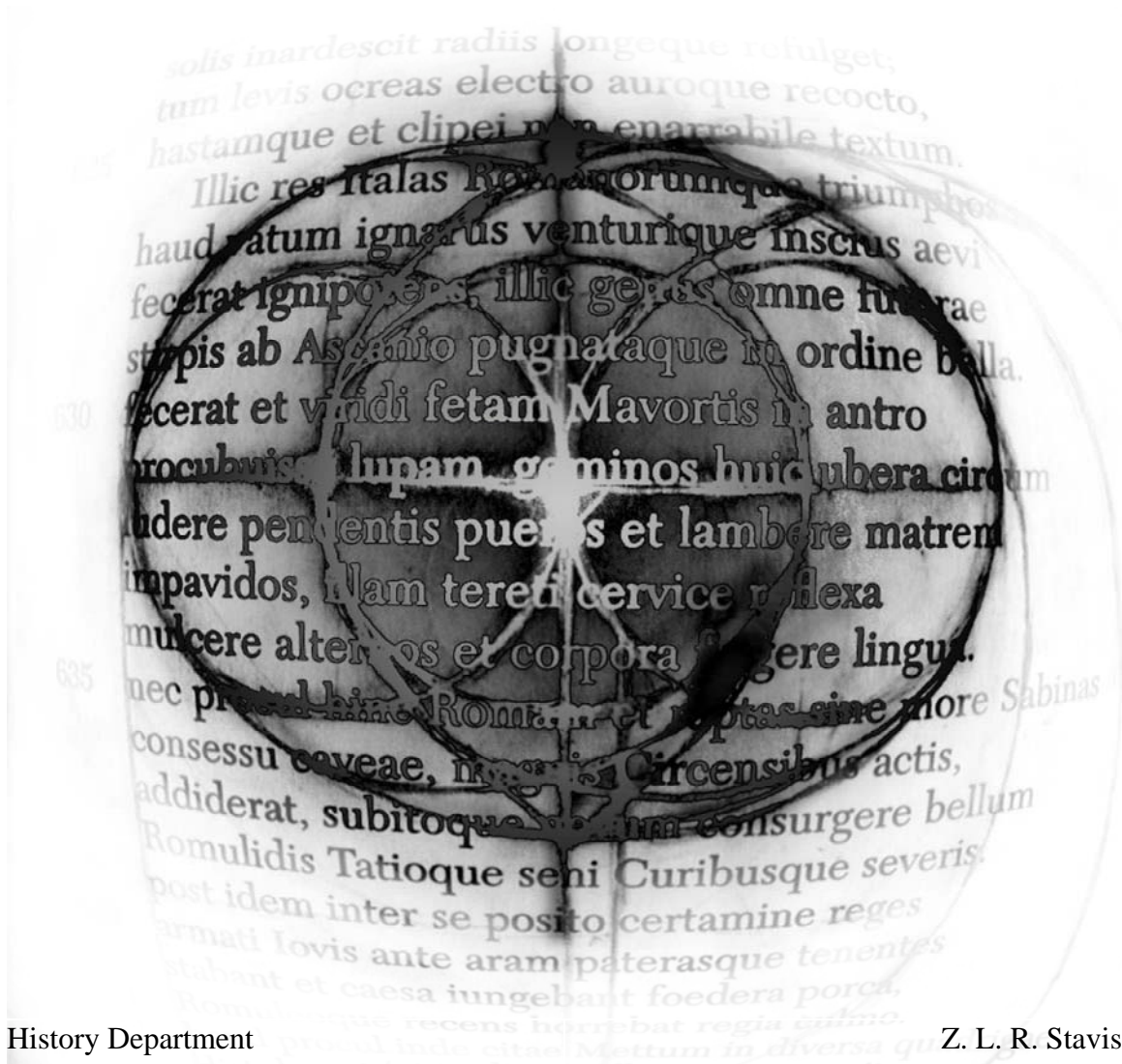


State of Affairs before the Fall

Roman Agrarian Legislation in the Republic of Cicero (129-63 B.C.)



History Department

Z. L. R. Stavis

Barnard College

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Columbia University

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Part I: *Ager Publicus*

**Introduction**

Of the lands conquered by the Roman Republic, confiscated and declared public land, “*ager publicus*,” a part were sold, part became colonies, and the remaining portion, decimated by war and unattractive to either colonialists or buyers, went to line the coffers of the Roman state. The duty of distributing this land fell to the Senate, which publicly proclaimed the *agri publici* open to the cultivation of any willing to provide a tithe of their grain, 1/5 of the fruit, and a number from their annual livestock yield to the Republic in taxes; in the surviving section of his *Roman History*, Appian (c.95-165) writes that this was theoretically done until a plan of distribution could be settled upon, “in order to multiply the Italian race, which the Senate considered the most laborious of peoples. But the very opposite thing happened.”<sup>1</sup>

Taking this opportunity to amass vast tracts of *ager publicus*, according to both Appian and Plutarch (c.45-125 B.C.), wealthy men accumulated spacious estates, the *latifundia*, manned by increasing numbers of slaves.<sup>2</sup> Inconsistencies in the accounts of both historians mean that additional sources must be called upon to determine if the situation was resultant in the landlessness among the citizenry leading up to the violence in 133 B.C. – the year Tiberius Gracchus, elected Tribune of the Plebs,<sup>3</sup> put the promised agrarian legislation to the vote. D.C. Earl, author of *Tiberius Gracchus – a study in*

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<sup>1</sup> Appian, *Civil Wars* 1.1.7. Transl. Horace White, London: Macmillan & Co. Ltd., 1899.

<sup>2</sup> App., *B.C.* 1.7; Plutarch, *T.G.* 8, 1-3. The pro-Gracchi propaganda tradition is a term many secondary historians give to Appian and Plutarch, along with their adherents, on this account (Earl 20, *cf.* Badian, *Foreign Clientelae*, 173 n. 3; 174 ff.).

<sup>3</sup> The office of tribune was the first tier on the *cursus honorum*, or course of honors, the progression of public offices. Traditionally one began as either tribune or aedile (in charge of public works and games), then proceeded to the offices of quaestor, censor, and praetor, and from there, the consulship. We shall hear more about the senate and the particular responsibilities of its officers in due time.

*politics*, makes the argument that “the word *latifundium*, universal in modern discussions of the agrarian situation in the second century B.C., does not in fact appear in Latin until the elder Pliny (c.23-79). This seems suggestive since agrarian matters were much discussed in the first century B.C. by Cicero in his speeches, especially those *de lege agraria*.” Accounts of slavery on even smaller farms by 206 B.C must demonstrate how sympathetic the hierarchy of society as a whole was of slavery.<sup>4</sup> The wealthy largely left their estates to the management of slaves; both groups held well-defined positions in society, while census figures seem to show that the number of citizens who owned land was declining.

Appian says that the wealthy favored the use of slaves rather than the proletariat – notably named for the term denoting ‘offspring,’ *proles*, the sum of their assets – on the account that the *servii* could not be called away to war. However, the proletariat would have been likewise ineligible for military service because they did not own land, prerequisite for enrollment in the legions. Despite declining birthrates of the citizenry as a whole, by 133 B.C., the *proletarii*, or unlanded, consisted of 24% of the population, nearly a full quarter.<sup>5</sup> And yet, Yanir Sochat notes, “Until approximately 146 B.C. the proletariat did not constitute a large section within Roman society.”<sup>6</sup> The importance of this group was not entirely due to its size but the growing point of necessity its tenuous position seems to have posed to the republic; for although the number of landless was growing -- the census in 203 B.C. lists 214,000 citizens whereas in 131<sup>7</sup>, there are

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<sup>4</sup> D.C. Earl 25. *Tiberius Gracchus, a study in politics. Collection Latomus*, Vol. 66. Bruxelles: *Revue D’Etudes Latines* 1963. Cf. Livy 28, 46; 32, 7.

<sup>5</sup> Earl 36. *Ibid*.

<sup>6</sup> Yanir Sochat. [67] 46-76, “The Problem of Recruitment for the Legions,” *Recruitment and the Programme of Tiberius Gracchus. Collection Latomus*, Vol. 169. Bruxelles: *Revue D’Etudes Latines* 1980. Cf. Sallust, App. B.C. I. 7, Plut. T.G. 8.

<sup>7</sup> All dates are B.C. unless otherwise noted.

318,000<sup>8</sup> – Earl proposes instead that, “Rome in the second century was indeed in the grip of a serious crisis, a crisis not in the agricultural, economic or even social sphere, but in the recruitment for legions.”<sup>9</sup>

With war ever brewing on the horizon, let us examine two examples of the third and second century, the Second and Third Punic Wars, which will illustrate the strain Rome’s campaigning put on the population. The Second or Hannibalic War beginning in 218 B.C. dragged on for 12 years (218-201). During that time Rome rallied twenty-eight legions, approximately 150,000 citizens.<sup>10</sup> Even after reducing the number due to population necessities, in the battles of Trebia, Lake Trasimene, Cannae and in Spain Rome lost over 50,000 legionaries.<sup>11</sup> Overall, the Second Punic War cost Rome a third of her citizens.<sup>12</sup> “Every available man was used on land or sea throughout interminable campaigns,” Tenny Frank writes poetically, “till her fields went to waste and debts outstripped the returns of scanty crops.”<sup>13</sup>

Acquiring new provinces in Sicily, Sardinia and Corsica meant, even after Scipio Africanus’ defeated Hannibal in 202, maintaining a presence – which required legions in each province – as did each ensuing campaign. Polybius, the 2nd century B.C. historian who traced the fall of the Republic, theorizes that the Punic Wars were the declaration of an intention for Rome to become the major imperial power in the Mediterranean. Supporting this intent was more than just a dream: “To keep up a fair quota for her army Rome at the end of the war admitted into citizenship the Sabine and Picentine people,

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<sup>8</sup> Tenney Frank. [205] 202-218, “The Plebs Urbana,” *An Economic History of Rome*. 2<sup>nd</sup> edition revised. New York: Cooper Square Publishers, Inc. 1962. Cf. Beloch, *Bevölkerung der Griech. Röm.*

<sup>9</sup> Earl 36. *Ibid.*

<sup>10</sup> Earl 26, *ibid.* Cf. R.E. Smith [*supra*]; cf. E. Gabba, *Athenaeum*, n.s. 27 (1949) [*supra*].

<sup>11</sup> Earl 30. *Ibid.*

<sup>12</sup> Frank 203 (1962).

<sup>13</sup> Frank [91] 90-107, “The Establishment of the Plantation,” *ibid.* (1962).

running the imaginary walls of her city-state across Italy to the Adriatic.”<sup>14</sup> With the legions expanding Rome’s boundaries, the next century brought fresh conquests and a greater dependence on raising manpower.

Evidencing cross-continental designs in 149, Rome began the Third Punic War with Carthage along with new campaigns in Macedonia and Greece.<sup>15</sup> Publius Cornelius Scipio Aemilianus Africanus, a military tribune in the Fourth Legion in Africa under the consul Manius Manilius, and the adoptive grandson of the famous general who defeated Hannibal and his elephants in 202, in 149 B.C. had 80,000 infantry and 4,000 cavalry when war with Carthage began anew. “Since the legion at this time consisted of 5,000 infantry and 300 cavalry of citizens plus allied contingents of 5,000 infantry and 900 cavalry, this probably means that no less than eight legions were involved at Carthage,” Earl counts.<sup>16</sup> War with Carthage seems to have required raising a vast host.

When Scipio Africanus’ grandfather and namesake, Scipio Africanus, had raised his own army to attack Carthage in 205, he was forbidden to levy troops except for volunteers.<sup>17</sup> By 152, the levy was suspended and men were chosen from the eligible by lot.<sup>18</sup> In 144, because of rioting over recruitment for a war in Spain, a tribune of the plebs intervened on their behalf, attempting to stop the consul<sup>19</sup> from taking troops to war.<sup>20</sup> “At the levy in 138 the consuls P. Cornelius Scipio Nasica and Dec. Iunius Brutus made an example of one C. Matienus who had deserted the army in Spain. The tribunes C.

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<sup>14</sup> Frank 91 (1962).

<sup>15</sup> Earl 30. *Ibid.*

<sup>16</sup> Earl 31, *ibid.* Cf. Polybius 6.20.

<sup>17</sup> Earl 33, *ibid.* Cf. Livy 28, 45, 12; App. *Lib.* 7; Plut. *Fab. Max.* 26. 2. The legions were called up by levy, ‘*dilectus*,’ drafting eligibility being determined both by registry in the census and meeting the property requirement.

<sup>18</sup> Earl 33, *ibid.* Cf. App 49.

<sup>19</sup> Consular rank was the highest honor of the *cursus honorum*. Each year saw two magistrates elected.

<sup>20</sup> Earl 33, *ibid.* Cf. Livy, *Oxy. Per.* 54.

Curiatus and Sp. Licinius demanded certain exemptions from the levy and when the consuls refused imprisoned them.”<sup>21</sup> With the levy becoming more and more unpopular after 145 when the consul was forced to take out an untrained army, in succeeding campaigns generals were forced to rely on the precedent of asking for volunteers.<sup>22</sup>

Spurius Ligustinius, a citizen of Sabine stock, is an example of one who, even after fighting against Philip and the Macedonians, immediately reenlisted with the consul<sup>23</sup> Marcus Porcius Cato for war with Spain in 195.<sup>24</sup> Despite the complaints about military service in 193 B.C.,<sup>25</sup> Ligustinius reenrolled three times more, including during the praetorship of Tiberius Sempronius Gracchus<sup>26</sup> in 180 B.C.” “Four times within a few years I was chief centurion of the *triarii*.<sup>27</sup> Thirty-four times I was awarded by my generals for valor,” Ligustinius said in his speech in 171 B.C. during a draft for a campaign in Macedonia. He is trying to pacify both parties involved in levying troops for the campaign – both the centurions being called upon to serve again, and the military tribunes doing the drafting. “I have received six Civic Crowns. I have served twenty-two years in the army, and I am over fifty years old.” Nonetheless Spurius claims to be willing to fight again at need. His speech is a model piece in Livy’s histories. Jo-Ann Shelton, who provides us with this speech, says that “Spurius Ligustinius’s speech

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<sup>21</sup> Earl 33, *ibid.* Cf. Cic. *De Leg.* 3.20; Livy *Per.* 55; *Oxy. Per.* 55.

<sup>22</sup> The consul was Q. Fabius Maximus Aemilianus. Earl 34, *ibid.* Cf. App. *Ib.* 65.

<sup>23</sup> The highest tier on the political ladder, each year saw two consuls elected. Consuls were magistrates who took over many of the functions of monarch after Rome expelled her kings and became a republic.

<sup>24</sup> Livy 42.34.

<sup>25</sup> Earl 32, *ibid.* Cf. Cato, fr. 17-18 *PRF* cf. Scullard 27, *Roman Politics*.

<sup>26</sup> The father of tribunes Tiberius and Gaius, both of whom passed agrarian laws.

<sup>27</sup> The highest rank of centurion.

reveals him as an ideal Roman soldier: a man of peasant stock who fights bravely for his country.”<sup>28</sup>

But this was his choice; however, volunteers could not be relied upon and shortages lead to problems with the levy, although “there were many like him, and their number would increase as time went on.”<sup>29</sup> There is a famous case of a man in 179 who protested that he had already served two decades in the army, and questioned the justice of being sent again. We may wonder why there are protests when the census figures are still high: in short, with the growing number of *proletarii* ineligible for military service, only part of the population was being called upon to meet the needs of the greater whole. Consequently, we have a smaller and smaller group being asked to fight overseas, many of whom refuse the unequal burden. Duty is an injustice, as the further example of Titus bears.

“The claims concerning the decrease in the population and the inability to send men to the army, which had been voiced, are well known,” Sochat argues in his chapter on “The Problems of Recruitment for the Legions.”<sup>30</sup> A number of social factors would also have to be analyzed here in order to ascertain reasons for a declining birthrate, if there was one. Sochat asserts that only Appian connects the decline in the birthrate with the difficulties raising legions,<sup>31</sup> but Earl remarks, “That there was an actual shortage of citizens for the legions is indicated by the fact that sometime before 150 the minimum

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<sup>28</sup> Jo-Ann Shelton. [256] 256-257, A Good Republican Soldier, *The Army during the Republican Period*, (IX) “The Roman Army,” *As The Romans Did, A Sourcebook in Roman Social History*, Oxford: Oxford UP 1988.

<sup>29</sup> R.E. Smith. 5 [1-10], “The Roman Army before Marius,” *Service in the Post-Marian Roman Army*. Manchester: Manchester UP 1958.

<sup>30</sup> Smith [48] 46-76, “Methods and Sources of Recruitment,” *ibid.*

<sup>31</sup> Sochat [20] 9-45, “The Capite Censi and the Census Figures,” *ibid.*

property qualification of 11,000 *assēs* was reduced to 4,000 *assēs*.”<sup>32</sup> The number of citizens was declining; the strain on the population showed early and this would have had adversely affected the levy. Nevertheless, as Earl points out, “Reduction of the property qualification seemed to have little effect. It therefore remained to increase the number of citizens possessed of the necessary qualification.” It was at this time that Tiberius Gracchus, who in his youth had served in the Third Punic War under Scipio Aemelianus, drafted the *lex Sempronia agraria* to address the issue.

With the influx of *ager publicus* over the course of the second century, Frank poses the question, “What was to be done with these vast areas, aggregating a total of perhaps two million acres, at least half of which was arable?”<sup>33</sup> That is the kind of question agrarian legislation was designed to answer. While we may syllogistically sum up the reasons for agrarian legislation, attributing its causes to the need for troops, fuel for Rome’s campaigns, it is useful to examine the tensions within this society. Moreover I think we can come to a better understanding of agrarian legislation through examination of two periods in its overall history, the state of affairs at the time of the Gracchi and that of the law proposed in 63 B.C. during the consulship the great republican orator, Cicero.

### **The Agrarian Legislation of the Gracchi Brothers**

There was not enough *ager publicus* or land being assigned to furnish Rome’s *proletarii*, including the growing number of freedmen and immigrants who poured into

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<sup>32</sup> Earl 32, *ibid.* Cf. Polybius 6.19, 2. What is relevant here is not the conversion rate, but the fact that the property requirement for entry into the legions had been reduced, showing that the need for legions was related to the property requirement for enrollment. According to Smith, (4 *Super*, c.f. Walbank 698), we do not know the date but it would seem to be during the second century [cf. Gabba, (1) 184 ff. who dates it to the Hannibalic War].

<sup>33</sup> Frank 97 (1962).

the capital city. “Doubtless the jibe of Aemilianus overshoot the fact when he claimed that he had led to Rome in chains the hordes that now validated the revolutionary bills of the Gracchi. But the phrase would have passed as pointless had there not been much truth to it,” Frank writes in his chapter on “The Gracchan Revolution.”<sup>34</sup> Scipio Aemilianus’ statement is indicative of the attitude of the Senate soon after the end of Second Punic War ceased the traditional practice of extending the citizenship to Italian allies, a deviation with far reaching implications that may be said to have created the symptomatic problem of recruitment that the Gracchan legislation attempted to address. Frank is not far from the mark when he says, “Finally the evil consequences of the over-benevolent leasing system now began to lower over the whole land.”<sup>35</sup> In a sense this is true because the ramifications of the neglectful regulation of benefits to the upper-class had begun to manifest on the flip-side.

In the opening of his election speech Tiberius Gracchus said, “The wild beasts of Italy have their caves to retire to, but the brave men who spill their blood in her cause have nothing left but air and light.”<sup>36</sup> The image he used depicts a reversal of the mental roles of beasts and men that is surreal, its juxtaposition a violation of the classical ideal.<sup>37</sup> The chaotic jumbling of the correct order of things is indicative of the state of necessity at the time, bringing up a point about the injustice of the situation. At the same time his point is suggestive of an alternate and ideal system, wherein there would be a

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<sup>34</sup> Frank 127 [127-140], “The Gracchan Revolution,” (1962).

<sup>35</sup> Frank 128 (1962).

<sup>36</sup> Plutarch. *Makers of Rome*. Translated with an Introduction by Ian Scott-Kilvert. London Penguin Books 1965.

<sup>37</sup> A fragment, possibly in reference to this discussion, of Cicero’s *Republic* reads, “There is no one who would not rather die than be transformed into the shape of an animal while still having a human mind; all the more miserable is it to have a beast’s mind in a human body. That seems to me as much worse as the mind is more noble than the body.” Cic. *Rep.* III. 4.1c., in. Lactantius, *Inst.* 5.11.2., ed. James E. G. Zetzel, *On the Commonwealth and On the Laws*. Cambridge: Cambridge UP 1999.

provisioning of that just due. G. M. Duby, in his work on “Youth in aristocratic society: Northwestern France in the twelfth century,” makes the point wherein under a patrimonial system, the need for the younger sons to find land and rich wives, the pressures on the eldest son to leave home and find glory, and the coexisting culture of romantic chivalry shows “the presence of such a group [*c.f. juvenes*, or youths,]...helped to sustain certain ideas, myths and forms of collective psychology,” an example of how necessity can sustain a system of ideals.<sup>38</sup> In this situation it was the slave, like the older son, that had a defined hierarchical role ideally held by a *proletarius* or a *socius* [ally]. Tiberius, appealing to the humanitarian sentiment that Rome needed a strong body from which to pull her legions, said that the protectors of the state should have some of the land for which they fought.

In attempting to address inequity with redistribution, Tiberius appealed to former distributions of *ager publicus*. During the third century, the Senate had provided for the *proletarii* and the *socii*; ‘allies.’ Through the allotment of *ager publicus* to the establishment of colonies, such as Benevento, the Senate found ways of incorporating these groups into the growing state and her forces. As late as 223 B.C Gaius Flaminius had distributed land in the north east of Italy in Piceum and yet, after the Second Punic War, during which time a number among the allies of Italy had defected to Hannibal’s camp, the *socii* were punished for their rebellion.<sup>39</sup> In the typical fashion a third of their land was taken, contributing to the sudden growth of the *ager publicus* after the Hannibalic War. Thereafter distributions of this sort had ceased. Although in his election

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<sup>38</sup> Georges Duby. [120]113-122, “Youth in aristocratic society, Northwestern France in the twelfth century,” *The Chivalrous Society*. Translated by C. Postan (Berkeley, 1977).

<sup>39</sup> T.R.S. Broughton 232. *Magistrates of the Roman Republic, Volume I*. New York: American Philological Association 1951.

speech Tiberius appealed to these distributions, thereby attaching precedent to his plan of redistribution, it deviated radically from the former proclamation.

The *ager publicus* had been held by long occupation on the Senate's charity [*possessio*], not legal title. "These possessors were not legally the owners of the land," points out E.G. Hardy, the author of *Six Roman Laws*, "the *dominium* still belonging to the State but for generations their occupancy had not been interfered with, and though theoretically, according to Appian (1.7), they were subject to a rent of 10 per cent. on crops and 20 per cent. on fruits, this seems to have been very irregularly exacted, and the land had come to be regarded and in many cases treated as private property."<sup>40</sup> In the succeeding generations this definition of *possessio* had become blurred: some inherited *possessio* while others bought it, *caveat emptor*.<sup>41</sup>

A further stipulation of *possessio*, the so-called *lex Licinia*, its dating a subject of interest, stated that no one should possess more than 500 *iugera* of the *ager publicus*.<sup>42</sup> In addition to distributing *ager publicus* to the *proletarii*, Tiberius proposed enforcing the 500 *iugera* limitation on *possessio*; at the same time he promised to grant full ownership of amounts up to 500 *iugere* for the *possessores*. All land beyond this was to be reclaimed by the state.<sup>43</sup> To these he said, "Do not sacrifice a great thing while striving for a small, especially as you are to receive no contemptible compensation for your expenditure on the land, in free ownership of five hundred *iugera* secure forever, and in case you have [*proles*], of two hundred and fifty more for each of them."

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<sup>40</sup> E.G. Hardy. [36] 35-55, "The Lex Agraria," *Six Roman Laws*. Oxford: Clarendon Press 1911.. D. J. Gargola further points out, citing as an model the complex system that sprung up around tax collection on the *Lex Hieronica*, "Appian's tithe, if collected on any scale, would have required an even more complex organization, of which there is no trace ([140] 127-146, "Leges De Modo Agrorum," *Lands, Laws, and Gods*. Chapel Hill & London: University of North Carolina Press 1995)."

<sup>41</sup> The *sententia* or proverb meaning, "Let the buyer beware," would certainly apply to buying public land.

<sup>42</sup> 1 *iugere*=5/8 of an acre.

<sup>43</sup> Hardy 37. *Ibid*.

There is a debate among the historians centering on the beneficiaries of the *lex Sempronia*. Earl argues that Tiberius did not advance the claim of the “small farmer” or Rome allies.<sup>44</sup> By the small farmer, we may understand that Earl does not refer to those citizens of the Senate who were also *possessores*. He then wanted to redistribute the land in the form of small plots. In the statement with which he opens his book, *Recruitment and the Programme of Tiberius Gracchus*, Sochat takes issue with Earl’s remark that the target of Tiberius’ reform was primarily to increase the number eligible for military service.

Sochat argues that Tiberius had a social aim, quoting H. Last’s chapters in the *Cambridge Ancient History of The Roman Republic* (henceforth *C.A.H.*), “The business of Tiberius was to relieve the widespread unemployment of the urban population, and the plan he adopted to achieve this end was a scheme for the partial redistribution of the public land – a scheme so sane in its conception and so successful in its results that it is futile to charge its author either with reckless vote catching or with utopian aspirations of unpractical ignorance.”<sup>45</sup> While Sochat admits, “it is possible to disagree with this author regarding the extent to which the entire reform was successful, despite the fact that its long-term effectiveness in the social sphere was minimal,” he argues that Tiberius intended to include the “small farmer” among the beneficiaries of his bill, and therefore, “it cannot be defined as futile, as Earl attempts to do.”<sup>46</sup> On the issue of allotments to the

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<sup>44</sup> Sochat 7, *ibid.* Cf. Earl 32, *ibid.*

<sup>45</sup> *Ibid.*, cf. H. Last 89, *Cambridge Ancient History of the Roman Republic (133-44) B.C., Vol IX.* [C.A.H.]. Cambridge: Cambridge UP 1977.

<sup>46</sup> *Ibid.*

allies, Earl allows that while the proletariat must have included some *socii*, the bill did not specifically provide for the latter.<sup>47</sup>

The significance of the debate that has accrued around the aim of the Gracchan legislation has an eye to the far-reaching consequences that grew out of the context of Tiberius' initial proposals. "As to who were the beneficiaries under the law," Earl says, "there is a head on conflict of evidence." He points to an important passage laying this argument to rest in the *Republic*, when Cicero says that Tiberius Gracchus fulfilled his duty to the citizens [as their tribune], but sharply neglected the established rights of the allies and the Latins.<sup>48</sup> "The remaining evidence is undeniably difficult to interpret, but it seems unmistakably to support Cicero."<sup>49</sup> The motivations of the Gracchi are important here insofar as they shed light on the tradition they inadvertently began.

Tiberius was one of ten tribunes to be elected as *tribuni plebis* on December 10, 134 B.C. "It is a reasonable guess that actual or potential opponents were early alerted to what was in the offing, and that Tiberius' difficult and obstructive colleague M. Octavius may have been run as a candidate by them rather than (as Plutarch has it) only later won over by them."<sup>50</sup> The *possessores* had no real response at the time beyond supporting a

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<sup>47</sup> Earl 22, *ibid*. Earl uses the example of the *ius migrandi* of C. Claudius Pulcher, the descendent of whom aided T. Gracchus in legislating his *lex Sempronia*, which made limitations on the amount of *socii* who could gain citizenship by moving to Rome.

<sup>48</sup> Earl quotes, "*Ti. Gracchus perseveravit in civibus, sociorum nominisque Latini iura neclexit ac foedera* (Cic. *De Rep.* 3.41)." The passage continues in the Loeb translation, "If this habit of lawlessness begins to spread and changes our rule from one of justice to one of force, so that those who are held faithful by fear alone, then, though our own generation has perhaps been vigilant enough to be safe, yet I am anxious for our descendants, and for the permanent stability of our commonwealth, which might live on for ever if the principles and customs of our ancestors were maintained (Trans. Clinton Walker Keyes 217, *De Re Publica, De Legibus*. London: Harvard UP 2000)."

<sup>49</sup> Earl 20, *Ibid*.

<sup>50</sup> David Stockton. [60] 60-86, "The Tribunate of 133," *The Gracchi*. Oxford: Oxford UP 1979. Cf. Plutarch *TG* 10.1: "To such oratory as this, the utterance of a noble spirit, delivered with genuine passion to a people profoundly moved and fully aroused to the speaker's support, none of Tiberius's adversaries could make an effective reply. So they abandoned any attempt to oppose him by argument and

tribune to balance Tiberius. During the second tribunate of his brother Gaius Gracchus in 122, the tribune M. Drusus divided the proletarian vote and offered the urban proletariat a cushier package. Many of the *proletarii* lived well in Rome as clients of wealthier men, and had no inclination to be packed off to some corner of the Italy to follow a plow. For the rural proletariat who did desire land, M. Drusus proposed a set of colonies (none were founded), thereby upstaging Gaius' proposal.

It is difficult to specifically ascertain how much of the Senate supported Tiberius at this time because he presented the *lex Sempronia* straight to the *Concilium Plebis* ['popular assembly'] for approval.<sup>51</sup> In his analysis of the tribunate of 133, David Stockton says, "If to bypass the Senate would be to give the kiss of death to his proposal, they [the commission established by Tiberius to administer the *ager publicus*] would be revealed as foolish amateurs even to contemplate such tactics – and that they assuredly were not. It had worked in the past."<sup>52</sup> The system had provided for such recourse, but the Senate did not commend ignoring their recommendation. Gaius Laelius – consul in 140 and a friend of Scipio Aemelianus' – proposed a law that would distribute *ager publicus* to indigent citizens that actually anticipated Tiberius' law by seven years. However, when it was met with fierce opposition in the Senate, prudently he withdrew it, becoming known as Gaius Laelius Sapiens, or Gaius the Prudent.<sup>53</sup>

"That they were prepared to approach the *Concilium Plebis* with proposals for legislation which had not received senatorial approval was a trifling breach of custom,

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sought the help of Marcus Octavius, one of the tribunes of the people, a serious young man of steady character, discreet and a close friend of Tiberius (Scott-Kilvert translation 162)."

<sup>51</sup> Stockton 61. *Ibid.* According to Cic. *Acad.* 2.13 and Plut. *TG* 9.1, Ti. consulted the consul M. Scaevola.

<sup>52</sup> Stockton 61. *Ibid.*

<sup>53</sup> Broughton 479, *ibid.* Cf. Plut. *TG* 8.3-4.

and not without parallel...The first danger came with the deposition of Octavius.”<sup>54</sup> Each tribune had the power of veto, both in the Senate and in the *Concilium Plebis*. When Octavius twice vetoed the popular assembly’s vote, Tiberius took a number of steps to ensure that his bill passed, first offering to pay Octavius for the *ager publicus* that he possessed. According to Plutarch, Tiberius sealed the treasury and forbade the praetors to open it, meaning that the magistrates ceased to be able to perform their functions.<sup>55</sup> Casius Dio does not ascribe the cessation to the sealing of the treasury, but to the street fighting between their two gangs.<sup>56</sup> The third time the *lex Sempronia* came before the assembly, Tiberius also put Octavius’ office to the vote, asking the people to divest him of his office – or any tribune of the plebs who opposed the will of the *Concilium Plebis* – at that time instead of during the annual elections.<sup>57</sup> Octavius may no longer have been a tribune, but he was still the Senate’s man. “The authority exercised by the Senate rested on a precarious basis and was founded on custom [*mos*] rather than law [*lex*]. Even in its great day this authority was liable to be challenged and,” G.H. Stevenson further elucidates, “after the Gracchan period it was easy to short circuit the Senate by appealing to the popular assemblies.”<sup>58</sup>

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<sup>54</sup> H. Last 90. *C.A.H.*

<sup>55</sup> Earl 80-1, *ibid.* Cf. Plut. *T.G.* 10.5-6.

<sup>56</sup> Earl 81, *ibid.* Cf. Dio fr. 83. “Not only did the two principals conduct themselves in this way, but gangs were formed which engaged in bitter abuse and even armed conflicts. For all of this the proposed law was a mere pretext covering a struggle for supremacy. The version, perhaps, owes more to the political struggles of the last decades of the Republic than to the actual events of 133 itself (Earl 80).”

<sup>57</sup> One of the important rights of the office of tribune was the power of veto. The powers of the tribune, the first step in the *cursus honorum* (see f.3), were closely associated with those of the people, an area of blurring important in a mixed constitution like Rome’s.

<sup>58</sup> G. H. Stevenson 438. *C.A.H.*

Tiberius, having pushed his law through the senate, now found himself and the commissioners<sup>59</sup> of the *lex Sempronia* – Tiberius, his younger brother Gaius, and his father-in-law, Claudius Pulcher – in a position of having to find land for his redistribution. “Since those in possession failed to hand in a list of their holdings,” reports D.J Gargola, the author of *Lands, Laws, and Gods*, “a proclamation was issued inviting informers to come forward against them.”<sup>60</sup> When this failed Tiberius passed a second law vesting the commissioners with the power to judge which lands were *ager publicus*.<sup>61</sup> After the expulsion of the Roman kings in 509 B.C., the power to judge, ‘*iudicium*,’ was one of the magisterial powers of the king that transferred to the offices of censor, consul, and praetor. Vesting the commissioners with magisterial powers set a precedent for the Rullan land proposal and the *lex Iulia Agraria* of the following century. “In theory, a more effective alternative could have been to adopt the policy of using public funds to buy land for distribution, as Rullus was later to propose in 63 and Julius Caesar in 59. But once again we are being wise after the event,” Stockton points out. “Quite probably such an approach was not conceivable or feasible in 133, and public funds (Asia was not yet a province) insufficient.”<sup>62</sup>

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<sup>59</sup> Laws provided for a commission to oversee their enforcement. The make up of this commission, a senior member of the senate (Claudius Pulcher, consul in 143 and censor in 136), a junior member (Tiberius), and one who had not taken office (Tiberius’ brother, Gaius), was not unusual but, Gargola points out their familial relationship was (149, *Ibid.*). However, Scipio Aemelianus was Tiberius’ first cousin and brother-in-law – the two men disliked one another – showing that family was not necessarily an indication of fraternity. Nonetheless, Plutarch says, “In my opinion Tiberius would never have suffered the fate which finally overtook him if Scipio had been in Rome at the time of his political campaign (S-K 159).”

<sup>60</sup> Gargola [153] 147-174, “The Gracchan Reform,” *Lands, Laws and Gods – Magistrates and Ceremony in the Regulation of Public Lands in Republican Rome*. Chapel Hill: University of North Carolina Press 1995. Cf. App. BC 1.18

<sup>61</sup> Gargola 151, *ibid.* Cf. App. BC 1.18

<sup>62</sup> Stockton 52, *ibid.* Cf. Astin, Scipio Aemilianus, 166.

“Tiberius surely assumed that the Senate would make a reasonable amount of public money available to his commissioners once the bill had been carried.”<sup>63</sup> However, this was not the case. When Asia became a province later that year, when Attalus III, the King of Pergamum bequeathed his realm to the Roman people in his will, Tiberius was triumphant.<sup>64</sup> Here were the funds he needed to finance his project.<sup>65</sup> “At first sight it did not seem much use to put men back onto small plots of land so long as the political and social and economic conditions that had driven them off in the first place remained substantially unchanged.”<sup>66</sup> To make land allotments more than just a gesture, the commission would need money to equip their new clients, with tools and cash cushion to live on in the year before the land became productive; Pergamum was a rich kingdom. The envoy had brought the king’s will straight to Tiberius, who – cutting the Senate out of the process once again – brought forth a *plebiscite* concerning the revenues of these lands to the *concilium plebis*.<sup>67</sup> “But matters of public finance and foreign affairs and relations lay by practice and precedent and convention within the Senate’s sphere,” Stockton protests, “and the Senate was the body which, even in the view of the outside observer, was eminently best qualified to deal with them.”<sup>68</sup>

“Ti. Gracchus’ present actions meant, ultimately, that the People, or rather the proletariat, would become the master in politics. For the proletariat would support him

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<sup>63</sup> Stockton 52f. *Ibid.*

<sup>64</sup> Pergamum is present-day Turkey. The Roman’s called it Asia, and the name has since extended to cover an entire continent.

<sup>65</sup> Stockton 69. *Ibid.*

<sup>66</sup> Stockton 51. *Ibid.*

<sup>67</sup> His father, Tiberius Sempronius, as censor, twice consul and the celebrator of two military triumphs was, according to Plutarch, renown for his diplomacy with the *sociis*; it was perhaps for this last reason and perhaps for Tiberius’ own reputation that the matter was brought to his attention.

<sup>68</sup> Stockton 69. *Ibid.*

only as long as he satisfied its demands and expectations.”<sup>69</sup> Theoretically, presenting the bill directly would allow the commissioners to meet their needs with efficiency, at the same time it would gain them thousands of loyal clients. “No doubt some of the money was to be used for the purpose indicated by Plutarch. But this would account for only a very small fraction of what was presumably a vast sum. The remainder was to be given as a free gift to those disappointed of their hopes of land. Compensation or bribe, it matters little.”<sup>70</sup> This was the line that Gracchus, wittingly or unwittingly, had crossed.

Plutarch says that Tiberius had taken to carrying a pointed stick. Comments that Tiberius was perhaps unworthy of the immunity his senatorial position extended to him – a protection he had not afforded his friend, Marcus Octavius – struck home. “The surviving accounts of that final day of Tiberius’ tribunate differ on many points, with the result that any reconstruction of the events is inevitably hypothetical in important respects. This is no cause for surprise,” Astin, the author of *Scipio Aemilianus*, assures us. “It may be doubted if there was ever a primary account which was not tendentious.”<sup>71</sup> We know these things concretely: with a mob of *possessores* out for his blood; Tiberius knew that if he left his office, the Senate would repeal his law.<sup>72</sup> He ran for immediate reelection to his office, an act which, if not prohibited, was frowned upon. At his election, there was (minor) rioting. “Elected year after year by the *plebs* and bringing his bills before the *concilium plebis*, he could effectively short-circuit the normal machinery of state.”<sup>73</sup> Meanwhile, the Senate called a meeting.

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<sup>69</sup> Earl 104. *Ibid.*

<sup>70</sup> Earl 95. *Ibid.*

<sup>71</sup> Stockton 75, *ibid.* Cf. Astin 218-26, *Scipio Aemilianus*.

<sup>72</sup> See Stockton 70. *Ibid.*

<sup>73</sup> Earl 104. *Ibid.*

Tiberius' opponents, the *possessores*, reported on the violence at the election and called upon the consul, M. Scaevola, to raise a military force against Tiberius. "Gracchus was steering Rome straight for ochlocracy [the decay of democracy into mob rule]."<sup>74</sup> Scaevola in turn pointed out that the rioting was directed against Gracchus' second bid for office and moreover, he would put no citizen to death without a proper trial.<sup>75</sup> Yet Tiberius had broken faith: to some, rewarding him with senatorial immunity, which had divested it from another, did not seem like his just due. "In short," writes Plutarch, "Tiberius's programme was designed to cripple the power of the Senate in every possible way, and it was inspired by motives of anger and party politics rather than by considerations of justice and the common good."<sup>76</sup> Scipio Nasica – another of the Scipiones, consul in 138 and the *pontifex maximus*<sup>77</sup> – objected to this injustice. According to Plutarch, he declared "Now that the consul has betrayed the state let every man who wishes to uphold the laws follow me."<sup>78</sup>

"Championing the cause of the *possessores*, Scipio Nasica said that Tiberius wished to make himself a tyrant. The Roman state, after the manner of the Greek political theorists, combined three elements to represent the magisterial powers of the king, those of a ruling government or aristocracy, and that of the people. Without the mixed constitution as a balance, the other parts would decay: kingship into tyranny, aristocracy into oligarchy, democracy into ochlocracy.<sup>79</sup> A tyrant was to be resisted at all costs; furthermore it was the duty of a good citizen to kill a tyrant. Gathering the

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<sup>74</sup> Earl 104, *ibid.* Cf. H. Last 9, *C.A.H.*, 9.

<sup>75</sup> Plutarch. "Tiberius Gracchus," Transl. Scott-Kilvert 171. *Ibid.*

<sup>76</sup> Plutarch. *Ibid.* 169

<sup>77</sup> This was a religious role. The most famous *pontifex maximus* was Julius Caesar.

<sup>78</sup> Plutarch. *Ibid.* 171.

<sup>79</sup> A Greek political theory, mixed constitutions are also dealt with in Polybius' famous treatise in Book VI of his histories, and by Cicero in his *Republic*.

*possesores* and their clients, the Senators went down into the Campus Martius, where the tribes were gathered to vote, attacking Tiberius and his followers. Tiberius was torn limb from limb, and his body was not returned to his family.<sup>80</sup> “This is said to have been the first outbreak of civil strife in Rome, which ended in the bloodshed and death of citizens, since the expulsion of the kings,” said Plutarch. “All other disputes, although they were neither trivial themselves nor concerned with trivial objects, were resolved by some form of compromise, with the Senate making concessions through fear of the people and the people out of respect for the Senate.”<sup>81</sup>

The looming historical significance attached to the Gracchi can be better explained if we look at the event in light of its position in classical Roman history. The first century A.D. historians, Appian and Plutarch, care little about the personal motives of Tiberius himself. Earl continues, “Although Tiberius believed in the strength of his reforms, in part due to the opposition of the Senate, according to Earl his agrarian legislation did little to solve the problems it had set out to solve. Consequently the original purpose of Ti. Gracchus’ law was lost. What the sources preserve is the propaganda, both contemporary and later.”<sup>82</sup> Both historians wrote during the reign of Augustus. Here his relationship to Julius Caesar is important. The latter was a member of one of the political factions, the *Populares*, the reform party whose propaganda comes out of this time and which, according to Cicero, included *lex agraria*, *lex frumentaria* (laws detailing the distribution of grain to the urban proletariat), and with the reform of

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<sup>80</sup> In the same manner Achilles, in his rage, left the bodies of the slain as a feast for dogs (Hom. *Il.* 1.1).

<sup>81</sup> Plutarch. Scott-Kilvert 172, *Ibid.*

<sup>82</sup> Earl 39. *Ibid.*

voting procedures.<sup>83</sup> For its validation we begin to see, gradually increasing after the fact, historians giving the Gracchi the venerable quality of precedent, presenting them as political intellectuals and moralists of the great orders.

The debate about the dating of the so-called Sextio-Licinian rogations bears further mentioning here because it sheds light on the historiographical tradition of the Gracchi. Although the proclamation that no one should hold more than 500 *iugere* of the public land must date to the influx of *ager publicus* just after the Hannibalic war, many historians – even modern – date this proclamation all the way back to the *lex Licinia* of 370 B.C. In that year, what kind of *ager publicus* could the Republic have had? When Licinius and Sextius were tribunes, the amount of *ager publicus* was actually small. That the *Ager Veientana* may have been left public is more legendary than fact, but we can guess that Roman state at this time consisted of about a third of Latium a tenth of Etruria.<sup>84</sup> In a community of such a size, 500 *iugere* comprised a vast estate. The time to cap land allotments would have been after the Hannibalic war, when the size of the *ager publicus* was so great.<sup>85</sup> Moreover, the big issue of 370 was the appointment of magistrates.<sup>86</sup> At some later time, the issue of public land was tacked on.<sup>87</sup> “This tale of conquest is not built on known facts but on a preconceived scheme, marking out the stages of rapid growth and expansion. It is not the work of a clumsy scribbler but a shrewd doctrine forged by farseeing politicians,” writes A. Alföldi. “Therefore, before

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<sup>83</sup> Cic. *Pro Sest.* 103.

<sup>84</sup> Alex Toynbee, “*Hannibal’s Legacy*,” Oxford 1965.

<sup>85</sup> Earl 30, *ibid.* Cf. *Aethenaeum*, n.s. 26 (1948), 191ff, cf. Cato fr. 167 ORF.

<sup>86</sup> Broughton 111. *Ibid.*

<sup>87</sup> “Tibiletti argues that the law limiting *possessio* of cultivatable land to 500 *iugera* and granting the right of grazing 100 large and 500 small animals is a different and later law than the *Lex Licinia* of the fourth century,” said Earl on page 29.. Another reason we can assume these proclamations occurred around the end of the Second Punic War is because Livy talks about people being prosecuted for grazing at this time

trying again to comb out the small bits of reliable facts from the rubbish, we must attempt to grasp the outlines of the fictitious pattern.”<sup>88</sup>

“The first Roman historians were two senators who lived through the second Punic War, Q. Fabius Pictor and L. Cincius Alimentus,” writes the historiographer Peter Wiseman. “They wrote in Greek; their histories dealt with the legends of Rome’s foundation, which they dated respectively to 747 and 729 B.C., but only ‘summarily’ with events after that, until they reached a period for which they had first-hand evidence to draw on.”<sup>89</sup> Cato took four books to reach the Hannibalic War, his contemporary L. Cassius Hemina in five, L. Piso Frugi, consul in 133, in four or five.<sup>90</sup> A generation later the number had risen. Q. Claudius Quadrigarius left out the founding legends; he somehow reached the Hannibalic War by book nine. But Cn. Gellius at the turn of the first century B.C., and Valerius Antias a generation or two later, are cited as having ninety-seven and seventy-five books, respectively, in their histories.<sup>91</sup> When the sudden “expansion of the past”?<sup>92</sup>

Was there a sudden discovery of some numinous source? Dionysius had written that each of the chroniclers “takes something out of old records kept on sacred tablets”<sup>93</sup> Fragments have recently been discovered that show it would have listed no archive of the extent and magnitude of which we speak. Cicero and Varro quote “Piso *in annalibus*”

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<sup>88</sup> A. Alföldi [124]123-175, “The Projection of the Roman Conquest of Middle Italy Back into the Dark Ages by Fabius Pictor,” *Early Rome and the Latins*. Ann Arbor: University of Michigan Press, 1965. Based on the Jerome Lectures at the American Academy in Rome, summer, and at the University of Michigan, fall 1961. Cf. Alföldi, *Die trojanischen Urahnen der Römer (Rektoratsprogramm der Universität Basel für das Jahr 1965)* 1957.

<sup>89</sup> Peter Wiseman, [9] 9-26, “Annals and History,” *Clio’s Cosmetics*, Rowman and Littlefield: Leicester UP 1979.

<sup>90</sup> Wiseman 10. *Ibid.*

<sup>91</sup> Wiseman 11. *Ibid.*

<sup>92</sup> Wiseman 21, *ibid.* Cf. Badian (1966) 11f: “There was simply not as much information to be had as Gellius produced.”

<sup>93</sup> Wiseman 16. *ibid.* Cf. Dion. Hal. 1 73.1, Gelzer 1934, 54-1964, 101f.

four times, and while most of the second century writers are referred to as “annalists,” the term specifically denotes a year by year account.<sup>94</sup> “Cicero echoed him with the comment that for Fabius Pictor, Cato and Piso, history was merely the compilation of annals, no more literary than the primitive notice-board of the *pontifex maximus* (which even Cato had dismissed with contempt) and recording simply dates, names, places, and events.”<sup>95</sup>

Around the Hannibalic War, and increasing after the tribunate of Gracchus, we find the events of that decade, which were to accumulate such a great importance, being retrojected by historians into the past in a justification of the current situation they saw around them. “It was universally accepted by the Romans as a literary (or psychological) technique that people act in character and that, therefore, you could assert things of people for which there was no actual evidence but which would have been characteristic of them to have done... So a historian was entitled to transfer the measures and policies of the Gracchi and attribute them to Sp. Cassius in order to give his life more verisimilitude.”<sup>96</sup> Another reason for this change came out of the tradition of the Greeks. Thucydides, who – though more concerned with the facts than his predecessor, Herodotus – had attended the now famous funeral speech of Pericles but was unable to transcribe exactly what had been said, thought to record the gist of it as it ought to have been said.

“The art of rhetoric, encroaching everywhere upon the spiritual life of Hellenism, cultivated fiction as an intellectual weapon of the orator, the lawyer, the politician, and of course as a vehicle for *belles-lettres*. Unfortunately history was also regarded as a branch

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<sup>94</sup> Wiseman 12-13. *Ibid.*

<sup>95</sup> Wiseman 18, *ibid.* Cf. Cic. *De. Or.* II 51-3, Cato fr. 77P, referring to Sempronius Asellio’s preface to his *Res Gestae*, or “Histories,” when he said annalists, “write down in whose consulship a war began or ended, and who held a triumph as a result of it... that is, telling stories to children, not writing history.”

<sup>96</sup> Wiseman 25, *ibid.* Quoting Oglivie 1976, 20.

of rhetoric, and even as such *par excellence*.”<sup>97</sup> The sound of history, read and written for rhetoric, is meant to adhere to the ears, not to the facts. Even better, it should conjure an ideal image of the nature of things. In a letter to his friend, Cicero writes, “History is a work of oratory greatly...it has been conceded that rhetoric must be used in histories so that anything said may be able to be better argued.”<sup>98</sup> Clio is the muse of history, Wiseman tells us, and her adornments the art of rhetoric. “The similarity is not fortuitous: the historians were trained in rhetoric, and applied their training to the art of history.”<sup>99</sup>

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<sup>97</sup> A. Alföldi 174, on manipulation of facts and dates and the responsibility of Fabius Pictor, “Fabius Pictor,” *Ibid*.

<sup>98</sup> Cic. *Bru.* 11.42.

<sup>99</sup> Wiseman 26. *Ibid*.

Part II: *Miles Proletarius*

In the year of Cicero's own consulship in 63 BC, tensions were high in the senate between its factions who disagreed about the means to meet the needs of the people. "That legislation and the concomitant violence of and upheaval had resulted in the murder of Gracchus by a mob led by another of Scipio's relatives, Scipio Nasica Serapio; and the tribunate of Gracchus was regarded by Cicero and his contemporaries as the beginning of the social upheavals which lasted into their own time."<sup>100</sup> When Cicero, arguing successfully against an agrarian proposal in 63 B.C. overturned it, the lack of violence in response seems unusual, anomalous in the face of the civil wars that had marked the intervening period. In his speeches, which survive to this day, Cicero points out that agrarian legislation posed, considering the state of affairs, a threat to the continuation of the Republic. He was able to gain enough popular support that the tribune, P.S. Rullus, withdrew the bill without putting it the vote. Despite the bloodshed of 63, there nevertheless seems to have been no outcry at the tabling of Rullan's motion, unusual in light of the role it would play. Because it had not passed, this makes it difficult to ascertain what, exactly, this proposed legislation contained.

Let us set the agrarian legislation of the Gracchi at odds with the state of affairs during Cicero's consulship, to see what we can infer from the system of comparison. Consequently, it could be helpful to have a composite view of the transformation of agrarian law over the intervening decades. "In the same period, however," points out Gargola," a series of great commanders increasingly came to dominate Roman political

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<sup>100</sup>Zetzel xii. *Cicero - On the Commonwealth and On the Laws*. Cambridge UP.

life.”<sup>101</sup> As in this period agrarian legislation tends to meld into the turbulent state of affairs, a brief survey of this time will provide not only a context to analyze the situation at Cicero’s consulship, but a position from which to elucidate key points about agrarian legislation in general. The creation of a trajectory between the two periods will enable us to see what of the lost law we can infer.

In the decade following Tiberius, some important figures embarked on their political careers. “Though Roman history had not yet entered on the military phase which occupied the last decade of the century, domestic issues were receding into the background and there appears the man who., after the struggles with Jugurtha and with the Germanic invaders, was to become the first in that line of military *principes* which led in direct succession to Augustus.”<sup>102</sup> Gaius Marius, the future general and consul who, after a distinguished military service under Scipio Aemelianus, became tribune in 119 B.C. Marius was not of noble birth, as were the hereditary families of the Senate. He was an *eques* – from the term for “horse,” *equus*, the *equites* were so named because they had a horse on which to ride into battle – from the Latin town of Arpinum. One of the last allied Italian territories to be granted citizenship in 188 B.C., Arpinum is also the town where, at the turn of the century, Cicero is born, another self-made “new man,” *novus homo*.

In 129 Scipio Africanus, returned from campaigns in Egypt, Syria, Asia and Greece, having brought the a great war to a close with the destruction of Numantia. In *Scipio’s Dream*, Book VI of the Republic, an effigy of Scipio Africanus the elder tells him, “But after driving in state to the Capitol, you shall find the commonwealth disturbed

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<sup>101</sup> Gargola [176] 175-189, “Toward the Principate,” *Lands, Laws, and Gods*, *ibid*.

<sup>102</sup> H. Last 93. *C.A.H.*

by the designs of my grandson.”<sup>103</sup> Scipio returned to Rome and found himself presented with a state of political crisis. Although he trying to staunch the flow of the agrarian reforms his cousin Tiberius Gracchus had passed during his tribunate four years earlier, he had not been home a year before his mysterious death.<sup>104</sup> “There is reason to believe that after the activities of the land commission established by Ti. Gracchus and the intervention of Scipio Aemilianus in 129, the most probable effect of which was to remove from the commission’s jurisdiction *ager publicus* occupied by Latin and Italian allies, C. Gracchus found little or no public land for distribution under his own agrarian law.”<sup>105</sup>

“The Gracchan laws ended the rigid separation of categories found in the mid-republican legislation. Like the Gracchi, late republican legislators felt free to combine elements earlier kept distinct, but again like the Gracchi they followed in very broad outline the patterns found in earlier legislation.”<sup>106</sup> Appian lists three laws dealing with the *ager publicus*.<sup>107</sup> The agrarian commission established by Tiberius continued, although with different members until 119, when it was disbanded. In 112 a movement was passed to give benefits to the Latin and Italian *possessores*, of which little is known.<sup>108</sup> “In the period before the Jugurthine and Teutonic wars came to occupy all the

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<sup>103</sup> Cic. *De Rep.* 6.11. Harvard UP.

<sup>104</sup> Zetzel xii. *Cicero – On the Commonwealth and On the Laws*. Cambridge UP.

<sup>105</sup> Earl 26, *ibid.* Cf. H. Last 44, *C.A.H.*; Hardy 39, *ibid.*.

<sup>106</sup> Gargola 176. *Ibid.*

<sup>107</sup> Gargola *ibid.* Cf. App. *B.C.* 1. 27. A law was also repealed in this period. “If the grants had originally been capable of ownership *optimo iure Quiritium*, they became *ager privatus vectigalisque*, [private lands and taxes] either now or soon afterwards.”<sup>107</sup> In 121, Gaius’s faction in a public brawl murdered some senators in a dispute over the *lex Rubria* which had allotted land to the colony of Junonia.<sup>107</sup> Despite the opposition, the law was successful in that year; the colonialists kept their land “But the measure is in accord with the whole trend of agrarian legislation since the death of Gaius Gracchus. The work of the Gracchi was accepted: those who had profited were left with their gains intact (H. Last 100 Gargola. *Ibid.*)

<sup>108</sup> Gargola *ibid.* Cf. Bruns, *Fontes*

energies of Rome only one feature remains – the series of measures whereby the status of the *ager publicus*, left in great obscurity by the Gracchi, was reduced to order.”<sup>109</sup>

Another law in 111, written on the back of Gaius Gracchus’ *lex Acillia*, paved over the Gracchan redistributions, and in some ways was apropos to its intentions. The law made the allotments of the *ager publicus* the private property of the *possessores* – within the scope of the *lex Sempronia*. The *dominium* of any greater portion reverted to the state, which either rented out the *ager publicus* or left open common land (*ager compascuus*); except for the *ager Campanus*, all the public land was distributed in this fashion.<sup>110</sup> “Here, the main object was to raise money by the sale of public domain, possibly to make good in some degree the loss of revenue from Italy, but more probably to provide funds for the war which had been declared on Jugurtha the year before.”<sup>111</sup>

Plutarch tells us that the need for forces had grown so great that Gaius Gracchus had passed a law reinforcing the minimum age limit of 17, as younger boys were being recruited to fill the legions; he had passed another reducing the period of service.<sup>112</sup> He also introduced one of the ranks of the properties classes into the juries – the *equites*, a burgeoning class of businessmen – in order to disrupt the judicial process, as his own comments reveal.<sup>113</sup> In the face of new wars, the Senate could only levy troops from propertied classes, or *ex classibus*. Faced with the task of appointing troops for another war in Africa, the Senate, as we may remember in the case of Carthage, wars in Africa necessarily entailed a great deal of troops. “The dearth of competent commanders and

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<sup>109</sup> H. Last 91, *C.A.H.* Marius waged the Jugurthine War. The latter campaign was in Gaul.

<sup>110</sup> Hardy 35. *Ibid.*

<sup>111</sup> H. Last 100. *C.A.H.*

<sup>112</sup> Smith 8 [1-10], “The Roman Army before Marius (200-100 B.C.),” *ibid.* Cf. Plut. *C. Gracch.* 5.1, 16.1.

<sup>113</sup> Smith, *ibid.*

the low standard of morality which now pervaded public life had produced a whole series of generals who must at all costs be taught a lesson *pour encourager les autres*.”<sup>114</sup>

Through popular interference of his armies, Marius made a bid for provincial command that was appointed to the war against Jugurtha: “With the arrangement of provincial commands already made – an interference of great significance, which portends the action of the People for the benefit of Pompey and of Caesar – he was appointed to succeed Metellus in Africa.”<sup>115</sup> According to the Roman politician and historian, Sallust (86-35 B.C.), the Senate gave to Marius the power of *imperium* to raise troops for his campaign against Jugurtha; they hoped that, by means of his task, “Marius would become as unpopular as his noble predecessors.”<sup>116</sup> Marius, like Metellus, drew from the *socii* for his campaign; however, in a key move, he enacted an important change to recruitment practices he ignored the property qualification in 107, opening enrollment to any who had a head – the *capite censi*, the lowest of the property classes.<sup>117</sup>

Marius followed after precedent once again. Circa 145, the property qualification had been reduced by over half – from to 11,000 to 4,000 assēs – which elevated the number of *proletarii* eligible for military service.<sup>118</sup> “It was a simple step, revolutionary only in that it was a final step,” says E.G. Smith, the author of *Service in the Post-Marian Reform Army*.<sup>119</sup> With this action, in 107 Marius was to finally solve the problem of recruitment for the legions. “It was this crisis which had been developing during the previous years and came to a head at the time of the Jugurthine and Cimbric wars, with

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<sup>114</sup> H. Last 159. *C.A.H.*

<sup>115</sup> H. Last 125-6. *C.A.H.*

<sup>116</sup> *Ibid.*, cf. Sall. *Jug.* 84,3.

<sup>117</sup> Erich S. Gruen. [366] 358-404, “The Plebs and the Army,” *The Last Generation of the Roman Republic*. Berkeley: University of California Press 1997.

<sup>118</sup> Emilio Gabba [11]1-19, “The Origins of the Professional Army at Rome: the ‘proletarii’ and Marius’ reform,” *Republican Rome, the Army and the Allies*. Translated by P.J. Cuff. Basil Blackwell: Oxford 1976.

<sup>119</sup> R.E. Smith, 10, *Ibid.*

which Marius was faced and in the solution of which he unwittingly made possible the development of the army to become the bulwark of the Empire for centuries to come.”<sup>120</sup> In solving the recruitment problem for the army, Marius created a larger danger for Rome.

Before this period Rome had no standing army and continuous service had seemed impossible to demand. But in return for their volunteer service, when Marius recruited the *proletarii* he promised to reward them with land. Marius’s reforms did not exactly remove the property requirement for enrollment in the legions; he reallocated the fulfillment of the qualification to after the soldiers [*milites*] term of service; he juxtaposed the terms of that requirement, so that the soldiers should receive land at the end of the campaign in return for their aid. Because they were volunteers, rules of the levy from the landed classes did not apply.<sup>121</sup> “Hitherto land-allotments had been used to relieve unemployment due to ordinary economic causes; henceforward, thanks to the army reforms of Marius, the most pressing claim came from the ex-service man.”<sup>122</sup>

In turn Marius gained a number of faithful clients with powers of their own, not the least of which was their popular support at the elections. Marius was elected consul in 107, legally and with a great deal of popular support, his legions filling the Campus Martius where elections were held. The *comitia* of the tribes, or the voting assembly, was in theory a democratic system. It was divided into tribes of the rural and the urban plebs, but the division was notoriously uneven.<sup>123</sup> The army was composed mainly of men

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<sup>120</sup> Smith 1. *Ibid.*

<sup>121</sup> Gabba 15. *Ibid.*

<sup>122</sup> H. Last 100. *C.A.H.*

<sup>123</sup> The outcome of an election depended on the majority vote rendered by the tribes, each in turn rendered by a majority vote. The rural plebs had consisted of 31 tribes, most of whom were disinclined to ride into

from the countryside, who overwhelmed the rural vote with their support.<sup>124</sup> “We also find frequent mention of the intervention – sometimes decisive – of soldiers, whether as serving men or veterans. They might be used to intimidate, certainly, but more often just took their legitimate part in the voting.”<sup>125</sup> In his agrarian laws of 103<sup>126</sup> and 100, the tribune L. Appuleius Saturnius, gave Marius’s soldiers plots of land in Africa.<sup>127</sup> “These client-soldiers, who more or less unconsciously personify and entertain very profound social demands, do not represent precise political movements. They can therefore be hooked indiscriminately by the political bait of either a Marius or a Sulla.”<sup>128</sup>

The differences between Marius and his quaestor,<sup>129</sup> L. Cornelius Sulla, who would emerge to become Marius’ greatest rival after 101, can be seen in the resolution of the Jugurthine War. Marius’ campaigns caused the checkmate, while Sulla’s diplomacy brought a speedy surrender. “The achievements of Metellus and Sulla were set against those of Marius, and praise or blame was distributed with the strictest loyalty to party.” The exacerbation of party lines over the popular reform faction became more extreme; with Marius out of Rome, the *Optimates* were not idle. The conservative backlash came with a vengeance.

The creation of the Roman professional army was Marius’ achievement, but one that could be emulated. Sulla, during the Social War in 89-88, raised such an army of his own, with which he won the command of a new war against King Mithridates in the

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the city for elections held annually – the rural vote also notably included a number of the Senators who possessed property in the rural countryside. Although at points the population of the city of Rome famously consisted of over a million citizens, the urban plebs only had a total of four tribes.

<sup>124</sup> Gabba 28 [20-69], “The Roman Professional Army from Marius to Augustus,” *ibid.*

<sup>125</sup> Gabba 29. *Ibid.*

<sup>126</sup> Gabba 41. *Ibid.*

<sup>127</sup> Gargola 176. *Ibid.*

<sup>128</sup> Gabba 27. *Ibid.*

<sup>129</sup> A consular commander is assigned a quaestor as aide and (effectively) second-in-command, especially to keep track of finances and such.

Asian province. When Marius tried to replace Sulla by the same threatening tactic he had pulled on Metellus, Sulla's army chased him out to Africa and established Sulla himself as a dictator. Sulla based the precedence for his dictatorship, although in a modified form, upon the creation of the *senatus ultimum consultum*, or the ability for the Senate to order the consul to use extreme measures in order to safeguard the republic. This precedent was established in 121 when senators were murdered in a public brawl with Gaius Gracchus, in a dispute over another agrarian law, the *lex Rubria*.<sup>130</sup> "Sulla's cause, seeking to rid the state of hateful tyranny, was therefore just, the cause of the *respublica* and of the *nobilitas*."<sup>131</sup> Sulla stamped out Marius' forces once and for all in 88 – as well as thousands of Roman citizens when he marched on Rome to depose Marius, who had returned to Rome a second time, displaying an important consequence of the Roman professional army, intended or unintended, a sort of contractual obligation between the general and his army. As usual, there were precedents of a sort: in 134 B.C. Scipio Aemilianus had gone to war against Numantia with an army composed almost entirely of clients when it proved almost impossible to levy an army of the usual citizen militia type. By this time, the obligation of the client to perform military service for his patron had long since ceased.<sup>132</sup> "The phenomenon of military *clientele* developed *pari passu* with the proletarianization of the citizen militia and with the extension of continuous military service."<sup>133</sup>

Before setting out on Rome, Sulla's army swore an oath to him, in case they were concerned about marching on their own city; all of his officers but one, however,

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<sup>130</sup> H. Last 82-3, *C.A.H. Cf. lex Rubria de virilis ill.* 65.5.

<sup>131</sup> T.N. Mitchell 3. *Cicero the Senior Statesman*. New Haven: Yale UP 1991.

<sup>132</sup> Gabba 26. *Ibid.*

<sup>133</sup> *Ibid.*

refused.<sup>134</sup> “It must have been difficult for the ordinary soldier to distinguish between the two aspects of this oath; and it came to be regarded rather as a personal oath of loyalty to the general rather than the state.”<sup>135</sup> The relationship of general and the soldier had again come to be discussed as one of client to patron. “As a result the soldier ends up being considered a *miles Caesaris* or a *miles Pompei*, and the army thereby ceases to be the State’s army but becomes in practice a private army.”<sup>136</sup>

Sulla’s system incorporated potentially estranged social reformers and soothed the bristling of potential military opponents, introducing many reforms. Most of his reforms were designed to absorb the effects of the Gracchi’s agitations. Although Marius had been a reformer in earnest, Sulla was one by default. M. Livius Drusus, tribune in 91 B.C. passed a sweeping counter-reform program that was nonetheless very conservative. Although with the passing of his *lex Aurelia*, Drusus awarded an agrarian law to Sulla’s troops, he also doubled the ranks of the Senate, thereby allowing new social opportunities for many from the equestrian order who may have been jurors or who were *novi homines*, new or self-made men like Cicero; at the same time, he vested senatorial positions for some of the Italian leaders, securing their allegiance to the system. “It reveals a political capacity which matched that of Gaius Gracchus.”<sup>137</sup>

Drusus also reduced the powers of the tribune, he only drew the attention of the plebs to the part of the establishment that helped to connect them to the system. The office of Tribune and that of the Aedile, the administrator of public works and games, were the lowest echelon in the senate, a stage at which one curried the people’s favor for

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<sup>134</sup> Gabba 27. *Ibid.*

<sup>135</sup> Smith33. *Ibid.*

<sup>136</sup> Gabba 27. *Ibid.*

<sup>137</sup> Gabba, [131] 131-41, “M. Livius Drusus and Sulla’s Reforms,” *ibid.*

later elections. Such men could promise the people extravagances knowing full well that the senate would veto them, nonetheless gaining in popularity in their advance through the *cursus honorum*, or the course of honors, the progression of public offices.<sup>138</sup> Although Cicero was to choose the office of *aedile*, rather than tribune, as his entry point into the *cursus honorum*, this does not mean that the office of tribune necessarily entailed radical behavior. However, a striving politician could become enmeshed in his promises to the people, using the office to gain social popularity, stirring up strife, as Lepidus did after the end of the dictatorship. However, “to associate the tribunate with the Gracchi, Saturninus, or Sulpicius Rufus is to forget that ten men held the office every year in Rome, very few of whom are known to have engaged in radical agitation.”<sup>139</sup> For the most part, the tribunate was not a threat to the system but held a place within it.

Upon his death in 78, the ramifications of Sulla’s agrarian policies for his troops became apparent. In order to provide land for his veterans, Sulla had displaced many Italian farmers, landowners, opponents from the civil wars, and anyone who had been proscribed. Not all of the disenfranchised settled down, but in many cases took up arms against the republic under Lepidus and Brutus in the Italian peninsula, and under Sertorius in Spain.<sup>140</sup> At these times, the senate closed ranks to defend itself from the outside political threat, and Lepidus went into exile. Nor would the senate take this measure unless it seemed necessary. Before Lepidus joined the uprisers, he had tried to gain popularity by appealing to the disenfranchised, calling for a reinstatement of their property. To gain the favor of the *plebs*, Lepidus called for *lex frumentaria* for the

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<sup>138</sup> Gruen 24. *Ibid.*

<sup>139</sup> Gruen 23. *Ibid.*

<sup>140</sup> Gruen 1, *ibid.* Cf. Broughton 75. *Vol. 2. Ibid.*

distribution of grain.<sup>141</sup> Lepidus' plans got the better part of him, and he was forced to keep his promise to the disenfranchised and go to their aid.

Only at this point did another rising general, Pompey, and Lepidus' co-consul, Catulus, join forces to beat down the affront. Although Pompey was a *populari* and Catulus a more conservative *Optimates* (Cicero later championed both of them), party politics were unimportant when the integrity of the senate was presented with outside threats. The balance of power remained relatively unaffected in both groups, but there were serious reductions of powers to those who had taken a position against Sulla during his dictatorship. "The bloody decade of the Social and civil war meant that the major decisions were being made not in the forum, the *curia*, or in the *iudicia*, but in the battlefield. Sulla resolved to put an end to that cycle."<sup>142</sup> Nevertheless, the end of his own life saw the rise of a new general.

By 70 B.C., about to turn into the decade in which Cicero himself would become consul, the Sullan framework – not so much as a structure, according to Gruen, the author of the *Last Generation of the Roman Republic*, than tension of alliance and alignment – was still in place.<sup>143</sup> The new concessions that Pompey gained in his many battles, including the Spanish war against Sertorius, did not recede. Pompey gained a personal increase in *auctoritas*, authority that allowed him to share the consulship with Crassus in 70. After finishing a nearby campaign, he stationed his army outside of Rome on the pretense of guarding against stragglers. He disbanded it only after receiving a concession that exempted him from having to climb the *cursus honorum*. "Land grants for veterans

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<sup>141</sup> Gruen 13 *Ibid.*

<sup>142</sup> Gruen 10

<sup>143</sup> Gruen 48. *Ibid.*

are usually associated with demagogues and military men, and with subversion of aristocratic control in the state. But upon conclusion of the Spanish war and return of Roman forces, the *curia* [the Senatehouse] authorized legislation to provide land for both the soldiers of Metellus and Pompey.”<sup>144</sup> There is only one passing mention to the *lex Plotia agraria*, which has been dated to 70. “The veterans, as Pompey’s speech seems to show, were not rewarded until 59 B.C.”<sup>145</sup>

In the year of his consulship, Pompey also promulgated legislation calling for profiteers of the Sullan regime to return funds to the state, greatly angering his co-consul, the famously wealthy oligarch. Crassus was the patron of the *publicani*, the organization of tax farmers who had turned Asia into a cash cow. Established under Tiberius in order to process the funds from Pergamum, the *publicani* were the first corporations, business men who had volunteered to solve the problem of collecting taxes in that province. Each year, associations of *publicani* bid on the return of the year’s taxes, or *vectigalia*, putting up the money in advance. The idea was overbid on their projected *vectigalia* – here the competition was key – in order to make at least a 10% profit in the hopes that the Senate would accept their bid to collect the money. In this year, the *publicani* overbid on the profit margin. Due to the decimating affects of the war in Asia with Mithridates, they carried a net loss, and the Senate refused to reimburse them. Crassus was also the same oligarch responsible for putting down Spartacus’ slave revolt in 72, a victory for which Pompey had stepped in to take the credit.

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<sup>144</sup> Gruen 37 f., 112. *Ibid.*

<sup>145</sup> Gabba 153, “The Lex Plotia Agraria,” *ibid.* C.f. Cic. *Ad Att.* I 18, 6.

“What marks the Ciceronian age is a persistent tension between the old categories of political behavior and the onrush of events that appeared to outstrip them.”<sup>146</sup> Cicero himself argued for Pompey’s to take military command of the province of Asia in 66 B.C. Certainly Cicero owed much to his *Optimate* supporters, and he had avoided associating with the reformists. “Especially notable was his failure to support the Gabinian law in 67, the measure that had given Pompey his extraordinary command against the pirates, and that had wide support among the general public and the equestrian order.”<sup>147</sup> Delivering his first political speech to the people, *On Pompey’s Command*, Cicero names a number of reasons to extend Pompey’s command, ‘*imperium*.’ War Mithridates had dragged on for twenty-four years, the longest single war in Roman republican history, draining the *vectegalia* and putting a strain on the allies.

“For now, what language can be found to equal the valor of Gaius Pompeius, at once strong and virtuous?”<sup>148</sup> Pompey, popular enough to have a chance of receiving full command against Mithridates had moreover successfully concluded each of his campaigns, well over a handful. “For I think that these four qualities are indispensable in a great general: knowledge of military affairs, valor, authority and good fortune.”<sup>149</sup> In the speech, Cicero speaks in glowing terms of Pompey, too glowing. “For those are not the only virtuous of a general which are usually thought so,--namely, industry in business, fortitude amid dangers, energy in acting, rapidity in executing, wisdom in foreseeing; which all exist in as great perfection in that one man as in all the other

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<sup>146</sup> Gruen 49n. *Ibid.*

<sup>147</sup> Mitchell 6, *Ibid.*

<sup>148</sup> Cicero. *De Imperio Cn. Pompei Oratio* 1.1. *Scriptorum Classicorum. Oxonii: Clarendoniano* 1905.

<sup>149</sup> Cic. *De. Imp.* 1.28.

generals put together whom we have either seen or heard of.”<sup>150</sup> He describes qualities of the *exempla* of a leader.<sup>151</sup> “Of this subject matter it is more difficult to find an end than a beginning.”

“It is also clear from Cicero that *exempla* of this kind were the main value of history for the individual in his public and private life, as well as for the orator in his craft.”<sup>152</sup> Scipio is the representation of a strong magistrate; however, when he comes close to tyranny, he is able to rely on the wisdom of his friend, Laelius the Prudent. “Manlius and Scipio were both examples of the rhetorical commonplace that the populace is often ungrateful to its saviors; equally Scipio’s behavior could be used to illustrate self-confidence, of Manlius’ fate to exemplify heroism perverted into tyranny.”<sup>153</sup> The *lex Manllia* also vastly increased Pompey’s area of control. “When Pompey was invested with his commands against the pirates and King Mithridates, the political destiny of Rome was transferred from the Forum and the Senate House to his camp.”<sup>154</sup> The question of what Pompeius Magnus would do with his army when he returned to Rome was a looming question.

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<sup>150</sup> Cic. 1.28.

<sup>151</sup> Cic. *De Imp.* 11.29.

<sup>152</sup> Wiseman [37] 27-40, “History and Rhetoric,” *ibid.* Cf. Cic. *Arch.* 14.

<sup>153</sup> *Ibid.*

<sup>154</sup> M. Cary 275. *C.A.H.*

Part III: *Simulacrum***Orationes De Lege Agraria Ciceronis contra P. Servilium Rullum**

Upon his ascension to the consulship on the first day of January in 63 B.C., Cicero met with a proposal for an agrarian law put forth by the tribune P. Servilius Rullus. In a series of three speeches – two to the people and one delivered before the senate, all of which survive to this day – Cicero conjures the image of a Republic mortally threatened by the agrarian proposal. “With these counter-measures Cicero was entirely successful; he provided such a chilly reception for Rullus’ bill that its author withdrew it without putting it to the vote.”<sup>155</sup> Considering the atmosphere of political disharmony pervading the capitol at this time, we may ask why, in light of the bloodshed of this and the surrounding years, there was no violence in response to the tabling of Rullus’ proposal, considering its apparent importance. This has to do with questions of who backed the law, and who was resisting it. Because the text of the defeated proposal does not endure, we are left with the big questions about what it contained.<sup>156</sup>

Rullus was no Gracchus. He has typically been seen as a cat’s paw, a tool of some more powerful backer. The question remains, then, of who was behind him in this endeavor. There are two basic theories. The first theory – that Cicero is able to overtly imply by virtue of the open-ended nature of the law, which leaves room for the possibility of interpretation – holds that this law was put forth by rivals of Pompey. It provided

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<sup>155</sup> M. Cary 486. *C.A.H.*

<sup>156</sup> “By far the most valuable source for the period covered by this and the following chapter [(XII) “The First Triumvirate”] consists in the Letters of Cicero,” M. Cary notes in *C.A.H.*, “Next in order of importance comes the Speeches of Cicero, which were particularly plentiful in the year of his consulate.”

unusual powers to a commission, of ten rather than three: the decemvirs, who called for generals to register their conquests with the state. “The *decemviri* will sell the booty, the spoils, the division of the plunder; the very camp of Cnaeus Pompeius, while the general is forced to sit still.”<sup>157</sup> The conquests would provide money for the commission, which the *decemviri* could then use to buy the land promised under the law. Although this made sense if in fact the bill would serve Pompey’s veterans, Cicero depicts the *decemviri* as selling land left, right and center, and even has them selling the camp of Pompey out from under his very feet. “In his anxiety to discredit his opponent at all costs he piled bad arguments on top of good,” M. Cary said in his discussion of the land bill of Rullus. “He profited by ambiguities in the drafting off the bill to exaggerate *ad absurdum* the powers of the decemvirs and the magnitude of their operation.”<sup>158</sup>

The law did provide unusual powers to the commission, above and beyond that provided by previous agrarian laws. “Again the reformers adapted and modified a traditional form to serve a new end,” Gargola points out, reminding us of Tiberius’ second law, which provided the commission with the powers of *iudicium* to buy and sell public land.<sup>159</sup> However, the Rullan law gave the *decemviri* the additional power of *imperium*, the special magisterial power to command or to enroll troops. “The scale of the decemvirs’ operations and the powers entrusted to them exceeded the requirements of even the most ambitious scheme of settlement.”<sup>160</sup> The unusual amount of power it implied is clearly a part of the bill’s critique.

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<sup>157</sup> Cic. *Agrar* 1, fr. 4.

<sup>158</sup> M. Cary 486, *C.A.H.*

<sup>159</sup> Gargola 149, “The Gracchan Reform,” *ibid.*

<sup>160</sup> Cary 485, *C.A.H.*

Another theory holds that the Rullus promulgated the bill on behalf of Pompey. The theory is that the commissioners would use their unusually large power to provide grants of land to Pompey's veterans. When Pompey returned he would need a land law for his veterans, one stronger than the *lex Pompeia*. This seems like a *cui bono* argument in favor of his support. Pompey was in Asia during this time, cleaning up the mess after a prolonged campaign against Mithridates. "Pompey's impending return following his spectacular victories over the pirates and Mithridates was heightening political tensions and prompting moves to court his friendship or minimize his power. The divisive effects of the civil wars of the eighties and many injustices of the Sullan years were continuing to foster unrest and alienation and to encourage political agitation and opportunism."<sup>161</sup>

When Pompey reached Rome later in 63 he disbanded his armies. Then he backed a series of agrarian laws. In 61, he put Pupius Piso into the consulship, but the senate stymied his proposals, and Pompey was able to get very little accomplished in this respect. The consul Pompey established in the following year, Lucius Afronius, was even more useless in this regard. Passing his land law provided the motivation Caesar needed to get Pompey to join with the first triumvirate. Cicero in a letter to his friend Atticus in 59 says that Caesar had approached him, saying that he was going to reconcile Pompey and Crassus. Because the Senate would not pass their bills, he would propose to each of them what they desired: for Pompey, an agrarian law for his veterans and for Crassus, a return on the money his corporate clients had lost in Asia. In uniting these powerful forces, Caesar then asked Cicero to join the first triumvirate.

This theory has in its favor the evidence. The Rullan land law seems to bear similarities to the Caesar's agrarian law. Despite the comparison to the Gracchan law,

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<sup>161</sup> Mitchell, [9-10] 9-62, "The Political Ideas behind the Policies of 63," *ibid.*

the Rullan proposal bears more in common with the *lex Iulia Agraria*, due to the changes wrought by Marius' reforms. Both of the Gracchi faced a major social problem and a military problem that was generic and non-specific. Saturninius' agrarian law was aimed at a specific, and in a sense, retroactive issue: Marius' soldiers have done sterling service and should be rewarded. "The framers of late republican laws followed the same broad pattern, although they tended to define their areas broadly, as did the Gracchi, and often intended that the veterans of the major commanders be the main (or only) beneficiaries."<sup>162</sup> The Rullan law, because it is left vague, ended up looking like a Gracchan land law, open-ended, aimed at broad social problems. Enough of the substance of the law comes through Cicero's speech to reflect Caesar's land law in 59, which was not open-ended but was specific in the Saturninan fashion.

The historical evidence seems to imply that Pompey was indeed the backer. In light of this, however, historians show a careful unwillingness to be decisive on this matter. This is in part because Cicero is likewise either unwilling or unable to name the bill's backer. The primary source that we have of this is Cicero's speech on the matter, which is rhetorical in nature. However, Cicero's use of rhetoric – the art of saying something in such a way so that it appears not to have been said – allows him to say things that he could not state openly. Pompey was the darling of the people. Moreover, the fact that Rullus' backers had not made themselves known allows Cicero to incriminate a far wider scope of people without specifically incurring support for the bill from the clients of anyone he might mention.

At points Cicero seems to suggest Pompey himself backs the bill. Because he uses the rhetorical "you," although he is addressing Rullus, the texts of his speeches

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<sup>162</sup> Gargola 176. *Ibid.*

would have been read by Pompey. Therefore, when he says, "You have given up to me a city made anxious with suspicion, in suspense from fear, harassed to death by your proposed laws, and assemblies, and seditions," he could easily be referring to the state of uncertainty over whether Pompey and his army would invade the capitol upon his return, a question which had left the capitol in suspense. "You have inflamed the hopes of the wicked, you have filled the virtuous with alarms; you have banished good faith from the forum, and dignity from the republic."<sup>163</sup> Pompey had left the state of affairs upon his return unspecified: "Hence the conflicts which meantime opened in the city were waged under the shadow of his home-coming."<sup>164</sup> Analyzing his speeches for content in this manner poses a danger to the historian, not in the least because the task of reading literally between the lines leaves little to quote. However, the primary text survives the debate.

Applying rhetoric to the analysis of Cicero's oration may allow us to analyze his *oratio de lege agraria* systematically. "We, the modern readers of ancient historiography, are in constant danger of being numbered among the *stulti*. It takes a substantial effort of imagination to re-create the state of mind of a Roman reader familiar with all the techniques of the rhetorical schools and conditioned to discount them."<sup>165</sup> Scaevola distinguishes between the *prudentes* and the *stulti*, those wise to the rhetorical flukes and those who swallow them hook, line, and sinker.<sup>166</sup> "Cicero distinguishes the two parts of the audience as those who recognize what effect the speaker is having on

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<sup>163</sup> Cic. *Agrar.* 1.VIII(24).

<sup>164</sup> M. Cary 475. *C.A.H.*

<sup>165</sup> Wiseman 36. *Ibid.*

<sup>166</sup> Wiseman 51, *ibid.* Cf. Dion. Hal. XI 1.3.

them, and those who know *why* he is having that effect.”<sup>167</sup> In a sense this is well and good, but not everyone in the Roman audience had the benefit of a rhetorical education at Rhodes, as Cicero did.<sup>168</sup> Cicero, who owed much to his rhetorical education, remains central to the study of rhetorical models.

Despite the intervening years, the speeches are in optimum condition. Although of *exortium* from the first speech – the opening, in which Cicero thanks the people for electing him consul – only a small fragment remains; nevertheless, the state of Cicero’s views can still be ascertained from the rest of the oration. Meanwhile some of the *narratio* – in which the orator lays out the circumstances leading up to the debate – is missing, but the historical details of that have already been filled in. The rest of the three speeches are in perfect condition. In each part of his speech, Cicero recycles the topics he has initially laid out in his division: he *iudicium* of the *decemviri*, their power to sell the *ager publicus*, and *imperium*, the ends justifying the means, all related to the point at issue.

In having the power of the *iudicium* to buy and sell public lands, the *decemvirs* in effect had the ability to turn land into gold. If property can be sold, if the empire, if *imperium* may be sold, it is just gold too. “He is selling all the possessions in Italy, in regular order. Forsooth, he is very busy in that occupation. For he does not omit one.” But the *decemviri* do not sell the republic for the sake of gold, but for the sake of corruption. “I suppose you do not doubt, that they who procured these things by their

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<sup>167</sup> Wiseman 34, *ibid.* Cf. Cic. *Brut.* 187, in which he distinguishes between the *docti* the *intellegentes*, and the *vulgus*.

<sup>168</sup> Zetzel xxvii. *Cicero – On the Commonwealth and On the Laws*, Cambridge UP, *ibid.*

arms and their valor, did not sell them for the sake of the treasury, on purpose that we might have something to sell for the sake of bribery.”<sup>169</sup>

According to Deleuze, the division is not to divide topics, but to unite them, or, “to distinguish pretenders; to distinguish the pure from the impure, the authentic from the inauthentic. This explains the constancy of the metaphor assimilating division to the testing of gold.”<sup>170</sup> In this manner, Cicero reexamines the topics he laid out in his partition from a different angle. In the *refutatio* he then deals with the possible refutations of his argument about these topics. “Features typical of oral poetry, thought not unique to it, are ring-composition and composition of association by ideas. In order to round off and bring the topic to completion, the poet often reverts to the idea with which he began,” R.M. Frazer says in his discussion of the style of the poet Hesiod<sup>171</sup> in his *Theogeny*.<sup>172</sup>

The refutation is very important in questions of the law’s backer’s because, in addressing the ambiguities in his own argument, Cicero makes another point about the ambiguity of the law itself. Nevertheless, the argument unto itself seems ambiguous, even from a rhetorical standpoint. He uses confusion to this affect, further obscuring the point. Here, it is helpful that his argument repeats itself. He casts cursory suspicion on each of his own arguments, including the assertion that the law is opposed to Pompey. If Cicero can make this argument, therefore, the law has raised too many possibilities and needs to be more defined. “Unfair as he was, Cicero accomplished his purpose without

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<sup>169</sup> Cic. *Agar*. 1.II(4).

<sup>170</sup> Deleuze, [254] 253-266, “Plato and the Simulacrum,” *The Logic of Sense*. New York: Columbia UP 1990.

<sup>171</sup> Hesiod flourished around 700 B.C. Frazer tells us that “he is the first European we can know as a real person, for, unlike Homer, he tells us about himself in his poems (4).”

<sup>172</sup> Frazer 15-6, “Introduction,” *The Poems of Hesiod*. Norman: University of Oklahoma Press 1983. C.f. P. Walcot xiif, *Hesiod and the Near East* (Cardiff, 1966).

alienating the Senate; he induced the people to vote against a bill ostensibly conceived in their interest, and with praiseworthy social intent.”<sup>173</sup>

## Conclusion

But with certainty, who backed the law and who opposed it? The latter question is more difficult. However, because Cicero set his *Republic* at the time of the Gracchi, when agrarian legislation was the state of affairs, we have a point of exposition from which to infer the state of his notions. Moreover, we shall allow Laelius Prudens and Scipio Aemilianus to explain these things, for they are the two main characters in Cicero’s *Republic*, who are partaking in a dialog about justice. In Book III of Cicero’s *Republic*, another character, Philus, argues that there is no such thing as distributive justice, because justice is in fact based upon necessity, not or just due. Laelius, who as we remember nearly proposed an agrarian law, makes the argument for justice supported by Scipio, who praises Laelius in his own argument for a just government, arguing that the mixed constitution of Rome is the only true republic. A similar dialog on justice, in fact, provides the setting for Plato’s *Republic*.

Accordingly, to be able to legislate a reflection of that system, an understanding of which constitutes immanence in the image guiding creation and interpretation of *fas*, divine law or mandate, requires both education and wisdom. The offhanded decree of the senate in the Lex Licinia, a law *de modo agrorum* of the second century B.C., that the ager publicus, or public land devastated and confiscated by the S.P.Q.R after a war would be distributed properly at some later date had the power of *fas* although the system had been corrupted – the wealthy had no intention of doing so, instead aggregating the land

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<sup>173</sup> Gruen, 393, *ibid*.

into vast plantations manned by large populations of slaves, the first to be satisfied. The violation of an ideal system becomes evident through the surreality associated with a state controlled by the wealthy and by slaves, both of whom have secure positions in society, while the citizens go landless. The point of necessity in a system poses a threat, the decay of the aristocracy shadows falling. If the Senate crumbles, then the entire tier begins to collapse. Through the avenues of the tribunes, it is easy to imagine how this bulwark could exert a pressure on the people. They introduced necessity into the system, tautologically revealing an ideal system, the *simulacrum*.<sup>174</sup>

Polybius breaks down the Roman mixed constitutional system in his histories. First he classifies three types of polities, kingship, aristocracy, and democracy. Although this is a Greek political theory and others had explained the breakdown in greater detail, Polybius says, “Suppose that from floods, pestilences, failure of crops, or some such causes the race of man is reduced almost to extinction. Such things we are told happened, and it is reasonable to think will happen again.”<sup>175</sup> From their need, one person would rise from among the rest, a powerful and charismatic person, who organizes the resources of the community and becomes a king.

Thus society begins as a primitive monarchy, with a strong man to bring them together. His son also succeeds. Nevertheless, by dynasty kingship lapses into tyranny, while the kings and their cronies feed off the people. Now, the nobles are the class of society that has the most to take gain, and they establish an aristocracy full of high-

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<sup>174</sup> Deleuze describes the simulacrum (feels syllogistic) as follows (. “It would of course be necessary to distinguish two operations, namely, the production of a physical surface for lines which are still corporeal, for images, imprints, or representations and the translation of these onto a “metaphysical” surface, where only the incorporeal lines of the pure event are played out which represent the interpreted sense of these images (find another quote in “Plato and the Simulacrum?” *Logic and Sense*).”

<sup>175</sup> Polybius, *Histories*. 6.5., translated from the text of F. Hultsch by Evelyn S. Shuckburg. Vol I. Bloomington: Indiana University Press.

minded ideals. When they too cease to care about the common good, they fragment into an oligarchy which exploits the people, who establish a democateia, as Tiberius did. The people will value the liberty they had fought for, coming to value their personal freedoms about all others. At this point, their society becomes an ochlocracy, or mob rule, and this is the vicious cycle of government. In a way, Cicero held the same ideal as Tiberius, placing a great faith in the people. He had spoken in terms of educating them, and of this desire he became disillusioned after his loyalty to the people went unmet. Thus he began to draft his *On Laws*.

How does one break out of this cycle? At a propitious moment before the system moves towards decay, chose the best from each system and amalgamate them into a system which checks itself. The monarchical aspect becomes the magistrates, chosen from the aristocracy, whom the people have the right to vote in and out of office. Both Polybius and Plato use the Greek term, the *politeia*, to describe this, and Cicero uses the term *res publica*.

In *On Duties*, Cicero says, “Although men originally banded together because their nature so urged them, yet it was in the hopes of protecting their possessions that they sought the defensive safety of cities.”<sup>176</sup> This statement, taken out of context, has often been interpreted to mean that Cicero, like the *possessores*, as only protecting the right of property, or distributive justice. However, the first two books of his *Republic* are about the mixed constitutional system. Ascribing his view to the propaganda of either the *Populares* or the *Optimates* is missing the greater picture that he has made.

“Judged from the point of view of parties, therefore, Cicero may seem to have followed a wavering course, but his ultimate goal, the welfare of the republic, he kept

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<sup>176</sup> Cic. *On Duties* 1.24. Shelton *ibid*.

steadily in view.”<sup>177</sup> In Book VI of the *Republic*, Scipio is in Africa meeting King Masinissa, to whom his grandfather had restored his hereditary domains. “Thereby I questioned him about his kingdom, while he inquired of me about our commonwealth, and we spent the whole day in an extended discussion of both.”<sup>178</sup>

Later, after being bored with war tales of his grandfather’s exploits, Scipio falls into a deep sleep. “The following dream came to me, prompted, I supposed, by the subject of our conversation; for it often happens that our thoughts and words have some such effect in our sleep as Ennius describes with reference to Homer, about whom, of course, he frequently used to talk and think in his waking hours.”<sup>179</sup> Scipio’s dream is Cicero’s waking life. In the dream, a bust of his ancestor, Scipio Africanus, appears before him, a simulacrum of his elder tells Scipio that a time will come to hold up the torch of the fatherland, in light of his character, ability and wisdom. At that time, a choice of two paths appears before him. “For when your age has fulfilled seven times eight returning circuits of the sun, and those two numbers, each of which for a different reason is considered perfect, Nature’s revolving course have reached their destined sum in your life, then the whole State will turn to you and your name alone.” If Scipio’s time is aptly ascertained to be 129 B.C., then from that year, seven years times eight, a span of 56 years subtracted from 129 comes to 63, the summit of the Roman Republic.

Cicero’s work came at a crucial time for Rome. Considering the popularity of Plato as a precedent, it ought to have been understood. “He expected his readers to be sophisticated enough to distinguish the *oratorium genus* from the *historicum*,” and we

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<sup>177</sup> Tenney Frank 125, “Annual Lecture on a Master Mind, Henriette Hertz Trust, Cicero.” *Proceedings of the British Academy*, 1932. London: Oxford UP 1932. Read June 8, 1932.

<sup>178</sup> Cic. *Rep.* 6.9. Harvard UP.

<sup>179</sup> Cic. *Rep.* 6.10. Harvard UP.

shall make the same distinction.<sup>180</sup> It was Caesar who figured out what Pompey backed, because in the end it was what they both desired: *power*. When Cicero refused to join with the first triumvirate, adhering to his own ideals, his power in the Senate seemed crippled, and thereafter the triumvirs ordered him to speak on the topics they assigned him. Although in the year 43 Cicero continued to work on his *On Laws*, there is no indication that he had completed his task.<sup>181</sup> Law becomes a discourse imposed by authorities that no longer have power. Lactantius, citing Books 1 of *Laws*, cites Cicero as saying “that he had lacked neither the will nor the effort,” but “As far as I am concerned, Scipio dealt adequately with this subject in the book which you have read.”<sup>182</sup>

Cicero’s words come to us through time. We have full texts of many of his speeches and in many ways, Roman history comes from him; he wrote over 800 letters, comprising most of what we know of Roman culture. “It is the breadth and scope of all his work rather than the depth or height of any one idea that calls for attention. Perhaps it would be fairer to speak of him as a pervading force in the world than as a master mind.”<sup>183</sup> His bust is the image, printed in gold, on the cover of the Cambridge Ancient History, which lists the dates of the Republic from 133-44 B.C. However, in Cicero’s own *Republic*, he sets it at a different date: 129 B.C, for there is a greater point to be made here.

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<sup>180</sup> Wiseman 34. *Ibid.*

<sup>181</sup> Zetzel xix. *Cicero – On the Commonwealth and On the Laws*. Cambridge UP.

<sup>182</sup> Zetzel 79, *ibid.* Cf. Lact. *On the Workmanship of God* 1.11-13, 1.7.

<sup>183</sup> Frank 13 (1932).

This historiography represents not just the history of the Fall of the Roman Republic, but the Republic that has been issued to us by Cicero who, knowing that agrarian legislation represented the state of affairs of the Republic at the time of the Gracchi in a useful retrojection to 129 B.C., right in between Tiberius and Gaius Gracchus, taking the point in time wherein the system first began to show tension symptomatic of the state of the Republic as a whole and in the place of the situation he foresaw in his oration on agrarian legislation in 63 B.C. when the situation was on its last leg, at that fortuitous moment creating a mixed constitution.

- A. Alföldi. *Early Rome and the Latins*. Ann Arbor: University of Michigan Press, 1965.  
Based on the Jerome Lectures at the American Academy in Rome, summer, and at the University of Michigan, fall 1961. Cf. Alföldi, *Die trojanischen Urahnen der Römer (Rektoratsprogramm der Universität Basel für das Jahr 1965)* 1957.
- Appian, *Civil Wars*. Transl. Horace White, London: Macmillan & Co. Ltd., 1899.
- Cicero. *De Re Publica, De Legibus*. Translated by Clinton Walker Keyes. London: Harvard UP 2000.
- Cicero. *On the Commonwealth and On the Laws*, ed. James E. G. Zetzel, *On the Commonwealth and On the Laws*. Cambridge: Cambridge UP 1999.  
- *De Imperio Cn. Pompei Oratio. Scriptorum Classicorum. Oxonii: Clarendoniano* 1905.  
- *Agrar*.  
- *On Duties*. See Jo-Ann Shelton.
- David Stockton. *The Gracchi*. Oxford: Oxford UP 1979.
- Deleuze, [254] 253-266, "Plato and the Simulacrum," *The Logic of Sense*. New York: Columbia UP 1990.
- D.C. Earl. *Tiberius Gracchus, a study in politics. Collection Latomus*, Vol. 66. Bruxelles: *Revue D'Etudes Latines* 1963.
- D.J. Gargola. *Lands, Laws and Gods – Magistrates and Ceremony in the Regulation of Public Lands in Republican Rome*. Chapel Hill: University of North Carolina Press 1995.
- E.G. Hardy. *Six Roman Laws*. Oxford: Clarendon Press 1911.
- Erich S. Gruen. *The Last Generation of the Roman Republic*. Berkeley: University of California Press 1997.
- Emilio Gabba *Republican Rome, the Army and the Allies*. Translated by P.J. Cuff. Basil Blackwell: Oxford 1976.
- Frazer 15-6, "Introduction," *The Poems of Hesiod*. Norman: University of Oklahoma Press 1983.
- Georges Duby. [120]113-122, "Youth in aristocratic society, Northwestern France in the twelfth century," *The Chivalrous Society*. Translated by C. Postan (Berkeley, 1977).
- Jo-Ann Shelton. *As The Romans Did, A Sourcebook in Roman Social History*, Oxford: Oxford UP 1988.

- Peter Wiseman. *Clio's Cosmetics*, Rowman and Littlefield: Leicester UP 1979.
- Plutarch. *Makers of Rome*. Translated with an Introduction by Ian Scott-Kilvert. London Penguin Books 1965.
- Polybius. *Histories*, translated from the text of F. Hultsch by Evelyn S. Shuckburg. Vol I. Bloomington: Indiana University Press.
- R.E. Smith. *Service in the Post-Marian Roman Army*. Manchester: Manchester UP 1958.
- Eds. S.A. Cook *et al.* *Cambridge Ancient History of the Roman Republic (133-44) B.C., Vol IX. [C.A.H.]*. Cambridge: Cambridge UP 1977.  
H. Last 1-38, "Tiberius Gracchus."  
40-100, "Gaius Gracchus."  
102-156, "The Wars of the Age of Marius."  
G. H. Stevenson 437-72, "The Provinces and their Government."  
M. Cary 475-504, "Rome in the Absence of Pompey."
- Tenney Frank. *An Economic History of Rome*. 2<sup>nd</sup> edition revised. New York: Cooper Square Publishers, Inc. 1962. Cf. Beloch, *Bevölkerung der Griech. Röm.* -"Annual Lecture on a Master Mind, Henriette Hertz Trust, Cicero." *Proceedings of the British Academy, 1932*. London: Oxford UP 1932. Read June 8, 1932.
- T.N. Mitchell. *Cicero the Senior Statesman*. New Haven: Yale UP 1991.
- T.R.S. Broughton 232. *Magistrates of the Roman Republic, Volume I*. New York: American Philological Association 1951.
- Yanir Sochat. *Recruitment and the Programme of Tiberius Gracchus. Collection Latomus*, Vol. 169. Bruxelles: *Revue D'Etudes Latines* 1980.
- Map – *The Ancient Roman Empire*. Abraham Ortelius, in *Parergon*, Antwerp, 1595  
Osher Collection, University of Southern Maine