'. As the rest of the section goes on to talk of an insidious change from the rule of 'ius' to that of violence, and the consequent change in relationships between those who had previously obeyed the Romans willingly, and now were to be held down by fear, it is probable that Laelius was talking about something fundamentally disruptive to the constitution. It is perhaps more likely that this was Gracchus' attempt to gain political ascendancy, and perhaps the charge that he was aiming at 'regnum', than a decision to confine land distribution to Roman citizens alone; but any interpretation is bound to be extremely speculative.<sup>65</sup>

What is clear from both passages is that Laelius is accusing Gracchus, presumably on the basis of the agrarian law, of neglecting and violating the treaties and rights of the allies and Latins. This has been connected with the approach, mentioned by Appian and by the Bobbian Scholiast, to Scipio Aemilianus for help against the triumviral commission in 129.<sup>66</sup> The Italians (Ἰταλιῶται in Appian) or the Latins (according to the Schol. Bob.) objected because of difficulties over boundaries and lack of documentation regarding title to the land, and because some of them were being moved from good land to poor, uncultivated and swampy land (so Appian). This incident, when taken with the passages from Cicero, raises two important questions: first, if Appian was right that Gracchus had enjoyed Italian support in 133, who are these Italians who are now lodging their objections with Scipio Aemilianus; and secondly, if Gracchus could be accused of neglecting the 'iura ac foedera' of the Latins and allies, which rights had he violated?

To take the second question first, it is surely improbable that this breaking of treaties refers to the commission's activities in resuming and redistributing *ager publicus*. Though no doubt the larger landowners among the Italian allies who had been working sections of public land would be as unwilling as their Roman counterparts to abandon it, it is most unlikely that such individuals would be able to claim that they had any right to it under the *foedera* agreed between themselves and the Romans, when individual Romans were unable to make a similar claim; and the words 'iura ac foedera' do have a decidedly constitutional ring to them. There is one area where accusations of just this sort might have been made, and that is in the granting of citizenship to citizens of allied or Latin states without the assent of the governing bodies of those states. For instance, when Cicero was defending Cornelius Balbus in 56 against the accusation that his grant of citizenship was faulty, it is clear that he had to overcome the technical objection that, as formal assent had not been given by the city of Gades, Balbus' place of origin, the ancient *foedus* with the Gaditanes had been broken, and their rights in this matter had been violated. Cicero's opponent alleged that Pompey 'foedera scientem neglexisse, violasse, rupisse'.<sup>67</sup> The language is strikingly similar to that used in the *de republica*. Moreover we know that just such complaints about the 'poaching' of citizens, especially from the Latin cities, had been made earlier in the second century. As a result, in 187 12,000 Latins who had been registered by the censors on the citizen lists were sent back to the communities from which they had come. Ten years later, following further complaints, the process was repeated, and the right of Latins to transfer their citizenship from their own states to Rome was restricted so that only those who left children behind them could migrate.<sup>68</sup> Thus if Gracchus was making it possible for Italians and Latins to enrol as Roman citizens (thereby explaining in part the increase in census figures at this time), he and his commissioners might well be faced with charges of violation of the rights and treaties of the Latin and Italian communities.<sup>68a</sup>

<sup>64</sup> So Badian, *Foreign Clientelae*, 170-1.

<sup>65</sup> It is worth noticing that 'perseveravit in civibus' is in any case an extremely odd phrase for 'he confined his attempts to benefit people to Roman citizens'. All uses of *perseverare* in that I have been able to trace in Cicero have referred to continuance in a line of action or in an opinion: *ad Att.* 6. 3. 5; 8. 11. 5; *ad fam.* 3. 10. 6; *de prov. cons.* 10; *de inv.* 2. 5; 2. 9; *de leg.* 3. 26; *de off.* 3. 95; *de nat. deor.* 3. 83.

<sup>66</sup> Appian, *BC* 1. 18. 76 f.; Schol. Bob. on *pro Mil.* 16 (Stangl p. 118): 'P. Scipio Africanus . . . cum Latinorum causam societatis iure contra C. Gracchum

triumvirum eiusque collegas perseveranter defensus esset, ne ager ipsorum divideretur, repentina morte domi suae interceptus est.'

<sup>67</sup> *Pro Balb.* 13. Cf. also *pro Balb.* 10; 13; 19; 29 and 52 for similar language about treaty-breaking, and H. Braunert, 'Verfassungsnorm und Verfassungswirklichkeit in spätrepublikanischen Rom', *Das altsprachliche Unterricht* IX. 1 (1966), 51-73, for an analysis of the argument.

<sup>68</sup> Livy 39. 3. 4-6; 41. 8. 6-12.

<sup>68a</sup> For the census figures see P. A. Brunt, *Italian Manpower* (1971), 13 and 61-83.

If this is what was happening, it becomes easier to answer our first question, as to the identity of the Italian objectors in 129. Just as in the 180s and 170s it was the ruling classes of the Latin states who were worried about the continued survival of their own communities and of the preservation of their special relationship with Rome, so in 129 it is likely to have been the large landowners among the Latins and allies, who had nothing to gain from Gracchus' measure, and might well be losing not only *ager publicus* which they had previously farmed but also citizens from their own cities, who approached Scipio Aemilianus. It has been objected that there is no sign of a 'class-war' among the Italians on this subject, and that to import such a concept is gratuitous and distorting.<sup>69</sup> It is true that we have almost no evidence for feelings about Gracchus' law in the different sections of the Italian cities, a fact which, given our huge ignorance about the reaction within them to *any* of the events of this period, should not surprise. However, it is equally plain that all our sources view Tiberius' tribunate as divisive in the Roman context, both in inception and in consequence.<sup>70</sup> If land were allotted to the Italian poor as well as the Roman, and removed from the Italian landowners as well as the Roman, it would be remarkable if the same hostility were not present in the Italian cities as in Rome. Moreover Cicero, in a passage we have just been examining,<sup>71</sup> links together as four effects of Gracchus' tribunate and death the rousing up of the allies and Latins, the violation of their treaties, the continual seditious innovation of the triumvirs and the perturbation of the 'boni viri locupletes'. It is hard to escape the conclusion that the Italians and allies for whom Cicero's Laelius is concerned are the rich and powerful.

## V

My conclusion, then, is that we do have enough evidence from our literary and historical sources, and from legal and epigraphic ones, to take seriously the assertions of Velleius and Appian that Italians were included among the supporters of and beneficiaries under Ti. Gracchus' land law; and that he achieved this by means of a combined offer of land and citizenship to the Italian poor. The general historical context into which such a view should be set also seems to support such a contention, as can be seen from three linked considerations.

Firstly, it has been shown that Gracchus' measure proposed to alter fundamentally the legal status of a considerable number of pieces of land within the *ager Romanus*, and that this would inevitably involve the ancient procedures of Roman civil law. This factor has been overlooked by most scholars who in recent years have written about the *Lex Sempronia agraria*. The view propounded here attempts to explore some of the consequences; but, irrespective of the correctness of this particular account, it is essential that the legal aspect of Gracchus' work be recognized in any assessment of him.

Secondly, and connected to the importance to Gracchus of the ancient process of *mancipatio*, there are clear signs that an appeal to antiquarian precedents was part of the propaganda used by Gracchus and his supporters. This might in any case be expected when they were promoting a bill to re-establish the old peasantry uprooted by changes in social and economic conditions. It is particularly apparent in the introductory remarks of both Appian and Plutarch, which point back to an earlier law, a law which Appian at least suggests was passed in the fourth century B.C.<sup>72</sup> It seems clear also that the propaganda of the Gracchan reformers had a pronounced effect on the writers of earlier republican history a century later, in particular Livy and Dionysius of Halicarnassus.<sup>73</sup> It is interesting to find, therefore, that both these authors describe allocations of land under allotment schemes to non-Romans, and that Livy in more than one passage links grants of land and citizenship together.<sup>74</sup>

<sup>69</sup> So Badian, *Foreign Clientelae*, 171.

<sup>70</sup> e.g. Cic., *de rep.* 1. 19. 31; Plutarch, *TG* 8-9; Appian, *BC* 1. 9-10; Velleius 2. 2. 3.

<sup>71</sup> Cic., *de rep.* 1. 19. 31; above p. 8.

<sup>72</sup> Appian, *BC* 1. 8-9; Plutarch, *TG* 8. The air of antiquity which the sources give is undoubtedly present, whether or not the details of the law in fact date from c. 167, as ably argued by Tibiletti (*Athenaeum* n.s. 26 (1948), 191 f.).

<sup>73</sup> Dionysius of Halicarnassus: see E. Gabba, *Athenaeum* n.s. 42 (1964), 29 ff.; on Livy, see R. M. Ogilvie, *Commentary on Livy, books 1-5* (1965), 555; 591 and 547.

<sup>74</sup> Dion. Hal. 8. 68-76, cf. Gabba, art. cit. (n. 73); Livy 6. 4. 4, 'eo anno in civitatem accepti qui Veientium Capenatumque ac Faliscorum per ea bella transfugerant ad Romanos, agerque his novis civibus adsignatus' (389 B.C.); cf. Livy 5. 30. 8

Finally, it has generally been recognized, as Gabba puts it, that 'in the problem concerning the extension of the Roman citizenship to the Latins and Italians there is one point that can be regarded as certain: its origin is linked with the question of *res agraria* raised by the Gracchi at the end of the second century B.C.'<sup>75</sup> The two are closely connected by the time of Fulvius Flaccus' abortive proposals in 125,<sup>76</sup> but it has been difficult to trace the beginnings of the link before that date. If the suggestions of this paper are accepted, it may be seen that Gracchus, in stretching the law to achieve a specific and desirable end, had set on foot the series of events which was to lead to the turmoil of the Social War. It would not be the only instance of that single-minded reformer releasing forces which were to go far beyond his own somewhat limited vision.<sup>77</sup>

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<sup>75</sup> E. Gabba, *Republican Rome, the Army and the Allies* (tr. P. J. Cuff) (1976), 70 = *Athenaeum* n.s. 32 (1954), 41.

<sup>76</sup> Appian, *BC* 1. 21. 86 f.; Val. Max. 9. 5. 1.

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