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Conflicts in Roman Land Law in the Era of the Empire

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Abstract. The purpose of this study is to examine agriculture of the Ancient Rome from the point of view of the development of judicial proceedings in this branch. During the period of transition from the Republic to the Empire several systems of land surveying were formed in Rome, which contributed to the improvement of land management. In the centuriation system the categories of land ownership and possession were most clearly defined. The task of this study is to show how in land disputes (controversies) there was a change of the archaic legal procedure to the formulary one, characteristic of the preclassical period. However, it is the analysis of controversies that reveals the peculiarity of Roman agriculture, in which the archaic features in legal proceedings not only persist for a long time but also linger until the classical period of *Ius Civile*. Such controversies as “*de loco*”, “*de fine*”, “*de proprietate*” were conducted using the archaic verb *litigo* (including the classical period). But at the same time, in the pre-classical legal proceedings the verb “*ago*” was introduced into the process. Though the combination of features of the archaic and formulary processes complicated the judicial process in land disputes, nevertheless, it retained all the characteristics of the ancient land law which was also important in the classical period of *Ius Civile*.

Keywords: archaic process, formulary process, legal proceedings, property, possession, centuriation, cadastre

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Конфликты в римском земельном праве эпохи Империи

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Аннотация. Цель исследования заключается в изучении сельского хозяйства Древнего Рима эпохи Империи с точки зрения развития судопроизводства. В период перехода от Республики к Империи в Риме оформилось несколько систем межевания. В системе центуриации наиболее рельефно обозначились категории собственности и владения. Задача исследования — показать, как в земельных спорах, или контroversиях происходила смена архаического судопроизводства формулярным, которое было характерно для предклассического периода. Проанализировав контroversии, автор пришла к неоспоримому выводу: архаические черты в данном сегменте римского судопроизводства сохранились вплоть до классического периода *ius civile*. Решив поставленную задачу, автор сформулировала важный тезис: такие контroversии, как *de loco*, *de fine* и *de proprietate*, на протяжении веков проводились с использованием архаического глагола *litigo*, между тем в предклассическом судопроизводстве в процесс внедряется глагол *ago*. По мнению автора, сочетание черт архаического и формулярного процессов, хотя и осложняло судопроизводство по земельным спорам, тем не менее даже в классический период *ius civile* сохраняло все характерные черты древнего земельного права.

Ключевые слова: архаический процесс, формулярный процесс, судопроизводство, собственность, владение, центуриация, кадастр

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Introduction

After Emperor Augustus created the Roman cadastre, it was assumed that all prerequisites for archaic controversy should disappear. Since now the *modus* has become the technical basis of the whole *divisio* of the lands. It is the parameter that should become the main object of confrontation in controversies. Indeed, the action “*de modo*” (“about the size of the land parcel”) in the period of the empire was primarily associated with the act of selling a piece of land, being a real action (In rem) according to *Ius Civile*. And in the very doctrine of things, *modus* meant the obligation imposed on the subject of law [1. С. 114–117]. During the Empire era, *modus* replaced the category of “indefinite” *locus* (“place of land parcel”) and

began to be considered as *ager* with specified boundaries and area [2. C. 3–16]. The *Corpus Agrimensorum Romanorum* (CAR) contains information that in the land law of the Empire, it was the *modus* that retained the characteristic features of *ager*, which made it possible to make claims for overpayment for the plot [3. S. 28]. This shows that both in the archaic and in the preclassical periods, *modus* played rather only an auxiliary role in *divisio*, and was not a decisive argument in legal proceedings (D. 10. 1, 7).

Improving legal proceedings on land disputes

Frontinus believed that in the classical period, *modus* finally becomes at last the main evidence in the assignment of land parcels; because some miscalculations could be found in *agri divisi*. And in this case “*de modo controversia est in agro adsignato*” (CAR. S. 5). Actually, at assignment the principle of equality was implemented in *civitas*, and land surveying was built on the *modus-princip* [4. P. 88–93]. Hyginus the Elder explained that in the fields of *divisi et assignati* each area unit has its exact *modus* (CAR. S. 80). And Hyginus Gromaticus added that within such area unit each land parcel is “*ad modum acceptum*” (CAR. S. 162).

It is noteworthy that in disputes “*de modo*” the same title is retained as in lawsuits “*de loco*” — *controversia*. Frontinus believed that such a dispute arises if “*de modo controversia quotiens [re] promissioni modus non quadrat*” (CAR. S. 6). This is a clear hint of an error in the calculation of the boundary grid assignment. M. Kaser believed that in this case Frontinus was concerned about checking the *modus* [5. S. 8–12]. The commentator Agennius Urbicus just demanded that the size of the parcel must be checked for “*modus restituere*” (CAR. S. 35).

Imperial agrimensors analyze the dispute “*de modo*” in two ways: the first one is on possible error in the calculations, the second one is while checking and protecting the rights of the ancient quirite’s possession. Agrimensors consider “*de modo*” in the formulary process, therefore, the course of the investigation is conducted on the verb *ago*, although the very beginning of the confrontation is determined by the verb *nascor*. It is clear that we are dealing with a claim *actio* of the classical period, when the features of archaic *controversy* remain. Moreover, Hyginus the Elder argues that “*de modo*” includes even more boundary elements than in rem ones (CAR. S. 94). Although in Paul’s work we can find the statement that “*de modo*” arises from a mismatch in size (Paul. Sent. II.17.14). Perhaps this refers to an error in the markup of archaic possessions.

We can quite agree with F. Hinrichs that “*de modo*” includes elements of different claims [6. S. 195]. Moreover, Hyginus the Elder’s thesis that *modus* is closely connected with the boundary *fnis* corresponds to both the first and second options (CAR. S. 84). But, Frontinus says about the use of “*de modo*” on lands that have not been surveyed (CAR. S. 5–6). For the commentator, such fields are unmeasured *loci* (CAR. S. 35). Therefore, in this case we speak about possessions

created through *occupatio*. In the period of the Empire precisely these fields needed to be checked for *vectigal*, which brings closer the controversies “de modo” and “de loco”. It is important to note that the “*controversia de loco*”, as an archaic litigation, took place based on *fides*. The ancient production proceeded according to the *legis actio* using the verb *litigo*, and the moment of truth came in the *litis contestatio*, observing mutual obligations. But the analysis “de modo” showed that legal proceedings in land law in the classical period could continue in the formulary process. In fact, the deviation from the classical claim was revealed only in the specification of the area of the Quirite possession on *modus* in compliance with the norms of the *Ius Ordinarium*.

It is worth to note that in the Empire period, “*controversia de loco*” retained its position in land law. The archaic claim “de loco” demonstrated the close connection between the category *finis* and *locus* and the boundary sign — *terminus*. The entire course of the process in “de loco” lawsuit turned towards the adoption of a compromise solution. Land management in the archaic period was based on the fact that the correct conduct of controversies supports the world order, while the boundaries show ownership of the land [7. P. 168]. The undertermined in its size *locus* remained within the specified natural boundaries. For O. Behrends, such fields are *loci soluti* [8. S. 224]. In Roman *agrimensura*, such a *locus* was defined as *arcifinius*. A similar *arcifinius* may have been included in a *fundus* (CIL. X. 4842; CAR. S. 40). According to A. Burdese, in Roman land law, *locus* always retained the well-known natural designations [9. P. 19]. Consequently, it was *finis* that began to play a decisive role in refining *locus* as *arcifinius*. And according to Paulus, this is the basis for a *in rem* claim (D. 10, 1, 4, 5/6). A. Rudorff saw a real claim here, although the area was not contested (SRF. II. S. 252). The archaism of “de loco” is confirmed by the verb *litigo*, although the claim for “place of the parcel” can also begin with the verb *pertineo*. However, O. Berends considers “de loco” only a *in rem* claim [8. S. 245]. It must be said that for Cicero such a question was not unambiguous. He saw in “de loco” the basis for the development of the right of possession (Cic. de re publ. 81). Gai is also known to have determined the criteria for the right to a parcel (Gai. IV. 42).

Our main source — CAR does not always define the essence of controversies. Thus, starting the analysis of *possessiones*, the authors pass from the object of litigation *locus* to the boundary *finis* (CAR. S. 34). But this only emphasizes the archaism of the controversy. And even O. Behrends does not always accurately understand the archaic design of *locus*. He insists that “de loco” has *in rem* character, though he ignores Frontinus’ mention. of the width (*latitudo*) instead of the field area relating to the *arcifinius* (CAR. S. 2) [8. S. 250–252].

It is important that in the classical period the concept of *locus* in the cadastre meant such important parts of it as *silva et pascua*, as well as *compascuus*. Being the basis for *possessio minus*, *locus* remained an important category throughout all life in Rome (Cic. de off. 1, 7; Cic. de leg. Agr. 1. 1, 3; 3, 3, 3, 12). O. Behrends

rightly notes that it was through such *possessio minus* that the praetor, with the help of *usucapio*, could interfere with the gentile nature of property [8. S. 249–269]. Incidentally, Frontinus' commentator. Agennius Urbicus (CAR. S. 30–34) also points to this. Hyginus the Elder connects *locus* directly with the ancient possession (CAR. S. 93). It should be mentioned that such loci had no plans, which once again emphasizes the archaism of this category. Usually, at the natural boundaries of the *loci*, ancient cuts on the trunks of boundary trees were often preserved (CAR. S. 108–109). It is interesting that Agennius Urbicus saw elements of Ius Quiritium in it (CAR. S. 30–34). According to Hyginus the Elder, the controversy “de loco” arose on relic lands more often. Frontinus considered that such a dispute was traditionally held on *legis actio* (CAR. S. 5). His commentator added that the nature of the litigation was *in rem*, but with borderline elements (CAR. S. 41).

Traditions of archaic legal proceedings in the land law of Ancient Rome

All the land surveyors thought that the most ancient dispute about the border “de fine” took place in the period of Empire. The role of the border was important not only in the allocation of a parcel, but also in providing passage to the working place of the farmer (Verg. Georg. I. 125; Ovid. Met. I. 135; Ovid. Amor. III. 8. 42–43; Cic. de leg. I. 25, 55; CAR. S. 27–28). The essence of ancient border dispute revealed precisely in “de fine” (D. 10. 1, 2, 4, 10). The natural *finis* itself occupied a special position in the land law [10. P. 9–25]. Designated by relief, *finis* did not have its own border line. The boundary line is connected in Roman *agrimensura* with another ancient boundary, the *rigor* (CAR. S. 4–5, 31). According to A. Schulten and F. Castagnoli, it was this circumstance that turned *rigor* into the most important element of Roman land management [11. S. 110; 12. P. 21–28]. It was the *rigor* in the land management system of strigation-scannation that began to allocate a piece of land with a noticeable boundary line (CAR. S. 54; fig. 25–27) [13. P. 76].

The natural *finis* continued to designate the ancient Quirite possession in the imperial period. That is why one of the land surveyors, Siculus Flaccus, compiled a similar description of it (CAR. S. 107–108). The most important characteristic of the *finis* was the width, the preservation of it was difficult even for agrimensors to find among natural benchmarks. In addition, over time, the relief denoting *finis*, although slowly, could still change. *Rigor*, representing the line of the border, was most often planted with thorns. If such a *rigor* was damaged or destroyed, then the angle of its turn could become an object of litigation (CAR. S. 4–5; 30–31). In the archaic period, during the process of *legis actio*, the essence of litigation was often replaced by ritual [6. S. 184]. In the preclassical period, the controversy “de fine” and “de rigore” was prepared for the process by the praetor, who sought to find a compromise solution for the participants of the dispute (CAR. S. 33). Since this information was kept in the CAR, therefore, in court, the process on the borders

followed an archaic pattern even in the imperial period. And, although the process itself was not *legis actio sacramento*, but the decision was made in the course of formulary, and not classical legal proceedings (CAR. S. 80). The border conflict was complicated by the fact that in practice the natural *finis* could not be separated from the *locus*. That is why, already in the course of the formulary process, the concept of “awarding” one of the parties — *adjudicatio* — was used. Nevertheless, Augustus (CAR. S. 7, 65) supported the important position of the *finis* as the basis of all land law. The fact that Augustus strengthened the meaning of *finis*, which in the archaic did not even have a boundary line, showed his deep understanding of the structure of the entire Roman land management (CAR. S. 120, 160, 164).

The second border-road *rigor*, with its more definite line, marked out a marked piece of land (Plin. NH. II. 137, 148). This did not diminish the significance of *finis* (Fest. 358L) [14. P. 15–16]. The practical fixation of the *finis* boundary was carried out by placing a sign — *terminus* (Dionys. II.75; Plin. NH. XVIII.8; Plut. Num. 14; CAR. S. 105). On the *rigor*, such a sign was more often placed at the corner of the turn in the form of a stone cross (CAR. S. 75, 137; fig. 81).

If boundary stones were not preserved on the archaic *finis*, then its restoration proceeded according to the signs of the relief, onto the custom of the area. Frontinus reduced the essence of the dispute about *finis* to the reconstruction of the category of the field *arcifinius* (marked but unmeasured space) (CAR. S. 5) [9. P. 193]. On the *rigor*, even with the loss of *terminus*, traces of the angle of turn could be restored. For the breadth of the *rigor* in the corner increased up to 15 feet (Fest. Ambitus). Moreover, such a feature of the *rigor* angle did not affect the accuracy of *modus* unit area and private parcel. And since both owners of neighboring parcels had equal rights both in the *finis* and in the *rigor*, it is important that these neighbor rights were respected fully (CAR. S. 58–59). Neighborhood rights were based on *fides* that guaranteed the progress of an archaic lawsuit. But, in the preclassical period, this was no longer enough. Now the role of the boundary sign of *Terminus* has noticeably increased. It contained records about the parcel, which replaced the archaic notches on the border trees (CAR. S. 80) [9. P. 32]. Since the *Terminus* denoted the *fundus* of a citizen, its boundary was marked with greater accuracy than on indefinite *loci* (Plin. NH. XIX.4, 50; CAR. S. 78, 102). In the classical period of *Ius Civile*, both the *finis* and the *rigor* began to allocate *dominium* on fields subjected to limitation (CAR. S. 157–159). *Finis* turned into a direct border-road of the allocated area after *modus* recalculation of the entire demarcated territory (CAR. S. 5, 73, 122) [15. P. 99–100; 16. P. 79–99].

In the IV century AD Agennius Urbicus connected the consideration of the controversy “de fine” with the controversy “de positione terminorum” (CAR. S. 58–62). For this period, one can even speak of the judicial functions of land surveyors. It is believed that highly qualified specialists in land surveying decided the question to what extent the meaning of the dispute about the “location of terminis” embodies the lawsuit “*moti termini*”. After

all, it is known that in the classical period the shift of the term was no longer considered as sacrilege, like in the archaic, but was considered as a criminal (D. 10, 1, 4, 4). But, the influence of “*moti termini*” on “*de positione terminorum*” still reduces the dispute to the angle of turn. Moreover, Agennius Urbicus emphasized that in this case no more than two neighbours can take part in the dispute (CAR. S. 58). But he did not clarify whether the archaic verb *litigo* is preserved in legal proceedings. For the commentator, *terminus* itself is an active element in the disputes both “*de loco*” and “*de modo*” precisely through “*de positione terminorum*” (CAR. S. 59). Quite right is the opinion of C. Moatti that the *terminatio* for the classical period has become the most important technical element of the entire act of *divisio* [15. P. 83]. F. Hinrichs believes that all agrimensors still strive to more clearly separate the controversy “*de fine*” from the essence of “*de loco*” [6. S. 177].

In contrast to the *finis*, the border of rigors accurately demonstrated on earth the state of *privatus* in the form of *fundus* (CAR. S. 106, 113–115; figs. 1–2). Work on the *rigor* was reduced to its “restoration” [6. S. 39–49]. The course of the trial “*de rigore*” in the preclassical period was determined by the formula of the praetor (Gai, IV.42). If the archaic verb *litigo* was preserved in “*controversia de fine*”, then the litigation for *rigor* only began with it, and its further course followed the verb *facio*. Therefore, the *rigor* dispute was essentially an *actio* that retained the ancient title of *controversia*. Border disputes increasingly began to include in the proceedings part of the *adjudicatio* formula, which turned into a technical element of land law [6. S. 181, 247].

One of the most important types of disputes was “*de proprietate*” — over the exclusive right to graze cattle on the lands *silva et pascua* (CAR. S. 6). According to Frontinus, this controversy was made on the verb *litigo*, but his commentator Agennius Urbicus in this case used a non-legal verb — *discuto* with the meaning of *ago* (CAR. S. 39). One can trace the evolution of the judicial process in the postclassical period. For this period CAR even preserved information about the mentions of the collective use of land in Italy, which was owned by the entire civil collective. In the provinces, these categories of land were already — *pro indiviso*, which reflected the development of private ownership of all categories of land in the empire. The preservation of elements of archaic legal proceedings in Italy is also found in the continued use of the expertise of mensors in local traditions of land use. In the provinces, in the case of proceedings and disputes over *silva et pascua*, they preferred to refer to the document — the land survey plan (CAR. S. 39–40).

Frontinus thought that another important dispute “*de possessione*” — about possession on the parcel, should be held precisely on the archaic verb *litigo* (CAR. S. 6). Nevertheless, he argued that the praetor’s *interdictum* constitutes the legal basis of the dispute. Frontinus makes clarifies that in the case of a Quirite possession, the instrument *Ius Honorarium* (*interdictum*)

is introduced, although the proceedings are about ancient possessions. According to Frontinus, for such cases, the proceedings carried out according to the formulary process, but all participants of the process must be well aware that archaic material is being discussed. Both Frontinus and his commentator understood that the investigation carried out according to the praetor formula is fulfilled using the verb *ago*.

In CAR, this type of dispute remains uncommented for the classical period of the *Ius Civile*. Ancient possessions are large land masses of *Ager Publicus*, their creation demonstrated the publicity of the action in the Roman *civitas*. This, according to W. Simshäuser, was a social need [17. S. 223]. Later, such possessions already needed protection. It appears in praetor law through the *imperium* of magistrate, i.e. it is *interdictum*. Such protection certifies both *rigor* and even natural *finis* [8. P. 215]. But, very ownership of the land, even in the developed Roman *agrimensura*, could be expressed through the archaic concept of *locus* in the form of *arcifinius* (CAR. S. 5). Indeed, in the archaic “de loco” became, a kind of a manifestation of power of entire *civitas* [8. P. 269]. It is true that agrimensors did insist themselves that possessions arose in uncultivated fields (CAR. S. 93).

Hyginus the Elder thought that such a *locus* on *Ager Colonicus* was granted to the settlers by the administration of the colony itself (CAR. S. 92), so the legal proceedings for possessions went to *Ager Colonicus* according to the archaic *legis actio*. Even M. Kaser saw in the formula *uti possidetis* an expression of an early form of protection of possession [18. S. 30]. The fact of *occupatio* was expressed through *arcifinius*, that is why in the text of Frontinus *litigo* seemed to be strengthened by *interdictum* (CAR. S. 6). This author separated “de loco” controversies from the other litigation — “de possessione”. However, the use of *litigo* emphasizes that in both cases the main focus is on the place of the parcel (CAR. S. 6, 8). In the controversy “de possessione”, Frontinus sees two aspects: the *in rem* aspect in land management, and the border aspect in law. But still, if Frontinus uses the expertise of mensors, then Agennius Urbicus limits the checking according to the cadastre documents.

Conclusion

All controversies in CAR during the imperial period retained archaic features. This can be traced in the course of production by such controversies as: “de loco”, “de fine”, “de proprietate”. But already in the “de modo” controversy, the design elements of the *privatus* plot stand out more prominently, like a *dominium* on the ground. However, the entire course of legal proceedings on land law shows that the process of separating private property rights to land from rooted social principles was going very slowly.

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