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# LAW AND POWER IN ANCIENT ROME ПРАВО И ВЛАСТЬ В ДРЕВНЕМ РИМЕ

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# The evolution of legal proceedings in the Roman land registry

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**Abstract.** The relevance of this study is due to the fact that it is based on the analysis of a source that has not been sufficiently studied in Russian historiography — Corpus Agrimensorum Romanorum. Using a comprehensive method of historical research, the author reveals the evolution of legal proceedings in the Roman land registry. The purpose of the author is to trace the allocation of land in the archaic and pre-classical periods of the development of the Ius Civile in Rome, as well as to point out the changes in judicial proceedings that determined the course of its development in Roman agrimensura. The author came to the following conclusions that, starting from the period of Emperor Augustus, the forma plan of land surveying was worked out, which was a scheme of the most perfect system of field division — centuriatio; and also that during the entire pre-classical period of the Ius Civile in Rome, elements of archaic judicial procedure were preserved: thus, locus forever retained the category of Publicus, except Moreover, the influence of archaism is manifested in how a compromise outcome of a dispute becomes the preferred solution to land conflicts. The formulary process, which based the evidence on the law of the magistrate, built the category of "segments from the boundary line" into the decision of the process of boundary claims based on the interdictum. Thus, the actiones finium regundorum group of claims was singled out, which completed the formation of Roman land law.

Keywords: finis, locus, praetor, controversia, culta, inculta

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## Эволюция судопроизводства в римском земельном кадастре

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Аннотация. Актуальность исследования обусловливается тем, что оно построено на анализе источника, недостаточно изученного в российской историографии — Corpus Agrimensorum Romanorum. Используя комплексный метод исторического исследования, автор раскрывает эволюцию судопроизводства в римском земельном кадастре. Цель исследования — проследить проведение ассигнации земли в архаический и предклассический периоды развития Ius Civile в Риме, а также указать на изменения в судопроизводстве, определившие ход его развития в римской агрименсуре. Сделаны выводы: начиная с периода императора Августа отработан план межевания — forma, являвшийся схемой самой совершенной системы деления полей — центуриации; в течение всего предклассического периода Ius Civile в Риме сохранялись элементы архаического судопроизводства: так, locus навсегда оставил за собой категорию Publicus, а компромиссный итог спора становится преимущественным решением земельных конфликтов; формулярный процесс, строивший доказательства на праве магистрата, встраивал категорию «отрезков от межевания» в решение процесса пограничных исков на основе interdictum; таким образом, произошло выделение группы исков actiones finium regundorum, что завершило формирование римского земельного права.

**Ключевые слова:** граница, место участка, претор, спор, земля обрабатываемая, земля необрабатываемая

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### Land assignation in the Roman cadastre

In ancient Rome a plot of land was transferred into a private ownership by a citizen in an act of assignation, which guaranteed its inviolability within a larger unit called *centuria*. The act of assignation (assignatio) was preceded by technical demarcations of the fields (agri divisi), which implied their division by special limits — limitatio. It provided both material and legal basis for assignatio (Cic. Fam. IX. 13. 2). An official who carried out the assignation was called auctor divisionis. His name and title were inscribed on the boundary stone (Terminus) that marked the borders of the assigned lands (CAR. S. 134, 140; l. c. 209, 226).

Augustus embarked on the task to eliminate any stochastic elements from the process of property registration with an emphasis on the difference between property and possession in legal terms.

Since the period of late Republic was characterized by the lack of vacant lands, this was extremely important. Under Augustus, Rome laid down the principles of its future land cadastre. Thus, it established the width of divisors and of special quinary divisors in its land management system — *centuriatio*. At this stage, agrimensors had to determine such elements of surveying that were in line with the archaic land use norms. At the same time, learned land surveyors dubbed Augustus's reforms in land management "the laws of divine Augustus" (CAR. S. 23, 82, 135). Modern aerial photography shows that the aforesaid reforms were quite precise in definining the ratio between principal axes of surveying on the fields of agri divisi — Decumanus Maximus and Cardo Maximus at 40 and 20 feet respectively with all the limits being given a width of 8 feet (CAR. S. 71, 83, 131–134, 155–157). These parameters were then included in the early version of Roman cadastre with further introdution of special quinary limits of 12 feet in width, used in singling out an important part of the area of the Ager Colonicus — saltus (CAR. S. 69–72). It was saltus that reflected the connection between the principles of Roman cadastre and archaic land management. Augustus especially emphasized the significance of another fundamental unit in Roman land management — finis. He confirmed its ancient width of 5 feet in a special decree (CAR. S. 5, 61, 134).

Augustus decreed to inscribe the classification of divisors on boundary markers — terminae — established on limits. This action — termination (terminatio) was the final stage of centuriation before assignatio, i.e. the transfer of land into private ownership. Augustus ensured that in another system of Roman land management — strigatia-scamnatio — its divisor called rigor, used to form a rectangular unit of land, also had a width of 8 feet. At the same time, the border of a private plot within this system was also called rigor, but this time its width was 5 feet, i.e. it was totally equal to the width of finis in the centuriation system (CAR. S. 109, 114–116).

In general, Augustus' effort on compiling the cadastre culminated in the formula for the transfer of land: "Qua falx et arater ierit" (CAR. S. 73, 164). It was this fertile land that was subject to assignation with an ultimate inscription on the boundary stone "Datum assignatum" (CAR. S. 80–81). Such a precisely designated plot with an inscription on the Terminus was in sharp contrast to a very vaguely assigned land area of the Archaic period.

It was under Augustus that a specific surveying plan for the *Ager Colonicus* called *forma* was introduced. This was a reduced copy of the colony field itself, with all its components: principal and linear dividers, additional quinary dividers for control, which constituted a special block of 25 *centuriae*, designated as *saltus* (CAR. S. 118–119). Moreover, the plan was supposed to indicate

cultivated and non-cultivated lands (CAR. S. 73, 76, 165) [1]. Such a plan also featured other components of the Ager Colonicus: forests (silva), public pastures (loca publica), as well as special locations (exeptus, concessus) (CAR. S. 160; fig. 122-123) [2. P. 93-94]. If Ager Colonicus was crossed by a river, all its curvatures affecting calculations of the size of centuriae and the plots within had to be indicated on the plan (CAR. S. 86). It should be noted that it was not until Augustus reforms that internal division within centuriae appeared on the plans (CAR. S. 158) [3. P. 281–284]. Consequently, besides centuriation, the plan featured the boundaries of private plots, thus becoming a principal document reflecting the results of assignations (CAR. S. 164). Augustus, when there was a shortage of land, allowed "to add" part of the lands of a neighboring municipality. Such additional area was called a "prefecture" (CAR. S. 81). In this case, surveyors were required to have precise knowledge of what kind of boundary grid was used in the prefecture in relation to the surveying of the main colony (CAR. S. 124–125) [4]. The records on the plan were kept in accordance with the stages of land surveying. After the entire survey grid was drawn on the plan, the boundaries (fines) of private plots in each centuria were marked here (CAR. S. 84, 94). Therefore, the plan reflected each part of the settler's allotment (sors) defined in a draw. The land that came into private ownership was designated on the plan as Datum Assignatum (CAR. S. 161, 164). On the ground, the settler's ownership was confirmed by a similar record on the boundary stone (CAR. S. 60, 136, 137, 139). All the documents on land surveying were collected in the central archive — Tabularius Caesaris (CAR. S. 166) [5. P. 112], while the plans of Italian lands were kept in Sanctuarius Caesaris (CAR. S. 118). All the changes in the land status in Italian regions were recorded as commentaries to forma, also kept in the Sanctuary (CAR. S. 119). All checks and updates were meticulously added to archival records. The provinces had their own Tabularia, copies of provincial documents were sent to Ostia for the Curator Tabularium et Librorum (CIL. XIL. 976).

This set of documents was referred to in resolving whatever land disputes could have arisen on the Ager Colonicus. Thus, the emerging judicial proceedings of the classical period — cognitio extra ordinario — were fully based on documentary evidence on the distribution, size of the settlers' lots, as well as further acts related to the citizens' property on the Ager Colonicus. This seems to have been meant to eliminate any basis for land disputes.

The question arises as to why the authors of the Corpus Agrimensorum Romanorum (CAR), writing in the classical period of Ius Civile, paid so much attention to boundary disputes over a plot of land. At the same time, even on the *Ager Colonicus*, after the limitatio was carried out and the plots were transferred into private ownership, there remained lands that were not intended for assignatio. These were the lands that retained the status of *Publicus* within the cadastral boundaries. These lands were intended as plots for the new settlers. They were *loci* defined as *inculta*, and locus was known to belong to the entire *civitas* [6]. In the

Early Republic Italy, the plots were distributed as *locatio*, i.e. with a most general idea of the area. A. Schulten maintains that this principle did not change until the 2nd century BC [7. P. 8]. Such loci were confirmed on *fides*. E. Salmon believes that in pre-Gracchi Italy, all lands were alloted as locatio [8. P. 69–79, 98–100]. But is it possible to regard such a locus as *privatus*? This question was first raised by F. Castagnoli [9. P. 23–36]. Or was it a mere *possessio* on the land? One of the land surveyors, Agennius Urbicus, viewed this process as locatio, which implied ownership [10]. Hyginus the Elder sees the situation as the beginning of neighborly relations, technically based on locatio (CAR. S. 93). O. Behrends regards it as a manifestation of the power of entire community [11. S. 269]. L. Capogrossi Colognesi believes that this practice laid the basis for *agri occupatorii* and was *iniuria*, i.e. outside the legal framework [12. P. 118]. In essence, this was a real locatio. O. Behrends considers this as reflecting the archaic nature of Roman agrimensura [13. P. 6–10].

## Archaic elements in Roman land management

In the archaic period of Roman agrimensura, having received a natural border, locus entered the category of arcifinius [14]. Tacitus contemplates on such a field from the category of agri capti (Tac. Ann. XII. 32). Siculus Flaccus describes such a field as solutus (CAR. S. 100). Pomponius is more specific, stating that locus in the form of arcifinium is regarded as ager when creating a possession (Pomp. I. 26). Thus, Roman agrimensura forms a new concept — a border along natura loci, i.e. along ditches, waterfalls, streams, free-standing trees, juniper bushes (CAR. S. 113). K. Moatti finds it quite clear that loci is a provision of public property [2. P. 59-60]. Indeed, Siculus Flaccus emphasizes that locus does not have modus (CAR. S. 107). Locus seems to have transferred the meaning of public field to arcifinius (CAR. S. 161). O. Behrends is quite right that in the archaic period, locus becomes the basis for possession according to Ius Quiritium without a magistrate [11. S. 247]. Its technical implementation was arcifinius, fixed along natura loci. Thus, lands with the status of Publicus, now being arcifinius within the boundaries of Ager Colonicus, could serve as land plots for private ownership. Survey plans featured no more than the outline of Publicus lands, while their distribution among settlers created ownership rights within the cadastral register.

It was quite peculiar of the Roman agrarian structure that its technical basis for agrimensura was developing ahead of its legal foundation. Thus, the fields of *divisi* et assignati reflected advanced methods of allocating and designating property, while the ownership was still formalized under Ius Quiritium. Therefore, from the archaic to classical period in Rome, all boundary disputes were designated as controversia, not actio [15]. The most important thing for the opponents in the trial was to take a sacred oath — fides, which gave them equal rights in the process. The essence of the dispute was revealed in the part of litigation called

*litis contestatio*, which was, in fact, the moment of truth. The most common object of litigation was the angle of intersection of the plots boundaries.

In such legal proceedings, it was not the verdict that was important, but rather the compromise solution based on the expertise of the mensors. The mensor himself was called *arbiter ex compromissu*, whereas both parties in the process often cited the traditions of land use (CAR. S. 5, 60, 61). Augustus ordered land surveyors to opt for such land management standards that would take into account surveying practices of the archaic period [16].

The most ancient form of dispute over the boundary of a plot of land was "de fine" along natural benchmarks (CAR. S. 5, 31). At the same time, there appeared another type of boundary called rigor — a straight line (CAR. S. 5). When boundary markers were being placed on the boundaries, it gave rise to another type of dispute — "de positione terminorum" (CAR. S. 4). The owners also argued over the location of the plot itself — "de loco" (CAR. S. 5, 33–35). The first two controversiae could not be considered in separation from the location of the plot — locus, since natural boundaries, reinforced by an artificial sign, is an instrument for identifying the locus. For lawyers, a measured and calculated plot of land is fundus (Ulp. Dig. L. 16, 60) [17]. At the same time, Pomponius believed that locus is the plot on which possession arises (Dig. XLI, J, 26; Pomp. I. 26), while locus can also be part of fundus (CIL. X. 4847; Dessau 5743; Bruns. Font. Jn7 77). Controversiae de loco often lacked clear definitions on whether the plot had a private character or public affiliation [18].

Controversia de loco, despite the fact that it was in essence an action in rem, also had many features of a boundary claim. The debate started in the 19th century by A. Rudorff, who placed "de loco" in the category of actions in rem and continues, even after a well-argumented speech by F. Hinrichs, who proved that "de loco" is conditioned by two boundary claims ("de fine" and "de positione terminorum") [19. S. 252; 20. S. 193]. It was this type of litigation that reflected the transition in Roman land management from archaic legal proceedings to a new type of process within the framework of Ius Honorarium.

## The formulary process in Roman land law

The new formulary process set the record straight on the basis of the magistrate's authority. The praetors formulated the claim based on the mensors' expertise. The agrimensors had to confirm the presence of *arcifinius* on the lands and establish its natural boundaries. On the *inculta* lands, the mensors recorded their natural *finis* within the boundaries of the cadastral register (CAR. S. 5, 32–35). According to Siculus Flaccus, surveyors had to be precise in determining the fields both by their quality and by their legal status (CAR. S. 103–104). It was not always easy to establish the natural finis, but even more difficult was to confirm the presence of another boundary — *rigor*, marked by a shallow ditch.

The experts had to distinguish finis and rigor on the lands of Publicus from private boundaries. Land surveyors were even assigned a special task to construct a right angle rigor — a job they paid more attention to than to the construction and designation of natural finis (CAR. S. 4-5, 31). Starting from the Archaic period, the agrimensors also faced a difficult task of how to separate the borderroad finis or rigor from the servitude iter, which had the same width and ensured the right of passage through the fields of a neighbor (CAR. S. 10, 49). This was the job for a well-trained land surveyor (CAR. S. 89). The praetor formulated his claim based on the expertise of the mensors, which made it possible to separate boundary claims of controversiae from other disputed elements more clearly. It was the mensors' job to allocate plots of land within the boundaries of a new colony. Such lands on the Ager Colonicus always retained the form of arcifinius and were allocated for those whose lands were directly ajacent to the natural finis. It was on these lands that all the work of the praetor was carried out after the mensors examined and allocated areas for grazing cattle on lease terms. Thus, on the Ager Colonicus, ownership relations arose for forests and pastures (CAR. S. 159–160, 168) [21].

In addition to farmlands in the colony area, there were lands not occupied by assignatio. These were the so-called "sections" from the survey — *subsecivi*. *Subsecivi* became elements of the Roman agrimensura and were distinguished through designations and descriptions of their boundaries. According to Hyginus the Elder, a "section" could have a border along the limit on one side, and along the outer line of the colony's field on the other (CAR. S. 8). "Sections" could be of different sizes, from an incomplete centuria on the borders of the colony — or in its center if there were lands there — to a complete but unassigned centuria (CAR. S. 80, 120) [22. S. 19–20]. Unlike forests and pastures, *subsecivi* were fragments of good arable land, which made them quite important in the colony's overall survey grid.

In the period of the late Republic under Augustus, the "sections" were classified along with the regulation of width and designation of limits in the centuriation grid (CAR. S. 13, 84, 117, 122, 135; fig. 28) [23. P. 75–79]. Those "sections" that had good arable land were classified as *arcifinius* [19. S. 234, 235]. Augustus believed that it was not enough to mark out the "sections" with arable land simply by location. He established the status of the "sections" as follows:

- 1. *Subsecivi auctor divisionis*, that were the reserves of the princeps, temporarily lent to the administration of the colony;
- 2. *Subsecivi concessa coloniae*, that were "ceded" to the colony. They became the reserve of the colony for rent or purchase by the settler (CAR. S. 165);
- 3. *Subsecivi vetus possessor*, that were ceded to a local resident as farmland (CAR. S. 9, 121–122, 169; fig. 134).

While Hyginus the Elder emphasized that all the "sections" concessit sint to the citizens, Hyginus Gromaticus indicated that these fertile lands could

be granted for pastures (CAR. S. 163; fig. 123, 133). Indeed, the "sections" gave the new settlers a convenient opportunity to create possessions (CAR. S. 8–9, 90) [19. S. 259, 392]. Under Augustus, *concessus* became one of the fundamental provisions of land law. This totally justifies the actions of Emperor Vespasian, who checked the census of Italian lands, based on the type and term of the "cession" (CAR. S. 96–97) [20. S. 129–130]. Augustus gave a thorough thought not only to the agrimensorial, but also to the legal status of *subsecivi*, which resulted in the compilation of the "Books of Sections" (Libri subsecivorum). These books provided information on their location and type of their "concessus" (CAR. S. 116, 119, 166). This marked the beginning of regular state control over the "sections" from the assignation.

Augustus devised two types of concessus:

- 1) ad personam coloniae, when jurisdiction over all types of land outside assignatio is retained by the colony's administration, which leases them to settlers;
- 2) "to the entire collective of the new settlement" (CAR. fig. 122a, 134).

This reflects Augustus's desire to create a community of equal opportunities. Unassigned lands within the boundaries of the colony retained the status of Publicus. Publicus lands in this case are considered vacuus, since they retain the technical characteristics of arcifinius (CAR. S. 100-101). However, the arcifinius type of field differs from the ancient vacuus by the presence of scriptura (CAR. S. 2; fig. 6). Although Siculus Flaccus, following Appian, believed that although the occupation of Publicus creates arcifinium, which denotes possession, occupatio can nevertheless be considered the most ancient form of land exploitation (App. B.C.I. 7; CAR. S. 98, 101; Col. R.R.I. 3. 11). It was through concessus as a legal mechanism that subsecivi were introduced into the agrarian relations of Rome. Now such a possession on the "sections" was protected by the praetor (CAR. S. 160). "Concession" became a most important form of Roman economic policy of in the provinces [19. S. 388]. The rights of local residents to lands were formalized anew with the inscription — C.V.P. (Concessuss Veteri Possessori) [24. P. 988]. All these actions were carried out in accordance with the "laws of the divine Augustus" (CAR. S. 129).

Like any other category of *Publicus*, the "sections" could become the basis for a legal claim. The prerequisite for such litigation was any illegal creation of possessio on "sections" (CAR. S. 8). Due to land shortages in Italy, these fragments of good arable land were especially valuable. This prompted Augustus to devise a special Ius Subsectivorum, which contributed to the development of ownership rights to land in the cadastre. Frontinus generally believed that Ius Subsectivorum introduces *modus* for fields of the *arcifinius* type (CAR. S. 8, 40). Augustus typology and types of assignments of the "sections" adapted them to the needs of the cadastre (CAR. S. 3, 9, 96), while *scriptura* became the first evidence of the creation of a joint pasture — Compascuus [25. P. 32–42]. It should be noted

that for rapid calculations of Publicus areas, they used a method called *mensura per extremitatem conprehensus* (CAR. S. 7, 8, fig. 21), similar to that used to measure lands for taxation in Asia and Egypt (CAR. S. 85, 86).

The purpose of lawsuits in the classical period, as well as in the archaic period, was to sustain the border. All elements constituting the border had to be precisely defined at the stage of litis contestatio. But in the course of a formulary process, especially in disputes over indivisible property, ager was awarded solely to one side, while the other could be compensated for the loss on the basis of adjudicatio. Cicero was the first to designated adjudicatio as a means to determine ownership rights, but only after the whole area was checked for modus (Cic. De re publ. 81). In fact, controversia de modo emerged as such a check on whether the plot of land was in conformity with the given area. The introduction of adjudicatio in the classical period gave rise to a special group of lawsuits — actiones finium regundorum. This became possible due to the fact that under Ius Honorarium, boundary lawsuits got separated from lawsuits in rem. The practor issued an edictum on a plot of land or an interdictum that protected this property. However, in boundary claims, a certain archaic feature persisted for a long time, namely the use of the verb litigo (CAR. S. 9). In fact, the authors of CAR used other verbs along with litigo, including ago, which is more in line with the category of actio. The archaic nature of the "de loco" dispute can be seen in the way it was resolved based on the method of measuring along the external boundary — mensura per extremitatem conprehensus — by the mensors (CAR. S. 1-2, 61). At the same time, "de modo" disputes employed early signs of praetorian protection in checking ancient possessions on the centurized Ager Colonicus (CAR. S. 62). Anything protected by the practor, however, became bonorum possessio, and this was true for any type of surveying.

#### Conclusion

It was not until the late Republican period, that *modus* became an important category of Roman land management. Then *modus* came to be used for measutements of ancient Quirite possessions, when they were checked for renewal or reaffirmation of ownership rights. Such a check gave rise to possessions *ad interdictum*. In comparison to ancient *occupatio*, when possession was created only on the basis of membership in the *civitas*, *possessio ad interdictum* was formed by the praetor. It should be noted though, that *controversia de modo* also kept the archaic ritual in place. When Rome was creating its cadastre, it was necessary to take into account the powerful influence of archaic traditions of land use. That conditioned the emergence of *adjudicatio* in the late Republican period to regulate the ratio between the need to form possessions and the norms of archaic land use.

This explains why the CAR features frequent repetitions of specific instructions on land surveying, reflecting practical activities of the mensors. Their expertise was an important part of legal proceedings in land law, while the very existence of possessions by right of the magistrate was aligned with all the norms of the Roman cadastre through *adjudicatio*.

When *actiones finium regundorum* were singled out as a separate group of lawsuits, it ushered that Roman land law was ultimately transformed into a special branch of Ius Civile. This, in turn, made it possible to complete the final design of the Roman land cadastre after all the technical elements of agrimensura were given legal status.

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