



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

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Locatio in Roman agrimensura

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Abstract. The relevance of this study is due to the lack of works in Russian historiography that would examine in detail the phenomenon of locatio as an act of creating a possession. Using an integrated method of historical research, the author comprehensively studies both the legal component of the mentioned phenomenon and its practical component: we are talking about arcifinius as a technical expression of locus. The author's goal is to, having comprehensively studied the procedure of simple locatio, give a legal assessment of the phenomenon itself, as well as determine its place in the system of Roman agrimensura and in Roman land law. The work uses the works of outstanding Roman agrimensors, such as Hyginus the Elder and Agennius Urbicus (*Corpus Agrimensorum Romanorum*), as well as extensive historiography, both domestic and foreign. As a result of the undertaken research, the author comes to the following conclusions: firstly, locus and arcifinius in the archaic period of Roman history symbolized the category ager publicus; secondly, the possession that arose in the public field as a result of locatio was secured by the ancient law of ius Quiritium and retained its significance until the era of the Empire; thirdly, during the Empire, land provided to citizens as possessions on a lease basis began to be allocated in a similar way. Thus, the ancient locatio retains its significance throughout the history of the Roman state.

Keywords: locus, arcifinius, possession, land, finis

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Locatio в римской агрименсуре

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Аннотация. Актуальность настоящего исследования обусловлена отсутствием в отечественной историографии работ, в которых был бы детально рассмотрен феномен locatio как акта создания поссессиона. Используя комплексный метод исторического исследования, автор всесторонне изучает как правовой компонент упомянутого феномена, так и его практическую составляющую: речь идёт об arcifinius как техническом выражении locus. Цель автора заключается в том, чтобы, всесторонне изучив процедуру простой locatio, дать правовую оценку самому явлению, а также определить его место в системе римской агрименсуры и в римском земельном праве. В работе использованы труды выдающихся римских агрименсоров, таких как Гигин Старший и Агенний Урбик (*Corpus Agrimensorum Romanorum*), а также обширная историография, как отечественная, так и зарубежная. Автор приходит к следующим выводам: во-первых, locus и arcifinius в архаический период истории Рима символизировали категорию ager publicus; во-вторых, владение, возникшее на общественном поле в результате locatio, закреплялось древним правом ius Quiritium и сохраняло свое значение вплоть до эпохи Империи; в-третьих, во времена Империи подобным образом стали выделяться угодья, предоставляемые гражданам в качестве владений на условиях аренды. Таким образом, древняя locatio сохраняет свое значение на протяжении всей истории римского государства.

Ключевые слова: место участка, участок в природных границах, поссессион, угодья, граница

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Introduction

The procedure under which a plot of land was allotted to a citizen throughout the classical Ius Civile period in Rome was based on special land surveying systems that relied on precise calculation of land areas. The Corpus Agrimensorum Romanorum data collection (CAR) demonstrates a perfect system of land surveying — centuriation — with its division of larger plots of land into units equal in area — square centuria (CAR, S. 136–141). However, according to agrimensors, at different stages of Ius Civile evolution, the land allocation could also take the form of *locatio* (l.c. 226, 4), which implies that

the plot was designated by citing its location (*locus*) without specifying its area (l.c. 235, 1, 12; 237, 8) [1]. Land surveyors specifically emphasized that such a simple procedure was different from *divisio* of plots in their preparation to *assignatio*. Nevertheless, the transfer of *locus* to a citizen without *divisio* was quite common. The CAR represents all the information on *locus* in comparison with *divisio* plots (CAR, S. 5, 8). Agrimensores also emphasized that *locus* was to be removed from the *divisio* tract of lands (CAR, S. 121).

Locatio as an Act of Creating a Possession

A. Schulten believed that prior to the 2nd century BC, Italy predominantly used *locatio* with its very loose idea of the size of the plot [2. S. 8]. Indeed, throughout the Ius Quiritium period, any *locus* was warranted by a sacred oath called *fides*. Neighboring *loci* were also confirmed by *fides*, hence, *locatio* might be seen as an archaic way of allotting a plot of land. But could such a plot be regarded as *privatus*? This question was first posed in academic literature by F. Castagnoli [3. P. 23–36]. E. Salmon maintains that prior to the Gracchi period in Italy, land allocation was mainly through *locatio* [4. P. 69–79, 98–100].

A citizen claimed a *locus* as *possessio* of the land. However, as early as in the period of Ius Quiritium a process of *occupatio* of the lands with the status of *Publicus* was also gaining ground. No one but patricians were granted the right to create *agri occupatorii* through simple *locatio*. In contrast to *locus*, *ager occupatorius* had more precisely defined natural boundary reference points, fixing them with the neighbors as one's occupation through *fides*. Agennius Urbicus regards *occupatio* in Italy specifically as *locatio* (CAR, S. 53) [5]. Hyginus the Elder believes that neighborly relations in *locatio* were always based on local customs (CAR, S. 93). O. Behrends saw this as a legal manifestation of power of the entire *civitas* [6. S. 93]. *Agri occupatorii* turned into *possessions* of the land, unlimited in time and space. This, in essence, was *locatio* [7]. According to L. Capogrossi-Colognesi, such *ius occupandi* was *iniuria*, i.e. a non-legal action [8. P. 118].

At the same time, another process was unfolding that involved the entire Roman *civitas* — the seizure of the lands in Italy following victorious wars with neighboring tribes. This very process is characterized by L. Capogrossi-Colognesi as an early stage of development of Roman *agrimensura* [9. P. 68–69]. On the contrary, O. Behrends sees it only as a primitive essence of *agrimensura* [10. S. 6–10]. It was also a *locatio*, but of the new lands whose population was driven off. These plots came to be called *ager arcifinius* or *arcifinius* — a compound term from *ager* = field and *finis* = boundary. M.J. Castillo Pascual, analyzing the term, derives it from *arcere*, which may imply the expulsion of enemy [11].

Arcifinius as a Technical Term for *Locatio* in *Agrimensura*

In the *Ius Quiritium* period, *locus* came to have a technical form of *arcifinius*. According to surveyors, that was a plot cleared of enemies. Tacitus called such plots *agri capti* (Tac. Ann. XII. 32), while Titus Livius called them *vacuus*, i.e., captured from the enemy. Siculus Flaccus in turn used the term *solutus* (CAR, S. 100). Pomponius, on the other hand, thought that under *Ius Quiritium* *locus* is expressed in *arcifinius* and is fixed as *ager* in the creation of *possessio* (Pomp. I. 26). While *occupatio* puts primary emphasis on the idea that the action is public in civil society, *agrimensura* creates boundaries precisely by *natura loci* — ditches, waterfalls, rivers, freestanding trees — and by *loci* that have become *possessiones*. Sometimes boundaries were even marked by juniper trees (CAR, S. 113). Surveyors specifically underlined that *articifinium* has never been surveyed. C. Moatti considers it quite clear that *loci* never lost their status of public property since the rise of Rome [12. P. 59–60]. It is indicative that in their writings agrimensors constantly contrast *arcifinius* and *divisio*; while Siculus Flaccus emphasizes that *locus* has no *modus* (CAR, S. 107). *Locus*, retaining its status of *publicus*, extends this meaning of public field to *arcifinius* too (CAR, S. 161). L. Capogrossi-Colognesi regards *possessoria* as an original form of Roman *proprietas* [8. P. 395]. O. Behrens emphasizes that *locus* is a possession designated without a magistrate under *Ius Quiritium* [6. S. 247], while Pomponius considers *locus* as a prerequisite for the creation of a possession under *Ius Quiritium*, based solely on *fides* (Dig. XLI, J. 26; Pomp. I. 26). The tendency to designate *publicus* lands by *locus* led to its technical embodiment in *arcifinius* — a non-surveyed tract of land with natural boundaries (CAR, S. 40) [6. S. 247]. Thus, *arcifinius* expressed the idea of public property, i.e. *Ager Publicus Populi Romani*. However, the need to further designate the plots of citizens generated a demand for additional specifications for the area. A well-established tradition of designating *Publicus* through *natura loci* was further consolidated. This extended to the newly acquired Roman lands in Italy; *arcifinius* became quite common.

In archaic times, *de loco* controversy was not so much a dispute over the boundary as over the very fact of the existence of public property. That is why, from the time the texts were first published by A. Rudorff, academic literature regarded *de loco* as action in rem in *legis actio*. The most ardent defender of *de loco* in rem throughout the entire period of Roman land law existence is R. Knütel [13. S. 303]. F. Hinrichs, however, sees in this controversy the signs of a boundary claim in addition to in rem [14. P. 193–195]. In *legis actiones*, *de loco* is treated as a controversy that had existed before the category of *modus* was introduced. After all, in *Ius Quiritium* plots were declared based on the place, not on the area, which was further clarified at the time of *litis contestatio* (CAR, S. 37). According to M. Kaser, when *litis contestatio* was

conducted, *fides* alone sufficed to warrant the establishment of a *possessio* on *usucapio* [15. S. 11–12]. Gaius believed that this type of archaic litigation could have survived throughout pre-classical and even into classical periods of *Ius Civile* (Gai IV. 42). Thus, *locus*, reinforced by a technical term *arcifinius*, created the mechanism of allotting a plot of land as *locatio*. The importance of this action for the archaic period was that it reflected the existence of *Ager Publicus*. When an ancient possession was created on *Ager Publicus*, it primarily expressed one's allegiance to civil society. (Cic. De off. I. 7; Cic. De leg. agr. I. 1. 3.; III. 3. 12¹). In effect, through *locatio*, possession was created on *usucapio*. By the late Republican period, however, the process required an intervention by praetor, i.e. the magistrate's authority started to infringe on the gentile procedure of hereditary property. O. Behrends believes that *usus* is based on *auctoritas* in civil society, so as long as the calculation of area was not necessary, *usucapio* on *locus*, i.e. location, totally sufficed [6. S. 249–269]. If the texts by surveyors feature indications of a plot within a natural boundary inside a centurized field, it only demonstrates the idea of preserving an ancient *usucapio* in *ager publicus*. Agennius Urbicus defines that as a possession under *Ius Quiritium* (CAR, S. 30–34).

For Frontinus, the main point is that *locus* is technically formalized as *arcifinius*. Hyginus the Elder reinforces that by emphasizing that such a system preserves fragments of ancient *Publicus*. Consequently, the CAR authors see *locus* as fixing the allocation of a plot and its legal status. Agrimensors consistently compare *locus* to *agri divisi*, but to verify *locus* within a centurioned field, agrimensors apply a special method of measurement — *ager mensura per extremitatem comprehensus* — measuring along the outer boundary without internal surveying (CAR, S. 121). This was to emphasize that the *locus* is ancient, the one that has preserved its special position in the demarcated field. Moreover, agrimensors believe that such an archaic *locus* can even be exchanged for another ancient plot elsewhere in the centurioned field (CAR, S. 93). Such an exchange they call *locus pro loco* (CAR, S. 119–120). Thus, the category of *locus* consolidated the existence of *publicus* in Roman territories, realized through *locus pro loco*.

Locatio on Other Lands

Surveyors used a special term to refer to an abandoned plot — *locus relictus* (CAR, S. 33, 61). It originated from the enforcement of *Ius Gentium* in Italian territories conquered by Rome and reflected an increment of *Ager Romanus* in natural boundaries through *locus* and *arcifinius* (CAR, S. 2, 108–109). In the Archaic period, both categories — *locus* and *ager* — were designated through *arcifinius* (CAR, S. 55–56). The existence of this important area of land was also through *locatio* [14. S. 90]. The point is that *locatio* of the area, in fact,

does not differentiate ownership from possession. After all, by *locus-principus* it does not matter whether the land is arable or not, and *relictus* is just a rough field (CAR, S. 67). In fact, these lands represent the remnants of archaic agrarian life in Italy (CAR, S. 92, 108). Although the land it is not arable, it is important for cattle-breeding, and social tensions and land hunger in the late Republican period made abandoned lands, forests, and glades quite sought-after. Augustus systematized their legal status (CAR, S. 46–47; 67) and applied a tried-and-tested method of *locatio* to grant the plots on these lands. Besides, there was another type of fields categorized as land, but only for temporary use. These are *subsecivi*, segments of land left after the survey. They were found in each *centuria* and could be given to colonists on the terms of lease. They were also allotted through location [16]. It is noteworthy that the CAR considers them as having the same legal status as fields *extra clusa*, i.e. non-surveyed. Allocated from *division* lands, they were also granted temporarily as farmland on the terms of lease. Although Guignus Gromaticus regarded such a field as *locus vacantus*, it was still no more than a colony reserve, and therefore the lease on it was granted through *locatio*. F. Favory underlines that agrimensors were the very first to point out the difference between *relicti* and *extra clusa* in land law (CAR, S. 165) [17].

Conclusion

Thus, before *divisio* came to dominate in Roman land surveying, the allocation of plots was based on a simpler method of *locatio*. *Locus* as a category of land surveying retains its importance in land law as *Publicus*, while the formalization of *locus* through *arcifinius* reinforced *locatio* technically.

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