

Legal Causes of the Social War in Rome

Abigail Williams

University of Virginia  
Advisors: Elizabeth Meyer and Michael Doran  
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## INTRODUCTION

The Social War was one of the most influential conflicts in Roman history. Fought between Rome and her Italian allies (*socii*), the end of the conflict brought about the unification of much of the Italian peninsula. Scholars both ancient and modern have proposed a variety of explanations for the start of the conflict. Appian, writing in the second century CE, asserted that a desire for citizenship was the primary driver of the conflict and traced the origins of the war to the proposal of extending citizenship to Italian allies in 125 BCE by tribune of the plebs Fulvius Flaccus.<sup>1</sup> Modern scholars have focused on whether *socii* sought an extension of citizenship or the creation of an Italic state separate from Rome. This paper subscribes to the citizenship theory, but takes it a step further, making the question not one of the extension of citizenship but the substance of citizenship. What rights specifically did the Italian allies desire?

The *socii*, I argue, took up arms against their Roman neighbors for the right of *conubium*, borne out of a preoccupation with inheritance rights. This desire for *conubium* came primarily from the Italian elite, who were responsible for waging war and commanding the Italian military. Over time, allied desires evolved and a contingent of *socii* clamored for a state independent from Rome. Such changes could reflect the aspirations of non-elite Italians, doubts regarding the feasibility of Roman concessions, or a variety of other factors. Difficulty discerning the reasons motivating the creation of a separate state constrain this paper to the period before the war starts. This paper ponders the considerations at the start of the conflict, rather than their evolving nature during the war.

In Part 1, I provide an historiographical account of the Social War. Part 2 provides a brief history of the conflicts leading up to the Social War and the war itself. Part 3 examines the legal rights of *peregrini* on the eve of the war, so we can see precisely what rights and privileges the *socii* were lacking. Part 4 takes a deeper dive into some of these rights and privileges. First, I

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<sup>1</sup> App. BC 1.34. Translation from Loeb. "I have treated it in this history because it had its origin in the sedition in Rome and resulted in another much worse. It began in this way. Fulvius Flaccus in his consulship first and foremost openly excited among the Italians the desire for Roman citizenship, so as to be partners in the empire instead of subjects." καὶ αὐτὸν διὰ τὰδε συνήγαγον ἐς τήνδε τὴν συγγραφὴν, ἕκ τε τῆς ἐν Ῥώμῃ στάσεως ἀρξάμενον καὶ ἐς πολὺν χειρόνα στάσιν ἐτέραν ἐκπεσόντα. ἤρξατο δὲ ὧδε. Φούλβιος Φλάκκος ὑπατεύων μάλιστα διή πρωτος ὅδε ἐς τὸ φανερώτατον ἠρέθιζε τοὺς Ἰταλιώτας ἐπιθυμεῖν τῆς Ῥωμαίων πολιτείας ὡς κοινωνοὺς τῆς ἡγεμονίας ἀντὶ ὑπηκόων ἐσομένων.

consider *ius migrationis* (the right of moving to Rome and gaining citizenship), then *suffragium* (the right to vote), then *provocatio* (freedom from arbitrary punishment), then *commercium* (the right to contract), and finally *conubium* (the right to enter a valid Roman marriage). The bulk of this paper focuses on *commercium* and *conubium*. I demonstrate how grants of *commercium* likely would not be as useful to *socii* than *conubium*, suggesting concerns over inheritance rights were at the forefront of the minds of elite *socii* on the eve of the Social War.

## PART 1: HISTORIOGRAPHY

The Social War, or the Italian War or Marsic War as it is sometimes called, entangled Roman citizens and non-citizen Italians in a bloody military engagement lasting from 91 - 87 BCE.<sup>2</sup> Despite the war's economic and social importance, it is poorly documented in surviving ancient literary sources. This dearth of sources results in disagreement among modern scholars regarding the causes and chronology of the conflict. Perhaps the most contentious question is as follows: what motivated the Italian insurgents to take up arms against Rome? Modern scholars traditionally subscribe to one of two reasons: (a) the Italian insurgents sought Roman citizenship, or (b) the Italian insurgents sought complete independence from the Romans. Some scholars, like Mommsen and Keaveney, operate within the middle ground, suggesting the Italians originally wanted citizenship, but desired independence as the war waged on.<sup>3</sup>

There is dissent, even among scholars who agree the insurgents' primary aim was a grant of Roman citizenship, regarding what benefits the Italians were seeking. Of all the potential advantages, which were the former allies willing to die for? The theory advanced by Taylor argues the allies viewed enfranchisement as a means to further their political participation.<sup>4</sup> A related view is proposed by Gabba, who suggests shared experiences between Romans and Italian allies led to a desire for political equity.<sup>5</sup> He posits the Italian commercial class, aware of the impact of Roman foreign policy on their bottom line, sought enfranchisement to strengthen their commercial power. Sherwin-White agrees that social and political equality motivated the Italian insurgents, saying they were "fitted" to receive Roman citizenship.<sup>6</sup>

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<sup>2</sup> These dates are generally accepted as the temporal confines of the conflict, though some territories continued fighting with the Romans until years later.

<sup>3</sup> Mommsen (2010) 494-496. Keaveney (1987) 76-77.

<sup>4</sup> Taylor (1949) 18, 46.

<sup>5</sup> Gabba (1976) 72.

<sup>6</sup> Sherwin-White (1939) 129.

Other scholars citing citizenship as the primary goal of the Italian insurgents include Brunt and Nagle. Brunt contends that the abuse of *ius migrationis*, the right to migrate to Rome and gain citizenship, in the years preceding the Social War indicate a broad desire of the allies for enfranchisement. To achieve citizenship, men with *ius migrationis* would either adopt a child to be left behind in the province (meaning the population did not increase) or sell their son to a Roman in slavery with the agreement that the Roman would then manumit him, thus making the former ‘slave’ a Roman citizen as well.<sup>7</sup> He argues that this “desire for Roman citizenship was keenest among the Latins.”<sup>8</sup> Rather than focus on the abuse of allied rights, Nagle analyzes their commercial concerns to argue they wanted citizenship. He suggests Roman encroachment on allied communities and economic consequences were significant considerations for Italians taking up arms.<sup>9</sup> While Dart agrees this shows “general allied dissatisfaction with Rome,” he challenges this view by citing regions that stayed loyal to Rome during the initial stages of the conflict.<sup>10</sup>

More radical scholars contend Italian insurgents wanted independence from Rome or that pan-Italic sentiments caused the outbreak. Mommsen cites the Italian establishment of a new capital city at Corfinium to suggest while *socii* may have wanted citizenship at the start of the conflict, this quickly evolved into a desire for a new state.<sup>11</sup> Mouritsen highlights the process of Italian unification to suggest the *socii* wanted independence. He argues the ancient literary sources are colored with hindsight bias; because the Italian allies received citizenship at the conclusion of the Social War, they must have started the conflict for citizenship.<sup>12</sup> Therefore, he argues, scholars should look to larger trends on the Italian peninsula to determine the true cause of the Social War.

This paper follows in the footsteps of those scholars who believe the Italian insurgents sought Roman citizenship. I argue the Italians fought specifically for the grant of *conubium*, rather than relying on “citizenship” as a nebulous concept. Extensive scholarship exists on the Social War because it prompted a significant change in the composition of the Roman citizenry and is emblematic of larger trends towards political violence in the Republic. Understanding the

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<sup>7</sup> Dart (2016) 49.

<sup>8</sup> Brunt (1965) 92.

<sup>9</sup> Nagle (1973) 367.

<sup>10</sup> Dart (2016) 18. He specifically refers to Etruria, Umbria, Campania, and Apulia.

<sup>11</sup> Mommsen (2010) 238.

<sup>12</sup> Mouritsen (1998) 7.

crux of Italian desires will provide insight into the motivations and decisions that guided the Social War.

## PART 2: HISTORY OF THE SOCIAL WAR

The Social War was a significant military conflict in Roman history that took the lives of over 300,000 Italians and Romans.<sup>13</sup> While scholarly disagreement exists regarding the cause of the conflict, it is clear that discontent between Rome and her allies arose from a myriad of factors such as the allies' lack of political representation, minimal legal rights, taxation, and continued contribution to the Roman military. Rome's expansion from a small, agricultural village to a powerful city brokering many treaties with its neighbors provided the foundation for civil unrest. The incorporation of various Italian villages into its dominion led to differing treatment and a divide between peoples.

This distinction primarily manifested between the Latin allies (the Latins) and Italian allies (*socii*). The Latin League consisted of a group of villages in central Italy that were culturally and linguistically similar to Rome.<sup>14</sup> The Latins enjoyed a myriad of privileges from the Roman state, including *commercium* (generally the right to contract) and *conubium* (generally the right to enter into a valid Roman marriage). Italian allies, on the other hand, included people from conquered territory throughout the Italian peninsula. Rome often conquered these villages, assuming their people into the Roman state, but leaving them with large degrees of autonomy.<sup>15</sup> Some *socii*, particularly those with magisterial status, enjoyed similar legal capacities as the Latins, but these rights were not widely granted. Each town created an individual treaty with Rome to determine the rights and privileges granted to citizens, and each was known as *civitas foederata*.<sup>16</sup> Both the Latins and Italian allies contributed substantially to the Roman military, comprising a significant percentage of the manpower.<sup>17</sup> Differences in the treatment between these classes of Roman allies, exacerbated by the movement of peoples in the second century BCE,<sup>18</sup> served as a foundation for the Social War.

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<sup>13</sup> Bispham (2016) 77.

<sup>14</sup> Roberts (2007) "Latins".

<sup>15</sup> For a discussion on the legal autonomy of Italic villages, see Raggi (2022) 312.

<sup>16</sup> Dillon (2015) 439.

<sup>17</sup> Scullard (1965) 55.

<sup>18</sup> Raggi (2022) 313.

The catalyst for the Social War can be traced back to the Gracchi brothers.<sup>19</sup> Tiberius Gracchus, tribune of the plebs in 133 BCE, proposed land reform that reallocated the *ager publicus* (property owned by the Roman state but possessed and used by non-state actors), which upset the status quo. Some scholars argue that the Italian allies perceived this as a threat to their livelihood, because they were unable to appeal these decisions as non-citizens.<sup>20</sup> Tiberius Gracchus was violently murdered by the *pontifex maximus*, Publius Cornelius Scipio Nasica Serapio, for (arguably) bypassing the approval process for his agrarian legislation extra-constitutionally.<sup>21</sup> This was the first of many political murders during the period.

Gaius Gracchus (Tiberius' brother and tribune of the plebs in 122 BCE) and Fulvius Flaccus (consul in 125 BCE and tribune of the plebs in 122 BCE) also provided a spark for Italic frustrations. They proposed a bill offering *suffragium* (the right to vote) to non-Latin Italians and citizenship to the Latins.<sup>22</sup> In response, Livius Drusus (also tribune of the plebs in 122 BCE) undermined their proposal by proposing a colonization bill.<sup>23</sup> This law suggested the grant of *provocatio*<sup>24</sup> to the Latins and siphoned support away from the other proposal. Livius Drusus was successful, and the *socii* were not extended political rights. He died, however, before the law granting *provocatio* was passed, leaving the Latins and Italian allies without any new rights. Gaius Gracchus and Fulvius Flaccus were killed after a *senatus consultum ultimum* was passed, their lives ending because of the same political violence that befell Tiberius Gracchus. The Italians were incensed that magistrates advocating on their behalf would be treated in such a manner and expressed frustration at being considered subjects instead of partners.<sup>25</sup>

Such misfortunes did not stop the Italians from attempting to use citizenship rights. In 97 BCE, many elite Italians registered themselves on the census as citizens.<sup>26</sup> This was an easy task considering a man simply had to show up to Rome and make a declaration as to their name, wealth, tribe, and domicile, all of which could be easily faked. This trickery came to the attention

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<sup>19</sup> Dart would disagree with this analysis. "It is therefore worth considering the period of the Gracchi not as a 'cause' of the Social War but rather as a symptom of an emerging crisis in the interactions between Rome and its allies." Dart (2016) 56.

<sup>20</sup> Dart (2016) 44.

<sup>21</sup> Brunt (1988) 22.

<sup>22</sup> App. *BC* 1.23.99, discussed in Prag (2022) 324 and Dart (2016) 60.

<sup>23</sup> Plutarch *Gaius Gracchus* 9.3, discussed in Prag (2022) 324.

<sup>24</sup> Meaning the Latins would no longer be subject to corporal punishment on military service. Plutarch *Gaius Gracchus* 9.3.

<sup>25</sup> Dillon (2015) 437.

<sup>26</sup> Bispham (2016) 86.

of the consuls of 95 BCE, Crassus and Scaevola, who decided to purge the census rolls.<sup>27</sup> The census was an incredibly important part of political life in Rome, acting as both a “gateway to the body politic and a point of contestation.”<sup>28</sup> The *lex Licinia Mucia* was passed, resulting in a *quaestio* (specialty court) to hear cases of fraudulently acquired citizenship and remove *peregrini* from the census.<sup>29</sup> The ancient commentator Asconius claims that the alienation of Italic peoples from this episode of history was the greatest cause of the Social War.<sup>30</sup> Fighting did not begin, however, until a few years later.

The proposals by Gracchus and Drusus provided the foundation for future tribunes to curry political favor by suggesting that grants of rights typically reserved for citizens be granted to the allies. In 91 BCE, Marcus Livius Drusus (tribune of the plebs), the son of the tribune who advocated for *provocatio*, proposed to grant citizenship to either all allies or the Latins alone.<sup>31</sup> Livius Drusus likely offered citizenship as a way to garner support for his bid to return the *quaestiones* (standing courts) to the Senate.<sup>32</sup> He produced a broad package of legislation, including the citizenship proposal, to gain support. Like Flaccus and Gracchus, he was also killed. At the time of his death, only the citizenship bill had not been voted on.<sup>33</sup> His death, along with the deaths of other magistrates the Italian allies saw as friendly to their requests, was added to the growing list of grievances of the allies.<sup>34</sup>

The Senate ultimately rejected the citizenship proposal and in turn infuriated *socii*. The residents of Asculum, a *civitas foederata*, were rumored to be exchanging hostages with another city, a customary practice in wartime preparations to prevent desertion. The Roman praetor Quintus Servilius traveled to Asculum to investigate the alleged hostage exchange, threatening violence along the way. The allies, fearful of discovery and enraged at the threats of violence, expressed their anger by lynching Servilius and his legate Fonteius.<sup>35</sup> Following these brutal deaths, the people of Asculum killed any Roman in the city and ransacked their property.<sup>36</sup> The people of Asculum sent an embassy to Rome, attempting to explain their violence and to request

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<sup>27</sup> Bispham (2022) 324.

<sup>28</sup> Bispham (2022) 324.

<sup>29</sup> Bispham, (2016) 86.

<sup>30</sup> Bispham (2016) 86.

<sup>31</sup> Prag (2022) 324.

<sup>32</sup> Prag (2022) 324.

<sup>33</sup> Prag (2022) 324.

<sup>34</sup> Dillon (2015) 437.

<sup>35</sup> App. *BC* 1.38.171 – 174.

<sup>36</sup> Bispham (2016) 76. See also Dillon (2015) 349.

a grant of rights. They were met with derision.<sup>37</sup> The Senate allegedly did not let them finish speaking before denying their requests. This started the Social War.

Incensed by their unequal rights with the Romans, these allies-turned-insurgents searched for allies among other disaffected Italian regions. Several allied regions joined in the fight against Rome. These places were primarily divided into two groups: the Marsi and the Samnites.<sup>38</sup> The regions included Picenum, Lucania, and Fregellae. Venusia was the only Latin town to fight against Rome, likely because it was geographically isolated from Rome itself and surrounded by Italic allies.<sup>39</sup> Together these towns created a new Italic federation, establishing a capital at Corfinium and minting their own coins.<sup>40</sup> Italia was “a common city for all the Italians in place of Rome” and began functioning as a separate state, engaging Rome in military battles, appointing their own magistrates, and erecting public buildings.<sup>41</sup>

Under the leadership of the consuls Quintus Poppaedi Silo and Gaius Papius Mutilus, *Italia* engaged in prolonged fighting with the Roman military, whom they used to fight alongside.<sup>42</sup> The war had a northern and a southern theater. Etruria and Umbria, two areas that did not originally join the *socii* against Rome, threatened to revolt but were quickly stopped.<sup>43</sup> For the *socii*, the first year of the war was the strongest, although they were unable to subdue Campania in the southern theater or expand further into the northern theater from Asculum.<sup>44</sup>

The Social War witnessed numerous and costly battles, with both sides fighting on equal footing. *Italia*'s challenge to Roman supremacy did not last, however, and the Republic gradually began to win. The combination of Roman military might and political concessions weakened the Italian allies.<sup>45</sup> Using the proverbial carrot and stick, Rome defeated the majority of Italian allies and assimilated them into their citizenry. The Samnites and the Lucanians,

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<sup>37</sup> Scullard (1965) 54.

<sup>38</sup> Bispham (2007) 32.

<sup>39</sup> Bispham (2016) 77.

<sup>40</sup> Dillon (2015) 440.

<sup>41</sup> Brunt (1965) 97-97. See also Bispham (2016) 86: “[T]here was to be a representative council, and magistrates, to run the war.”

<sup>42</sup> By the year 91 BCE, for every one ‘Roman’ soldier in the Roman army, there were two Italian allies in the same army. Non-citizen allies bound by their *foedera* could be compelled to serve. Brunt (1971) 686.

<sup>43</sup> Bispham (2016) 87.

<sup>44</sup> Bispham (2016) 87.

<sup>45</sup> The military engagements go far beyond the scope of this paper. For more information on the military history of the Social War, see App. *BC* 1.38 or Diodorus Siculus, *The Library of History*, 37.2. For modern compilations of the military history, see Dart (2016).



however, remained independent from Rome until Sulla's return.<sup>46</sup> In 82 BCE, they were defeated at the Battle of the Colline Gate.<sup>47</sup> Sulla's victory over the insurgents and Marius (the Younger) ushered in a period of political violence and uncertainty in Rome.

The 'carrot' dangled by the Romans to discourage fighting was a grant of full Roman citizenship. The two best documented enfranchisement measures are the *lex Julia* and the *lex Plautia Papiria*. The first concession came in 90 BCE with the *lex Julia*. This law granted citizenship to those Italian towns that did not take up arms against Rome.<sup>48</sup> Its primary purpose was to prevent areas that had not joined the resistance, namely Etruria and Umbria, from doing so.<sup>49</sup> It also demonstrated that the Romans were willing to compromise, which diminished the desire for battle. Eight new tribes were established and added to the end of the voting roster in the *comitia tributa*.<sup>50</sup> With full citizenship, the *socii* and Latins could enter valid Roman marriages, uphold contracts, and pass down their property. This law encouraged Italian towns to remain loyal to Rome if they had not yet revolted.

Following the success of the *lex Julia*, Rome introduced the *lex Plautia Papiria de civitate* in 89 BCE.<sup>51</sup> This law granted citizenship to insurgent Italian allies if they gave up arms within sixty days of its passage.<sup>52</sup> This law was proposed by two tribunes and passed in the *comitia tributa* as well.<sup>53</sup> There were two exceptions to this law: the Samnites and the Lucanians.<sup>54</sup> While the *lex Julia* and *lex Plautia Papiria* are considered the most substantial enfranchisement laws of the period, they were made in conjunction with others. The *lex Pompeia*, *lex Calpurnia*, and a *senatus consultum* in 86 BCE provided further enfranchisement for the Latins and *socii*.<sup>55</sup>

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<sup>46</sup> Bispham (2016) 87.

<sup>47</sup> Dillon (2015) 438.

<sup>48</sup> Gabba (1992) 123.

<sup>49</sup> Brunt (1965) 94. Appian notes the "inhabitants of Etruria and Umbria and other neighbouring peoples on the other side of Rome [opposite the Adriatic side of Italy]" were incited to revolt, which is when the Romans realized concessions were necessary. App. BC 1.49. Bispham believes the other "neighboring peoples" that may consider revolution were the Latins, who at this point remained steadfastly loyal to Rome (except for the city of Venusia). If correct, this could have fundamentally shifted the progression of the war. Latins provided significant military power to the Roman army and losing that could have cost Rome the war. Bispham (2016) 87.

<sup>50</sup> App. BC 1.49. Gabba (1994) 123. Bispham (2022) 327. This assertion by Gaius has been disputed, but that is beyond the scope of this paper.

<sup>51</sup> Dart (2016) 40.

<sup>52</sup> Dart (2016) 170.

<sup>53</sup> Dart (2016) 171.

<sup>54</sup> Gabba (1992) 126.

<sup>55</sup> Dart (2016) 172.

The Social War emerged primarily from longstanding grievances of the Italian *socii*, who sought to acquire the rights and privileges associated with Roman citizenship. This bloody history demonstrates just how important these rights were to the *socii*, who were willing to die for the chance of political equality. Although the war ended with a Roman victory, the *socii* achieved their main goal: Roman citizenship. The integration of the Latins, Italian allies, and Romans into a unified state marks a pivotal moment in Roman history. A closer examination of the Social War and its aftermath provides modern scholars with insight to what specific rights and privileges the *socii* wanted and which the Roman citizens wanted to keep for themselves.

### PART 3: LEGAL STATUS OF *PEREGRINI*

The *socii* sought specific legal rights to better their social and economic standing. When these rights were not granted, they banded together to create an *Italia* fighting against Rome. Other scholars have questioned whether *socii* sought an extension of citizenship or the creation of an Italic state separate from Rome. The question, however, should not be one of extension but rather of *substance*. What rights specifically did the Italian allies desire? And how did citizenship become the clearest method to achieve those rights? To understand these questions, we first must analyze the rights of non-citizens under Roman authority on the eve of the Social War.

Two terms primarily denote the ‘otherness’ of non-Romans interacting with the state: *peregrini* and *nationes exterae*. Eberle distinguishes these terms by comparing their status in relation to the city of Rome. *Peregrini* were non-Romans who came to live in Rome while *nationes exterae* were foreigners living outside of Rome and interacting with magistrates.<sup>56</sup> Other scholars simplify the narrative. For example, Raggi notes that anyone who did not possess Roman citizenship was considered a *peregrinus* and was therefore excluded from the institutions of the republic.<sup>57</sup> For the purposes of this paper, I will use *peregrinus* to refer to any non-Roman citizen subject to Roman systems of administration.

Treaties between the Roman Republic and the Italian cities could grant *peregrini* a host of rights, such as *conubium* and *ius migrationis*.<sup>58</sup> Grants of citizenship were commonly used to signal Rome’s pleasure with an individual or group of people,<sup>59</sup> although their importance

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<sup>56</sup> Eberle (2022) 332.

<sup>57</sup> Raggi (2022) 312.

<sup>58</sup> Raggi (2022) 312.

<sup>59</sup> Bispham (2016) 78.

fluctuated in the period preceding the Social War.<sup>60</sup> As Rome began expanding her empire through military engagements and treaties, an influx of *peregrini* began to interact with Roman customs and the legal system. Some scholars argue the office of peregrine praetor was created in response to this evolution in 241 BCE.<sup>61</sup> Others argue the office was added so more magistrates could exercise *imperium*.<sup>62</sup> Regardless of the purpose, the peregrine praetor had jurisdiction over disputes between *peregrini*, and likely between *peregrini* and Roman citizens, as their role developed.<sup>63</sup>

### **Latin Allies**

The Latin allies inhabited the region of Latium before the Roman monarchy began and shared similar language, religion, and social institutions. They likely had the rights of *conubium*, *commercium*, and *ius migrationis* to support their community.<sup>64</sup> Roman kings exercised hegemony over Latium, which resulted in a revolt by the Latin allies who were ultimately defeated at Lake Regillus in 493 BCE.<sup>65</sup> The terms of the peace treaty required equal military support from Rome and the aptly named “Latin League.” In 341 BCE, the towns of the league revolted against Rome because of its geographical expansion against them in what became known as the Latin War.<sup>66</sup> This conflict was a disaster for the Latin allies. In 338 BCE, Rome incorporated some cities into full citizenship and dissolved the Latin League, requiring individual towns to form specific treaties with Rome. The Romans also began to increase their colonization efforts, conferring Latin status on some of the colonies that were not part of the Latin League.<sup>67</sup>

The rights and privileges of Latin allies varied depending on the specific treaties and arrangements between each city and Rome. Most Latins, however, had similar grants of rights because they were originally members of the Latin League. There is scholarly disagreement regarding the existence of the rights of *conubium*, *commercium*, and *ius migrationis* after the Latin War in 340 - 338 BCE. These disputes will be further explored in each section of the paper.

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<sup>60</sup> Bispam (2022) 324.

<sup>61</sup> Roselaar (2016) 145.

<sup>62</sup> Brennan (2000) 131.

<sup>63</sup> Daube (1951) 67.

<sup>64</sup> Roberts (2007) “Latins”.

<sup>65</sup> Roberts (2007) “Latins”.

<sup>66</sup> Roberts (2007) “Latins”.

<sup>67</sup> Roberts (2007) “Latins”.

The Latin allies found ways to express their frustrations with Rome, particularly when it came to *ager publicus*. Tiberius Gracchus, tribune of the plebs in 133 BCE, proposed significant land reforms that would redistribute *ager publicus*, including that which the Latin allies possessed.<sup>68</sup> In 129 BCE, presumably after losing some of their possessed land in the redistribution, some allied clients of Scipio Aemilianus sought his assistance in enforcing their *foedera*.<sup>69</sup> While land redistribution slowed in the following few years, Rome's political machine geared up. Fulvius Flaccus, canvassing for the consular election, proposed making the *socii* citizens in exchange for *ager publicus*.<sup>70</sup> This proposal met great opposition from the *nobiles*, who feared the vast boon of Flaccus' *clientes* if it were passed.<sup>71</sup> Widespread resistance angered the *socii*, who were being disrespected by the Romans after flocking to the city to show their support for the law. In response, the people of Fregellae revolted.<sup>72</sup>

Likely in response to this revolt, some Latin elites had the opportunity to gain Roman citizenship. Introduced approximately around 125 BCE, although this date is disputed, the *ius adipiscendi civitatem Romanum per magistratum* allowed Latin allies who held a magistracy to receive Roman citizenship at the conclusion of their term.<sup>73</sup> This right complimented the right of *ius migrationis* likely given to Latin colonies as a hegemonic tool of the Romans.<sup>74</sup>

### **Italian Allies**

The Italian allies, or *socii*, did not share as many traits with the Romans as the Latin allies did. They spoke a variety of languages including Umbrian, Oscan, and Etruscan.<sup>75</sup> The *socii* did not possess Latin status though some were geographically close to the Romans.<sup>76</sup> These towns also did not share fundamental rights such as *l'onnubium*, *commercium*, and *ius migrationis* with each other or Rome during the Roman monarchy and into the middle Republic.<sup>77</sup> Without a rich history of interactions with the Romans to advocate for their rights, the *socii* found they were granted fewer privileges than their Latin neighbors.

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<sup>68</sup> Conole (1981) 129.

<sup>69</sup> Conole (1981) 129.

<sup>70</sup> Conole (1981) 132.

<sup>71</sup> Conole (1981) 133.

<sup>72</sup> Brunt (1965) 91.

<sup>73</sup> Roselaar (2016) 151.

<sup>74</sup> Roselaar (2016) 146.

<sup>75</sup> Dillon (2015) 431.

<sup>76</sup> Dillon (2015) 431.

<sup>77</sup> Dillon (2015) 431.

While it was less common than for their Latin counterparts, the Italian *socii* could gain Roman citizenship. In 123 BCE the *lex Acilia repetundarum* was proposed, supported by Gaius Gracchus.<sup>78</sup> This *lex* acknowledged provincial Italian frustrations regarding magisterial abuse of power. If an Italian provincial successfully prosecuted a Roman magistrate for wrongdoing, he was rewarded with citizenship.<sup>79</sup> Magisterial abuse was likely widespread as time went on, with magistrates expecting royal treatment upon their entrance to cities. Only L. Cossinius and T. Coponius (both from Tibur) are recorded as receiving citizenship through this *lex*.<sup>80</sup> Such concessions by the Romans demonstrate they understood grievances regarding magisterial abuse but did not want to grant citizenship as a way to police their behavior. Additionally, this *lex* applied primarily to provincial Italians, not all Italian allies. This distinction demonstrates how *socii*, while facing similar misconduct, did not have legal recourse that would result in justice. Anger over the extortionate officials, and a lackluster Roman response to the problem, could have stoked allied cries for the war but were not the primary cause.

#### **PART 4.A: IUS MIGRATIONIS**

Migration was incredibly important to many people on the Italian peninsula.<sup>81</sup> Populations moved around on account of military conflicts, the hope of better prospects, or for a variety of other reasons. For Roman citizens, citizenship attached to the person and was kept despite moving around. Latins, and perhaps Italian *socii* more generally, could gain Roman citizenship through migration provided they met certain requirements. *Ius migrationis* was a right that granted Latins the ability to acquire Roman citizenship by migrating and settling in the city of Rome.<sup>82</sup> At least some Latin cities had this right in at least the second century BCE, as evidenced by complaints in 187 and 177 BCE by provincial embassies that too many of their people were migrating to Rome.

To fulfill the requirements of the *ius migrationis*, people had to (1) migrate to Rome, (2) permanently settle in the city, and (3) leave a son behind in their hometown. Livy recounts the civic tension this immigration produced.

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<sup>78</sup> Roselaar (2016) 151.

<sup>79</sup> Roselaar (2016) 151.

<sup>80</sup> Roselaar (2016) 151.

<sup>81</sup> Raggi calls it “one of the most essential characteristics of Roman citizenship.” Raggi (2022) 313.

<sup>82</sup> Broadhead (2001) 69.

The senate was greatly impressed also by the embassies from the allies of the Latin confederacy, who had wearied both censors and former consuls, and were at length given audience before the senate. The substance of their complaints was that large numbers of their citizens had been rated at Rome and had moved to Rome; but if this were allowed it would come to pass in a very few decades that there would be deserted towns and deserted farms which would be unable to furnish a single soldier. Similarly the Samnites and Paelignians complained that four thousand families had moved from their territories to Fregellae, nor did either community furnish fewer soldiers on that account when the levy was made. Moreover, two kinds of fraud had been practised to secure individual transfers of citizenship. The law granted to any persons among the allies of the Latin confederacy, who should leave in their home towns offspring of their loins, the privilege of becoming Roman citizens. By the abuse of this law some were injuring the allies, some the Roman people. For in the first place, in order to evade the requirement that they should leave offspring at home, they would give their sons to any Romans whatsoever in slavery, on the condition that they should be manumitted and thus become citizens of freedman condition; in the second place, those who had no offspring to leave behind, in order to become Roman citizens adopted children.<sup>83</sup>

Latin allies sent embassies to express their concern over the mass emigration from their communities and the subsequent hardship when required to provide Rome with soldiers. Entire households were abandoning their homes to activate their *ius migrationis* and thus Roman citizenship. People found two loopholes in the right to facilitate an easier acquisition of citizenship: adopting a son who would stay behind in the community, and selling a son into slavery only to have the new owner manumit him. Livy's accounting of this *lex* first implies that a Latin man had to have children to become citizen, but that they were able to work around this by adopting a child and leaving that child behind (or selling the child into slavery in Rome for future manumission). This scheme meant Latins were not staying in their towns; potential citizens likely would have adopted someone from their town to perform this procedure, meaning there would be no increases in the population of Latin towns. The Latin allies were able to use *ius migrationis* to gain citizenship and significantly increase the number of people able to use the right by exploiting loopholes.<sup>84</sup>

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<sup>83</sup> Livy 41.8.6 - 10. *Moverunt senatum et legationes socium nominis Latini, quae et censores et priores consules fatigaverant, tandem in senatum introductae. Summa querellarum erat, cives suos Romae census plerosque Romanos commigrasse; quod si permittatur, per paucis lustris futurum, ut deserta oppida, deserti agri nullum militem dare possint. Fregellas quoque milia quattuor familiarum transisse ab se Samnites Paelignique querebantur, neque eo minus aut hos aut illos in dilectu militum dare. Genera autem fraudis duo mutandae viri civitatis inducta erant. Lex sociis nominis Latini, qui stirpem ex sese domi relinquerent, dabat ut cives Romani fierent. Ea lege male utendo alii sociis, alii populo Romano iniuriam faciebant. Nam et ne stirpem domi relinquerent, liberos suos quibusquibus Romanis in eam condicionem ut manu mitterentur mancipio dabant, libertinique cives essent; et quibus stirps deesset quam relinquerent, ut cives Romani fierent.*

<sup>84</sup> Dart (2016) 49.

This emigration caused a serious demographic challenge to the allies, who were still recovering from the Hannibalic War and could not meet their military obligations to Rome.<sup>85</sup> Likely more out of concern for their decreasing military power than concern for the allies themselves, Roman senators decided to grant the embassy's request.<sup>86</sup> To do this, they instructed the peregrine praetor to investigate and repatriate any *Latini* registered as Roman citizens whose father had been registered in a Latin community in 203 BCE or earlier.<sup>87</sup> Approximately 12,000 men were sent back to their hometowns and removed from the Roman census rolls at the conclusion of this investigation.<sup>88</sup>

This passage from Livy also demonstrates the Latins, not *socii*, had the right of *ius migrationis*. The Samnites, Paelignians, and people of Fregellae were not *Latini* with specialized rights. Rather, they would have *foedera* with one another (and Rome) to enumerate the legal attributes of their relationship. While the embassy expressed their frustration that entire families had moved between these regions, their actual qualm was that those at home were still providing the same number of soldiers to Rome despite their diminished population. The Roman Senate would have no authority to curb migration between *civites foederatae*, so long as the migrants were not claiming Roman citizenship.<sup>89</sup>

This episode in Livy demonstrates two things: (1) Latins had the right of *ius migrationis* at least until 187 BCE and (2) Latins and *socii* received differential treatment. The migration between Italian towns and from those towns to Rome demonstrates the desire of non-Romans to achieve more rights. *Socii* may have felt the difference in their legal status more sharply because they were unable to achieve Roman citizenship through *ius migrationis*. Latins were dissatisfied with the new restriction of their legal access to the path of citizenship. Some scholars believe the right was curbed or entirely ended after this period,<sup>90</sup> which would be a reason for revolution. Given the long time period between the expulsion of Latins from the census and the Social War, however, *ius migrationis* was likely not the primary right for which the *socii* revolted. The Latins had other ways to exercise their rights and the *socii* would not have felt the sting of differential treatment if Latins could not exercise the right either.

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<sup>85</sup> Bispham (2022) 320.

<sup>86</sup> *Haec impetrata ab senatu*. Livy 41.8.12.

<sup>87</sup> Livy 39.3-6 discussed in Bispham (2022) 320.

<sup>88</sup> Livy 29.15 and 37.3 discussed in Bispham (2022) 320.

<sup>89</sup> Dart (2016) 48.

<sup>90</sup> See Dart (2016) 50 and Roselaar (2013) 112.

## PART 4.B: SUFFRAGIUM

*Suffragium* denoted the right to vote in a Roman assembly. During the Republic, it primarily represented a “technical term of constitutional law,” though it later included decisions and opinions not provided through formal legal channels.<sup>91</sup> To better understand how the right of *suffragium* functioned in Rome and why the *socii* desired it, a foundational understanding of Rome’s voting procedure is necessary. There were 35 voting districts, called tribes, in Rome and its surrounding territory. The urban area had four tribes and the rural area had thirty-one.<sup>92</sup> These tribes had substantial interactions with the census, which divided landholders into tribes based on property classifications.<sup>93</sup> Tribes collected taxes, provided soldiers to the Roman army, voted on lower magistracies, and proposed laws.<sup>94</sup> Voting occurred in order of property class; tribes with higher property requirements voted first and therefore tribes with less property were of less political importance.<sup>95</sup>

Latins were sometimes able to vote in Rome, even if their town did not have a grant of *suffragium*. This fact is accounted for from a short passage in Livy. He mentions the corruption of two *publicani* (tax collectors) who defrauded Rome. While a praetor provided information regarding the corruption, the Senate was hesitant to suggest any recourse. In response, two tribunes took on the case and fined one of the *publicani*. Postumius, the fined *publicanus*, appealed that fine before the Roman people, drawing a huge crowd overflowing the Area Capitolina. When discussing the preparations for a vote, Livy says, “After providing their witnesses, the tribunes pushed back the crowd and the urn was brought for them to decide by lot in which tribe the Latins would vote.”<sup>96</sup> When one of the *publicani* appealed the fine for his misbehavior, the *Latini* in Rome were given the opportunity to join one of the tribes and vote.

Based on this short passage, we cannot determine whether there were any restrictions on Latins who could exercise *suffragium*. The lack of emphasis with which Livy mentions this procedure leads some scholars to believe it was a “routine political action.”<sup>97</sup> This means Latin

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<sup>91</sup> De Ste. Croix (1954) 33-34.

<sup>92</sup> Taylor (2013) 3.

<sup>93</sup> Taylor (2013) 8. “The relation of tribes to census comes out over and over again in the sources.”

<sup>94</sup> Taylor (2013) 9.

<sup>95</sup> Taylor (2013) 9.

<sup>96</sup> Livy 25.3.16-17. Discussed in Bispham (2022) 322. *Testibus datis tribuni populum submoverunt sitellaque lata est ut sortirentur ubi Latini suffragium ferrent.*

<sup>97</sup> Bispham (2022) 322.



allies conceivably exercised voting rights on a fairly regular basis. It seems plausible their *suffragium* was granted to at least *incolae* (Latin residents in Rome) at the time of a vote by being assigned to a random tribe.<sup>98</sup> The *socii* had no such voting rights, even if they resided in Rome. The differences in political power between the two classes of allies likely exacerbated the frustrations of the *socii*.

*Suffragium* reflects the growing value of Roman citizenship and the importance of the Latins to Rome. This right could have been granted to stave off claims for citizenship. If so, it was successful at least for the Latins, all of whom (except one) did not take up arms against the Romans in the Social War. But would such a scheme have prevented the *socii* from revolting? Scholars are divided on this question. Dillon states that the “question of voting rights as citizens was not their primary concern” because only elites would be able to travel to the city to cast their votes.<sup>99</sup> To support this theory, he notes the distribution of the *socii* into new tribes after the Social War “raised no problems.”<sup>100</sup> Brunt, on the other hand, says “the demand for citizenship is essentially a demand for the *ius suffragii*.”<sup>101</sup> He cites the disruption of voting rights in 88 and 87 BCE by the Senate after the Social War’s end as proof *socii* primarily sought *suffragium*.<sup>102</sup>

I believe that while *suffragium* held major significance for the Roman citizens, it was not a strong motivating factor for the *socii* to fight against Rome. First, it could take someone multiple days to reach Rome from the rural areas.<sup>103</sup> This travel would be necessary *every time* a vote was cast, making the journey unfeasible for most *socii*. While elites would exercise *suffragium* more frequently, it is unlikely their less-privileged neighbors would risk their lives for them to vote. Additionally, many elite *socii* had the opportunity to become magistrates and gain citizenship through *civitas per magistratum*. This process took longer and was not available to every wealthy, property-owning *socius*, but it did act as a valve to release pressure on the desire for *suffragium*.

Second, issues regarding enforcement of citizenship rights following the Social War demonstrate their *suffragium* was important to the Romans, but not necessarily to the allies. The

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<sup>98</sup> Bispam (2022) 322.

<sup>99</sup> Dillon (2015) 437.

<sup>100</sup> Dillon (2015) 437.

<sup>101</sup> Brunt (1965) 103.

<sup>102</sup> Brunt (1965) 103.

<sup>103</sup> For example, to travel from Asculum to Rome on foot it would take approximately 6 days. For an interactive map detailing how long travel would take between cities on the Italic peninsula, take a look at The Stanford Geospatial Network Model of the Roman World. <https://orbis.stanford.edu/#>

*lex Julia* and *lex Plautia Papiria* enfranchised many of Rome's allies. These grants of citizenship to the Latins and *socii* allowed the wealthy to vote in the *comitia centuriata* and stand for magistracies, among other things.<sup>104</sup> The war for equality was not over, however, as the old Romans sought to prevent the *novi cives* from exercising their rights. The *comitia tributa* (tribal assembly) was organized into 35 tribes and the *novi cives* originally were restricted to either eight<sup>105</sup> or ten<sup>106</sup> new tribes that would vote at the end.<sup>107</sup> This fact suggests they had very little political power and likely their vote would not change any outcomes. This, in addition to the large distances *socii* would travel to exercise their *suffragium*, meant the vote of many Italian allies would go uncast.

It also took a few years for *novi cives* to be added to the census, though a sharp increase in the 70/69 BCE census demonstrates enrollment into tribes had taken place by that point.<sup>108</sup> Such a delay in census enrollment likely indicates a delay in voting power as well; without being assigned to a tribe, a person could not vote. Information from the ancient sources paints a picture of old Romans attempting to circumscribe the voting rights of new citizens, not of new citizens actively fighting for their immediate right to exercise *suffragium*. This fact suggests that *socii* did not revolt primarily for the right to vote.

### ***Civitas Sine Suffragio***

The value of *suffragium* is indicated by the creation of a second class of citizenship called *civitas sine suffragio*. Members of this class did not belong to a tribe and therefore could not exercise the right to vote.<sup>109</sup> This status was given to some cities surrounding Rome, such as Caere, which received the status in the fourth century BCE.<sup>110</sup> While grants of this status originally showcased good intentions, this did not remain the case. It later became a type of punishment; individuals with *civitas sine suffragio* had financial and military obligations, but no opportunity to vote.<sup>111</sup> Most communities granted this status later received citizenship.<sup>112</sup> Some Latin towns were being treated “better than the *cives sine suffragio*” because of their treaties with

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<sup>104</sup> Dillon (2015) 446.

<sup>105</sup> Velleius 2.20.2

<sup>106</sup> App. BC 1.214-215.

<sup>107</sup> Dillon (2015) 446.

<sup>108</sup> Dillon (2015) 448.

<sup>109</sup> Taylor (2013) 9.

<sup>110</sup> Raggi (2022) 312.

<sup>111</sup> Raggi (2022) 312.

<sup>112</sup> Raggi (2022) 312.

Rome.<sup>113</sup> This contrasts sharply with the *socii*, who were never granted this status or treated better than people with this status. Ancient sources, however, do not highlight these differences as a point of tension for the allies. Therefore, while we can see that voting is important for elites and Romans, it is unlikely to have been the primary motivation for *socii* taking up arms against Rome.

After the Gracchan period, there are no ancient allusions to the existence of *cives sine suffragio*.<sup>114</sup> It is curious that we should not hear of any members of this class existing at the start of the Social War if they remained; this inferior class likely would have shared frustrations similar to those of the *socii* and would have sought to align militarily with them. The elimination of this secondary class, whose members did not enjoy full privileges, would have “deepened the gulf between the *socii* and the citizens” by removing the chance to enjoy some privileges without enfranchisement.<sup>115</sup> The fact that ancient sources do not explicitly comment on any Italic sentiments regarding the destruction of this class of individuals further suggests *suffragium* was not the primary motivating factor for *socii* in the Social War.

#### **PART 4.C: PROVOCATIO**

*Provocatio* is the right to be free from “execution or arbitrary punishment by magistrates.”<sup>116</sup> It allowed individuals to appeal decisions and abuses by magistrates. The right was established by P. Valerius Poplicola in the early years of the Republic as protection against magisterial *imperium*.<sup>117</sup> Livy mentions *provocatio* when describing the events of 300 BCE, when the consul Marcus Valerius proposed a law to combat magisterial misbehavior.

In the same year Marcus Valerius the consul proposed a law of appeal with stricter sanctions... Yet the Porcian law alone seems to have been passed to protect the persons of the citizens, imposing, as it did, a heavy penalty if anyone should scourge or put to death a Roman citizen.<sup>118</sup>

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<sup>113</sup> Bispham (2022) 322.

<sup>114</sup> Brunt (1965) 93.

<sup>115</sup> Brunt (1965) 93.

<sup>116</sup> Bispham (2016) 81.

<sup>117</sup> Develin (1978) 46.

<sup>118</sup> Livy 10.9.3-5. *Eodem anno M. Valerius consul de provocazione legem tulit diligentius sanctam... Porcia tamen lex sola pro tergo civium lata videtur, quod gravi poena, si quis verberasset necassetve civem Romanum, sanxit.*

The common understanding of the Valerian law is that it compelled magistrates to heed the use of *provocatio*, imposing violent sanctions on anyone brazenly abusing their power.<sup>119</sup>

Uncertainty remains regarding what precisely the Valerian law put into effect, beyond more strongly enforcing the provisions of the *lex Porcia*.<sup>120</sup> The Porcian law protected citizens against capital punishment but does not extend to others. *Provocatio* provided some protection against the exercise of arbitrary power, although it is unclear how often appeals were successful even with evidence of misbehavior.

Ancient sources go silent about this right until the second century BCE, when Gaius Gracchus and Fulvius Flaccus proposed the extension of *suffragium* to *socii* and citizenship to *Latini*.<sup>121</sup> In response, Livius Drusus proposed a *ius provocationis* for the Latins.<sup>122</sup> This measure aimed to address the complaints Gaius and Fulvius had responded to without providing them the boon of *clientes* by granting citizenship to large swaths of people.<sup>123</sup> These competing proposals demonstrate that there were at least a few Italians who wanted citizenship or at a minimum some rights of the citizenship, and that both sets of allies were seeking to strengthen their rights against mistreatment from Romans.<sup>124</sup>

While protection from mistreatment was important to the *socii*, it is not the primary right of citizenship they were seeking. After the Flaccus and Drusus episode, the right of *provocatio* is not mentioned again as a serious allied concern again. This could be because in the years following the failed proposal, the *socii* had other rights to worry about.

#### **PART 4.D: COMMERCIIUM**

A commonly held belief among scholars is that the *socii* rebelled to strengthen their legal property rights by gaining *commercium*. This right encompassed the legal capacity of an individual to engage in commercial transactions, enforce contracts, and own property.<sup>125</sup> Understanding why *commercium* was deeply embedded within the concept of citizenship, but

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<sup>119</sup> Develin (1978) 47.

<sup>120</sup> Develin (1978) 47.

<sup>121</sup> Prag (2022) 324.

<sup>122</sup> Dart (2016) 60.

<sup>123</sup> Dart (2016) 60.

<sup>124</sup> Bispham (2016) 80.

<sup>125</sup> Roselaar (2016) 146.

that *socii* would not have waged war for it, requires an examination of the law of obligations and enforcement.

## Types of Contracts

To better understand the Roman law of contracts, we must rely on jurists writing long after the Social War. Gaius, writing in the second century CE, divides the body of contract law into four types: contract *litteris* (written), contract *verbis* (oral), contract *re* (real contracts), and contract *consensu* (consensual contracts).<sup>126</sup> Real and consensual contracts are informal, meaning they were considered *ius gentium* and thus did not require parties to have *commercium*.<sup>127</sup> Written and oral contracts had formal components and were considered contracts from civil law (*legitimi*).<sup>128</sup> Contracts were further divided into eight types of contracts: (1) contracts for sale (*emptio-venditio*), (2) contracts for hire (*locatio-conductio*), (3) contracts for partnership (*societas*), (4) commission (*mandatum*), (5) loans for consumption (*mutuum*), (6) loans for use (*commodatum*), (7) contracts for deposit, and (8) pledges.<sup>129</sup> While the law of obligations encompasses much broader types of agreements, *commercium* would grant individuals the ability to participate in *all* forms of contracts. It was not necessary, however, for an individual to enter *every* type of contract.

Consensual contracts differ from the others by only requiring an agreement and nothing else; they were also considered *ius gentium* and did not require either party to have *commercium*. They do not stipulate how the agreement should be expressed or a timeline for action (unless agreed upon).<sup>130</sup> They are binding when the agreement is fulfilled. Four of the eight types of contracts fall into this category: *emptio-venditio*, *locatio-conductio*, *societas*, and *mandatum*.<sup>131</sup> These were enforced by a system of *bona fides*, or good faith. When issues regarding these contracts were presented to a *iudex* (judge), he would decide what the remedy was on the basis of equity, rather than relying upon written laws.<sup>132</sup> *Emptio-venditio* was the most common the

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<sup>126</sup> Gaius *Institutes* 3.89. Translation from Studemund. “First let us consider those that arise from contract. Of these there are four genera; for an obligation is contracted either by thing done, by [spoken] words, by writing, or by consent.” *Et prius uideamus de his quae ex contractu nascuntur, harum autem quattuor genera sunt: aut enim re contrahitur obligatio aut uerbis aut litteris aut consensu.*

<sup>127</sup> Campbell (1878) 107.

<sup>128</sup> Birks (2014) 34. Campbell (1878) 107.

<sup>129</sup> Birks (2014) 30.

<sup>130</sup> Gaius *Institutes* 3.135-137 discussed in Birks (2014) 65; Watson (1984) 8; Frier (2021) 185.

<sup>131</sup> Birks (2014) 65.

<sup>132</sup> Birks (2014) 65.

contracts and included the sale of an object for a set price.<sup>133</sup> *Locatio-conductio* closely resembled *emptio-venditio*, but involved a price set for services.<sup>134</sup> *Societas* formed a partnership between parties either for a particular undertaking or concerning a particular good.<sup>135</sup> The contract of *mandatum* allowed someone to act as an agent, but gratuitously, on behalf of another.<sup>136</sup> For example, Person A could give a mandate to Person B so that Person B may transact business on Person A's behalf. These informal, consensual contracts comprised most of commercial life in Ancient Rome.<sup>137</sup>

### Consensual Contracts

It is prudent to investigate when the Romans accepted consensual contracts (depending upon *ius gentium* for their legality) as valid and thus enforceable. This question is quite difficult. Likely, consensual contracts were recognized after the mid-second century BCE, with the establishment of the peregrine praetor.<sup>138</sup> Brennan suggests the office of *urban praetor* was created in 367 BCE by the Licinian-Sextian legislation to produce more magistrates with grants of *imperium*.<sup>139</sup> This grant allowed the praetor to defend the city if the consuls were absent, regulate Roman civil and criminal processes, preside over the Senate, hold assemblies, and exercise military power.<sup>140</sup> Only three ancient sources mention, albeit briefly, the creation of the office of peregrine praetor.<sup>141</sup> Based on these references, primarily one from Lydus, Brennan believes the office of peregrine praetor was created in either 247 BCE or 244 BCE.<sup>142</sup> Other scholars, such as Howe, agree that the office was established in the mid-second century BCE, though they disagree regarding the exact year.<sup>143</sup> Regardless of the exact date of creation, an additional magistrate exercising *imperium* during the Punic Wars would keep Rome defended as other magistrates fought outside the city.

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<sup>133</sup> Birks (2014) 66. Campbell (1878) 120.

<sup>134</sup> Campbell (1878) 121.

<sup>135</sup> Campbell (1878) 123.

<sup>136</sup> Campbell (1878) 124.

<sup>137</sup> Birks (2014) 129.

<sup>138</sup> Howe (1902) 379.

<sup>139</sup> Brennan (2000) 58.

<sup>140</sup> Brennan (2000) 58.

<sup>141</sup> Brennan (2000) 85. These were Livy *Periochae* 7.3.8; Lydus *De Magistratibus* 2.56; Pomponius *ILS* 212 col. 1 lines 28-29.

<sup>142</sup> Brennan (2000) 86.

<sup>143</sup> Howe believes the office was established in 242 BCE. Howe (1902) 379.

If one believes the office of peregrine praetor was created to defend the city of Rome during military engagements, then it follows the peregrine praetor's involvement in commercial matters likely remained minimal in the early years of its existence. Brennan postulates after the number of praetors was increased to four in 227 BCE, the peregrine praetor was able to “shed his primary role... of overseas provincial governor” and was free to be deployed elsewhere.<sup>144</sup> The increased time around the city provided the peregrine praetor with more time to develop his other roles, ultimately culminating, I argue, in his ability to hear commercial disputes regarding consensual contracts among *peregrini*. While the peregrine praetor could still be sent abroad, he occasionally encountered legal disputes while on the Italian mainland.<sup>145</sup> He did not have the ability to shape Roman law, however, until the second century BCE.

As Rome became an increasingly commercial civilization, concerns about contractual enforcement would have strengthened. Originally, commercial claims between citizens were adjudicated through a procedure called *legis actio* (discussed in more detail below). The jurist Gaius notes these actions required highly specific language (e.g., someone could lose his case for using the word “vines” instead of “trees” in his proceeding); they were also not available for *peregrini*.<sup>146</sup> Special provisions required through the *legis actiones* did not meet business demand in an increasingly commercial civilization.<sup>147</sup>

Consensual contracts of sale allowed “new articles of foreign commerce” to bypass the rituals of *mancipatio* and were likely inspired by the aedile's edict upholding *bona fides*.<sup>148</sup> To make economic life accessible to both *peregrini* and Romans in the second century BCE, the enforcement of consensual contracts developed.<sup>149</sup> The introduction of the formulary system in the mid-second century BCE through the *lex Aebutia* allowed *peregrini* to enforce consensual contracts through the peregrine praetor, significantly reducing pressure for *commercium* for economic security.

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<sup>144</sup> Brennan (2000) 95.

<sup>145</sup> Brennan (2000) 97.

<sup>146</sup> Gaius *Institutes* 4.11. Metzger (2013) 18.

<sup>147</sup> Howe (1902) 379.

<sup>148</sup> Amos (1883) 223-224.

<sup>149</sup> Pantu (2013) 5.

## Legal Procedure: *Legis Actiones* and *Formulae*

During the Roman Republic, two different procedural systems dominated civil trials: *legis actiones* and the formulary system. *Legis actiones* were in effect during the period of the Twelve Tables and constituted the only legal remedy until the second century BCE.<sup>150</sup> The formulary system likely came to be used in the mid-second century BCE.<sup>151</sup> These procedures advanced first through the *in iure* stage, where the praetor defined the legal issue and appointed an *iudex* to the case.<sup>152</sup> The *iudex* would then render a final judgment regarding the controversy in the second stage, *apud iudicem*.<sup>153</sup> Both parties had the opportunity to provide evidence supporting their positions before the *iudex* relayed a final judgment. Starting around the third century BCE, an *iudex* had the opportunity to make equitable considerations (*ex bona fide*) when deciding a case, instead of solely relying upon considerations conveyed by the praetor.<sup>154</sup>

The *legis actiones* procedure, unlike the formulary system, required each claimant to describe their legal issue within the parameters of certain fixed phrases (*certa verba*).<sup>155</sup> Substantive law, provided to the *iudex* by the praetor, determined the outcome of the case.<sup>156</sup> Such highly specified pleading requirements means small mistakes in describing the issue would render the claim invalid.<sup>157</sup> The system also did not allow defendants to include any affirmative defenses on their behalf.<sup>158</sup> This rigorous procedural form was available only to Roman citizens, leaving *peregrini* without clear recourse for their commercial disputes.<sup>159</sup> As the needs of Romans changed, a new procedure overtook the *legis actiones*.

The formulary system, likely introduced by the *lex Aebutia* in 130 BCE, replaced the *legis actiones* as the primary procedure though it did not eliminate the option.<sup>160</sup> Scholars advance different explanations as to the development of the formulary system. Brennan suggests it was used so legal actions could proceed on *dies nefasti*, which was not allowed with the

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<sup>150</sup> Domingo (2018) 111.

<sup>151</sup> Kelly (1966) 355.

<sup>152</sup> Brennan (2000) 131. Domingo notes that, before the establishment of the office of praetor, parties would bring their case before a consul. Domingo (2018) 113.

<sup>153</sup> Brennan (2000) 131.

<sup>154</sup> Brennan (2000) 131.

<sup>155</sup> Brennan (2000) 131.

<sup>156</sup> Brennan (2000) 131.

<sup>157</sup> Metzger (2013) 18.

<sup>158</sup> Metzger (2013) 18.

<sup>159</sup> Metzger (2013) 18. Brennan (2000) 132.

<sup>160</sup> Kelly (1966) 355. Brennan (2000) 132.



solemn formulas of *legis actiones*.<sup>161</sup> Another common explanation suggests the formulary system emerged so *peregrini*, who could not use the strict *legis actiones* procedure, could still find redress.<sup>162</sup> Regardless of the origin of its development, the formulary system allowed *peregrini* to resolve their commercial claims with the help of the peregrine praetor.

Both civil law and praetorian law could be enforced through the formulary system.<sup>163</sup> It incorporated written formalities, requiring the plaintiff and defendant to fit their grievance into an existing cause of action.<sup>164</sup> These causes of action would be listed by the praetor at the start of his term and frequently built upon the actions allowed by his predecessors.<sup>165</sup> The praetor's edict specified the conditions under which the peregrine praetor would grant a formula, any exceptions to the formula, and available remedies if the civil law did not provide them.<sup>166</sup> The litigants could use boilerplate language (actions and defenses) to express their issue. The formula also provided potential remedies the *iudex* could follow, including concise options for legal remedies.<sup>167</sup> The formula would guide the *iudex* to either adjudicate the matter by strict law or *ex bona fides*; when under the good faith schema, the judge could use his discretion in deciding the case. In this way, praetors began to build their own body of Roman law.<sup>168</sup>

Three types of formulae existed: (1) the expansion of civil formula, (2) the recognition of agency, and (3) conceptually new actions.<sup>169</sup> In the first, the praetor adopted a legal fiction of “presumed understanding” to extend the civil action to new instances.<sup>170</sup> This was most important for *peregrini* because the praetor could thereby apply the civil law limited to citizens to foreigners, relying on the fiction that they were Roman citizens.<sup>171</sup> This legal fiction provided *socii* with an avenue for redress, assuming they found a sympathetic praetor, without any grant of *commercium*. The second type occurred primarily for debtors. In these formulae, the name in the condemnation portion of the formula was different from the name in the *intentio*.<sup>172</sup> This type

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<sup>161</sup> Brennan (2000) 132.

<sup>162</sup> Brennan (2000) 132 discussing F. Wieacker, *Römische Rechtsgeschichte* 449-450.

<sup>163</sup> Domingo (2018) 113.

<sup>164</sup> Domingo (2018) 113.

<sup>165</sup> Metzger (2013) 21. See also Domingo (2018) 113.

<sup>166</sup> Brennan (2000) 133.

<sup>167</sup> Metzger (2013) 21.

<sup>168</sup> Nuances of the development of the praetorian edict and creation of ‘praetorian law’ is far beyond the scope of this paper. For more information on the topic, see Frier (1983) 231. Kelly (1966) 346. Watson (1970) 106.

<sup>169</sup> Domingo (2018) 120.

<sup>170</sup> Domingo (2018) 120.

<sup>171</sup> Domingo (2018) 120.

<sup>172</sup> Domingo (2018) 120.

held little significance for *socii*. The third type allowed the praetor to develop new areas of law by creating an action for which there was no similarity in the existing civil law.<sup>173</sup> This type of formula primarily contributed to the development of praetorian law and would also be important for *peregrini* looking to enforce their rights. Peregrine praetors could enforce consensual contracts under *ius gentium*, without relying on changes in *ius civile*, through this creation. With these three types of formulae, parties had the opportunity to seek redress for any commercial issues that arose.

Civil litigation was not the sole avenue through which *socii* sought legal remedies. Parties could also submit their dispute to arbitration through a formal agreement (*compromissum*).<sup>174</sup> Reciprocal stipulations provided monetary enforcement, and penalties could also strengthen the agreement. This method was advantageous because the arbitrator was not bound by the formulary procedure.<sup>175</sup> Arbitration was also available in any jurisdiction, regardless of the status of the parties, making it accessible to Italian allies. *Socii* could also use a form of *stipulatio*, a verbal and not consensual contract, to vindicate their rights.<sup>176</sup> This procedure employed a question (*dari spondes?*) and answer (*spondeo*) to create a contractual obligation.<sup>177</sup> While the *spondeo* language is exclusive to Roman citizens, *peregrini* could employ other words such as *dabo*, *promitto*, *fideiubeo*.<sup>178</sup> Thus various enforcement mechanisms provided certainty in the market and made *commercium* less important to *socii*.

## Jurisdiction

How often were praetorian prefects adjudicating matters for *peregrini*? The question of jurisdiction after the introduction of the formulary system will help us understand how (un)important *commercium* was to *socii*. For *peregrini* seeking to enforce their commercial contracts through a trial, location was incredibly important. Inside the city of Rome, the urban praetor handled matters between parties with Roman citizenship.<sup>179</sup> If one of the parties was a non-citizen, the peregrine praetor had jurisdiction.<sup>180</sup> The *aediles curules* had jurisdiction over

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<sup>173</sup> Domingo (2018) 120.

<sup>174</sup> Domingo (2018) 124.

<sup>175</sup> Domingo (2018) 124.

<sup>176</sup> Zimmerman (1996) 72.

<sup>177</sup> Gaius *Institutes* 3.92-93.

<sup>178</sup> Gaius *Institutes* 3.92-93 discussed in Zimmerman (1996) 72.

<sup>179</sup> Domingo (2018) 114.

<sup>180</sup> Domingo (2018) 114.

sales occurring in the Roman market.<sup>181</sup> Local governors had jurisdiction in the provinces, assuming the position of praetor but without the official grant of title.<sup>182</sup> Other local magistrates were required to follow the edict of the provincial governor when adjudicating disputes.<sup>183</sup> The local magistrates had limited jurisdiction in Italian *municipia* and parties could seek to transfer their proceeding to Rome. In that scenario, the plaintiff could appear before the urban praetor or the provincial governor for adjudication.<sup>184</sup>

Trials were deemed *iudicia legitima* if they occurred within one mile of the city of Rome's borders, both parties were Roman citizens, and a single Roman *iudex* presided over the adjudication.<sup>185</sup> These trials relied upon statutory law and if a party lost his civil status, then the trial could not commence.<sup>186</sup> If any of these conditions were unmet, the trial depended upon the praetor's *imperium*.<sup>187</sup> In these trials, an action would not be extinct until the praetor granted the defendant an exception, meaning he could face double jeopardy.<sup>188</sup>

These requirements for civil litigation restricted the venues for *peregrini* to seek redress. Most *peregrini* would interact with their local magistrates or provincial governor because they were outside the city of Rome. Only a few (likely wealthy and elite) members of the foreigner class would interface with the peregrine praetor to resolve any disputes. They would have to contract in Rome and have the ability to travel to the city, or reside in the city, for the duration of the civil litigation. While transferring a proceeding to Rome was possible, it was improbable. Doing so would require resources and connections many *peregrini* were unlikely to possess. The average foreigner conducting business in his own city would likely find resolution through his local magistrate or through arbitration, even without an official grant of *commercium*.

### ***Res Mancipi***

*Peregrini* could want *commercium* for transfers of *res mancipi*, specifically for Italic land transfers. On the other hand, this issue did not affect many *socii*. As I will demonstrate below, they were able to possess and bequeath *ager publicus* without *commercium*. Additionally,

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<sup>181</sup> Domingo (2018) 114.

<sup>182</sup> Domingo (2018) 114.

<sup>183</sup> Domingo (2018) 114.

<sup>184</sup> Domingo (2018) 114.

<sup>185</sup> Domingo (2018) 115.

<sup>186</sup> Domingo (2018) 115.

<sup>187</sup> Domingo (2018) 115. This is a highly debated statement from Gaius, but I have included it in this paper because I believe in its veracity and it demonstrates how venue restrictions could affect *socii*.

<sup>188</sup> Domingo (2018) 115.

recent scholarship has suggested the ‘land problem’ espoused by the Gracchi was much smaller in scope than originally believed.<sup>189</sup>

The Roman state could grant *commercium* to individuals. Livy details how the Roman Senate in 169 BC bestowed multiple gifts on two Gallic princes for the wrongdoings of the consul Gaius Cassius.

They determined to send to the envoys gifts of two thousand *asses* apiece and to the two princely brothers the following special gifts, two twisted necklaces made of five pounds of gold and five silver vessels of twenty pounds, and two horses with trappings for head and chest, along with their grooms, and cavalry weapons and military cloaks, and to the princes’ attendants, both free and slave, garments. These things were sent; the following was granted at their request—that they should have the privilege of buying ten horses apiece and of exporting them from Italy.<sup>190</sup>

Horses were classified as *res Mancipi* in Ancient Rome, a special type of property that required formal procedures of the *mancipatio* to transfer title successfully. *Res Mancipi* included Italic land, buildings on Italic land, slaves, horses, mules, cattle, and some types of servitudes.<sup>191</sup> Romans and people with official grants of *commercium* were the only people who could transfer property through *mancipatio*. If a *peregrinus* wanted to transfer items or protect his right to the property under Roman law, he would need *commercium*. This passage in Livy demonstrates two things: (1) that the Roman state had the unilateral ability to grant *commercium* and (2) that *commercium* was necessary for the transfer of *res Mancipi*.

Most *peregrini* would not be concerned with the transfer of horses. The more important consideration would be Italic land. This was land owned by the Roman state but possessed by individuals. In the early Republic, possession of *ager publicus* had the “nature of ownership” and was neither revocable nor taxable; it is believed their possession included occupation and enjoyment, though it could be taken back by the state at any moment.<sup>192</sup> Land redistribution schemes focused on *ager publicus* became popular with the Gracchi brothers and caused social

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<sup>189</sup> Light (2006) 597. “A close reading of the Roman agronomists reveals this picture [i.e., slave-staffed estates pushing peasantry off the land] to be overly pessimistic.”

<sup>190</sup> Livy 43.5.8-10. *Munera mitti legatis ex binis milibus aeris censuerunt; duobus fratribus regulis haec praecipua, torques duo ex quinque pondo auri facti et vasa argentea quinque ex viginti pondo et duo equi phalerati cum agasonibus et equestria arma ac sagula, et comitibus eorum vestimenta, liberis servisque. Haec missa; illa petentibus data, ut denorum equorum iis commercium esset educendique ex Italia potestas fieret.*

<sup>191</sup> Roselaar (2012) 382.

<sup>192</sup> Lintott (1992) 36.

upheaval among both Roman citizens and *peregrini*.<sup>193</sup> The problems the Gracchi cited as the reason for their redistribution proposals have fallen out of favor.<sup>194</sup>

Still, *ager publicus* became a contentious issue in the second century BCE. An understanding of how people controlled land in the Republic is necessary to explain why. An individual either had *possessio* or *dominium* over property. While anyone could exercise *possessio* over property, only Roman citizens could exercise *dominium* because it was part of the *ius civile*.<sup>195</sup> *Possessio* of land, typical with *ager publicus*, meant the landholder controlled (but did not own) a portion of property in perpetuity.<sup>196</sup> In the agrarian law of 111 BCE, possession and the ability to bequeath property are listed as separate rights.<sup>197</sup> The landholders, however, often bequeathed land without permission from the state, especially because the state did not frequently audit the landholders.<sup>198</sup> If the state reclaimed the land from a possessor, however, immovable property (such as infrastructure) would remain with the land. *Dominium* over the land meant the landholder owned the property in its entirety.<sup>199</sup> *Dominium* was a civil law right reserved only for Roman citizens. *Dominium* allowed Romans to bequeath land and own everything on the property.<sup>200</sup> Generally speaking, the state could not repossess this land from the holder. In the second century BCE of the Republic, much of the Italian land was held through *possessio* rather than *dominium*.<sup>201</sup>

Without citizenship, *peregrini* could only acquire *possessio* of Italic land, not *dominatio*. They could never be full owners of Italic land not granted by the Roman state. Since *ager publicus* was owned by the Roman government, decisions about its transfer were made by the state and Rome could grant or even sell tracts of *ager publicus* to *peregrini* by a specified or implied grant of *commercium*.<sup>202</sup> With access to *ager publicus* through the state, *commercium* would not have been a strong motivation for revolution. If one subscribes to the belief that some Latin towns retained rights after the Latin War (for example, those towns granted citizenship or

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<sup>193</sup> Lintott (1992) 36.

<sup>194</sup> Lintott (1992) 43.

<sup>195</sup> Campbell (1878) 35.

<sup>196</sup> Dart (2016) 51.

<sup>197</sup> Johnson (1961) 51 translating Agrarian Law 111 BCE. "...excepting the land which its former possessor has taken or bequeathed."

<sup>198</sup> Dart (2016) 51.

<sup>199</sup> Dart (2016) 51.

<sup>200</sup> Campbell (1878) 35.

<sup>201</sup> Dart (2016) 51.

<sup>202</sup> Roselaar (2012) 402.

Latin colonies), then a portion of the Latins could even have retained *commercium*. Retention of this right, in addition to others, motivated the Latin allies to side with Rome during the Social War.

### **Conclusions on *Commercium***

*Commercium* became a non-issue for most *socii* in the mid-second century BCE. The restriction of the *legis actiones* procedure to Roman citizens signaled non-enforceability of consensual contracts between *peregrini* and Romans. Either the introduction of the formulary system accompanied by an extension of the competence of the peregrine praetor, or a relaxation of the restrictions of the *legis actiones* (namely the citizenship requirement) by the peregrine praetor, allowed *peregrini* to enforce their contracts without *commercium*. Given the trend toward relaxation of formal requirements in the commercial setting, the former proposition is more likely. If that conclusion holds, then *socii* would not concern themselves with *commercium* after the *lex Aebutia*. Contractual enforcement, particularly of the popular consensual contract, occurred regardless of citizenship status or grants of *commercium*.

## **PART 4.E: CONUBIUM**

We are left with *conubium*: the postulate is that the *socii* revolted primarily because they wanted *conubium* and the inheritance scheme that right allowed. *Conubium* is the right to a legally recognized Roman marriage.<sup>203</sup> This included the right to create a Roman will that would be enforced by law, meaning property could be passed down to children. With *conubium*, *socii* could produce children who would be eligible to inherit under intestacy. Additionally, a marriage made between people who had the right of *conubium* would produce both legitimate and citizen children, which mattered most in intestate succession. If a marriage was not legally recognized, any children borne from that couple would not be considered heirs and therefore would not be beneficiaries of the parental property holdings.<sup>204</sup> Above all else, the *socii* sought citizenship with *conubium*, or in the alternative a complete break from the Romans, so they could protect their inheritance rights.

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<sup>203</sup> Bispham (2022) 319.

<sup>204</sup> Roselaar (2013) 102.

## Grants of *Conubium* to Surrounding Communities

The legal right of marriage existed early in Roman history. Livy, describing Romulus' attempts to increase the longevity of the newly founded city, describes the right of intermarriage between cities.

...but owing to the want of women a single generation was likely to see the end of [Rome's] greatness, since she had neither prospect of posterity at home nor the right of intermarriage with her neighbours. So, on the advice of the senate, Romulus sent envoys round among all the neighbouring nations to solicit for the new people an alliance and the privilege of intermarrying.<sup>205</sup>

This passage demonstrates that the legal concept of *conubium* could be shared by different people. Ovid also mentions *conubium* when detailing the events preceding the Rape of the Sabine Women. He says, "The right of intermarriage is granted to peoples far away; yet was there no people that would wed with Romans."<sup>206</sup> Both Ovid and Livy are writing in the early Imperial period, far after the events of the Social War occurred. Temporal distance can retroactively assign meaning that was not present in the original instance. While that could be the case here, meaning Romans in Romulus' time did not define nor experience *conubium* as Romans in the later Republic did, it does indicate some concept of marriage between different people requiring permission by the state to be recognized. In this instance, Rome and its neighbors are political equals and therefore *conubium* is negotiated as equals. As time progressed, however, Rome became more politically powerful and could therefore grant *conubium* to other communities without reciprocal negotiation.

As Rome expanded, so too did the right of *conubium*. After fighting over territory, the *foedus Cassianum* was brokered between Rome and the Latin League in 493 BCE.<sup>207</sup> The Latins were granted equal rights of citizenship (i.e., they had *conubium*, *commercium*, and *ius migrationis*) and were expected to fight alongside the Romans in military engagements.<sup>208</sup> The Latin War, 341 - 338 BCE, altered the relationship between the Romans and the Latins. Livy says the following.

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<sup>205</sup> Livy 1.9.1-2. *sed penuria mulierum hominis aetatem duratura magnitudo erat, quippe quibus nec domi spes prolis nec cum finitimis conubia essent. Tum ex consilio patrum Romulus legatos circa vicinas gentes misit, qui societatem conubiumque novo populo peterent.* [My emphasis] This could be an over-translation. One alternative could replace "alliance and privilege of intermarrying" with "alliance and intermarriage."

<sup>206</sup> Ovid *Fasti* 3.195-196. *extremis dantur conubia gentibus: at quae Romano vellet nubere, nulla fuit.* [My emphasis]

<sup>207</sup> For a brief account of this war, see Livy 2.33.

<sup>208</sup> Roselaar (2013) 109.

The Lanuvini were given citizenship... The Aricini, Nomentani, and Pedani were received into citizenship on the same terms as the Lanuvini. The Tusculans were allowed to retain the civic rights which they enjoyed... To Antium likewise a colony was dispatched... [and] they were granted citizenship... The rest of the Latin peoples were deprived of the rights of mutual trade and intermarriage and of holding common councils. The Campanians... were granted citizenship without the suffrage; so too were the Fundani and Formiani.<sup>209</sup>

This passage from Livy provides modern scholars with a wealth of information about *conubium* and the relationship between Rome and its allies. Given that the rights of marriage and commercial transactions were specifically revoked from certain Latin communities, we can assume the “equal rights of citizenship” mentioned in the *foedus Cassianum* included these rights. The Latin colonies were made *cives sine suffragio*, which included the right of *conubium*. Granting these rights, used as a hegemonic tool to reward loyal allies and privilege friendly neighbors, strengthened the connection between Rome and its colonies.<sup>210</sup>

The other *Latini*, however, seem to have lost this right in the fourth century BCE. While individual cities could be regranted *conubium*, some Latin allies and *socii* did not maintain the right after the Latin War. That Latin allies did not have *conubium* is an idea shared by scholars such as Roselaar and Crook.<sup>211</sup> Not all scholars agree. Many believe the Latin allies were able to exercise *conubium* after the Latin War. Relying primarily on this passage and Sherwin-White’s analysis,<sup>212</sup> scholars Treggiari,<sup>213</sup> Cornell,<sup>214</sup> and Brunt<sup>215</sup> assert Latin allies had the right of *conubium* even after the war. Coşkun provides a more nuanced argument, noting that there is

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<sup>209</sup> Livy 8.14. *Lanuvinis civitas data...Aricini Nomentanique et Pedani eodem iure quo Lanuvini in civitatem accepti. Tusculanis servata civitas quam habebant...Et Antium nova colonia missa... Antiati populo est et civitas data... Ceteris Latinis populis conubia commerciaque et concilia inter se ademerunt. Campanis... Fundanisque et Formianis... civitas sine suffragio data.* [My emphasis]

<sup>210</sup> Roselaar (2013) 116.

<sup>211</sup> Roselaar (2013) 102. “[T]he idea that Latins enjoyed widespread *conubium* with Romans seems to me very unlikely.” Crook (1967) 44. “The rights of the Latins, both coloniary and Junian, can to some extent be spoken of together. *Conubium* they did not have, except by special concession.”

<sup>212</sup> Sherwin-White (1973) 32. “The existence of *commercium* and *conubium* is no small exception to the exclusiveness of local politics in fourth-century Latium.”

<sup>213</sup> Treggiari (1991) 44-45. “In republican times Latin cities had *ius conubii* with Rome, which meant that children of a Roman father and a Latin mother would be Roman and children of a Latin father and a Roman mother Latin (since *conubium* means that children follow their father).”

<sup>214</sup> Cornell (1995) 295. “Another aspect of this sense of unity is the body of social and legal privileges that were shared in common by the Latins and were in historical times defined as specific rights (*iura*). These included *conubium*, the right to contract a legal marriage with a partner from another Latin community.”

<sup>215</sup> Brunt (1965) 99. “Diodorus thought that the combatants in the Social War were linked by marriages, owing to the wide extension of *conubium*, and though this is clearly attested only between Romans and Latins, it may have become more extensive; at least we know that Pacuvius from Latin Brundisium was sister's son to Ennius from Messapian Rudiae.”



little positive evidence for such a right and that, overall, the privileges of Latin allies have been greatly exaggerated.<sup>216</sup> Without positive evidence demonstrating grants of *conubium* to *Latini* or *socii*, it is difficult to imagine many Latins retained these rights. It is likely some of the cities were stripped entirely of these privileges, while others were either incorporated into the citizenship (thereby gaining these rights) or retained some of the privileges.

Some of Rome's allies received the privilege of *conubium*, though ancient sources do not specify a date it was granted. For example, the Capuans allied with Hannibal in the Second Punic War, but losing *conubium* was a major consideration before they took up arms against the Romans.<sup>217</sup> In 211 BCE, Romans stripped the Capuans of their *civitas* and thus their right to intermarriage.<sup>218</sup> The Romans were able to revoke the privilege of *conubium* from entire cities as a punishment for fighting against them.

*Conubium* could also be granted as a privilege to allies. Livy says that in 188 BCE “[t]he Campanians now requested that they be allowed to take Roman citizens as wives, that any who had already taken them should be permitted to keep them, and that any children born to them before that date be considered as legitimate and able to inherit.”<sup>219</sup> These foreigners were seeking a retroactive grant of *conubium* to ensure their children could inherit property. At this time, the Campanians were considered *peregrini*, without special privileges granted to them. If *peregrini* had already been granted the right before 188 BCE, then this request would not have been necessary. The Romans granted the right to the Campanians, thus demonstrating (a) the desire of allied communities to access legal Roman marriages and inheritance, (b) how Romans used this right to encourage good behavior, and (c) the preoccupation with inheritance.

*Socii*, who were never granted the right of *conubium*, would be aware that this was a privilege that had been afforded to other groups at one point in time. It would contrast sharply with their own relationship with the Romans, where their marriages would not be legally recognized, and their children would not be automatically considered *heredes*. The sting of such

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<sup>216</sup> Coşkun (2016) 535. “[T]he content of the privileges that the Romans granted to the Latins prior to the Gracchan period have been widely overestimated since the 19th century.”

<sup>217</sup> Livy 23.4.7.

<sup>218</sup> Livy 26.33.3. “[T]hey were Roman citizens, several of them connected to Rome by marriage and by now even by blood relationships from their long-established right of intermarriage.” *eo se libertatem sibi suisque et bonorum aliquam partem orare cives Romanos, adfinitatibus plerosque et propinquis iam cognationibus ex conubio vetusto iunctos*. Livy provides us with the fate of the Capuans in 26.34.

<sup>219</sup> Livy 38.36.5-7. *petierunt ut sibi cives Romanas ducere uxores liceret et si qui prius duxissent, ut habere eas, et nati ante eam diem uti iusti sibi liberi heredesque essent*.

distinctions between classes motivated the Italian allies to wage war against the Romans so they could acquire similar rights as their neighbors.

### **The *Lex Minicia* and *Sine Manu* Marriages**

To better understand the importance of *conubium* to the allies, one must have a foundational knowledge of Roman inheritance. To do this, scholars rely primarily on jurists in the second century CE. While there is significant temporal separation between the Social War and the second century CE jurists, these jurists can provide a retrospective understanding of how status was conferred to children. The jurist Gaius reports the status of children born between people of varying status; children follow the status of the mother. A child born to a Roman woman (i.e., with *conubium*) is a Roman citizen.<sup>220</sup> The father of this child could be a Roman citizen, a *peregrinus*, or even a slave. A Roman father and a non-Roman mother would produce non-Roman children. Because it was easy to prove the identity of the mother of a child, more so than the father, a matrilineal system of status inheritance ensued.

Romans altered this schema of status inheritance through the *lex Minicia*. This law is not readily dated, having been mentioned only in the works of the jurists Gaius<sup>221</sup> and Ulpian.<sup>222</sup> Most scholars date its passing between 338 BCE - 91 BCE. This places the law between the express mention of *conubium* following the Latin War but before the mass grants of citizenship following the Social War.<sup>223</sup> Gaius says the following:

Our statement that where a marriage has been contracted between a Roman citizen and a peregrin, the issue will be a peregrin, is made on the authority of the Minician law, according to which the child born of an unequal marriage follows the condition of the parent of lower status. For by that enactment it was provided that if, without *conubium*, a Roman citizen took a peregrin to wife, or if a peregrin took to wife a Roman citizen, the issue of the marriage should be accounted a peregrin. It was mainly to meet the latter case that the Minician law was necessary... No doubt the word 'peregrin' in the Minician law has been held to include not only strictly foreign nations and peoples, but also those who pass by the name of Latins

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<sup>220</sup> Gaius *Institutes* 1.56. Translation by Studemund (1880). "Roman citizens are held to have contracted a marriage approved by the *ius ciuile* if they have taken Roman citizens for their wives, or even latins or peregrins with whom they have *conubium* [or right of intermarriage]. For as it is a consequence of this right of intermarriage that the children follow the condition [or status] of their fathers, it thus comes to pass not only that they become Roman citizens, but that they are in their father's *potestas*." [*Iustus autem nuptias duos Romani contraxisse intelleguntur] si ciues Romanas uxores duxerint, uel etiam latinus peregrinasue cum quibus conubium habeant: cum enim conubium id efficiat ut liberi patris condicionem sequantur, euenit ut non [solum] ciues Romani fiant sed et in potestate patris sint.*

<sup>221</sup> Gaius *Institutes* 1.78.

<sup>222</sup> *Tit. Ulp.* 5.8.

<sup>223</sup> Cherry (1990) 248.

but the allusion is to Latins of a different sort, who had their own separate communities and separate states, and were really included among the peregrins.<sup>224</sup>

The *lex Minicia* provided that the children of a Roman woman and non-Roman man would instead follow the lower status, meaning they would not have Roman citizenship. This change made any children of mixed marriages non-Roman, restricting citizenship to only offspring of two parents with *conubium*. The law addressed Roman fears that men of inferior status, namely foreigners or even slaves, could produce Roman children. By extending the scope to apply to any *peregrini*, *socii* in mixed marriages and Latins without *conubium* were affected. This change likely would have affected elite *socii* in mixed marriages more significantly; because of their ability to travel to Rome, they were more likely to enter into marriage with a Roman citizen woman than their non-elite counterparts, who primarily stayed in their Italian towns. These elite *socii* were likely also the instigators of the Social War, meaning frustrations regarding this change could have been a significant motivation for the conflict.

The past tense verbs suggest Gaius considered “Latins” people who were of a different status than Latins in his own time. These Latins had their own “communities and separate states,” likely tied to Rome through a series of bilateral treaties, and granted citizenship in the Social War.<sup>225</sup> While no date is certain, this law was likely passed around the time of the Gracchan citizenship proposal as a reactionary measure.<sup>226</sup> Minucius Rufus was consul in 121 BCE, which could explain the name of the legislation and provide a proper timeline, and other scholars agree the name “Minicius” was likely “Minucius.”<sup>227</sup>

While there are many uncertainties regarding the *lex Minicia*, it demonstrates that Roman citizenship had become more valuable to allies and their children. It was designed to exclude children of male non-Romans from the rights and privileges associated with citizenship. Moreover, some *peregrini* children could not receive inheritances or legacies from Roman

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<sup>224</sup> Gaius *Institutes* 1.78. Translation by Studemund. Brackets removed from original. *Quod autem diximus inter ciuem Romanam peregrinumque... peregrinus ex eo coitu nascatur, sed hoc maxime casu necessaria lex Minicia [fuit]; nam remota ea lege... conubium, qui nascitur iure gentium matris condicioni accedit, qua parte autem iubet lex ex ciue Romano et peregrina peregrinum nasci, superuacua uidetur; nam et remota ea lege hoc utique iure gentium futurum erat. Adeo autem hoc ita est ut... solum exterarum nationes et gentes, sed etiam qui Latini nominantur; sed ad alios Latinos pertinet, qui proprios populos propriasque ciuitates habebant et erant peregrinorum numero.*

<sup>225</sup> Cherry (1990) 249.

<sup>226</sup> Cherry (1990) 250.

<sup>227</sup> Cherry cites C. Castello, "La data della legge Minicia," *Studi in onore di V. Arangio-Ruiz* (Naples 1953) as his primary evidence.

citizens, making them severely disadvantaged parties in the laws of succession.<sup>228</sup> Some scholars speculate that the Roman state could even seize property left to *peregrini*.<sup>229</sup> Achieving Roman citizenship, then, would allow foreigners to concentrate their wealth for generations to come.

Even if a Roman citizen did not have a will, the customary laws of intestate inheritance retained property within the family. A praetor could issue an edict awarding *bonorum possessio* (i.e., possession not ownership) to *liberi, sui heredes*, the nearest agnate relative, other blood relatives, or a wife.<sup>230</sup> Non-Roman children would have a weak claim to the estate of their intestate parent, if any at all. This was the intended result of the *lex Minicia* - to deny parents without *conubium* the opportunity to build generational wealth. Modern scholars cannot determine how frequently and with what fervor this law, heavily restrictive in nature, was enforced. Particularly in cities further away from Rome, it is unclear whether the issues of inheritance and *conubium* would frequently arise. Communities geographically closer to Rome like those of some of the *socii*, however, would experience the disparity on a regular basis.

The period before the Social War also saw an increase in *sine manu* marriages.<sup>231</sup> There were two types of marriage recognized among Roman citizens: *manus* marriages and *sine manu* marriages. Marriages *in manu* brought the wife from the power of her *paterfamilias* and into the power of her husband. This transfer of power also transferred property; all the property a wife brought with her into the marriage became property of her husband, even in the event of divorce.<sup>232</sup> This system of dowry transfer was common in the fifth century BCE.<sup>233</sup>

Over time, however, marriages *sine manu* rose to prominence. In these arrangements, women would leave the *potestas* of their father upon marriage and become *sui iuris* or they would remain under the *potestas* of their original *paterfamilias* rather than move into the *manus* of their husbands.<sup>234</sup> They could own their own property, including the dowry provided upon their nuptials, although the husband would be able to use the property during the marriage. *Sine manu* marriages protected property by keeping it within the familial line of the *paterfamilias*.<sup>235</sup> In the event of the wife's death, the property would pass back to her *paterfamilias* instead of to

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<sup>228</sup> Cherry (1990) 264.

<sup>229</sup> Johnston (1988) 35-39.

<sup>230</sup> Cherry (1990) 264.

<sup>231</sup> Leese (2019) 130.

<sup>232</sup> Leese (201), 132. Though the husband may be subject to a fine or loss of part of his estate for the divorce.

<sup>233</sup> Leese (201), 132.

<sup>234</sup> Leese (201), 132.

<sup>235</sup> Leese (201), 132.

her husband. Increases in *sine manu* marriages began in the late third century BCE and dominated the scene during Cicero's time.<sup>236</sup>

The *lex Minicia* and an increase in *sine manu* marriages demonstrates a "preoccupation with regulations regarding inheritance."<sup>237</sup> *Conubium* provided the clearest avenue for enforcement of inheritance rights, which would be crucial for *peregrini* in mixed marriages to keep their property in family hands. For the Roman state, restrictions on *conubium* increased the likelihood that wealth remained in the hands of Roman citizens, thus strengthening the political dominance of the city. Access to this privilege, through the grant of citizenship, was therefore likely the strongest motivating factor for *socii* in the Social War. A general increase in the preoccupation with inheritance among Roman citizens would bring the idea to the forefront of the allies' minds. *Socii* likely felt stifled with the restrictions on their ability to pass down property in mixed marriage; through the *lex Minicia* and general rules of inheritance, they were locked out of advancing their familial and personal fortunes in Rome.

## CONCLUSION

The Social War fundamentally changed the relationship between Rome and her allies, unifying the Italian peninsula and solidifying Roman hegemony in the region. While the importance of this war is evident, the ultimate reason the *socii* revolted remains nebulous. The ancient historian Appian cited a desire for citizenship as the primary motivating factor for the *socii* to take up arms against their neighbor. This paper sought to understand which privilege granted with citizenship prompted the elite *socii* to lead a revolution against the Romans.

The right of *ius migrationis*, while useful for those able to relocate, would not have satisfied the *socii*. Complaints about large swaths of citizens emigrating from provincial towns and the requirement to leave a son behind made this privilege untenable for many *peregrini*. They also did not rebel for the chance to vote. *Suffragium*, while important, would primarily benefit the elite class. Additionally, their voting power would be minimal because (as evidenced by events at the conclusion of the Social War), *peregrini* would be added to the last tribes meaning their vote had nominal significance. Magisterial abuse was rampant in Rome, but *provocatio* would not have been the strongest motivating factor for *socii*. It is not mentioned in

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<sup>236</sup> Leese (201), 132.

<sup>237</sup> Roselaar (2013) 119.

ancient sources after the Gracchi brothers, and we would expect to see it in textual evidence if it held great significance for the allies, even with the dearth of ancient sources. While scholars have emphasized the importance of *commercium* for individuals, *socii* could still possess *ager publicus* and enforce consensual contractual obligations without the privilege. The prevalence of other contracting mechanisms, such as *stipulatio*, further weakened the importance of *commercium* for the allies.

Elite *socii* started the Social War primarily for grants of *conubium*. Unlike the other privileges that had loopholes to exploit, Roman inheritance laws were fairly iron-clad. Romans began to strengthen restrictions on gaining citizenship, such as through the *lex Minicia*, that the *socii* were unable to circumvent. Such conditions made it difficult for elite *socii* in mixed marriages to amass familial wealth and hold property for generations, which was incredibly important given the preoccupation with keeping property within a family at the time. Ultimately, the *socii* probably took up arms against Rome to strengthen their inheritance and property rights through *conubium*.

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