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The Republican Economy and Roman Law: Regulation, Promotion, or Reflection?

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The half millennium that runs from the revolution of 509 to the beginning of the principate saw the transformation of the Roman state from a regional power into a world empire. Thus, to speak of the Roman economy in the singular is misleading, as there is little justification, other than the common denominator of the political institutions referred to as "republican," to consider in one and the same chapter an economic system that underwent the most drastic changes, while showing endless diversity with regard to times and places, structures and scales, or actors and goods. Clearly, however, a family of small farmers settled in the vicinity of Rome throughout the period would have seen much less change than their counterparts in the more rapidly developing area surrounding Paris from the Renaissance until our time. Although a substantial part of the population in Antiquity remained involved in agricultural production at all times, the Roman people of the republican period went through a series of social and economic revolutions of global historical significance. Roman imperialism in Italy and around the Mediterranean Sea was accompanied or followed by economic and fiscal exploitation of newly formed overseas provinces. It resulted in uneven demographic growth, the enrichment of the upper classes, some degree of urbanization linked with colonization, and the development of municipal institutions. There was an increase in long-distance trade in both imports (food, slaves, metals and other kinds of raw material, and luxury goods) and exports (finished goods such as pottery and gold and silver coins), made possible by monetization and the development of a reliable communication network of roads, rivers,

Note: All dates are B.C. unless specified otherwise.

and harbors. Massive transfers of people (slaves, traders, soldiers, and to some extent colonists), the adoption of Latin or Greek as linguae francae, and the gradual, though fragile, pacification of conquered territories and seas brought in the most advanced level of globalisation the world was to know before the twentieth century.

Ancient literary sources had little to say about economic history but recorded nevertheless a few striking facts and events. The annalistic tradition, chiefly represented by Livy and Dionysius of Halicarnassus for the earlier period, mentions recurring tension between patricians and plebeians about debts and land use. The authors' perception is blurred by the long period separating the events and the earliest available records. For the second and first centuries, we dispose of contemporary sources, such as the treatment – normative rather than descriptive – of the villa phenomenon in the agricultural treatises of Cato the Elder and Varro. Retrospective accounts of dubious completeness and accuracy, such as Tacitus' history of moneylending (*Ann.* 6.16) or Pliny the Elder's history of the Roman coinage (*NH* 33.42–47), provided ancient historians with a basis that they either had to build upon or try to ignore. Ancient economic history, however, still relies to a large extent on those countless, though cryptic, allusions spicing the works of republican and imperial writers: the record of the discovery of the monsoon at some point during the Hellenistic period by an anonymous merchant bound from India to the Red Sea on a voyage allegedly motivated by greed is adduced rather casually by the same Pliny (*NH* 6.100–101, 106), even though it may have been one of the most significant changes in the organization of seaborne trade, from which the Roman aristocracy was to derive so much pleasure in the form of imported luxury goods. How many events of such importance failed to be recorded in Antiquity or were forgotten in the process of transmission is impossible to establish.

Archaeological remains can supplement the literary sources in significant ways:

- Periods of greater or lesser activity in public building, such as the so-called mid fifth century crisis,[1] are documented by the relative dating of excavated architectural structures.
- Regional surveys show large-scale villas coexisting with or replacing more modest dwellings in the countryside, such as the Valle d'Oro near Cosa in Southern Etruria,[2] and they point to changing patterns of agricultural settlement.
- The typology of discarded amphorae may reveal far-reaching dietary revolutions, such as the extension of wine drinking, combined

with bread eating (instead of the eating of porridge [*puls*]), among the Roman population in the second and first centuries.[3]

• The study of the number of identified dies on coins from hoards or individual finds, in connection with what is known about metal supply (from mining, war compensation, taxes, confiscations and fines, and demonetization of previously existing foreign or domestic currencies), allows some attempt at quantifying the size of monetary issues.[4]

Greek and Latin inscriptions from the republican period, though less numerous and diverse than for the imperial period, shed a different light on both public and private affairs. Like papyri from Hellenistic Egypt, they keep cropping up at a steady pace, thus providing us with new material that will most likely change or qualify our views on the ancient economy, too often shaped until recently by biased or naive representations offered by literary writers of the Augustan and imperial periods.

Modern perceptions of economic structures and phenomena can be informed by common historical sense and sometimes by models borrowed from other preindustrial societies.[5] They will never amount, however, to more than the sum of a collection of individual facts anchored in specific times and places, from which historians are free to extrapolate or not, in order to construct their own representation of a phenomenon too complex to be grasped, even though the sources available to them are more explicit, diverse, and abundant.

Aware of these limitations, I have decided to present some aspects of the economic history of the Roman Republic from a legal perspective. Methodologically, it can be observed that practically all types of sources can be put to use to illustrate how Roman treaties, statutes, edicts, and jurisprudence both affected and/or reflected economic and social life. Roman law, public and private, developed as a product of Roman society, adjusting to existing though changing circumstances while aiming at shaping the context in which the next generations would operate. Treaties and statutes were regarded as precisely datable in the ancient written sources; on the other hand, edictal law elaborated by mostly anonymous magistrates (praetors, aediles, and provincial governors) and jurists' law are admittedly more loosely or less clearly connected with specific historical circumstances, while offering better evidence for understanding the theoretical background of legal institutions bearing on economic life. The examples discussed below have been selected for the importance of their subject matter, for their antecedents and aftermath, for their function as turning points in a series of events

that illustrates a larger phenomenon, and for the many different ways they have come down to us. They all have great relevance for students of economic history, even though some may appear rather marginal. This short chapter does not claim to be a comprehensive treatment of the subject.

The First Treaty with Carthage (509/7)

According to the annalistic tradition, reported by Polybius (3.22–23), the economic history of the Roman Republic begins with a treaty between Rome and Carthage concerning seafaring and the definition of zones of economic and military influence. All commercial transactions concluded in Sardinia and Africa were strictly regulated, limited to purchases or sales pertaining to the maintenance of (commercial?) ships, and controlled by appointed civil servants (the Carthaginian equivalent of later Roman *apparitores*). By contrast, in Sicily, then partly a Carthaginian territory, Roman traders enjoyed the same rights as anybody else, such as Greeks and natives. It is remarkable that the earliest reported agreement of the republican period would deal with sea trade and include special provisions about commercial preserves and zones of free trade, where international commercial law would apply. Whatever the historicity of the deed, it shows that some second-century historians were ready to accept early republican Rome as a would-be maritime commercial power in the western Mediterranean Sea.[6] It also reminds us that early Rome was surrounded by more powerful and possibly more advanced neighbors (Etruscans, Greeks, and Italic peoples) with whom an economic relationship had to be established and regulated.

The *Foedus Cassianum* (493)

That Rome would conclude treaties with Latin peoples at an early date comes as no surprise. Military victories were a source of enrichment, public and private, and allies, like partners, were to share in the profits of war (*praeda*, *manubiae*),[7] in the form of movable goods, slaves, livestock, and land. Treaties were also a likely way to sanction private ownership outside the city limits. The *foedus Cassianum*, which was to define public and private relations between the Roman state and Latin communities down to the first century, acknowledged private contracts (*idiotika symbolaia*) as enforceable in a court of law (Dion. Hal. *Ant. Rom.*

·6.95.2). The extension of the *ius commercii* to noncitizens was a first step towards economic imperialism and suggests that production in agriculture and/or manufacture yielded regular surpluses to be exchanged through barter or sale for other desirable items.[8]

The Twelve Tables (451–449)

The economy of the mid fifth century is best reflected in the first and only "codification" of the law during the republican period. The work of a committee of ten, the majority patricians, the Twelve Tables had supposedly benefited from the influence of the Greek cities (more likely in southern Italy than in Attica), which then formed a monetized society. The text is partly lost but can be reconstructed on the basis of numerous quotations and paraphrases in later writings.[9] Various provisions attest to the concept of civil liability with (pre?)monetary compensation (*poena;* cf. I.14–15), acknowledge private property (denied through theft or *furtum;* cf. I.17), allude to periodic market days (*nundinae;* cf. III.6),[10] and take for granted slavery and manumission of slaves (*servus*, I.14 and passim; *libertus*, V.8; and *mancipium*, VI.1), which is distinct from the special status of debt-bondage (*nexum*, VI.1). Interestingly, we find here an early trace of a master's civil liability (*noxa*) for his slave's wrongdoing, the seed of a major development centuries later in Roman commercial law. The overall picture is that of a predominantly rural community, busy with preventing, punishing, or compensating damages caused to crops (*fruges, seges, acervum frumenti*; cf. VIII.4–6) and working on estates (*fundus*, VI.3, or *hortus herediumve*, cf. VII.2–5) organized along the lines of a managerial unit with its staff (*familia*, V.3–10) and capital (*pecunia*, V.3–10), its exact nature a mystery, though probably not cash. Wine and vineyards are attested to (VI.6/8 and perhaps X.6), but reference to olive cultivation is notoriously missing. Pastoralism is sporadically mentioned (VIII.3), but draft animals are more visible (*iumenta*, cf. I.3 and VII.6–7; *quadrupes*? cf. VIII.2). Local roads exist, to be maintained and repaired by private owners (VII.6–7). Most remarkable in terms of commercial law is the fact that deceit (*fraus*) and malice aforethought (*dolus malus*) are explicitly called unacceptable in certain kinds of relationships (between *patronus* and *cliens*, cf. VIII.10/21, or between *tutor* and [*pupillus*], cf. VIII.9/20). Last but not least, real contracts (*nexum, mancipium*) formally performed *per aes et libram* ("by means of bronze and scale") can be further specified by additional oral statements regarded as legally binding. The door is wide open for the introduction (in the

late third or early second century) of consensual contracts, a major step in the history of trade.

The picture put together here contrasts with that derived from the above-mentioned treaties in that the community lurking behind these provisions seems to form a rather closed society, showing no sign of commercial contacts with more distant overseas markets. The monetary system rests on weighed bronze ingots, certainly not the most practical instrument for trading.[11] But one should not infer too much from such a lacunary text, whose primary purpose was not to provide later historians with a complete and accurate description of the society that elaborated and interacted with this law.

One disputed question raised in connection with the Twelve Tables concerns loans and rates of interest. In a famous and problematic text, Tacitus (*Ann.* 6.16) mentions as part of the Twelve Tables (VIII.7) a provision restricting the rate of interest to eight and a third percent (monthly?), a provision reenacted in 357 by a plebiscite sponsored by two plebeian tribunes, M. Duilius and L. Menenius (Livy, 7.16). Historians of the Roman Republic have debated the reasons why the same provision would have been reenacted less than a century after its first introduction. Whether it had been ignored or reversed in times of crisis (the Gallic sack of 386) or wrongly attributed by Tacitus to the decemviral legislation is irrelevant. Whatever the right solution, it is obviously part of a historical trend in which loans in kind or in money were seen as a threat to the social order and had to be controlled through legislation. The sources record no fewer than twenty-seven bills aimed at limiting the rate of interest (either by prohibiting loans altogether or permitting them only in special circumstances) or protecting debtors against unduly harsh treatment inflicted on them by their creditors.[12] The proto-history of Roman banking was a period of strict regulation, though the laws were difficult to enforce.

The *lex Poetelia Papiria de nexis* (326/313)

Even the prohibition of loans at interest introduced by the *lex Genucia de feneratione* of 342 (Livy, 7.42.1)[13] did not succeed in freeing debtors from the fear of sustaining drastic physical consequences to their persons. Defaulting on loans entailed capital punishment (Twelve Tables III.6) or enslavement, either as *servi* or as *nexi*. The former were sold abroad (Gell., *NA* 20.1.47: "*trans Tiberim peregre*"), while the latter were

expected to pay off their debts in bondage (Varro, *Ling.* 7.105), that is within the community. The condition of *nexus* upset the social order more visibly, since the demotion attached to personal liability was, theoretically speaking, reversible, but brought dishonor upon the debtor unlikely to be compensated for by an eventual turn of fortune. A tale told by Livy (8.28), of a young debtor who was sexually harassed by his creditor and cruelly abused and who then appealed to popular sympathy and protection, provided the context for passing a law whereby debtors would no longer be held physically liable for their debts. The abolition of *nexum* in the late fourth century was regarded in later historiography as a new beginning of freedom and a major step in the "Conflict of the Orders" pitting patricians against plebeians. It was probably a turning point in the economic history of republican Rome as well, in that credit could be extended with a new kind of security: landed property or personal belongings. It also underlines the marked distinction between contracts and delicts as sources of obligations. Until then, failure to repay a debt was considered a breach of trust (*vinculum fidei*) and was dealt with like a fault (*noxa*) deserving punishment (*poena*); from then on, loans became a purely economic matter, guaranteed by family assets.[14]

It is probably no coincidence that our sources reveal the simultaneous appearance of the first professional bankers (*argentarii*) in Rome (310 B.C.; Livy, 9.40.16)[15] and the decision of the Roman state to issue its own coinage instead of relying on foreign (i.e., Greek) coins. The question of rates of interest would come up again later on, but it would no longer be possible to control it solely by legislation.[16] The availability of cash, of whatever denomination or metal, was henceforth a factor to be reckoned with. The level of indebtment of the upper classes would also bear on the deterioration of the political climate at the end of the republican period.

The *Plebiscitum Claudianum* (218)

While most of the legislation passed during the third century pertains to political matters, this should not obscure the fact that this period saw crucial economic developments, including those associated with the expansion of the empire to Sicily and Sardinia at the end of the First Punic War (264–241). The military victories of the Roman fleet resulted in the creation of overseas provinces and the opening of new markets. The conditions were ripe for the development of seaborne trade, with all

the associated risks and opportunities for profit. Commercial ships were expensive to build and maintain, and only a substantial investment in capital could enable a mariner to embark on the potentially profitable business of long-distance shipping. Members of the upper classes were prime candidates to risk their wealth in such tricky ventures. Shortly before the beginning of the Second Punic War (218), the plebeian tribune Q. Claudius proposed a bill barring senators and senators' sons from owning and operating commercial ships able to carry more than 300 amphorae, a size deemed more than sufficient to transport products from their agricultural estates to the market. While Livy (21.63) described the plebiscite as a measure devised by politicians close to the people to weaken the economic interest of the elite, it is clear that the main beneficiaries of the prohibition were those who were rich enough to invest in large ships without being senators, namely, the increasingly visible and ambitious members of the equestrian order.

The sheer fact that the prohibition was enforced over a long period – long enough for Cicero to invoke it against Verres in the early 60s (*2Verr.* 5.17.44–18.45), in spite of an apparent rhetorical admission to the contrary – and was reenacted by a *lex Iulia repetundarum* (possibly in 59)[17] shows that a strictly political explanation, intended as an illustration of the Conflict of the Orders, is not acceptable. The law was taking aim at the natural tendency of the upper classes to engage in lucrative activities likely to distract them from the life of leisure that was necessary to the conduct of public affairs. It was not profit itself that was regarded with suspicion, but big profit attached to big risk-taking (despite Cic. *Off.* 1.42.150–1). Incidentally, Livy's phrasing suggests that senatorial landowners were expected to produce agricultural (and other) surpluses to be transported on smaller boats (i.e., riverboats) and sold at nearby markets. The measure, like the ban of senators from public contracts,[18] was also meant as a check on corruption and designed to prevent potential conflicts of interest for provincial governors. Consequently, large-scale seaborne trade was left in the care of those who chose not to pursue a political career, as illustrated by one branch of the *gens* Sestia from Cosa, whose name appears on large quantities of amphora stamps found widely, in particular in a late second or early first-century shipwreck off Marseilles. Although the evidence of the stamps is directly connected not with wine production or distribution, but with the making of the containers, it is remarkable that Cicero (*Att.* 16.4.4) records that some Sestii owned large ships in the year 44, while other members of the same family had embarked on a full-scale political career.[19]

As of the late third century, the Roman state appears to have become careful to restrict the economic activities of its ruling class in order to ensure its survival by preventing its possible economic and hence social and political demotion as a result of entrepreneurship gone awry. This concern fell short of keeping the senatorial order from getting involved in commercial ventures, but it did force the senate to devise new schemes that would prove beneficial to the further development of commercial law. At the same time, the *plebiscitum Claudianum* turned out to be the first of a series of measures intended to define the dignity and economic role of the ruling order.

The *lex Metilia fullonibus dicta* (220/217?)

Pliny the Elder provides, again, the only ancient reference to a rather bizarre *plebiscitum*, in the context of his treatment of earth and chalk (*cretae Cimoliae*). Several varieties were known to have different properties, and *Sarda* (from Sardinia), *Umbrica* (from Umbria), and *saxum* were used by fullers in the laundering of garments. Both *Sarda* ("*inutilis versicoloribus*") and *saxum* ("*inimicum coloribus*") were used exclusively on white cloths, while *Umbrica* was mainly in demand for the shiny look it gave to garments. Colors were admittedly more difficult to handle: *Sarda* combined with sulfur fumigations was supposed to do the job, as long as the dye was of good quality. Otherwise, the dye was blackened and blurred. It is not altogether clear why Pliny (*NH* 35.57.197–198) refers here to the *lex Metilia* in connection with the censors of 220, C. Flaminius and L. Aemilius. Still enforced in the mid first century A.D., the statute was meant to regulate the work of launderers with regard to the use of detergents, perhaps imposing the preliminary use of the cheaper variety (*Sarda*) and reserving the use of the more expensive ones (*Umbrica* and *saxum*) for the finishing touch. If so, the law was interfering with the way private customers wanted to spend their own money and should be seen as the first of a long series of *leges sumptuariae* limiting extravagance among members of the elite.[20] On the other hand, it has been suggested that the *lex Metilia* was more in tune with the *plebiscitum Claudianum*, in that the regulations of laundering shielded the senators who wore a *toga praetexta* (white with a purple stripe on the edge) from the shame attached to the publicity of vastly unequal garb.[21] Whatever the correct interpretation, it is certainly an early instance of the

intrusion of the state into the private sphere of business at the level of minute details.

The *Lex Oppia sumptuaria* (215–195)

Shortly after the introduction of the *lex Metilia*, women became the target of additional and more drastic legislation introduced by the tribune C. Oppius in the darkest period of the Hannibalic War. Taking advantage of the military crisis caused by the defeat at Cannae (216), the law called for restriction pertaining to the possession of gold (hence of gold jewelry), the wearing of colored clothing, and the use of private transportation (horse-drawn vehicles) in town. The law, apparently accepted without protest at the time, was attacked as soon as the military threat had receded. Thus, in 195, a famous (fictitious) debate pitted the consul M. Porcius Cato against the tribune L. Valerius, one of the two advocates for the abrogation of the law (Livy, 34.1–8). To the former's plea to check female taste for luxury – a landmark in the history of misogynist rhetoric – the latter responded by pointing out that emergency measures ought to be lifted once circumstances allowed it. Although the law was then repealed, the many *leges sumptuariae* that followed during the next two centuries bear witness to the phenomenon of general enrichment of the Roman aristocracy and to the many ways this aristocracy chose to squander or to invest its wealth. Sumptuary legislation is good evidence not only for elite consumerism but also for innovative measures to curb socially challenging behaviors: Sulla's law of 81 imposed (lower than market) maximum prices on luxury food served at banquets in order to discourage this kind of competition among aristocrats.[22]

The Villa Phenomenon and the Law of Agency

Faced with the restriction on seaborne trade imposed by the *plebiscitum Claudianum* of 218, aristocrats were expected to invest their increasing wealth in agricultural land. Many did so by channeling their propensity to show off into the acquisition of large estates in desirable locations not too far from the capital city (the Bay of Naples and southern Etruria). They built mansions combining the amenities of city life with the charms of the country. The availability of large amounts of

cash and the lack of other commercial opportunities promoted the villa phenomenon from the early second century onwards.[23] Besides the architectural diversity produced by anonymous planners and craftsmen luxury villas showed three distinctive features (Vitr. *De arch.* 6.6):

- As temporary places of residence for their owners, they were comfortable, equipped (*pars urbana*) with state-of-the-art facilities (e.g., baths), and highly decorated with mosaics, wall paintings, colonnades.
- As agricultural concerns oriented towards both self-sufficiency and the production of marketable surpluses, they included a *pars rustica* with food-processing tools (a mill and wine and oil presses), storage space (granaries and cellars), stables for livestock, cells for the staff, and workshops and sheds for industrial activities. Nearby roads and waterways made it easy for the owner and his guests to travel to the estate, for tools, goods, and extra hands to be brought in, and, conversely, for saleable items to be exported.
- The relative proximity of individual dwellings, hamlets, villages, or towns provided a source of labor and a local market for perishable products.

Despite its natural attraction, country life was seen by aristocratic landowners as at best a temporary retreat from their hectic city life or their extensive travelling on business, whether public or private. Regular absences from the estate compelled landowners to delegate the exploitation of the land to tenants (*coloni*, *conductores*) or managers (*vilici*), according to how much control they wanted to retain over the organization of production. Cato the Elder, in his treatise *De agricultura* (*c.* 160), and M. Terentius Varro, in his three books on *Res rusticae* (*c.* 37), spell out the duties and prerogatives of farm managers employed in villas staffed with slaves.[24] Because of the need for product diversification linked with the villa economy and imposed by the goal of self-sufficiency and because of the pressure to keep the permanent staff busy in spite of the seasonal aspect of agricultural work, it became clear that, in order to be efficient, estate managers – who were predominantly slaves, according to the extant, largely epigraphic sources – had to be empowered with the capacity to make contracts with suppliers, contractors, workers, customers, and other outsiders.

Until the second century, people could obligate themselves in Roman law through their own contracts and their delicts but could not make another person liable. The only exception to this principle was that slave owners were held responsible for the misconduct and crimes of

their slaves (noxal liability in the Twelve Tables). It is likely that at some point during the second century, if not before, an unknown Roman praetor issued an edict providing for an extension of the master's (or principal's) liability for his dependents' delicts to the contracts concluded by them (slaves and sons-in-power).[25] Then the creation of various legal remedies (called *actiones adiecticiae qualitatis* by legal historians) allowed principals to choose how much control they wanted to retain over the transactions performed by their agents. The alternatives were to give them special permission (*iussum*) on a case-by-case basis, a general mandate (*praepositio*) in connection with the management of a business, or a free hand in the organization of their economic activities (*libera administratio peculii*). These initial choices determined in turn the extent (total or limited) of the contractual responsibility they were ready to shoulder.

Thus empowered, farm managers who were in charge of villas and their staff could become efficient economic actors, as employers, producers, and traders. The system devised by the Roman praetor was most practical in the context of the villa economy but could be adapted to other economic sectors. This is possibly what Cato the Elder resorted to in order to circumvent the ban of the *plebiscitum Claudianum*. According to Plutarch, Cato would lend money to a large group of people brought together into a legal partnership (*societas*) for the purpose of shipping, would then join the partnership as one among equal members, and would be represented on the ship by a freedman. Because the company was large enough, it could invest in several ships at the same time and thus minimize the risk while securing huge profits. In this way, Cato made good use of the openness of the money market and of the high rate of interest attached to bottomry loans.[26]

It is unclear how much seaborne trade increased during the second century or in years previous. Even though senators were theoretically barred from participating in shipping ventures, there was certainly no lack of candidates to invest in this sector of the economy. The development of the law of indirect agency, which was probably created to satisfy the needs of land-based business enterprises, whether agricultural or not (*Dig.* 14.3, *actio institoria*), was readily adjustable to the operation of a ship (*Dig.* 14.1, *actio exercitoria*). The latter, however, had specific features and requirements: the ban attached to the *plebiscitum Claudianum* excluded the dependents of senators from both the position of shipper (*exercitor*) and captain (*magister navis*); both principals and agents could be elusive characters; the maintenance of a ship called for constant input of money to pay for equipment and repairs; and long-distance seaborne

trade was an incontrollable and therefore risky business (making the credit of any agent difficult to check). Thus, the extension of the law of indirect agency to the shipping business may be seen as a later development made possible by its tested success in a more confined context, such as agriculture, industry, land-based trade, services, and professional associations (*collegia*).[27]

THE *LEX AGRARIA* OF 111 B.C.

The second century saw two trends of major economic significance: the extension of the empire over the whole of Italy, North Africa, and the Greek East and the development of seaborne trade. The villa phenomenon described above was only one aspect of the former trend. New territories were annexed and then redistributed to individuals (*viritim*) or to newly created Roman or Latin colonial communities. What could not be turned into private land remained public land, to be rented or used by cultivators and cattle breeders. The conquest was the result of military operations carried out by citizen soldiers dragged away from their farms for increasingly long periods of time. Upon their return, they usually lacked the interest, incentive, or opportunity to resume farming, and they sold or relinquished their estates to larger landowners who were better equipped, both financially and organizationally, to ensure their continuous cultivation and their profitability. A massive influx of slaves – 150,000 Epirotes in 167, according to Livy (45.34.6) – provided cheap manpower for agriculture, thus creating conditions, at least temporarily, of unfair competition with small landholders.

A natural concentration of landed property among the richest members of the aristocracy was no new phenomenon. Legislation introduced and eventually passed in the fifth and fourth centuries,[28] from the *rogatio Cassia agraria* of 486 (Livy, 2.41.3) to the *lex Licinia Sextia de modo agrorum* of 367 (Livy, 6.35.5),[29] shows how lawmakers, usually plebeian tribunes, tried to dispose of public land and to limit access to grazing grounds for fair sharing while sparing the interest of the elite. Even though the chronology of the history of *ager publicus* before the Punic wars is rather shaky, it seems that the problem became more acute in the late third century. Distributions to individual citizens, such as those carried out after the conquest of Picenum and Cisalpine Gaul (*lex Flaminia de agro piceno et gallico viritim dividendo*, Cic. Brut. 14.57), went to naught because owners were eager to sell their plots to large landowners

before moving to the city. However, the existence of a middle class of farmers was instrumental for the survival of republican political institutions. Major agrarian reforms, reenacting the limits imposed on the use of public land, were attempted by Tiberius and Caius Gracchus between 133 and 123, to be bloodily crushed by the aristocracy.[30] These reforms, as part of a larger package, aimed at giving individuals possession – but not ownership – of public land for cultivation in exchange for a rent. The individuals had no right to sell the land, and thus the historical trend towards concentration of land in the hands of the aristocracy was effectively blocked. In addition, some land was explicitly excluded from distribution by C. Gracchus and was to remain public.

In 111, this scheme was partly reversed by an agrarian law preserved in a much damaged inscription:[31] it provided that Gracchan *possessores* could acquire titles of ownership for holdings up to 30 *iugera*. The issue of landownership and cultivation by then extended outside the Italian territory, since parts of the law refer to plots located in North Africa or Achaea.[32] Although this statute confirmed Gracchan allocations, it also opened the door to further concentration of land and had the effect of attracting small landholders to the city while provoking a steady rise in the price of land.

The agrarian policy of the Roman state throughout the republican period promoted private ownership by allocating land on an individual basis or with the creation of colonies. Some marginal land could not easily be assigned because of the lack of adequate access roads and for various other reasons. The agrarian reforms of the second century make evident the willingness of reformers to include non-Roman citizens (allies and Latins) in the distribution of land, which had obvious political and demographic implications. They also remind us of the reformers' conscious effort to devise a credible alternative to large-scale landownership dependent on tenants or direct management with servile staff while at the same time boosting Italian urbanization through the creation of colonies. The overall phenomenon heightened the need for the development of an improved road system (*lex Sempronia viaria;* App. *B Civ.* 1.23; Plut. *C. Gracch.* 6.2).

It is perhaps ironic that such a complex and constructive program was also advertised by Tiberius Gracchus' archenemy, P. Popilius Laenas (consul 132), who, just after quelling a slave revolt in Sicily, boasted that he was the first to favor cultivators over grazers for the use of public land (not necessarily a sign of receding pastoralism in the face of expanding intensive farming). His achievements include the construction of a road

leading from Rhegio to Capua, with bridges, milestones, and relay stations, as well as the forum and public temples in Polla, a town in Lucania (*ILS* 23).

The road system had started out as a necessity for military campaigns (in the late fourth century) and was by the late second century undoubtedly geared towards economic development and political unification. It was to become one of the most enduring creations of Roman civilization.

The *lex Puteolana parieti faciundo*

Historians are not sure how major public projects were actually completed. While military personnel, private and public slaves, and forced labor may have been involved in building roads,[33] harbors, and public buildings, there is also direct evidence (from the Roman colony of Puteoli, founded in 194) of public contracting with private entrepreneurs for this purpose. The *lex parieti faciundo*, dated to the year 105 and preserved in an inscription engraved somewhat later (*FIRA* III^2 153), is a very detailed document drafted by local magistrates (*duumviri*) that describes the job of building a wall across from the temple of Serapis. Would-be contractors (*redemptores*) were required to provide sureties in the form of people (*praedes*) and landed property (*praedia*), respect set dimensions and quality standards (in terms of construction materials employed), and finish the work to the satisfaction not only of the magistrates letting out the contract but also of a council of former magistrates attended by at least twenty members. Payment was to be made in two installments, half at the time of contracting and the balance upon completion and approval of the work.

The *lex Puteolana de munere publico libitinario*

Not much more than a generation later, the same colony is found contracting out, possibly with other tasks, the sensitive mission of clearing the town – and presumably its territory – of human corpses and of carrying out capital punishment of convicted criminals and delinquent slaves.[34] In order to be able to hold the entrepreneur and his partners liable for dereliction of duty, punishable by heavy fines, the colony granted the company a monopoly with fixed rates. The contract

imposed precise conditions concerning the staff: it excluded the labor of children, the elderly, and physically impaired persons and prescribed a minimum of 32 workers to guarantee the efficiency needed to ensure public health. While moonlighting was not prohibited, services were strictly regulated, and penalties were threatened in case of imperfect compliance with the provisions of the contract. Most interesting is the fact that a striking lack of coherence in the terminology used in the document – the entrepreneur being referred to as either *manceps* or *redemptor* – suggests that the job description may be the result of a collage of provisions related to separate jobs, presumably let out to different people at different points. If this hypothesis is correct, the Puteolan *lex libitinaria* may illustrate the phenomenon of the concentration of work in the hands of one company in the late republican period. Besides performing the task of undertakers and executioners, the entrepreneur and his partners may have been entrusted with other public tasks that would have been described in the lost part of the inscription (first column[s]?).[35] How far back the original draft of the respective parts of this *lex contractus* goes we will never know. But the need for efficient sanitation must have antedated the foundation of the colony.

The *lex Rhodia de iactu*

It is quite likely that Roman law drew heavily from local practices long in use.[36] A puzzling illustration of the longevity of local customs brings us back to navigation. In a collection of texts excerpted in Justinian's *Digest* (14.2), some classical jurists discuss a mysterious *lex Rhodia*. Otherwise unattested in our sources, this law deals with compensation (*contributio*) in case of partial jettison of cargo as well as other topics connected with sea transportation. It is likely that the so-called Rhodian law was not a statute but a job description for ship captains (*magistri navium*) and shippers (*exercitores*, *navicularii*) based on practices developed in the eastern Mediterranean during the Hellenistic period.[37]

The literary sources and the archaeological material (imported and exported goods, shipwrecks, and harbors) show that seaborne trade greatly benefited from the expansion of the Empire and the contact with and demise of powerful competitors (Rhodes in 167, Carthage and Corinth in 146). Maritime roads were far from safe. Aware of this problem, the Roman senate addressed it, at least in the eastern part of the Empire, through a series of measures that stretch from the *lex de provinciis praetoriis* of 101/100 B.C.[38] to Pompey's major campaign against piracy

in 67 (*lex Gabinia de bello piratico*).[39] Although piracy and robbery had to be fought with military means, seaborne trade was highly vulnerable to other dangers, above all of a climatic nature. Storms were acts of God (*vis maior*) that classical jurists regarded as bearing on the law of both property and contracts. If a captain saw fit to throw overboard part of the merchandise in order to save both the remnant and the ship, the financial loss was to be supported equally among freighters (*vectores*) in a gesture of solidarity with those whose sacrifice was instrumental in limiting or preventing a disaster. Cicero, in a rhetorical context (*Off.* 3.23.89), suggested that slaves may have been occasionally killed in that way and for that reason, a behavior that a classical jurist like Paulus. tried to discourage by excluding slaves reported missing at sea from the global estimation of the loss for which contribution was to be paid by other freighters (*Dig.* 14.2.2.5). While it is possible that the original law provided only for cases of jettison, it is remarkable to find that late republican jurists extended the provision to cases involving ships being ransomed by pirates.[40]

Problems occurred everywhere, but some places were at higher risk than others. Shallow waters and river mouths, where merchandise had to be transferred from one kind of boat to another (*scapha* and *navis oneraria*), were particularly dangerous. It is then no surprise to find the Augustan jurist Sabinus referring to the mission of *urinatores*,[41] divers who specialized in underwater rescue operations. Their intervention may be attested in the shipwreck called Madrague de Giens (off Massilia in Gallia Narbonensis), where noticeable voids among carefully loaded containers can be explained either as the work of *urinatores* or as a result of earlier, unsuccessful jettison.[42]

Conclusion

The metaphor of voids and salvage operations leads us to our conclusion. No history of the ancient economy can claim to recover much of what has sunk into oblivion. Any account will be of necessity biased and partial. The ancient sources that survived are often ambiguous. As an example from Roman law and economic history, consider the notorious statute prohibiting the cultivation of olives and wine directed *c.* 129 at Transalpine Gaul. Was it a matter of protectionism against anticipated export to Italy and Rome of cheaper provincial products (cheaper because of the high price of land in Italy) or should we understand it as a way to maintain a high demand for Italian products in

the Gallic market?[43] Likewise, a single late source refers to air pollution caused by a smoked-cheese factory in Minturnae and to the owner's liability and obligations related to it. Are we to consider pollution a second- or third-century A.D. economic development, despite the fact that Ovid, in the Augustan period, knows of bad sanitary conditions at Minturnae?[44] While the answers to these questions do matter, it is clear that all legal sources tend to illustrate the complexity of ancient economic life and to show how much interest politicians, magistrates, and jurists had in it.

International treaties, bills, statutes, regulations, legal writings, job descriptions, and legal instruments were the documents most likely to survive in large enough quantities to make possible the reconstruction of social and economic phenomena (e.g., *leges sumptuariae*, *feneraticiae*, *agrariae*, etc.). In the absence of models built in a more fully documented context, we cannot expect to achieve quantification. The account presented in this chapter is no more than one perception of a manifold and changing reality.

One purpose of this chapter is to show that, on the basis of legal enactments or documents, historians of antiquity can reconstruct some salient features of economic history. More space and more time would have called for more instances and more details and nuances. In the end, however, the picture would have remained sketchy at best.

Notes

1 Colonna 1990.
2 Greene 1986, 107.
3 Tchernia 1986, 58–60.
4 Crawford 1974; Howgego 1992; Harl 1996.
5 For demographic studies, see Lo Cascio 1994; Harris 1999; Scheidel 1999, 2001; Morley 2001.
6 Scardigli 1991, 47–87. For the authenticity of Polybius' date (507 B.C.), cf. Cornell 1995, 210–14.
7 Aberson 1994; Rouveret 2000; Tarpin 2000.
8 See Cornell (1995, 295, 299–301) with reference to Dionysius of Halicarnassus (*Ant. Rom.* 7.53.5) for an allusion to the grant of equal rights (*isopoliteia*) to Latin communities.
9 I use here Crawford's (1996) edition (2:555–721, mostly 578–82); cf. Cornell 1995, 272–92.
10 De Ligt 1993.
11 Zehnacker 1990.
12 List in Rotondi 1912, 99–100.
13 Poma 1989.
14 Peppe 1981; Savunen 1993; Waelkens 1998.

15 Andreau 1987, 337–44.
16 Barlow 1978; Andreau 1999, 90–9, with bibliography.
17 Confirmed by the new Leiden Fragment of Paulus' *Sententiae* (ed. G.G. Archi et al., 1956) 3 (p. 5): "Senatores parentesve eorum, in quorum potestate sunt, vectigalia publica conducere, navem in quaestum habere, equosve curules praebendos suscipere prohibentur: idque factum repetundarum lege vindicatur." Nicolet 1980; D'Arms 1981, 5, 31–9.
18 Cass. Dio 55.10.5, 69.16.2 (Xiphilinus); Asconius 93 C.; Nicolet 1980, 390, n. 15.
19 D'Arms 1981, 55–61.
20 List in Rotondi [1912] 1966, 98–9; cf. Wyetzner 1995, 2002. XII Tables X.2–8 (regulating funeral expenses) shows that the propensity undoubtedly existed much earlier.
21 Wallinga 1996. For the date, cf. Livy 22.25 M. (Metilius was tribune of the plebs in 217).
22 Wyetzner 2002; cf. Gell. *NA* 2.24.11; Macrob. *Sat.* 3.17.11.
23 D'Arms 1970; Percival 1976; Greene 1986, 88–94; Dyson 1992, 74, 77–88; Smith 1997; Lafon 2001.
24 Aubert 1994, 117–200; Carlsen 1995.
25 Aubert 1994, 71–5.
26 Plut., *Cat. Mai.* 21.6; D'Arms 1981, 39–45.
27 Aubert 1994, 90–1, chapter 4 (clay artifacts), chapter 5 (services); 1999a (professional associations); 1999b (seaborne trade); 2001 (nonagricultural sectors, mostly in Roman Egypt); cf. De Ligt (1999), who favors an earlier date.
28 List in Rotondi [1912] 1966, 94–5.
29 Rathbone (forthcoming) suggests a later date (in the 290s) for the Licinian law.
30 The history is told by Appian, in the first book of his *Civil Wars*, and by Plutarch in the *Lives of Ti. and C. Gracchus*.
31 Crawford 1996, no. 2; Lintott 1992; Gargola 1995; De Ligt 2001.
32 A dispute about the cultivation of both private and public land opposed two communities in Liguria in 117 (*ILS* 5946) and required the decision of Roman arbitrators.
33 Roth 1999, 214–17.
34 Aubert (forthcoming).
35 *AE* 1971, no. 88, to be compared with *AE* 1971, no. 89 (a similar law from nearby Cumae that applies to the territory of Baiae); Aubert (forthcoming).
36 Cf. *lex Hieronica* for the collection of *vectigalia* in Sicily before and after the Roman conquest.
37 Rougé 1966, 397–413; De Martino 1982.
38 An inscription partly preserved in two copies, from Delphi and Cnidos; cf. *Roman Statutes*, no. 12 (Crawford 1996, 231–70).
39 Rotondi [1912] 1966, 371–2, with references (mostly to Cic. *Pro lege Manilia*).
40 Paulus (34 *ad ed.*) *Dig.* 14.2.2.3, citing Servius, Ofilius, and Labeo.
41 Callistratus, citing Sabinus (2 *quaest.*) *Dig.* 14.2.4.1.
42 Greene 1986, 25–6, citing Tchernia et al., 1978, 29–31.
43 Cic. *Rep.* 3.9.16; Tchernia 1986, 93–4.
44 Ulpianus (32 *ad ed.*) *Dig.* 8.5.8.5, quoting Aristo's *responsum* (early second century A.D.) to one Cerellius Vitalis, with Ovid *Met.* 15.716.