

# THE POLITICS OF IMPERMANENCE: LATIN *MIGRATIO* IN THE SECOND CENTURY

B.C.

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## 1. “*Stay at home!*”

The theme of the *Cattedra Giorgio Luraschi* encounter for 2019 was Latin migration.<sup>1</sup> Although the pandemic which was declared a few months after the colloquium had the apparent effect of blotting out, or suspending, many concerns that preceded it, there are few topics of greater contemporary resonance than migration, and few more poignant on which to reflect during a period in which the message of many governments to their people has been “*Stay at home!*”, in which movement and interaction have been severely attenuated. The colloquium in Milan came only a month after the attempt of Matteo Salvini to engineer a snap election, in which migration, on which Salvini had always taken a ‘strong’ stand, would have played a central part. Two months later, as Interior Minister, Salvini refused to allow migrants to disembark from the coastguard cutter *Gregoretti* in Augusta in Sicily (July 2019), a decision which generated a prosecution in the Italian courts. In May 2021 the district *Procura* of Catania found there were no grounds to proceed with the case, although another enquiry, that into the ‘Open Arms’ case, was passed on for trial on 17 April by the *Procura* of Palermo; the first hearing (23 October 2021) adjourned the case until December. Salvini stated to the press, after the dismissal of the *Gregoretti* case, that if in government again, he would pursue the same policy with regard to migrants as he had previously followed.<sup>2</sup>

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<sup>1</sup> Sadly, I never had the pleasure of meeting Prof. Luraschi, but his classic work (LURASCHI 1979) was a constant, wise and trustworthy companion in my doctoral studies, and has remained so since then; he (LURASCHI 1979, 63-82) dedicated some limpid and important pages to the subject of the present contribution. A few years ago I was able to find a second-hand copy online, which proved to be inscribed by Luraschi himself: ‘*con la più viva cordialità*’. It is a great pleasure to thank the organisers, especially Professors Miglietta and Maganzani, for the honour of their invitation, their *viva cordialità*, and their extraordinary and friendly patience in waiting for this contribution in what have been difficult times for everyone. It is also a great pleasure to acknowledge (yet again) the kindness of Lorenzo Gagliardi. Finally, Llewelyn Morgan, Karolina Sekita, Andrew Sillett and Matthew Leigh all offered assistance when I ended up in unfamiliar territory, which I acknowledge here.

<sup>2</sup> <https://www.lastampa.it/politica/2020/01/19/news/cos-e-il-caso-gregoretti-e-perche-salvini-potrebbe-finire-a-processo-1.38351650>;  
[https://www.repubblica.it/politica/2021/04/10/news/migranti\\_caso\\_gregoretti\\_pm\\_catania\\_matteo\\_salvini\\_non\\_ha\\_violato\\_le\\_convenzioni\\_il\\_governo\\_conte\\_condivideva\\_le\\_valute-295807662/](https://www.repubblica.it/politica/2021/04/10/news/migranti_caso_gregoretti_pm_catania_matteo_salvini_non_ha_violato_le_convenzioni_il_governo_conte_condivideva_le_valute-295807662/) (both consulted 26/04/2021);  
[https://www.ilsole24ore.com/art/caso-gregoretti-salvini-prosciolto-non-luogo-procedere-fatto-non-sussiste-AEJSR5I?refresh\\_ce=1](https://www.ilsole24ore.com/art/caso-gregoretti-salvini-prosciolto-non-luogo-procedere-fatto-non-sussiste-AEJSR5I?refresh_ce=1); [https://www.corriere.it/cronache/21\\_maggio\\_14/salvini-catania-processo-gregoretti-](https://www.corriere.it/cronache/21_maggio_14/salvini-catania-processo-gregoretti-)

Migration is a central point of debate and contestation in national politics across the globe, whether manifested in Donald Trump's infamous border wall with Mexico, or the plans explored by the Home Office in the UK to process illegal immigrants in the South Atlantic territories of St Helena and Ascension Island.<sup>3</sup> On 24 March 2021 the United Kingdom's Home Secretary, Priti Patel announced (yet another) set of government proposals to toughen up the processes around immigration (and the deportation of illegal immigrants without good reason to remain). One phrase, addressing Parliament, sums up the whole approach: "Mr Speaker, our new plan builds on the work already done to *take back control* of our borders" (my italics). The primacy of the nation-state during the twentieth century casts a long shadow into the twenty-first, and offers an enticing retreat from a world increasingly stripped of certainties. Brexit has been thus far, perhaps, the chief manifestation of the extreme outcomes to which such yearnings for insular security (packaged, ironically, as global opportunity) can lead. In today's volatile world borders can still be drawn on a map; citizenship, and its attendant privileges, can be easily documented, and access to them policed – no wonder that they are fetishised by large segments of Europe's media and electorates. This persistent concern with migration is, of course, much more than a case of 'dog-whistle' politics, where sections of the press and the political establishment seek to play on atavistic fears of 'the other'.

Migration, whether mass, or small-scale but cumulative, is hardly consequence-free: resource in the communities of destination (and of transit) is a zero-sum game. The gravity and complexity of the problem are reflected in the extent to which migration is the object of both academic study, and policy formulation via NGOs and think-tanks. One example of the latter (among many) is the International Migration Institute in Amsterdam; as to the former my own institution (Oxford) offers Master's and Doctoral programmes in Migration Studies and a Master's in Refugee and Forced Migration Studies; there is a research group in Border Criminologies; a Centre on Migration, Policy and Society; a Refugee Studies Centre; and a

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[oggi-sentenza-e7afd234-b48d-11eb-a3a5-b3729d611502.shtml](https://www.lastampa.it/cronaca/2021/05/14/news/caso-gregoretti-ultima-udienza-per-salvini-1.40269972);  
<https://www.lastampa.it/cronaca/2021/05/14/news/caso-gregoretti-ultima-udienza-per-salvini-1.40269972>;  
(all consulted 19/07/2021); <https://www.lastampa.it/politica/2021/10/23/news/open-arms-i-pm-chiedono-l-interrogatorio-di-salvini-tra-i-testimoni-l-ex-premier-conte-e-il-ministro-lamorgese-1.40841472> (consulted 01/11/21). On Salvini, see among other works (many hagiographic): PUCCIARELLI 2016; CAPORALE 2018.  
<sup>3</sup> <https://www.ft.com/content/ff1dc189-5531-4d81-8d17-7f332596f2cd> (consulted 26/04/2021).

Migration Observatory. The work of these groups seeks to inform and improve public debate and government policy.<sup>4</sup>

In antiquity mobility was, as we have come to see since Horden & Purcell's *Corrupting Sea* (2000), a Mediterranean structural constant. The nature and scale of mobility in the ancient world make for a salutary counter-point to modern obsessions about fixity of peoples and frontiers, and prompt us to examine the cultural constructedness of our own social preferences (or prejudices) when it comes to migration. Elena Isayev has produced a notable body of work where ancient views on migration and modern experience are made to inform each other in interesting ways.<sup>5</sup> It is not, however, the case that human beings have become more xenophobic or less tolerant than they were in the past. The rhetoric of blaming others for one's own discontents, and of casting decline and destabilisation as exogenous evils, is very old: thus Plato spoke of the sea which 'taught vice' through the contacts it facilitated; Cicero praised Romulus for founding Rome inland, a decent distance from insalubrious influences which might come across the sea; and Livy, praising the enduring home-grown virtues of ancient Rome asserted that 'into no community did greed and luxury *migrate* so tardily'.<sup>6</sup>

It would thus be naïve to construct the pre-modern world, in opposition to the modern, as some sort of mobile paradise, where movements of people were frictionless. A few kilometres from Augusta, where Salvini made 131 migrants remain on the Italian coastguard cutter, lies the breath-taking beach known as 'Lo Sbarcatore dei Turchi'; whatever the history and associations of this particular toponym, others like it (Scala dei Turchi, on the south coast of Sicily, Baia dei Turchi in Puglia) recall real hostile landings by Ottoman Turks in southern Italy, for example those in July 1480 at Otranto, August 1566 at Termoli, or August 1620 at Manfredonia, not to mention the Arab presence in Sicily (948-1091), and the emirate of Bari

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<sup>4</sup> <https://www.gov.uk/government/speeches/home-secretarys-statement-on-the-new-plan-for-immigration>; response by the Joint Council for the Welfare of Immigrants at: <https://www.jcwi.org.uk/explained-priti-patels-plans-for-the-immigration-system> (both consulted, 26/04/2021).

<sup>5</sup> Fundamental: HORDEN & PURCELL 2000, esp. chs. 5 & 9; see also SORDI 1994; BROADHEAD 2000; ID. 2001; URSO 2001; BROADHEAD 2003; PINA POLO 2006; ANGELI BERTINELLI & DONATI 2006; BROADHEAD 2008; ERDKAMP 2008; BOURDIN 2012, 517-89; HUMBERT, 2014; CORBO 2015; DE LIGT & TACOMA 2016; MERCOGLIANO 2017; LAFFI 2017a; ID. 2017b; ISAYEV 2017, a very major study; links to Isayev's work and interdisciplinary collaborations in the fields of mobility, migrations and displacement can be found at <https://humanities.exeter.ac.uk/classics/staff/isayev/> (consulted 28/04/21); ROSELAAR 2019, 36-40; for the ancient legal perspective TALAMANCA 1991 is very useful. Note also HICKS & MALLETT 2019, for the archaeology of contemporary migration.

<sup>6</sup> Plato: Strab., 7. 3. 8; Cic., *rep.* 2. 5. 2. -10. 2; Liv., *praef.* 11 (*nec in quam ciuitatem tam serae auaritia luxuriaque immigrauerint*).

(847-71) in the Middle Ages. Equally, as we shall see, the concept of ‘illegal immigrants’ was one which the Romans, at least in one sense, would have understood. Nevertheless, it seems on balance that ancient communities were much more ready to formulate concepts which facilitated and managed the relocation of individuals and groups than contemporary states are; the primary presumption was not that the words ‘illegal’ and ‘immigrant’ belonged naturally and inevitably together.

Of course, migration and mobility are not the same thing; the former is a specific subset of the latter. It will be helpful, therefore, to define migration more closely. It is not likely to be useful to adopt a reductive approach: migration is a term which covers a range of movements both by groups, of various sizes, and by individuals. Migration (and I restrict myself to human migration) can be random, but is most often purposive: people move for (a) reason(s). Some migrations are driven by climatic imperatives (whether short-term issues like drought, or longer-term systemic climate change), within which context various specific economic motives are often embedded. Migration need not be permanent, but can be structural, cyclical, and bipolar (or multipolar); it can embodying seasonal movement between different economic or environmental niches: vertical, and especially horizontal, transhumance is one example of such a phenomenon.<sup>7</sup> Equally, human migrations can be opportunistic and exploratory, as with some of the great historical population movements, out of Africa or into the Americas: to see what is out there, to seek new, better, niches to inhabit and exploit. Purposive migrations can have a specific destination in mind, known, even if poorly understood; in other cases it is not the destination which is the (prime) driver of movement, but circumstances at the point of origin: environmental or economic collapse, military threat, or demographic pressures, whether internal to a society or themselves caused by yet other movements or displacements of people.

Migration, however, is not simply movement, since movement is rarely consequence-free; cases like the arrival of *homo sapiens* in the Americas are rare. Someone’s arrival in a place usually has some impact on someone already there, whether in terms of resource, inter-human relations or the psychological states of the various actors. The migration often, then, in effect also embraces the management of the consequences of movement, a management which can range from the welcoming, to the pragmatic, to the hostile. Both movement and the

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<sup>7</sup> For Roman Italy: Varr., *Res rust.* 2. 1. 16-17, 2. 9, 9. 6; GABBA & PASQUINUCCI 1979; PETROCELLI 1999.

management of its consequences will always vary according to the nature and aims of both pre-resident and arriving parties; the latter might be anything from much-needed migrant workers to colonists sent by a militarily or culturally more capable power. Each party may have different expectations, on topics ranging from the putative length of stay to preferred (or dispreferred) relationships between the groups; and different ideas about how the whole range of possible interactions should be managed. What is striking about the ancient world is just how much attention could be given to managing, circumscribing and harnessing new arrivals, finding them a niche without curtailing the status and expectations of the existing citizen body. New instruments, legal or customary, were often devised to manage these consequences of movement, and in some cases these instruments were in turn used to manage further movement. In the Greek world, for example, socio-political response to inward migration led to the creation of non-citizen categories, such as those of resident alien, *metoikos* or *paroikos*, within the community of destination, developing from older institutions such as *xenia*. In other cases institutional response extended to bringing new arrivals within the citizen body under specific conditions, through the creation of arrangements for *isopoliteia*, potential citizenship, between communities. In this scenario the citizens of one community could swap their ‘natural’ citizenship for that of the community of destination on moving there and registering with the relevant authorities.<sup>8</sup>

## 2. *The Language of Migratio*

Migration should, then, be understood as not simply movement, but the range of consequences and reactions (extending to institutions and *mentalités*) entailed by movement. Would such an approach have been comprehensible to an ancient interlocutor, however? One way of approaching this question would be to examine in a granular way the Latin terms which seem overlap with the phenomena with which we are dealing. What follows aims to be a representative, not an exhaustive, discussion.

Within this semantic field Latin has available to it the verb *migrare* and its compounds (*admigrare*, *commigrare*, *demigrare*, *emigrare*, *immigrare*, *remigrare*, *transmigrare*), and the

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<sup>8</sup> See *inter alia*: WHITEHEAD 1977; WATSON 2010; KENNEDY 2014; and on Greek *isopoliteia*, GAWANTKA 1975; HUMBERT 1978, 123-35. For *paroikos* as the equivalent to *incola*: D. 50. 16. 239. 2.

nouns formed from them. The verbs' etymology is Indo-European, with a possible Italic root *\*migro*; their closest attested IE cognate is Greek *ameibō* ('I change').<sup>9</sup>

This cluster of verbs and nouns can be used simply to express random, purposeless movement from place to place: so Seneca, *Epistulae Morales* 69. 1; and Lucan and Silius use the verb of nomads on the fringes of the civilized world.<sup>10</sup> Seneca also uses *commigratio* to refer to the regular movement of the sun through the heavens.<sup>11</sup> Such uses, however, are not the most common. The vast majority falls under one of two related headings: either that of changing one's nature or essence; or that of changing one's location in a permanent or long-term way. Both meanings have in common the concept of a significant change which can entail not only (in many cases) a physical movement, but also often an alteration in ontological, legal or psychological state. Valerius Maximus in a rather ornate turn of phrase claims that laziness would quickly have 'migrated' from men if they had all been like Solon in character.<sup>12</sup> Lucretius uses the verb, metaphorically, to express both change of colour in nature, and natural movement and change more widely construed.<sup>13</sup> In another metaphor, *migrare* is used of the transition from life to death, and, more specifically, to denote the Pythagorean doctrine of *metempsychōsis*. Thus, in the last book of the *de re publica*, both Massinissa and Paullus are made to use *migrare ex uita* ('move out of life') as a euphemism for death. And in the *Tusculans* Cicero uses *migrare*, *demigrare* and *migratio* as metaphors for the transition from life to death – speaking of a *migratio* from, and a *commutatio* of, life: a movement, through death, from one 'place' to another. The additional use of *commutatio* here is significant, and suggests that the metaphor is derived precisely from the language of movement from one community, and even one citizenship, to another; *commutatio* is also suggestive of the kind of rights normally inherent in *isopoliteia* (on which see further below, sect. 4. 2).<sup>14</sup> A similar metaphor is used of remarriage in the *Digest*: wives cannot 'migrate to another marriage' simply because their husband has been captured in war.<sup>15</sup> We lack the context to explain

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<sup>9</sup> DE VAAN 2008, 379.

<sup>10</sup> Luc., 5. 441; Sil., *Pun.* 3.290 (nomads), *cf. ibid.* 14. 380.

<sup>11</sup> Sen., *Helv.* 6. 7. Other compounds of the verb can have very basic literal or metaphorical meanings: thus *demigrare* can mean simply 'to go away' or 'leave', and thus, of an effect, to 'cease': *cf. Stat., Theb.* 2. 22; 4. 405; Vatinius' *strumae* ... *ab ore demigrarunt* and relocate elsewhere on his body: Cic., *in Vat.* 39; Apul., *Apol.* 49; *Dirae* 101.

<sup>12</sup> Val. Max., 8. 7. ext. 14.

<sup>13</sup> Lucr., 2. 775; 5. 830.

<sup>14</sup> Cic., *rep.* 6. 9, 15; *Tusc.* 1. 27, 74, 97; *cf. leg.* 2. 48, 55; *fin.* 3. 61. See also Vell. Pat., 1. 11. 7, where 'migrating fortunately from life' is distinguished from simply dying; *cf. Apul., Apol.* 91; *metempsychōsis*: Ov., *Met.* 15. 172; Sen., *Ep.* 108. 20.

<sup>15</sup> *D.* 24. 2. 6.

Petronius, *Satyrice* 113, where Hedyle's *libidinosa migratio* is linked by Lichas with the plundering of his ship; an oxymoron describing elopement or abandonment? The verb is used twice in Juvenal's sixth *Satire*, with the sense of 'go away from' and/or 'keep away from my home'.<sup>16</sup> And Catullus, in a sympotic context, urges water to begone and take its place among the serious, where it will be appreciated.<sup>17</sup>

One of the biggest clusters of usages involves leaving home, whether as an individual, or as a group, and can refer either to moving home within a city, or to moving to a new community. Most such usages have to do with physical relocation, going away from the place currently occupied, to somewhere more – or less – appropriate. The verbs can, however, apply to non-humans, or to ideas or practices (we saw Livy, above, speak of the *immigration* of vices to Rome): Pliny uses the verb of transplanting young trees; and a speaker at the start of Petronius *Satyrice* criticises the 'gusty over-large loquacity' taught in schools of rhetoric, which 'recently' *commigrauit* from Asia to Athens', where it is, we infer, not welcome.<sup>18</sup> In Gellius, the lark 'moves' nest (*migrare* is commonly used transitively only at this later date, incidentally).<sup>19</sup>

The earliest usages survive in comedy.<sup>20</sup> In Plautus' *Curculio*, Cappadox announces his attention to move out (*migrare*) from the *fanum* of Aesculapius, since his health has been deteriorating rather than improving while he has been spending time there; and *emigrare* is used in *Mostellaria* of moving out of a property.<sup>21</sup> Sometimes the consequences of the migration of one party are expressed in terms of the speaker or focalizer having been required to move on as a result: thus in the *Trinummus*, Stasimus says that Callicles '*commigrauit* here to live, and drove us out'.<sup>22</sup> *commigrare* can also be used to express the consequent journey of those so forced to move on: in the *Andria* Simo describes to Sosia the beautiful young woman who three years before '*commigrauit* from Andros into this neighbourhood (*sc.* in

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<sup>16</sup> Juv., *Sat.* 6.08; 170.

<sup>17</sup> Cat., 27. 7.

<sup>18</sup> Plin, *HN* 17. 66; *cf.* 16. 136 on the 'transmigration' of trees into other climates, where the soil grants sustenance to the 'foreigners' and 'immigrants'; Petr., *Sat.* 2.

<sup>19</sup> *NA* 2. 29. 16; for the later transitive use, see OAKLEY 2005, *ad Liv.*, 10. 34. 12, where Livy, discussing the Roman sack of (the otherwise unknown) Feritrum in 294 B.C., says that the soldiers on entering the town found that the inhabitants had already left with everything they could carry, leaving behind only elderly people and objects difficult 'to move away' (*migratu*); OAKLEY 2005, 361-2 compares Silius, *Pun.* 7. 431f.

<sup>20</sup> See here ISAYEV 2017, 191-228.

<sup>21</sup> *Curc.* 216; *Most.* 471, 951.

<sup>22</sup> Plaut., *Trin.* 1084.

Athens), compelled by the poverty and neglect of her relatives'.<sup>23</sup> In the *Hecyra*, Sostrata tells her son that she is going leave the city, and live in the country in order that Philumema will feel able, with her out of the way, to come back to her husband Pamphilus; this decisive relocation, which entails that Sostrata abandon her home in town, Pamphilus in reply describes as *migrare*.<sup>24</sup> And in the *Mostellaria* Philo, using the new house as an analogy for a new-born human being, talks of the 'worthless and beggarly man' who *immigrat*, moves into, that house.<sup>25</sup>

Moving house in Rome represents a specific sub-group of such usages. The courtesan Faecennia Hispala, and her lover P. Aebutius, having revealed the existence of the 'Bacchanalian conspiracy', are moved into new accommodation for their own protection, with, respectively, the mother-in-law and a client of the consul Postumius: Livy uses both *migrare* and *immigrare*.<sup>26</sup> Cicero, in the *Pro Caelio*, says that Caelius is being criticised by the prosecution for his *migratio* to the Palatine, moving out of this father's house and renting a place of his own.<sup>27</sup> In July of 45 Cicero writes to Varro, and signs off the letter by wishing him luck with *migrationem et emptionem*: Varro is on the point of buying a new property, and intends to move to into it, changing his residence accordingly.<sup>28</sup> A similar situation is found earlier, when Cicero writes to Quintus in 56. Cicero tells his brother that he has had a house rented for him for the period of his immediate return, but he has hopes that he will shortly *commigrare* to his own house (*tuam* – the one on the Palatine adjacent to Cicero's own). Quintus' house in the Carinae is being rented by the Lamiae, so he cannot go there, and he cannot go straight to his house on the Palatine because the dilapidations caused by Clodius are still being made good. *commigrare* here connotes not a move to a wholly new property, but rather the proper transference of a household from one dwelling to another one, envisaged as permanent and definitive.<sup>29</sup>

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<sup>23</sup> Ter., *Andr.* 69-72.

<sup>24</sup> *Hec.* 589.

<sup>25</sup> *Most.* 105, *cf.* 135, disaster follows when he 'moves in' to his own *ingenium* or character, as opposed to the 'structure' which his parents built for him; Apul., *Apol.* 24. 5, for a similar usage. Plautus also uses *admigrare* in a metaphorical sense: *Pers.* 347, where the consequences, *ad paupertatem si ammigrant infamiae*, are aired; *cf.* also *Pers.* 685, where *remigrare* as usual means 'return home'.

<sup>26</sup> Liv., 39. 14. 2-3, with BRISCOE 2008, 267.

<sup>27</sup> *Pro Cael.* 18, note also the verb *semigrare* for moving away from his father, and *cf.* Sen., *Contr.* 7. 5 pr.: a father orders his son to move out of his house.

<sup>28</sup> Cic., *fam.* 9. 8. 2.

<sup>29</sup> Cic., *QF* 2. 3. 7; for the house in the Carinae, see Plut., *Cic.* 8.

In the *Philippics* Cicero looks forward to the imminent return of Sex. Pompeius into the possession of his father's *domus* and *horti*, whither he *immigrabit*.<sup>30</sup> Tiberius, on his return from Rhodes, *transmigrauit* from that same house of Pompeius in the Carinae to the *horti* of Maecenas on the Esquiline, where he lived in seclusion until the deaths of Augustus' adopted sons led to his return to public life.<sup>31</sup> Pliny the Younger speaks of the consequences of Trajan's alienation of parts of the imperial *patrimonium*, allowing new *domini*, equals of the old nobility, to *immigrare* into 'the homes and footprints' of the latter.<sup>32</sup> Appuleius describes Pudens moving, on his brother's death, from his mother's to his uncle's house, as *commigrare*.<sup>33</sup> And Cicero imagines gods being unwilling to leave their temples and move into (*immigrare*) the house of their 'guardian'.<sup>34</sup> Tiberius removed the *latus clauus* from a senator because he *demigrasse* into his *horti* just before the Kalends of July, in order to secure a cheaper rental of an urban property at that date.<sup>35</sup> The usage is not confined to the city of Rome: Verres *emigrabat*, lock stock and barrel, from the governor's residence in Syracuse to his new pleasure pavilion by the harbour. At opposite end of the moral scale, in Athens Antigonos Monophthalmos ordered his son Demetrios to *commigrare*, so that he should no longer lodge with a mother and her three beautiful daughters.<sup>36</sup>

An interesting passage of Livy is suggestive as to how someone trained in the rhetorical schools might imagine the immigrant's point of view; but it is also more than that. Lucumo *commigrauit* from Tarquinii to Rome in the reign of Ancus Marcius, with his wife and his wealth, a wholesale transfer of residence and political affiliation, of which he reminds the *plebs* when later seeking confirmation of his throne as Tarquinius Priscus. In Tarquinii, his status as a foreigner had frustrated his ambition, in Rome, a more open community, as his wife Tanaquil reasons, his background mattered less, and was in any case outweighed by his enumeration of what he had done for Rome. Livy's summary of Tarquinius' argument for being accepted as king (not the first foreign king of Rome), is an interesting definition of what we might call 'naturalisation', although citizenship is nowhere specifically mentioned: 'he had passed more of that time of life, in which men discharge civic duties, at Rome, than he had lived in his old

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<sup>30</sup> Cic., *Phil.* 13. 34.

<sup>31</sup> Suet., *Tib.* 15. 1.

<sup>32</sup> Plin., *Pan.* 50. 3.

<sup>33</sup> *Apol.* 98.

<sup>34</sup> Cic., *dom.* 141, that is, move into Clodius' new temple of *Libertas*, formerly Cicero's house.

<sup>35</sup> Suet., *Tib.* 35. 2; the importance of the Kalends of July, when leases normally began, for changes of residence recurs in Cic., *fam.* 13. 2, where Avianius Evander faces difficulties *remigrare* at short notice.

<sup>36</sup> Cic., *in Verr.* 2. 5. 30; Front., *Strat.* 4. 1. 10.

fatherland; in civic life and in war he had learnt Roman laws, and Roman rites, under no unsatisfactory teacher, Ancus the king himself; he had rivalled all in attention and deference towards the king, and had vied with the king himself in generosity towards others'.<sup>37</sup> This is a text of the first importance in that it is a rare attempt to articulate benchmarks by which an immigrant or incomer might seek to have himself accepted by the community to which he has migrated, and indeed, accepted as occupying a position of importance. Such an expression of what one has to do to be accepted as properly, functionally, Roman – in terms of knowledge of war, public life and religion, of civic practice and appropriate social orientation – would have resonated strongly with the generation of Italians whose parents had fought in the Social War, and whose own acceptance into the community as *ciues Romani* had not been without contestation. It surely also marked out the goals for Transpadanes of Livy's own generation, enfranchised in 49, who hoped to know, and to practice, what it meant to be Roman, well enough to find acceptance. The politics of assimilation in earlier centuries will also, no doubt, have had similar contours.

In most, if not all, of the above cases, we find the common semantic ground of a substantive, often formal, move from one place of residence to another. In effect, one *domicilium* or residence is abandoned, permanently or temporarily, for another, in the process of *migratio* or *commigratio*. The above cases concern individuals, but the same analysis applies to groups, and even whole communities. In a humorous aside on the parlous physical state of some *tabernae* which he owns, Cicero says that things have got so bad that not only the tenants, but also the mice, have moved out (*non solum inquilini sed mures etiam migraverunt*).<sup>38</sup> Pliny uses the term of bees swarming (the 'king' bee never otherwise leaves the hive).<sup>39</sup> Themistocles' advice to the Athenians for interpreting the oracle about wooden walls resulted, according to Valerius Maximus, in their transfer (*migrare*) into their fleet, a corollary of them abandoning their homes to the Persians.<sup>40</sup> Pliny claims that the Indians have always remained where they are, unusually among human peoples, never migrating beyond

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<sup>37</sup> Liv., 1. 34. 1, 35. 4-5 (*maiorē partē aetatis eius qua ciuilibus officiis fungantur homines, Romae se quam in uetere patria uixisse; domi militiaeque sub haud paenitendo magistro, ipso Anco rege, Romana se iura, Romanos ritus didicisse; obsequio et obseruantia in regem cum omnibus, benignitate erga alios cum rege ipso certasse*). The slightly tortured word order here may suggest that Tarquinius' is anxiously conscious of the special pleading required. Note that he was eventually killed, it is said, on the orders of the sons of the former king Ancus Marcius, who resented Tarquinius as a non-Roman, indeed non-Italian, usurper (Liv., 1. 40. 2-3).

<sup>38</sup> Cic., *Att.* 14. 9. 1; *cf.* *D.* 39. 2. 28 (Ulp.): loss sustained in respect of tenants' *emigratio* from an unsafe building; *cf.* *D.* 19. 2. 27. 1 (Alfenus).

<sup>39</sup> *HN* 11. 54.

<sup>40</sup> Val. Max., 6. 5. ext. 2.

their *finēs* (their fixity is the sort of anthropologically topsy-turvy situation which one would expect to find at the end of the earth).<sup>41</sup> Writing of German tribes, Tacitus, considering the specific case of the German Osi and Pannonian Aravisci, says that it is uncertain which of the two derived from a migration from the ancestral lands of the other, although that a migration had happened he did not doubt. Again, the large number of Galatian prisoners taken in 189 was caused by the movement of the whole population with the army, making their march, according to Livy, more in the manner of those *demigrantium*, moving home, than of those going to war.<sup>42</sup> Suetonius tells us that by the time of his murder it was widely believed, and a subject of gossip, that Caesar intended to *migrare* to Alexandria or Troy, and leave Rome in the hands of others; already Cicero had claimed some contemporaries thought that the fertility of Egypt would induce the Roman People to *demigrare* there.<sup>43</sup> *demigratio* is also used to denote formal organised movement of its citizens by a state: Nepos uses the word of Athens' decision to send settlers to the Chersonese under Miltiades.<sup>44</sup>

In some cases of *migratio* or *commigratio*, the movement is not voluntary, but either compelled by a conqueror, a new landowner, or, in the face of *force majeure*, to avoid an imminent threat or following a natural disaster.<sup>45</sup> Famously, Virgil's ninth *Eclogue* records the instructions of the new triumviral landowner to the tenant farmers, kicking them out: *ueteres migrate coloni*. Similarly, Cicero tells the *pontifices* that if his house is not restored to him, he must *demigrare* somewhere rather than stay in Rome where the house will be Clodius' trophy; the Suebi decided to *demigrare* their families and property out of their towns and into the forests when they learnt of Caesar's advance against them; and panicked by the Roman advance, Perseus compels the inhabitants of Dion to *demigrare* to Pydna.<sup>46</sup> Alexander the Great, according to Curtius, ordered the inhabitants of neighbouring cities to *commigrare* to the newly founded Alexandria, making it very populous.<sup>47</sup> In the aftermath of the recapture of Capua in 211, in the Hannibalic War, the people of Atella are ordered to *migrare* to Calatia, as

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<sup>41</sup> Plin., *HN* 6. 59.

<sup>42</sup> *Germ.* 28. 3; Liv., 38. 23. 9 (BRISCOE 2008, 10, for other Livian uses of the verb).

<sup>43</sup> Suet., *Iul.* 79. 3; cf. *Gaius* 49. 2, for the rumour that Caligula intended *commigrare* to Antium or Alexandria; Cic., *leg. ag.* 2. 42. *demigrare* can sometimes denote being far from one's natural habitat, as with the Muses coming to Latium from Helicon, in Stat., *Silv.* 1. 2. 4.

<sup>44</sup> Nep., *Milt.* 1. 2.

<sup>45</sup> As after the earthquake in Campania in A.D. 62: Sen., *Nat. Qu.* 6. 1. 10.

<sup>46</sup> *Ecl.* 9. 4; Cic., *dom.* 100; Caes., *BG.* 4. 19. 2 (for the Tusculans' decision not to *demigrare* from the places alongside Camillus' line of march in 381: Liv., 6. 25. 7); Liv., 44. 6. 3.

<sup>47</sup> Curt., 4. 8. 5.

part of Rome's drastic reorganisation of the *ager Campanus*.<sup>48</sup> A little earlier in the war, after the disaster at Trasimene, those living in unfortified places near Rome are told by Fabius Maximus that they should *commigrare* to safe places, in the face of Hannibal's anticipated advance.<sup>49</sup> And in the Civil War campaign in Africa in 46, we are told that the *incolae* of the towns sacked by Scipio have been forced to *commigrare* to the protection of his garrisons.<sup>50</sup> Those doing the displacing can be said to *immigrare*: thus the displacement, indeed extinction, of the Bructeri in Germany was said to be the consequence of the Chamavi and Angrivarii having *immigrasse* into their land (Tacitus' language leaves obscure the speed and nature of these consequences). Those displaced, in turn, can be said to *emigrare*, as Divitiacus said the Helvetii had, and the rest of the Gauls would have to, without Roman aid.<sup>51</sup>

*commigrare* seems to be more commonly used than *migrare* in these cases where communities or peoples (rather than individuals) move, or are forced to move. One of the most famous episodes in which *commigrare* and its cognates are used is during the debate after the Gallic sack of Rome.<sup>52</sup> The tribunes of the *plebs* repeatedly advise the Roman People to abandon their ruined city and *transmigrare* 'to a prepared city at Veii'.<sup>53</sup> In reply, Camillus dissuades the Roman People from abandoning Rome – a contribution summarised in his *elogium* in the Forum Augustum as stopping the Romans from *commigrare* to Veii.<sup>54</sup> In the reply which Livy gives him, Camillus poses (among many other objections in the long speech which concludes the first pentad) a sequence of rhetorical questions. If Veii happened to burn down, would the Romans *transmigrare* to Gabii or Fidenae, or some other place? Again, *Aequi Volsciue, faciant ut commigrent Romam, uelitisne illos Romanos, uos Veientes esse?* What if, once the Romans had gone to Veii, the old enemy, Aequians or Volscians, should move their abode to Rome – would his audience be content for them to be called Romans, and themselves to be Veientes? Is the soil of the 'motherland' of so much less importance than the presence of ephemeral buildings, that one changes the former whenever the latter fail?<sup>55</sup> Here again we

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<sup>48</sup> Liv., 27. 3. 7.

<sup>49</sup> Liv., 22. 11. 4.

<sup>50</sup> *Bell Afr.* 20. 4.

<sup>51</sup> Tac., *Germ.* 33. 1; Caes., *BG.* 1. 31. 14.

<sup>52</sup> The episode of the tribunes' proposal and Camillus' speech in Livy is contains repeated uses of these verbs: Liv., 5. 49. 8, 50. 8, 53. 1, 2, 3, 4 (twice), 7, 54. 1; cf. 24. 7 (the idea of moving to Veii after Rome's capture of the former).

<sup>53</sup> Liv., 5. 50. 8; cf. Suet, *Nero* 39. 2.

<sup>54</sup> *CIL* 6.1308 = *Inscr. It.* XIII, 3. 61; cf. Liv., 5. 49. 8 (*migrari*); on the speech and the issues it raises: ISAYEV 2017, 360-418.

<sup>55</sup> Liv. 5. 54. 2; 53. 7.

see that *(com)migratio* involves not just purposive movement, but an intent to remain in the community of destination; furthermore, this creates, indeed necessarily entails, a change in identity (at least in Camillus' view), and the negation of the previous identity. This is something beyond an alteration of name or of legal status: what is at stake is not only affect, it is almost ontological. The Romans will, on this scenario, become Veientes; the physical place and the identity of Rome having both been vacated, they will be taken up by Rome's former enemies.

The verb *remigrare* is often used to denote return to a place which one had left in order to reside somewhere else.<sup>56</sup> Thus Cicero, in a humorous letter to Papirius Paetus envisages that if he runs out of money in Naples *Romam tibi remig<r>andum est*. Having visited Rome to support friends in elections, Atticus definitively returned (*remigrauit*) from Athens to Rome in 65 B.C. Groups too can be said to *remigrare* to their homes, as the Menapii do in re-occupying their villages on the other side of the Rhine when they believe the Germans have withdrawn. A capital penalty was established for those who would not obey a summons to *remigrare* from Veii to Rome, having moved to vacant houses in the Etruscan city rather than rebuild in Rome after the Gallic sack; and in 206 a large number of peasants were compelled to return to their farms by the *auctoritas* of the consuls (so *remigrare* need not be voluntary).<sup>57</sup>

Finally, we may note a small cluster of other instances in which *migrare* (or *immigrare*) has negative implications for a change or a move, like those which we see Livy's Camillus express. These passages all share the common ground of something leaving its proper place, and finishing somewhere inappropriate; things end up where they should not be, with negative moral implications. Thus, discussing painting, Pliny notes the use of four colours by the early masters of fresco painting, but says that now additional colours have come to signal the rise of luxury; above all 'purple' *migrat* onto party-walls in houses, where it has no place.<sup>58</sup> Cicero plays with a similar concept writing to Tiro, in 46 B.C. Cicero is taking umbrage at Tiro's decision in a letter to use the word *fideliter* (faithfully) of attention to another's health. *fideliter* has its *domicilium*, its 'proper dwelling place', in application to *officium*, or duty (which we

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<sup>56</sup> It is also used to mean simply 'return', or return to the proper, or former, place, in a transferred or metaphorical sense: note Cic., *Acad.* 1. 13, where *remigrare* to or from an 'old' or 'new' *domus* is used playfully of switching allegiances between different branches of the Academy; cf. Pl., *Epid.* 569; *Poen.* 47; *Lucr.*, 2. 966; Cic., *Tusc.* 5. 62; *Apul.*, *Pl.* 2. 20.

<sup>57</sup> Cic., *fam.* 9. 18. 4; *Nep.*, *Att.* 4. 5; *Caes.*, *BG* 4. 4. 6; *Liv.*, 6. 4. 5; 28. 11. 9 (on which see below, sect. 8. 1).

<sup>58</sup> *HN* 35. 50.

faithfully recognize or discharge). However, it also makes many *migrationes in alienum*, that is into another's *domicilium*, or another subject matter: thus *fideliter* comes to be used metaphorically of learning, the household, a skill, or a plot of land. Important here is the idea that one belongs somewhere, and that ending up in, or applying oneself to a different context, is *migratio*: being out of one's proper assigned place.<sup>59</sup> Cicero also reflects the converse of this idea in the *Brutus*, when he says that M. Calidius' use of metaphors (*uerba translata*) was so skilful that 'you would say that they had not encroached into a place which did not belong to them, but migrated into their own', *immigrasse in suum* – *immigrare* in this case has a sense of the right to be in a place, a place which belongs to one. Yet the implication remains that without Calidius' skill, a user's metaphors might rather be seen to *usurp* a place in speeches (*immigrare in alienum*).<sup>60</sup> Again, Pliny the Younger says that under Domitian, *amicitia* perished, and flattery and adulation *migrauerunt* into its *locus*.<sup>61</sup> In the last case there is the clear implication that *migratio* can be something with negative consequences, an unpleasant usurpation, and a displacement of that which should be present. Possibly related to this sense of a *migratio* leading to something being in the wrong place, or usurping a place where it is inappropriate, are usages where *migrare* clearly denotes *avoiding* something, often something which one should do. Plautus has a character say that ideally *nec mens officio migrat*, the mind does not dodge its duty; Cicero uses *migrare* three times in this or a related sense, as well as saying in 54 that despite the deplorable political situation *nec tamen ego de meo statu demigro*, where the image is probably that of a soldier not deserting his guard-post.<sup>62</sup>

In conclusion, we can observe that this cluster of words, despite various nuances of deployment, embodies a sense of *change* as much as of physical (or metaphorical) movement, and that change can be understood as change of (legal) status, but sometimes also as emotional and almost ontological change. At its most forceful, as in the case of Lucumo's migration to Rome, or Camillus' view of the proposed migration to Veii, the change inherent in *migratio* involves the abandoning of one identity and the adoption of another, although in the case of Lucumo this happens over time, whereas Camillus, for rhetorical effect, attempting to frighten his audience, represents it as almost instantaneous, and dependent solely on physical removal

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<sup>59</sup> Cic., *fam.* 16. 17. 1.

<sup>60</sup> *Brut.* 274.

<sup>61</sup> Plin., *Pan.* 85.1.

<sup>62</sup> Plaut., *Trin.* 639; Cic., *leg.* 3. 11; *off.* 1. 31; *diu.* 1. 8, where Cotta is said argue as he did, so as not to seem to *migrare* (dodge, in the sense of not engage properly with) commonly accepted *iura*, relating to religion; *Att.* 4. 18. 2 (*demigro*); cf. Sosia in Plautus' *Amphitruo* (240): the Teleboians lose their lives in battle before they *demigrent* from their assigned places in the line.

from Rome to Veii, or from elsewhere into Rome. By themselves, the words in this cluster do not characterise either movement or change as good or bad – these meanings are acquired by the context; they can be used to denote either ending up in the house, or the place, or the condition in which one rightly belongs, or (less often) as usurping a place, a space or an identity to which one has no legitimate claim.

### 3. Migration: Modalities and Contexts

In pre-imperial Italy, as today, migration could take many forms; as a result, there could be many different types of newcomers to a community, present for different purposes and over different timescales.<sup>63</sup> These newcomers could be classified into a number of different legal or quasi-legal categories; as often in the Roman world, these categories are about status as much as about specific rights. Thus a late-republican or triumviral inscription from Interamnia Praetuttiorum records the donation by the *patronus* of the *colonia* and the *municipium* (Interamnia was possibly a double-community) of perpetual *lauatio*, made to *municipibus*, *coloneis*, *incoleis*, *hospitibus*, *aduentoribus* (members of the *municipium*, colonists, resident aliens, guests and visitors).<sup>64</sup> Some of these groups have a clear juridical definition, others are categories which connote social status and identity relative to the community; the main point of the text is to advertise the wide spread of the benefaction in question, crossing legal and customary divides. One of these groups denotes those who are not legally full members of the community, but live within it on a permanent or semi-permanent basis: the *incolae*. While some *incolae* (like the *Samnites inquolae* named in a third-century inscription from Aesernia) were members of a relict indigenous population absorbed within, or co-existing with(in), an incoming colonial population, other *incolae*, as perhaps at Interamnia, were immigrants into the community.<sup>65</sup> At the date of this text from Interamnia, the *incolae* are very probably Roman

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<sup>63</sup> Even the ‘indigenous population’ should not be imagined as a stable, constant, hermetically sealed entity: Ti. Gracchus, seeking re-election, famously found that many of his supporters in the *plebs* had vanished into the countryside when the harvest came (App., *BCiv.* 1. 14. 58-9); on the difficulty of defining Rome’s urban population in the late Republic, see PURCELL 1992; cf. TARPIN 2014 for other Italian communities. Defining the ‘migrant’ in Rome was not always an exercise in the self-evident.

<sup>64</sup> *ILLRP* 617; the much earlier list in Plaut., *Aulul.* 406-7 is similar (and see ISAYEV 2017, 219-20); cf. the *lex coloniae Genetivae* ch. 126, ll. 30-1: *colonos Geneti/uos incolasque hospites atuentoresque* (CRAWFORD 1996, I, no. 25); definitions in *D.* 50. 16. 239. 2 (Pomponius); cf. CRAWFORD 1996, I, no. 25 ch. 103; *Lex Flavia* ch. 53, 83.

<sup>65</sup> *CIL* 1<sup>2</sup>.3201 (Aesernia); see LA REGINA 1970-1, 452-3; GALSTERER 1976, 54; HUMBERT 1978, 346 n. 34; COARELLI, 1998, 37; BUONOCORE 2003, no. 8; BRADLEY 2006, 174; GAGLIARDI 2006a, 156-8; LAFFI 2017a, 56; cf. ROSELAAR 2019, 38. Whether these *inquolae* were recent incomers or had been absorbed into the colony back in 263 when it was founded, the text gives a fascinating insight into the organisation of such groups; their use of Latin is also notable. For *incolae* generally: LAFFI 1966, 193-208; POMA 1998; KREMER 2006a, 167-74;

just like the inhabitants of the town, but before the Social War migration into a town, and settlement within, alongside, or in the interstices of an existing community was more complex, as the legal statuses of the immigrants and of the host community were likely to be different. Such incomers were not just individuals (or groups) who left one place and made an autonomous purposive transfer to another; they were those who had to navigate different imperatives which were in tension with each other: retention of their own identities in the context of family, association or cult on the one hand, and the adoption of a new identity, which might be social, legal or ethnic (or an amalgam of these) on the other. In its strongest form the integration of the migrants into the new community was represented by the adoption or conferral of the latter's citizenship, thus bringing to bear the laws, rights, and socio-religious obligations of the community into which they had immigrated. Within the phenomenon of migration, then one may distinguish two important categories of migrant: the one who was content to, or had to, remain an *incola*; and the one who sought to, or had to, become a citizen. Much of the rest of this paper will be concerned with this latter category, and in particular with the interface between Latin immigrants and authorities in the city of Rome in the second century B.C.

All specific cases of migration within Italy, whether they fell under legal or customary arrangements adopted by individual communities or groups of communities, played out against a wider background of very considerable mobility, resettlement and displacement. Roman colonization is perhaps the most famous form of organised mobility, including the foundation of *coloniae Latinae* (Latin colonies); a related phenomenon is the settlement of (in all probability) tens of thousands of Romans in individual plots (*uiritim*) on Roman *ager publicus* across the peninsula.<sup>66</sup> At least in the era at which we can apprehend some aspects of the phenomenon in action, colonization had broadly normative forms and presuppositions. Its origins are more obscure, but what we have come to call colonization is surely a cousin of other types of organised movements of men of fighting age (and their families) in archaic and classical Italy: the movement of Sabellian mercenaries around central and southern Italy, that of Gallic mercenaries or war-bands over a greater range, and the migrations of Italic peoples known to later Roman writers as the *uer sacrum* or 'sacred spring'.<sup>67</sup> The historicity of these

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GAGLIARDI 2006a; ID. 2006b; LICANDRO 2007; GAGLIARDI 2011; ID. 2014; TARPIN 2014, 182-3; LICANDRO 2019, 70-4.

<sup>66</sup> On Republican colonization see now STEK & PELGROM 2014.

<sup>67</sup> On mercenaries see TAGLIAMONTE 1994, esp. 55-102. On the Mamertini: Fest. 150L = Alfius, *FRHist* 69; TAGLIAMONTE 191-8; DENCH 1995, 55-6, 185-6, 205, 211-12, 215. On the *uer sacrum*: DENCH 1995, 2, 56, 87,

latter movements need not concern us here; the important thing is that Roman writers saw them as characteristic of Italic peoples (and the vows which triggered them as analogous to Roman propitiatory vows in time of crisis).<sup>68</sup> The story of the origin of the Mamertini shows that such religiously sanctioned migrations were at least as old as the middle of the third century; and suggests that the Italic ‘sacred springs’ should not be kept apart from the mobility of mercenary groups.

With the growth of Roman power, and the creation of a Roman Italy, a *terra Italia*, other traditional forms of mobility were attenuated, becoming less compatible with the new realities in the peninsula. Organised group mobility was something largely (but, as we shall see, not entirely) sanctioned by and exploited by Rome, and indeed was another manifestation of her underlying power in Italy.<sup>69</sup> For example the Senate ordered in 180 the resettlement of 47, 000 Ligurian families to Samnium, on areas of *ager publicus* thereafter known as Ligures Baebiani and Ligures Corneliani, after the consuls who had fought the Ligurians and presided over their forced transfer and resettlement.<sup>70</sup> Different is the case of the Ferentines who in 195 enrolled in a colony which was to be led out in the near future, thereby gaining a potential Roman citizenship which would become real when the colony was founded, but caused a scandal by acting as Roman citizens before it had been led out (see further below, sect. 8. 3). In this instance there is an added layer of complexity in that these Ferentines expressed an intention (however disingenuous) to move to a new community in order to obtain the citizenship of a third community (Rome). It is important, in assessing specific cases of migration such as the ones I shall focus on later in this paper, to see them not simply as legal tangles needing juristic elucidation, but as specific cases of migration embedded in a complex background of mobility, and thus of power relations, one now very largely dependent on Roman power.

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105, 116, 146, 179, 181, 185-6, 188-95, 197, 199, 205-6, 208, 211-12, 215; BISPHAM 2007b, 182; BOURDIN 2012, 729-38; ID., 2014, 209-10.

<sup>68</sup> Liv., 22. 9. 10, 10. 1-6 (Roman *uer sacrum* decreed after the battle of Trasimene, 217 B.C.).

<sup>69</sup> *terra Italia*: BISPHAM 2007a, 53-73. Note, for example, the instructions in 186 to the praetor L. Iulius to prevent Gauls who had unexpectedly crossed the Alps into Italy from building an *oppidum* in the territory of Aquileia: Liv., 39. 45. 5-7; see also BROADHEAD 2003, 148.

<sup>70</sup> Liv., 40. 38. 1-7 (with BRISCOE 2008, 505-7); see GABBA 1976, 39-40; GABBA 1989, 201-2, 207-8, 213-14; Ligures Baebiani: PATTERSON 1988; NICOLET 2001, 125. Not all those settled by Rome remained where they were settled: the colonies of Sipontum and Buxentum were discovered (in the course of an investigation into the – unrelated – ‘Bacchanalian conspiracy’) to have been abandoned by the settlers sent there less than a decade earlier, Liv., 39. 23. 3-4.

#### 4. Romans and Latins: Migration in the Archaic and Classical Periods

##### 4. 1. Migration and the Latin Right

This paper will mainly be concerned with the implications of a handful of (much-discussed) Livian passages relating to developments in Latin migration to Rome, and the legal and political constraints affecting them, in the first quarter of the second century. Unfortunately, it is not possible to assess these developments without first forming a view on the prevailing legal framework within which Latins were able to migrate up to this point. Indeed, most discussions of those specific events which Livy relates are strongly conditioned by each author's own position on the historical background and development of Latin migration. Livy's evidence, which we shall consider in the next sections, shows beyond doubt that at the beginning of the second century Latins were able to migrate to Rome, and there to register in the census and thus become Romans (*per migrationem et censum*, as Livy (41. 8. 11) says in an official-sounding phrase). This state of affairs led to complaints from Latin communities, and was accordingly subject to regulation by the Roman authorities in 187, 177 and 173. The question of when exactly the right to migrate was introduced makes a big difference to our interpretation of what Livy relates. Was the right to migrate, for example, an immemorial possession of the Latin *nomen*? Somehow intrinsic to the legal and political relationship between Latins and Rome (or to one particular modulation of that evolving relationship)? Or in fact a recent right which was now being curtailed? This undertaking is challenging, since the only unequivocal evidence for any 'right' to migrate turns out to be the very passages of Livy which we shall be considering.<sup>71</sup>

The matter is further complicated by the existence of what Roman jurists call the *ius Latii*, a bundle of Latin rights often thought to include the *iura* of *conubium*, *commercium*, *migratio* and possibly *suffragium*.<sup>72</sup> The existence of communities of Latin status under the

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<sup>71</sup> BROADHEAD 2001, 69-70.

<sup>72</sup> Earliest (?) source to mention it: Strab., 4. 1. 12 (Nemausus has 'the so-called *Lation*', which allows ex-aediles and ex-quaestors 'to be Romans'), which must refer to the same kind of grant which the *lex Pompeia* made to the Transpadane communities in 89 B.C. (Asc., p. 3C, see below sect. 9) and Julius Caesar to Novum Comum (App., *BC* 2. 26. 98, *es Latiou dikaiou*); cf. Plin., *HN* 3. 7, 29. Gaius, *Inst.* 1.95-6 (he also discusses a 'greater' and 'lesser' Latin *ius*). *conubium*: *ibid.* 1. 56, cf. 76-9; *commercium*: *Tit. Ulp.* 19. 3, 5; for the early imperial distinction between Iunian Latins and freeborn *Latini coloniarii*: *ibid.* 1. 29, 79; 2. 56; 3. 56; *Cod. Iust.* 7. 6. 1. TARPIN 2014, 164-5, rightly notes that Liv., 26. 34. 7 implies that being a citizen 'of the Latin name' was a favourable status, irrespective of the Latin city in which one was registered.

Principate (for example those in the Hispaniae given Latin status by Vespasian)<sup>73</sup> shows that such a *ius* was by then a juridical reality as a communal status; and this reality can be traced as far back as the Latin colonies created in the Transpadana in 89 by the *lex Pompeia*.<sup>74</sup> The extent to which the *ius Latii* which we encounter in the early first century in the Transpadana, and subsequently, was co-extensive with the rights of Latins (whether colonists or *prisci Latini* – the citizens of surviving allied communities in Latium), is uncertain, although many scholars assume a very substantial overlap and continuity from one to the other. The very term *ius Latii*, after all, implies that these privileges were intrinsic to Latinity, in a way that certain rights were intrinsic to Roman citizenship (e.g. the *ius Quiritium*), and that they should thus be either foundational to the concept of Latin status (perhaps even of Latin ethnicity), or be (as *prouocatio* was for Romans) one of its earliest concrete manifestations.<sup>75</sup>

In search of an early point of origin for the *ius Latii* many scholars have, understandably, invoked the *foedus Cassianum* of 493 B.C., or the rebooting of the *nomen Latinum* in 338; a considerable normative superstructure describing and analysing the ‘Latin right’ has been built on such intuitions. As we shall see, however, the evidence for the content of the *foedus Cassianum* does not really authorise all of the assumptions often made about retrojection to this point of the ‘Latin right’; nor does 338 really have a much stronger basis in the evidence than 493 as the moment of origin for these *iura*. In fact, what we know for certain about developments of the rights and privileges of Latins at these, and indeed any other, points before the second century is underwhelming, to say the least. Scholarship in the last generation has polarised, accordingly, between defence of the ‘traditional’ orthodoxy on the one hand, most ably executed recently by David Kremer; and a deconstructive approach, employed in various ways by, among others, Will Broadhead, Saskia Roselaar and Altay Coşkun. I shall discuss some of their views in more detail below, but (fortunately) a comprehensive discussion of the origins and development of the *ius Latii* as a whole is out of scope here. Attention will

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<sup>73</sup> For the Latin *municipia* of Flavian Spain, see GONZÁLEZ 1986; KREMER 2006a, 111-93; and now LAMBERTI 2019.

<sup>74</sup> See below, sect. 9 for the *lex Pompeia*.

<sup>75</sup> Some of the large (and conflicting) bibliography on (the) Latin right(s): MOMMSEN 1887b, 607-44; KASER 1953; CATALANO 1965, 116-122; TOYNBEE 1965 I, 257 (discusses migration); ALFÖLDI 1965, 38-9; SHERWIN-WHITE 1973, 32-7, 97, 108-16, esp. 110-12 on *migratio*; GUARINO 1973; DE MARTINO 1973, 73-8; HUMBERT 1978, 98-122; LURASCHI 1979, 238-261, 262-92; SALMON 1982, 5; CAPOGROSSI COLOGNESI 1994; CORNELL 1995, 295-6; CHASTAGNOL 1995; OAKLEY 1997, 338-9; GASCOU 1999; CAPOGROSSI COLOGNESI 2000, 69-80; KREMER 2006a; COŞKUN 2009a, 31-113; ROSELAAR 2013a; 2013b; KREMER 2014 (review discussion of COŞKUN 2009a, with reply at COŞKUN 2015); TARPIN 2014, 161-4; COŞKUN 2016a; ID. 2016b; ROSELAAR 2019, 128-30 (limited to Latin colonies).

therefore be focused on the problem of migration (and consequent registration as a citizen), and its relation to any ‘Latin right’; for this two-part process (migration and registration at the census) a substantive legal reality has been assumed, one referred to as the *ius migrandi / migrationis*. As all scholars, whatever their position, accept, there was in antiquity no such term;<sup>76</sup> indeed it also remains to be demonstrated that there existed any codified ‘right’ applicable to all Latins to obtain the Roman citizenship *per migrationem et censum* (if this term even describes a discrete legal avenue with agreed rules and processes). In other words, is there a stable legal content in terms of the right to migrate and change citizenship, such that we can usefully deploy the term *ius migrationis*, irrespective of its being a neologism?

#### 4. 2. *Migration and Municipium; Exilium and Postliminium.*

Before we make any further remarks about the *foedus Cassianum*, we should think about the historical context of that agreement, with respect particularly to mobility. The archaic period was, at least in central Tyrrhenian Italy, characterised by significant mobility as a function of considerable permeability of citizen bodies. This in turn is related to a less exclusive conception of citizenship, and a much greater prevalence, with respect to later periods, of what has been termed ‘horizontal social mobility’, at least for élites and their dependents.<sup>77</sup> It is against this broader background that we must attempt to understand the legal framework, if that is not too modernising a term, surrounding migration and consequent enfranchisement within Latium (especially concerning Rome) in the period preceding the mid-republican developments which shall mainly concern us.

The evolution of the Roman citizenship itself was also the story of changing attitudes to outsiders, and debates as to how far Roman status should permeate for any of them. As Roman power grew, more outsiders were encountered; these had to have their status and privileges defined with respect to those of Romans. Some of these external communities remained external, and were bound to Rome by bilateral treaties; others were incorporated wholesale into the Roman state. But between these two poles of autonomy and absorption, there was a range of statuses and relationships which left communities, or individual members

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<sup>76</sup> Survey of doxography: BARBATI 2012, 32. Neither *ius migrandi* nor *ius migrationis* (I shall use the terms synonymously) are terms found in our sources, as is commonly admitted: e.g. HUMBERT 1978, 139; BROADHEAD 2004, 316; TARPIN 2014, 164.

<sup>77</sup> AMPOLO 1976-7; cf. CORNELL 1995, 157-9; BROADHEAD 2001, 83-4, & n. 58 for further bibliography.

of communities, able to possess, or required to possess, some elements of the citizenship. The sundry components of this grey area came to be referred to by tidy-minded late-republican lawyers and antiquarians as discrete legal statuses, such as the *ciuitas sine suffragio*, and the *municipium*; and corresponding individuals as *ciues sine suffragio*, and *municipes*. The relationship of these statuses is not wholly clear, and I do not wish to be drawn into discussion of such a contentious topic; I wish rather to call attention to two aspects of this bundle of statuses.<sup>78</sup>

Firstly, one manifestation of what was later called the *ciuitas sine suffragio* seems to cover honorific grants of Roman status (the punitive associations of the status seem to have come to the fore later). These can be assimilated to individual grants of *isopoliteia* in the Greek world,<sup>79</sup> where such grants were also given to communities. This status meant that, for those on whom it was conferred, a relocation from community *a* to community *b* for a considerable period, or permanently, was accompanied by the activation of a potential, already-conferred, citizenship in community *b*. Thus, for example, those so honoured by Rome could make use of their privileges only by being resident in Rome. Thus this particular modulation of the ‘citizenship without the vote’ would have been more or less a status which combined Greek *isopoliteia* and Latin *hospitium*. Consistent with wider fourth-century practice in the Greek world, the grant created a distinctive and favourable personal status for non-Romans residing in Rome; examples would include Caeritan *hospites*, and perhaps Capuan cavalrymen.<sup>80</sup>

Secondly, one understanding of what a *municeps* / *municipium* was, was as a group of individuals from a community who possessed the right to migrate to Rome. *Municeps* / *municipium*, whatever their relation to the *ciuitas sine suffragio*, may originally have been, or included, a means of managing migration to Rome from certain ‘subject’ communities in central Tyrrhennian Italy, and in the longer term, allowing their absorption into the citizenship. Paulus’ epitome of Festus (p. 117L) says that one definition of *municipes* was this: those who had migrated (*uenissent*) to Rome from other *populi* – these people could not hold magistracies,

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<sup>78</sup> Salutory discussion by MOURITSEN 2007.

<sup>79</sup> Cases from Greece: see, for example, OSBORNE & RHODES 2017, no. 182; RHODES & OSBORNE 2003, nos 8, 56; cf. HUMBERT 1978, 129 n. 125, 134; such conferrals of citizenship could be left to the honorand to take up or not, and could be either purely symbolic or intended to have practical value.

<sup>80</sup> SHERWIN-WHITE 1973, 200-3 (critiquing SORDI 1960). For *hospitium* as possibly the original Roman description of the juridical status and privileges accorded to groups (as well as individuals) later described as the *ius Latii*: HUMBERT 1978, 139-43, with discussion, some speculative, of Caeritan *hospitium* at *ibid.* 141-3.

but only did ‘the part consisting in (the) *munus*’. More fully, at p. 155L, Paulus glosses *municipium* thus:

*municipium id genus hominum dicitur, qui cum Romam uenissent, neque ciues Romani essent, participes tamen fuerunt omnium rerum ad munus fungendum una cum Romanis ciuibus, praeterquam de suffragio ferendo, aut magistratu capiendo; sicut fuerunt Fundani, Formiani, Cumani, Accerani, Lanuvini, Tusculani, qui post aliquot annos ciues Romani effecti sunt.*

‘*Municipium* is the name of that class of men, who, when they had come to Rome, while not being Roman citizens, had however a share in all things related to performing duty together with Roman citizens, except concerning casting votes, or taking office; such were the Fundani, Formiani, Cumani, Acerrani, Lanuvini and Tusculani, who after some years were made Roman citizens.

Some of Festus’ sources certainly thought that *municeps* described someone from a circumscribed list of communities (Paulus p. 117L adds Atellani besides Cumani and Accerani, who recur in the *lemma* on *municipium*), whose citizens had the right to move to Rome; there they were liable to (the) *munus*, like the Roman citizens, but could not vote or hold office; and that after some time they could become Roman citizens. These communities – and those named need not be all those thought to have had this right – are located from Latium, across Volscian and Auruncan territory, into northern and central Campania. The situation which Paulus’ sources purport to delineate is one which makes most sense if describing the second half of the fourth century. It does not matter whether Festus (or his sources) were wrong in explaining *municipes* or *municipium* in this way – what is important is that this was a credible claim to make, a reasonable situation to imagine. In other words, it is distinctly possible that one of the types of status which flowed into the later concepts of *municeps* / *municipium* was one which was predicated on the rights of certain individuals to migrate to Rome. Once settled in Rome they were liable to certain obligations, and their political privileges were circumscribed; but this did not prevent their being later made into (full) citizens.<sup>81</sup>

On this reconstruction the ‘institutions’ of *ciuitas sine suffragio* and *municipium* would have allowed (in one case) favoured individuals from some communities to enjoy potential citizen rights, which became actual on their moving to Rome; and (in the other) citizens of certain communities the right of migration under specific conditions, with enfranchisement to follow. They would almost certainly, however, not have been the oldest procedures which

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<sup>81</sup> HUMBERT 1978, 136 n. 144 for the claim that by migrating to Rome *ciues sine suffragio* could, like Latins, acquire the full citizenship; rather different the heterodox position of MANNI 1947, for whom (originally) the *municipium* was a ‘half-way house’ status for an immigrant to Rome who would *at some later point* be made a citizen; cf. COŞKUN 2009a, 113-24. On *municeps* and *municipium* see further: HUMBERT 1978; LAFFI 1985; HUMBERT 2006; BISPHAM 2007a, 16-31.

managed adjustments in status consequent on migration within Latium. For earlier legal or customary instruments we can look to the correlated rights of *exilium* and *postliminium*. *exilium* allowed the (voluntary, originally non-punitive) ‘exile’, on leaving Rome, to lay aside his Roman citizenship, and take on that of the community which accepted him, which would require registration in its citizen lists.<sup>82</sup> *postliminium* allowed return to his community, and to his former condition in that community, of a person who had voluntarily left it, or (in what was probably a later development) a person (or thing) captured in war. This *ius* seems to have applied only to relations with enemies, and with independent foreign powers, but excluded communities in the ‘say-so’ (*dicio*) of the Roman People; it was also subject to other restrictions (for example *postliminium* was not available to those who surrendered in battle or deserted).<sup>83</sup> Originally, *exilium* and *postliminium* probably operated on a reciprocal basis between Latin cities, including Rome. This raises the question of whether other reciprocal rights, such as those of legally recognised intermarriage between Latins and Romans (*conubium*), and of making legally binding commercial arrangements between Latins and Romans using *mancipatio* (*commercium*), were not also in existence by the sixth century (and *a fortiori* existing between other Latin communities on the same reciprocal basis). Whether there were at this early period universally observed rights to migration which entailed or led to citizenship, other than *exilium* and *postliminium*, seems less certain to me, but the evidence is inadequate for a definitive answer.<sup>84</sup>

#### 4. 3. *The foedus Cassianum*.

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<sup>82</sup> BROADHEAD 2001, 83-5. See KREMER 2014, 231, for the agency of the exile himself as crucial in making (or not making) this change of citizenship (*cf* Cic., *pro Balb.* 27, 31); in other words *mutatio ciuitatis* is not an automatic consequence of exile.

<sup>83</sup> MOMMSEN 1887b, 42-53, 653-8. *exilium*: Liv., 2. 2. 10f.; *cf.* 3. 29. 7; 5. 43-4 (Camillus & Ardea); Cic., *pro Balb.* 28-9 (mainly voluntary, and not a punishment); CRIFÒ 1961; SHERWIN-WHITE 1973, 34-5, 292-3; HUMBERT 1978, 82 & n. 108. *postliminium*: Gaius, *Inst.* 1. 129; Gell., *NA* 6. 18. 6; Fest., p. 244 (citing Aelius Gallus; *cf.* Paul., 245L), *s.v.* *postliminium* (‘also by *postliminium* can changing of community be effected’); Cic., *pro. Balb.* 28-30; *pro Caec.* 100; *Top.* 36-7; *de or.* 1. 181-2; *cf.* Liv., 5. 46. 10-11; *cf.* 34. 52. 12 (with BRISCOE 1981, 130); juristic discussion in section 15 of book 49 of the *Digest*, *e.g.* *D.* 49. 15. 2, 4-5, 7-9 12, 14-17, 19-30; DE VISSCHER 1939 = 1949b; CURSI 1996 (arguing, *inter alia*, for a restriction of application in the late Republic, *ibid.* 35-6); LEIGH 2004, 61-77, 95-6 (sensitive and stimulating discussion of the sources, *postliminium* and prisoners of war); ANDO 2008, 503-4; COŞKUN 2009a, 73-107; LICANDRO 2019, 95-8; *cf.* TARPIN 2014, 165-6, 180.

<sup>84</sup> Evidence for early *conubium*: Dion. Hal., 6. 1. 2 (495 B.C.); HUMBERT 1978, 82-3 & n. 109; *commercium*: HUMBERT *ibid.*, 83 n. 110; both probably at least as old as the *foedus Cassianum*: MOMMSEN 1887b, 223, 630-9; CASTELLO 1958; SHERWIN-WHITE 1973, 32-5; DE MARTINO 1973, 75-8; HUMBERT *ibid.* 98, and 105 & n. 67 for the claim that the pre-existing right of *migratio* was maintained mutually between Rome and the Latins, and Latins and Latins (the ‘evidence’, however, is inference from much later episodes); CORNELL 1995, 295-7 (rights predate the *foedus Cassianum*); OAKLEY 1997, 338-9 (some *iura* probably go back to the sixth century); ID. 1998, 541; BRADLEY 2020, 273 (Cassian treaty formalises what were ‘probably customary’ rights).

In 493 B.C. the agreement known as the *foedus Cassianum* reset and redefined the legal and institutional relationship between the Roman people on the one hand, and the Latin peoples on the other (it was soon extended to cover the Hernici too). The treaty should be understood as a *foedus aequum*, one which gave formal recognition to Roman equality with the rest of the Latin cities, but masked a *de facto* dominance of the Roman position; individual Latin identity was not submerged, while at the same time a shared identity as Latins is presupposed by their being collectively a party to the treaty.<sup>85</sup> The physical ‘treaty struck with all the Latins’ was, as Cicero, speaking in 56 B.C., asserts, ‘recently’ to be seen, inscribed on a bronze column behind the Rostra in the Comitium in Rome.<sup>86</sup>

The *foedus Cassianum* has often been seen by scholars as foundational for what is later called the *ius Latii*, formalising the rights of the Latins (and then Hernici) to: *conubium*, *commercium*, *migratio* (that is, the right to obtain citizenship by migration and registration) and, in some interpretations, *suffragium* (a qualified right to vote).<sup>87</sup> As noted above, the foundations for this assumption are not unproblematic. Our fullest (but admittedly incomplete) account of the contents of the treaty (in Dionysios of Halikarnassos) makes no mention of these supposed rights; from a *lemma* in Festus (166 L) scholars have argued that the treaty contained regulations about *commercium*. Cicero implies that it is the *foedus Cassianum* which underwrote the citizenship of the Tiburtes L. Cossinius and T. Coponius in the last generation before the Social War (*pro Balb.* 53) – but this was obtained as a reward for successful prosecution, and cannot be used to support a supposed right to migrate and thus obtain citizenship.<sup>88</sup> Almost every other statement about the nature of Latin rights as expressed in the

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<sup>85</sup> *foedus aequum*: Liv., 8. 4. 2, the words of the Latin *praetor* Annius in 341.

<sup>86</sup> *Pro Balb.* 53; the column was probably removed in the course of the Sullan rebuilding of the Curia Hostilia.

<sup>87</sup> Dion. Hal., 6. 63. 4; 7. 53. 5; 8. 35. 2, 70. 2, 72. 5, 74. 2, 76. 2, 77. 2; 11. 2. 2 (fifth-century *isopoliteia* granted to Latins and Hernici; Plut., *Cor.* 30); but note 4. 22. 3, used of naturalised immigrants. On the *foedus Cassianum*: sources collected in WERNER 1963, 443-53 (with commentary; note that Fest. 166L, *s.u.* ‘nancitor’, on loans and guarantees implies *commercium*, but assumes a monetary context, and is therefore anachronistic?); see also ROSENBERG 1920 (misunderstanding Greek *isopoliteia*); SHERWIN-WHITE 1973, 20-26, 33; HUMBERT 1978, x, 65-76, *cf.* 81-4, 91-122; STURM 1992, 724-5 (*migratio*); CORNELL 1995, 299-301; OAKLEY 1997, 336-7; BRADLEY 2020, 273, 278-80. The incorporation of Gabii (reign of Tarquinius Superbus) is also described by Dionysios as *isopoliteia*; it was embodied in a treaty which gave the Gabines enjoyment of their own laws and lands: Dion. Hal., 4. 58. 3-4; see also Liv., 1. 54. 10 and Dion. Hal., 4. 57. 3 on the incorporation; and *id.*, 3. 49. 6 on the incorporation of Crustumarium; SHERWIN-WHITE 1973, 14-15, 19, but note the corrections of HUMBERT 1978, 78 n. 96, 91. n. 21; *ibid.* 86-91 (Gabii). Early examples of *migratio*: HUMBERT *ibid.* 82 n. 107.

<sup>88</sup> The argumentation in the *pro Balbo* is some of Cicero’s most specious, in defence of a fragile case, and should be treated with caution at every turn; in any case, the link implied between the *foedus Cassianum* and the enfranchisements mentioned is never made remotely clear. One might ask who in the mid-first century could read a treaty on a bronze column (suggesting a shortish text?) which had been inscribed in the early fifth century, and been left exposed to the elements thereafter? A treaty written in archaic Latin, which was no

*foedus Cassianum* essentially depends on the inference that rights attested as obtaining much later ‘ought to’ have been enunciated originally in this agreement. Thus some scholars, even while admitting the lack of evidence for a *ius migrandi*, have continued to act as if it must necessarily exist, on the indirect basis of other, later evidence.<sup>89</sup>

Dionysios of Halikarnassos’ discussion of the *foedus* has long divided scholars. Mostly in speeches put in the mouths of Latins and Romans, the relationship established by the *foedus Cassianum* between Latins (and later Hernici) on the one hand, and Rome on the other, is described as *isopoliteia* (equivalent civic rights). Many verdicts on this assessment have been critical, arguing that this Augustan, Greek, assessment is anachronistic, misconceived, incorrect or even ignorant. As a result, attempts have been made to apply corrections, even to the extent of supplementing Dionysios’ account by ‘re-inserting’ into the treaty exactly the ‘Latin rights’ which Dionysios would have included if he had had any idea what he was talking about.<sup>90</sup> A more sympathetic reading is attempted by Michel Humbert, who, putting the idea of *migratio* at the heart of Latin status in the *foedus Cassianum*, carefully reconstructs a relationship to Rome which can be reasonably described as *isopoliteia*, thus sparing Dionysios’ blushes. Whether this reading of *isopoliteia* correctly captures the state of affairs after the *foedus Cassianum*, and whether this is what Dionysios *actually* meant, are quite other questions, however.<sup>91</sup>

The question of the content of the treaty is fraught with difficulty, even before one factors in problems of the credibility of evidence relating to the early fifth century as a whole. Fortunately our purposes do not require us to cut the Gordian knot, only to form as much of an idea of probabilities on the earliest phases of the ‘Latin right’ as will allow us to attempt the best (or least problematic) contextualisation of rights of migration (and consequent enfranchisement). On balance, what seems to emerge from the foregoing is that there are some grounds for thinking that *commercium* may have featured in the treaty as a newly established

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longer where it could have been seen (although perhaps not read), offered ample scope for unfalsifiable claims based on purported content.

<sup>89</sup> E.g. DE MARTINO 1973, 75; SALMON 1982, 5 n. 18.

<sup>90</sup> Dionysios’ concept of *isopoliteia* as applied to the Latins has been variously discussed: as a misunderstanding: MOMMSEN 1887b, 231 n. 1; CATALANO 1965, 99 n. 20; BELOCH 1926, 196; MANNI 1947, 32 (the exercise of *conubium* and *commercium* in relation to Roman citizens); DE MARTINO 1973, 73-8 (*conubium* and *ius migrandi* not specifically attested but credible; *ius suffragii*, however, impossible; again Dionysios is confused); an invention: FRACCARO 1934, 197-8 = 1956, 105 = 2021, 101; BERNARDI 1973, 29-30 (anachronistic); for full discussion, see also WERNER 1963, 443-67 (arguing for a number of implausibilities).

<sup>91</sup> HUMBERT 1978, 85-143, esp. 98-122.

(or formalised) right. Further it would seem odd for there to be no provision for *conubium* between Latin peoples (including Romans) in the fifth century; as we shall see, consideration of events in 338 *may* lend some support to this idea. The institutions of *exilium* and *postliminium* are probably older than the Cassian treaty as well,<sup>92</sup> and it would also be strange of the treaty made no mention of how they were affected (or not) by the new arrangements. As to anything to which the name *ius migrationis* might be applied, there is nothing in the (imperfect) evidence for the *foedus* itself to suggest its existence.<sup>93</sup> As we have seen, this has not stopped scholars arguing for just this outcome. If not now, then when?

#### 4. 4. *The Settlement of 338.*

Many scholars sceptical of the Cassian Treaty as the origin of the *ius Latii* have naturally been drawn to the settlement which followed the Latin War, in 338 B.C. The Cassian treaty was not suspended or revoked by either the war, or the new settlement which followed it; and Cicero not only states that it was preserved as an artefact in the Comitium, but implies that in some way it still underwrote privileges granted to Latins, at least down to the Social War (see sect. 4.3, above). Nevertheless, revolt against Rome could be seen as a rejection of, or withdrawal from, the *foedus Cassianum*, and we should not assume that its provisions simply continued to apply willy-nilly after 338 as they had before. After all, some Latin communities ceased to be Latin, being incorporated into the Roman *res publica*, mainly as *municipia*. The Latins seem to have been divided into two groups: (a) the Latin colonies, which now became foundations of Rome alone (since no Latin League any longer existed as a joint partner), and thus dependent on Rome; and (b) a few Latin cities which became allied to Rome via individual *foedera* of their own (essentially, Tibur, Praeneste and Cora). In both cases, bilateral arrangements between Rome and individual Latin cities would necessarily have cut across the provisions of the *foedus Cassianum*, although the latter probably continued to apply in some particulars, *either* through incorporation of its terms into the *leges* (charters) of the Latin colonies, or the *foedera* with other Latin cities, *or* by a specific clause stating that there was no derogation from those terms in the later charters or treaties, or both. Notwithstanding these

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<sup>92</sup> ‘*exilium* was an old practice’ (OAKLEY 1997, 339).

<sup>93</sup> CAPOGROSSI COLOGNESI 2000, 73 n. 6, in support of his claim that there existed no provision for any *ius migrationis* in the *foedus Cassianum*, cited Dion. Hal., 7. 18. 3: in 492, in the context of continuing disputes between the patricians and plebeians, some neighbouring cities offered to take in any Romans who wished to emigrate, offering citizenship and other benefits (considerable numbers took up the offer, although some returned to Rome when the domestic situation improved). This passage does seem flatly incompatible with the existence of a right to migration being included in the *foedus Cassianum*.

qualifications, it seems that the settlement of 338 allowed for, indeed entailed, a ‘rebooting’ of Rome’s relationship with the Latins, including their rights with regard to Rome. As Cornell states, ‘Latin status ceased to have a distinct ethnic or legal significance, and came instead to depend on possession of legally defined rights and privileges that could be exercised in dealings with Roman citizens’.<sup>94</sup> I would also argue that it was from 338 onwards that the term *nomen Latinum* came to apply only to existing and future *coloniae Latinae*, although it should be said that this is far from being a universally accepted conclusion.<sup>95</sup>

338 would thus, *prima facie*, seem to be a good place to start looking for the origin, or the reconfiguration, of any privileges and rights which we might think the Latins enjoyed in the Middle Republic in their relations to Rome. We do not have to look far for scholars locating the ‘Latin right’, migration included, in this context, rather than in that of 493. Thus Fraccaro argued that it was an original feature of the post-338 settlement; more specifically he saw it as a concession to Romans who enrolled as settlers in a Latin colony. On this view, although by enrolling they lost their Roman citizenship, they would be allowed to return to Rome later in life. Yet this explanation would imply that Latin colonists not originally from Rome did not have a *ius migrandi*, which seems unlikely, and in any case, migration between Latin cities is very likely to have remained possible. If something which we could call a *ius migrandi* emerged, now (or even later), one *might* perhaps make a case for seeing it as a replacement for the Latins of the older reciprocal rights of *exilium* and *postliminium*. These latter remained in place between Roman and Latin communities outside the new *nomen Latinum*, as at Tibur and Praeneste; they were extended to Neapolis in Campania in (probably) 326; and later (in the Hannibalic War) at least one Etruscan community, Tarquinii, was given the right to accept individuals exercising the right to *exilium*.<sup>96</sup>

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<sup>94</sup> Discussions of the settlement after the Latin War include, but are not limited to: HUMBERT 1978, 162-207; CORNELL 1989, 360-8; ID. 1995, 347-52 (quotation at 351); OAKLEY 1998, 538-59; CAPOGROSSI COLOGNESI 2000, 80-101; BRADLEY 2020, 299-303.

<sup>95</sup> For the view adopted here that the post-338 the *nomen Latinum* was limited to the colonies then existing or founded thereafter, thus excluding the *prisci Latini* (with whom, however, they would have shared certain cults), cf. SALMON 1969, 50-3, 173, nn. 61-2; BROADHEAD 2001, 87, 89 (cf. ID., 2003, 142), noting that the strategic importance of the demographic health of the colonies, not all Latium, was important to Rome; *contra* CASTELLO 1958, 221; TOYNBEE 1965, I, 249-58; SHERWIN-WHITE 1973, 103-4; HUMBERT 1978, 102-5; OAKLEY 1998, 567-8. That the *nomen Latinum* included all Latins (and Hernici) is not impossible, but Liv., 32. 26. 18 does not, as is often claimed, support that thesis. Latin colonies existing in 338 and rebooted as the core of the new *nomen Latinum*: Ardea, Circeii, Norba, Setia, Signia.

<sup>96</sup> FRACCARO 1934, 197-9 (with criticism of Mommsen’s ‘nationalist’ reading of ‘primeval’ shared Romano-Latin rights), 206-7 = 1956, 103, 105-6, 113 = 2021, 101, 108-9, assuming that the criteria for migration recorded by Livy under 177 (see sect. 6, below) were original rights of the post-338 Latin colonies (but see SHERWIN-WHITE 1973, 34; BROADHEAD 2001, 76; TARPIN 2014, n. 25 for a critique); so too already LANGE 1879 II, 127-8; BELOCH 1926, 194-6 (bringing arguments against a pre-338 date); DE SANCTIS 1929, 238; cf.

The *ius suffragii ferendi* (the right of Latins – probably already resident in Rome as *incolae* – to vote in a tribe selected by lot in Roman elections and trials) has also been included in reconstructions of the settlement of 338, by those who doubt the validity of associating this right with the *foedus Cassianum*; later dates have also been advocated. The exercise of the *ius suffragii ferendi* is attested once under the Republic, in 211 B.C., where the selection by lot of a tribe for Latins to cast their votes in the *concilium plebis* (in a *iudicium publicum*) is mentioned by in passing. The attestation, in the *lex Flavia* from imperial Spain, of a similar practice allowing *incolae* to vote in elections in Latin *municipia* supports the idea that Latins also possessed such a right in republican elections. The possession of such a right by *resident* Latins has similarities to cases in the Greek East where, given an agreement of *isopoliteia* between two cities, the citizens of either city who had emigrated to the other, but chosen not to take up the full citizen rights open to them there, enjoyed various privileges.<sup>97</sup>

Again, however, the evidence is not what we would wish. A degree of inference is necessary given the negative character of what we are told: most of the evidence explicitly connected to the question of rights in the wake of the Latin war, and after the revolt of the Hernici at the end of the fourth century, speaks to those which were removed as punishment, not those which were granted under the new settlement. Livy (8. 14. 10) speaks of *ceteri Latini populi* being deprived of *conubia, commerciaque et concilia inter se* in 338; he means, as his own account shows, the Latin communities other than Lanuvium, Aricia, Nomentum, Pedum, Tusculum, Velitrae, Antium, Tibur and Praeneste. The *concilia* here are obviously meetings,

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TIBILETTI 1950, 213-14 = 2007, 157-8; ID. 1953, 49. n. 14 TAYLOR 1960, 107-8 (implicit); KASER 1967, 58; SALMON 1969, 51-4, 173 ; cf. GABBA, 1989, 217-18; LAFFI 1995, 51-2 (extended to all Latin colonists and other Latins; then to all allies by the end of the third century); ID. 2017b, 91-2 (agnostic about whether Livy's *lex* restricted a so-called *ius migrationis*, or in fact was identical with it; introduced in any case after 338 and aimed at those who had given up Roman citizenship to join a Latin colony, later extended to Prisci Latini); ROSELAAR 2019, 129. Arguments against 338 as the date: HUMBERT 1978, 98-122. *exilium*: Pol., 6. 14. 2 (Neapolis), 8 (Tibur & Praeneste); Liv., 9. 30. 5-10 (*tibicines* in Tibur), cf. Ov., *Fast.* 6. 651-92 ; Tarquinius: Liv., 26, 3, 12; cf. BISPHAM 2007a, 133; TARPIN 2014, 164.

<sup>97</sup> Liv., 25. 3. 16; with BADIAN 1972, 16-20; *lex Flavia* ch. 53; see now RUSSO 2020; arguably C. Gracchus' plan to extend voting rights to non-Latin *socii* (App., *BC* 1. 23. 98-9) presupposes the possession of such a right by the Latins, but that conclusion is not inevitable. Dion. Hal., 8. 72. 5-6 is, despite the optimism of HUMBERT (1978, 99) not relevant: see BISPHAM, forthcoming. See also TAYLOR 1960, 107 n. 19; SALMON 1969, 52-3; SHERWIN-WHITE 1973, 35, 100. An early date for the introduction of the *ius suffragii ferendi* has been doubted by, among others, ROSENBERG 1920, 350-1 (not earlier than 287/6); cf. McDONALD 1944, 12 n. 6 (given to the 'XII colonies' founded from 265 onwards in recompense for the (supposed) restriction of the *ius migrandi*, on which see below, sect. 4. 5); BERNARDI 1947; DE MARTINO 1973, 75. For privileges in Greek cities see HUMBERT 1978, 130-6, although note that these are all financial or social, and not political.

political or religious, held in common by the Latins between themselves; *conubium* and *commercium* must be between themselves too, otherwise there would be no point in taking them away, but it is not clear whether such *conubium* or *commercium* also included Rome as well. In any case, as Sherwin-White noted, this is good evidence that the Latins had both these rights reciprocally with each other prior to 338; these could have existed independently of the Cassian Treaty, which seems to have dealt with relations between Rome and the Latins, as opposed to interfering in relations between Latins. Nevertheless, the proposition that Latins had such rights prior to 338, but that they were not extended to include relations with Romans, either in 493, or between then and 338, seems unlikely.

After the revolt of the Hernici was suppressed in 307/6, Livy tells us (9. 43. 23-4) that the loyal peoples of Aletrium, Verulae and Ferentinum had their own laws returned to them, and *conubium inter ipsos* – this last they retained alone of the Hernici for some time. On the other hand, the rebel community of Anagnia was enfranchised without the vote; *concilia* and *conubia* were taken away from its people, and its magistrates forbidden anything other than oversight of *sacra*. The *conubium* retained by the loyal Hernici is *inter ipsos*, with no mention of reciprocal inter-marriage rights with Romans. As for the Anagnini, the *conubium* taken away is not that with Romans, given that they became Romans by incorporation, and could thus legally marry other Romans; it can only be the right to inter-marry which the other Hernican communities still enjoyed. It seems likely that *conubium* between Hernicans and Romans was not at issue here, and the most likely explanation is that it did not exist, although this cannot be definitively proven on the basis of this passage. Note also that there is, unlike the case of the Latins, no mention of *commercium*, and, indeed, Livy's words give no hint that there existed any mutual rights of *commercium* between Hernicans and Latins.<sup>98</sup> One might, then read these passages as showing that the Latins had more rights than the Hernici, rather than the same ones, as often assumed. One might perhaps say that Livy at least does not rule out the assumption that there were reciprocal rights pertaining to *conubium* and *commercium* between Romans and Latins already in 338. Still less persuasive is the idea that the Hernici all enjoyed *conubium* with Romans. Above all, for our purposes, there is no mention of any right to migrate to Rome and acquire the citizenship by doing so.<sup>99</sup>

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<sup>98</sup> SHERWIN-WHITE 1973, 33; see also OAKLEY 1997, 338-9; ID. 1998, 541-2; BROADHEAD 2001, 81-3; OAKLEY 2005, 567-8; TARPIN 2014, 162 (surely, though, *conubium* between Latin cities was not abolished in 338?), 168.

<sup>99</sup> Survey of debate: BROADHEAD 2001, 74-6, 87. He perhaps stretches the point in stressing the difference between *migratio* and the other rights of association mentioned: *conubium* between members of communities was likely to lead to individuals moving from one town to reside in another, for example.

#### 4. 5. *The Twelve Colonies.*

The substitution of 493 with 338 as a date for the introduction (or perhaps reorganisation) of the ‘Latin right’ is not, then, without its drawbacks. For those not content with either date, the absence of Livy between 292 and 219 B.C. offers a convenient *lacuna* within which to locate measures or reforms which are known but undated, or assumed but undate; such hypotheses lack an evidential basis, but are conveniently unfalsifiable. Since Livy for 187 attests migration by Latins to Rome at some scale (below, sect. 5), and under 177 mentions an existing law governing the conditions for migration (below, sect. 6), and since one would be within one’s rights to be sceptical about locating either the basis for the practice attested in 187 or the law mentioned under 177 in either 493 or 338 B.C., it is unsurprising that some scholars have wished to locate the origins of the *ius migrationis* in this period. Further, since Livy can be (and has been) taken as attesting to a restriction, or a denial, of the right to migrate in 177, some scholars have made this apparent limitation part of a wider narrative of the restriction of the supposed right to migrate. 268 and 265 are the dates often reached for in this context, on the basis of a single sentence of Cicero.<sup>100</sup>

Cicero argued in 69 that his client Caecina, despite coming from the town of Volaterrae, which had suffered a punitive removal of its Roman citizenship by Sulla in 81, was still able to enter into an inheritance left to him by a Roman citizen. This was because Volaterrae has been given the ‘Arimate right’ (*ius Ariminensium*) by Sulla as a legal status replacing the lost Roman citizenship; as Cicero claims, everyone knows that the people of Ariminum, like those of the XII colonies, could inherit from Roman citizens, despite being Latins.<sup>101</sup> The *ius* of

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<sup>100</sup> For the idea that the *ius migrandi* is a regulation going back to a Latin settlement at the time of the Pyrrhic Wars (but not linked to the *ius Ariminense* attested in Cicero): ROSENBERG 1920, 345, 356-63.

<sup>101</sup> Cic., *Pro Caec.* 102 (*deinde quod Sulla ipse ita tulit de ciuitate ut non sustulerit horum nexa atque hereditates. iubet enim eodem iure esse quo fuerint Ariminenses; quos quis ignorat duodecim coloniarum fuisse et a ciuibus Romanis hereditates capere potuisse?* (‘and then because Sulla himself passed a law about citizenship, to the effect that he did not take away contractual guarantees and inheritances from these men. For he orders them to be of the same legal status as were the people of Ariminum; who is there who does not know that they were of the twelve colonies, and were able to receive inheritances from Roman citizens’)). On *nexa* here, and on the legal aspects of Cicero’s statement: LURASCHI 1979, 281-92; TARPIN 2014, 163; *cf.* Cic., *Top.* 28; *Har. Resp.* 14; Varr, *Ling.* 7. 105; Fest., *s.u.* ‘Sanates’, 426, 428L; *de controversiis agrorum* 20. 7 Campbell; CRAWFORD 1996, II, no. 40, I. 5, p. 555. On this much debated right, see for instance MOMMSEN 1887b, 623-4; BERNARDI 1947 (who locates the introduction of almost all the positive rights pertaining to the *ius Latii* in the context of a supposed improvement of status for Latin colonies founded in 268 or later); *cf.* ID. 1973, 76-91; for effective counter-arguments, see CATALANO 1965, 96-126; SALMON 1969, 92-4; *cf.*; GALSTERER 1995, 80-2; also LURASCHI 1979, 225-35; COŞKUN 2009a, 60-70, 129-49.

these Twelve colonies has been interpreted in fully as many ways as Cicero's passing reference allows. For example, Mommsen thought that the Twelve were Ariminum and the eleven founded after it,<sup>102</sup> and that the condition of these colonies was inferior in respect of the legal rights to their predecessors. Salmon thought (initially) that they were twelve of the eighteen loyal Latin colonies, who in 209 continued to supply troops to the Romans, when twelve further colonies declared they could not do so (Liv., 27. 9. 6 - 10. 10; see further below and sect. 5. 5).<sup>103</sup> Of these eighteen, the twelve founded down to 268 (including Ariminum) were not, on his view, punished like the refractory ones; the six remaining colonies, founded between 268 and 218, he thought were given in 265 a limited *ius migrandi*, with the limitation designed to keep their populations stable. In a similar vein McDonald argued that the existing *ius migrationis* (for which he offered no original date) was curtailed from 265 onwards for colonial foundations after that point. Salmon later changed his mind, identifying in the XII the colonies originally suggested by Mommsen, but arguing that the *ius Ariminense* entailed an increase in privilege rather than a reduction in rights.<sup>104</sup>

While it seems likely that the *ius* of the XII colonies was indeed favourable, rather than punitive, there is no hope at present of understanding its content, beyond Cicero's brief statement, and less still of being able to say with any certainty when and why it was introduced. The existence of the *ius Ariminensium* does however have one important consequence, since it implies that Latins who were not citizens of the XII colonies did not have the same rights in contractual guarantees and inheritances which the Ariminenses and the citizens of the other eleven colonies held. By extension it is unlikely that the *iura* held by different Latin colonies or groups of colonies were all identical with each other in all respects. Specific privileges or constraints linked to particular foundations or groups of foundations were probably reflected in differences and modulations in their separate *leges* (charters). To this point we shall return. In any case, there are no positive evidential grounds for saying whether anything like a *ius migrationis* was affected or not by the creation of the legal category of the XII colonies.

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<sup>102</sup> But Luca would be a thirteenth Latin colony, if really a Latin foundation: Vell. Pat., 1. 15. 2; TARPIN 2014, 164 n. 26, 173 n. 82.

<sup>103</sup> On the recruitment debacle of 209, and the punitive measures imposed in 204, see LAFFI 1990, 285-7; ID. 2017a, 52. The loyal colonies were named and thanked in the Senate and before the People: Liv., 27. 10. 9.

<sup>104</sup> MOMMSEN 1887b, 637-9 (progressive abolition down to 95 B.C.); SALMON 1936, 55-61 (265 B.C., but note ID. 1969, 92-4 for a revised view, with restriction beginning in 187); MACDONALD 1944, 11-12; CASTELLO 1958, 222 (204 B.C.); LAFFI 1995, 52, 76-7 (modifying LAFFI 1990, 295-6); cf. GALSTERER 1995, 82 n. 12; even the judicious OAKLEY (1998, 541) suggests in passing that the right suffered restriction after 338. Sceptical discussion: BROADHEAD 2001, 76-7, stressing the thinness of the evidence.

In 204 punitive measures were imposed on the twelve recalcitrant Latin colonies who had declared themselves unable to supply troops in 209 (above).<sup>105</sup> This year has been argued to be another possible context for a measure limiting the *ius migrationis*; we shall discuss this hypothesis further (sect. 6. 6, below). Other positions are more radical. Coşkun has attempted to show that the *ius migrandi* in fact did not entail any right to citizenship, but was just an informal recognition of the practice of moving from a Latin community to Rome.<sup>106</sup> Above all, one should not lose sight of the very limited volume and unsatisfactory nature of the evidence, indeed one might say the absence of *any* evidence (as opposed to inference), earlier than the two passages of Livy to which we now turn (sect. 5 & 6, below). On such grounds Will Broadhead has dismissed the existence of any privileged status shared between Romans and Latins, involving a universal and unrestricted right to migrate.<sup>107</sup>

### 5. *The Crisis of Latin Migration I: 187 B.C.*

Two passages of Livy are revealing about the politics of Latin migration in the middle Republic, and suggestive about the limits and opportunities surrounding formal movement, legal or customary, of Latins to Rome.<sup>108</sup> The first dates to 187:

[4] *legatis deinde sociorum Latini nominis, qui toto undique ex Latio frequentes conuenerant, senatus datus est. his querentibus, magnam multitudinem ciuium suorum Romam commigrasse et ibi census esse, [5] Q. Terentio Culleoni praetori negotium datum est, ut eos conquireret et, quem C. Claudio, M. Livio censoribus postue eos censores ipsum parentemue eius apud se censum esse probassent socii, ut redire eo cogeret, ubi censi essent. [6] hac conquisitione duodecim millia Latinorum domos redierunt, iam tum multitudine alienigenarum urbem onerante.*

[4] Then to ambassadors of the allies of the Latin name, who had assembled from every corner of all of Latium in great numbers, a hearing was given by the senate. They complained that a great multitude of their own citizens had moved their homes to Rome, and been registered in the census there; accordingly, the business was passed to [5] Q. Terentius Culleo, a praetor, with instructions that he should search out these men, and, of whomever the allies should have proved that, in the censorship of C. Claudius and M. Livius, or after those censors, he, or his father, had been registered in the census in the allied community, the praetor should compel that individual to return to that community, where he had been registered in the census. [6] In the course of this search, twelve thousand of the Latins returned to their homes; already at that time the multitude of those born in other places was burdening the city.<sup>109</sup>

<sup>105</sup> Liv., 29. 15; Dio Cass., 17, fr. 57. 70.

<sup>106</sup> COŞKUN 2009a, esp. 24, 156-200.

<sup>107</sup> BROADHEAD 2001, 82-3, 87, 89; lack of evidence: LAFFI 2017b, 91 n. 17 (although he disagrees with Broadhead's conclusions: *ibid.* 92 n. 18).

<sup>108</sup> My thinking on these episodes has been profoundly marked by a piece published in 1995 by Umberto Laffi; much of what follows is in dialogue with, and seeking to complement, that penetrating analysis: LAFFI 1995.

<sup>109</sup> Liv., 39. 3. 4-6. The text is that of Madvig's Teubner (1863); the translation is my own.

Livy informs us that the allies of the Latin name all sent embassies to Rome (*qui toto undique ex Latio frequentes conuenerant*, 39. 3. 4). I take Latium here to mean ‘Latin colonies’; note that in 177 it seems to have been the Latin colonies specifically who importuned the Senate (Cic., *Brut.* 170; see below, sect. 6. 1).<sup>110</sup> They wished to complain that many of their own citizens had not only emigrated to Rome, but had also had themselves registered there at the census. On the basis of our analysis of *commigrare* and related terms above, it seems that Livy understood, or imagined the Latins to understand, that the movement of these Latin citizens to Rome was intended to be a permanent or long-term movement, implying an intention to put down roots in the new community. That putting down roots meant obtaining Roman citizenship is made certain by the detail *ibi censos esse*. If a Latin had simply moved to Rome for a few years, and lived there as an *incola*, that would have been a different matter; most importantly it would have meant that that Latin could, nominally at least, be called on to provide services, above all military service, for his home community. In the spirit of the old arrangements about changes of citizenship in archaic Latium, it remained theoretically possible for a Latin voluntarily to renounce this Roman citizenship and return to his own community on a permanent basis (*via postliminium*), but we may seriously doubt whether many of these migrants intended any such thing.<sup>111</sup>

### 5. 1. ‘*per migrationem et censum*’: *Exchange of Citizenship or Double Citizenship?*

It would be reasonable to assume that enrolment in the Roman census, and the consequent adoption of Roman citizenship by a Latin, entailed a corresponding renunciation of the citizenship of the Latin colony. Rights like *exilium* and *postliminium*, as we have seen, assumed that normally (but not inevitably) an exile or *émigré* would lay aside his initial

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<sup>110</sup> LAFFI 1995, 45-6, 50, 52, 57, 64f., 73, 77 (against ID. 1990, 295-6), suggested that there is no reason not to see this passage as referring to all allies (and so too with the expulsions of 177, below); he advanced Livy 43. 12. 3-6 as evidence that *Latini* can be used to denote Latins *and* other allies; but the fact that Livy mentions *Latium* (3. 4) and *Latini* (3. 6) strongly suggests that he meant Latins only. Already MOMMSEN, 1887b, 637 n. 2, had noted the ambiguity, but adduced good reasons in Livy’s text to support the view that only Latins were meant; *cf.* KREMER 2006a, 33; BRISCOE 2008, 216; ID. 2012, 61, 63, *cf.* 426, and parallels there cited); LAFFI 2017b, 87, 91, changes his mind and now thinks only Latins were in question. TARPIN 2014, 170, n. 70, argues that only the geographical area of Latium is meant, but there is no evidence that cities like Cora and Tibur had to bring their census returns to Rome, as his argument requires. For more discussion of the application of the phrase *socii nominis Latini* see BROADHEAD 2001, 71-4 (inclining slightly towards Latins); and HUMBERT 1978, 112 and n. 81, arguing for Latium as meaning *all* Latins in this case. Importantly, but controversially, I take *nomen Latinum* to denote all Latin *colonies*, not all Latins (see n. 95, above for this distinction).

<sup>111</sup> Nonetheless, it is not certain that all those Latins who obtained the citizenship between 187 and 177 (below, sect. 6) chose to move to Rome, and some of those who had obtained it prior to 187 may have elected to remain as resident (Roman) aliens in their own communities after registering at the Roman census.

citizenship and register as a citizen in the new community, with the option to reverse that change in the case of return to the community of his birth.<sup>112</sup> This strongly implies that the acquisition of cumulative citizenships was not possible. One had to be a citizen of a community, and thus for those who moved to another community, and were not content to be *incolae*, this entailed *mutatio ciuitatis*, swapping one citizenship for another (assuming that there was a pre-existing right to such an exchange, and that the immigrant registered in the appropriate way). Nevertheless, it is worth asking whether this is what was happening in the case of the emigrating Latins. It is almost universally assumed that they gave up their Latin citizenship; but since this is an assumption unclouded by positive evidence in support, we should at least ask there was not, in fact, some kind of double citizenship operating in these cases?

Cicero, as is well known, was quite adamant that Roman citizenship was incompatible with other citizenships, and he speaks of this as of an immutable and timeless legal certainty.<sup>113</sup> However, as Licandro has recently argued, Cicero's apparently inflexible rule can be plausibly read as one particular position within an ongoing debate in the first century. This debate was about how Rome should adapt to the complexities of a variegated empire, in which for a growing number of individuals there was a need to recalibrate the relationship between the abstract demands of Roman legal status and the importance of being able to play a meaningful socio-political role in the town of residence, which in an increasing number of cases lay outside Italy. Cicero himself, in the *de legibus*, acknowledges a similar set of issues in Italy in the same period, namely the problem of how to bring Roman identity (within the *res publica*) and local identity (within the town of origin) into a comprehensible and rational relationship.<sup>114</sup> Indeed, Cicero himself effectively admits that there were in his day *de facto* citizens of Rome and another community (Athens).<sup>115</sup> He argues that such men have acted as if they could hold two contemporaneous citizenships, but were ignorant of the proper legal position, which, taken literally, meant that by accepting Athenian citizenship they had, unbeknownst to themselves, necessarily repudiated their Roman citizenship. Those who know the law will not commit this

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<sup>112</sup> For an example of such a renunciation in the arrangements for *isopoliteia* between Hierapytna and Praisos in a Hellenistic decree (early third century): SCHMITT 1969, no 554, ll. 4-5; cf. HUMBERT 1978, 138.

<sup>113</sup> Cic., *pro Balb.* 28-31, 53-5; *pro Caec.* 100; Nep., *Atticus.* 3. 1 (another text which shows there was disagreement on this question: LICANDRO 2019, 84-7). Modern debate includes but is not limited to: ARANGIO-RUIZ 1950; JOLOWICZ & NICHOLAS 1972, 71-4; SHERWIN-WHITE 1973, 29-30 (citizenship & residence), 32-7 (*exilium, postliminium, ius migrandi*), 291-306; BRUNT 1982, 136-47; MOURITSEN 1998, 87-92; CAPOGROSSI COLOGNESI 2000, 178-84; GENOVESE 2010; PALMA 2014; cf. LURASCHI 1978; TARPIN 2014, 173-4.

<sup>114</sup> Cic., *de leg.* 2. 5 (two *patriae*); LICANDRO 2019, 87-94; cf. DENCH 2005, 132-6.

<sup>115</sup> Cic., *pro Balb.* 30.

mistake – it is practically possible, but legally indefensible (in his view) to hold two concurrently valid citizenships.

... *uidi egomet nonnullos imperitos homines nostros ciuis Athenis in numero iudicum atque Areopagitarum certa tribu, certo numero, cum ignorarent si illam ciuitatem essent adepti, hanc se perdidisse nisi postliminio reciperassent. peritus uero nostri moris ac iuris nemo umquam, qui hanc ciuitatem retinere uellet, in aliam se ciuitatem dicavit.*

... I myself have seen some ignorant men, citizens of ours, enrolled at Athens in the category of jurors and members of the Areopagus, in a particular tribe, in a particular group, since they do not know that if they had acquired that [Athenian] citizenship, they had lost this [Roman] one, unless they should recover it by *postliminium*. But no one who is an expert in our custom and law has ever, if he wished to retain this citizenship, attached himself to another citizenship.

There has, indeed, been some exploration of possible co-existence of Roman and non-Roman citizenships in certain cases, and of a gradual blurring of once more rigid distinctions in the volatile century after the Social War, and such an enquiry can be pushed back even earlier, as Luraschi suggested. Concurrent dual citizenships probably start to become significant as a juridical reality from the middle of the first century B.C. onwards, seen first in unambiguous form with the grant of full citizenship to Seleukos of Rhosos in 42 B.C.<sup>116</sup>

Cicero frames his answer to the issue raised in the *de legibus* in terms of the hierarchical overlapping of two *patriae*. Building on Licandro's analysis, one might ask whether, at least in the aftermath of the Social War, some were not thinking about the same set of issues in terms of two *citizenships* instead: for example the *ceiues Frentan[ei q]uei in Sicelia colunt* (the Frentane citizens who farm in Sicily), probably dating to the generation after the Social War. In that case, one might perhaps imagine that the position Cicero adopts (absolute incompatibility of two citizenships) was both an ideological and a practical consequence of the rather fluid and uncertain situation obtaining after the Social War.<sup>117</sup> On this view, for conservative Roman élites, the enfranchisement of Italy was not done simply to add another citizenship to the existing one, bringing an extra layer of legal privileges in its wake, but rather to subsume the local citizenship within the Roman, so that while, in the language of the *de legibus*, there could be two *patriae* (of unequal status), there could not be two concurrent citizenships. Thus from this reactionary Roman perspective the new citizens were absolutely

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<sup>116</sup> Seleukos of Rhosos: SHERK 1969, no. 58 = SHERK 1984, no. 86. Nuanced views on double-citizenship: DE VISSCHER 1938; SCHÖNBAUER 1939; DE VISSCHER 1944; ID., 1945 (= ID., 1949a); ID., 1947 = 1949c; ID., 1956; LURASCHI 1979, 51-2, and *cf.* ID., 1983; TALAMANCA 1991; LURASCHI 1996, 48-67 (with BARBATI 2012; ID., 2013); RAGGI 2004; RAGGI 2006; TARPIN 2014, 178-9, 189; LICANDRO 2019, 74-111.

<sup>117</sup> *ceiues Frentani*: AMPOLO 2016; *cf.* BISPHAM 2020, 42-3; *cf.* LICANDRO 2019, 97-8 on Q. Mucius Scaevola's position on *postliminium* (*D.* 49. 15. 5), suggesting the Social War as the possible context for this discussion.

not meant to have their cake and eat it; whether this vision of enfranchisement was what Italians understood by the extension of the citizenship in the immediate aftermath of the war may be doubted, and it probably took time for the new vision enunciated by Cicero at the end of the Republic to achieve widespread acceptance. If this fiercely hostile attitude to double-citizenship should be reframed as part of the complex negotiation of rights and status which followed the Social War, we could then reasonably ask whether that same level of hostility to the idea was in fact operating in the generations before the Social War, when Italy did not face similar imperatives to prevent possible incoherence and fracturing of a new political order (which is not to say that dual citizenship was highly compatible with the pre-Social War political order in Italy). In other words, were Roman citizenship and other citizenships as mutually exclusive in the second century as Cicero had argued that they were (legally) in the first?<sup>118</sup>

At least one example of the grant of another citizenship to a Roman can be found, which does not seem to negate his Roman citizenship. In 170 B.C. Argos decreed in favour of Cn. Octavius (*cos.* 165) that he be '*proxenos* of the *polis*, and benefactor and citizen, both himself and his descendants, and that there should be for him the right of purchase and ownership of land and house, and security and immunity and inviolability ... and the same privileges as for those who have benefitted the *damos* the most'.<sup>119</sup> Yet there was zero likelihood, at most, of the noble Octavius arriving to add himself to the citizen-lists of Argos, and, still less, of his finding himself then enrolled in a tribe or phratry, or sitting in judgement in the Argive courts. The grant was made, but it was the honour, not the reality of the conferral of citizenship which counted in this case, and the Ciceronian 'rule' would not be infringed. A generation later the Gracchan *lex repetundarum* offered the alternatives to the non-citizen most responsible for a successful conviction either Roman citizenship (taking the tribe of the condemned defendant) and *uacatio militiae* or a grant of *prouocatio* and *uacatio militiae*. It is often understood that what is set out here took the form of a binary alternative: the citizenship was offered to the non-Roman who played the most important part in the conviction, but if he did not choose to take this up, he would receive *prouocatio* and exemption from military service. This in turn seems to presuppose that at this point there was no possibility of double-citizenship in Roman

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<sup>118</sup> Cf. BISPHAM, forthcoming. The disputes (Cic., *pro Balb.* 21) at Neapolis and Herakleia over whether to become *fundi* of the *lex Iulia* in 90 are, however, harder to explain on the assumption that local and Roman citizenships might co-exist in a relationship of equivalence ('since the majority in those communities preferred the freedom of their own treaty to (our) citizenship').

<sup>119</sup> Octavius: MORETTI 1967, I, no. 42 = SHERK 1984, no. 22; HUMBERT 1978, 138.

law; but not all scholars have taken this view, and the surviving text of the law does not explicitly say that a citizen of an allied community who takes Roman citizenship cannot retain his original local citizenship as well (or that he can). The Latins who were, as we shall see, repatriated in 187, were (most if not all) registered both in the Roman census, and in a Latin colonial census; it would seem premature to dismiss out of hand the idea that, *de facto* if not *de iure* there was some sort of double citizenship operating in their case (see sect. 6. 8, below).<sup>120</sup>

There are of course, difficulties with such a view. As we have seen, the general assumption underpinning *mutatio ciuitatis* in Italy, at least where Roman citizenship was one of the legal statuses involved, is that if taking a new citizenship was to have practical effect, and involved change of domicile, it meant renunciation (or at least *pro tempore* suspension) of the existing citizenship. Now, the concern of the Latin communities in 187 seems to be loss of resource, demographic, economic and symbolic, through migration to Rome and enfranchisement. Had it been the case that Roman citizenship could be held concurrently with another citizenship, the ‘new’ Romans would presumably have been able to plead that Roman obligations trumped existing Latin ones, and thus, for instance, they were unavailable for the local Latin levy. But this is not the problem which the Latins wanted solved: they did not ask the Senate to make these ‘new’ Romans take continuing Latin obligations seriously, but to return their citizens to them. There is thus a good case to be made that the emigrant Latins had given up, because they had to give up, Latin citizenship on gaining Roman citizenship. Such renunciation was probably not formal, as it is today, and involved no notification to the community whose citizenship was being renounced – had it been so the Latin communities could have compiled lists of those involved, which they could have passed on to the Roman authorities. Instead, thousands of these *émigrés* were still listed on the Latin census rolls.<sup>121</sup> It was registration in the census of the community of destination which gave formal expression to the change of legal status consequent on migration; the decision to register themselves in Rome was at least a symbolic statement that these Latins from that point no longer saw

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<sup>120</sup> *Lex repetundarum*: CRAWFORD 1996, I, no. 1, ll. 76-9; HUMBERT 1978, 117 & n. 96, argues that the evidence of the *lex repetundarum* can be read to show that Roman and Latin citizenships were simultaneously possible; LAFFI 2019, 174 (assignment of a tribe).

<sup>121</sup> On the census in Latin colonies: KREMER 2006b. LAFFI 1995, 44 and TARPIN 2014, 171, imagine, on the contrary, that the names of those who became citizens at Rome were erased from the Latin census rolls, but this seems to rest on no evidence.

themselves as citizens of their Latin colonies: registration conceptually doubled for resignation.<sup>122</sup>

Yet the evidence remains inadequate for a definitive solution, which is not a prioristic, to the question of whether Roman and Latin citizenships were cumulative or mutually exclusive. A further complication arises from Broadhead's observation that a Latin who registered in one local census, but did not show up at the next, would be treated on the latter occasion as an *incensus*, and subject to flogging in the *comitium* and sale of his property (or worse).<sup>123</sup> Presumably the obligation to leave behind offspring in the community as a precondition for migration (see below, sect. 6) was in part intended to protect the emigrant from this fate; but simply leaving and going to Rome, and obtaining citizenship *per migrationem et censum* might not do so. On the other hand, the attainment of citizenship *per migrationem et censum* would hardly have become a phenomenon known to historians if it rendered those who exploited it liable to be considered *incensi*. One might argue either that registration at Rome led to the *de facto* lapse of Latin citizenship, and thus the liability to be classed as *incensus*, or that a sort of double citizenship would have allowed the Latin to continue making 'offshore' declarations at the Latin census. *Non liquet*; we shall return briefly to this issue (sect. 6. 8, below).

### 5. 2. *The census of 189.*

In any case, by 187 there were very significant numbers of Latins at Rome, and we can assume that very many of these had become citizens by registration in the census. Emigration to Rome may have picked up even before the end of the Hannibalic war (after 204, for instance, by which time Hannibal was pinned down in Bruttium, shortly to be recalled to Africa). With the end of the war, and the demobilisation of some serving contingents, some Latin citizens may have felt themselves absolved from any immediate obligation either to serve again, or to

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<sup>122</sup> For the importance, in the context of a Hellenistic agreement of *isopoliteia* (between Miletos and Seleukeia (= Tralles), 212/11 B.C.) of registration in Seleukeia, see SCHMITT 1969, no. 537, ll. 56-60: only those who *apographesthai can politeuesthai*; cf. SCHMITT 1969, no. 539 (Miletos and Mylasa, 209/8); discussion of other Hellenistic examples at HUMBERT 1978, 130-2, noting the importance of registration in the *apographē* for being a member of units like tribe, deme or phratry, let alone to hold magistracies or priesthoods (of course, not all such texts formulate the need to register in identical ways: at Olbia a Milesian covered by the agreement of *isopoliteia* between the two cities and already resident may only hold a magistracy if he presents himself before the *boulē* and registers in the *apographē* – SCHMITT 1969, no. 408, ll. 7-11 – at which point he loses other privileges previously held, such as fiscal immunity).

<sup>123</sup> BROADHEAD 2004, 322-3; see further below, n. 161, on Latin *incensi*.

remain to defend the Latin *patria*, with a corresponding sense of freedom, and a pull towards Rome.<sup>124</sup> We do not know, however, whether the flow of Latins into Rome was constant, or whether it rather manifested itself in peaks and troughs of movement; as a consequence, we do not know whether some censuses had been particularly ‘targeted’ by recently arrived Latins, or whether all censuses in the previous decade or more had presided over similar levels of registration. As Laffi noted, Livy described census of 189/8 (that is, the one conducted by Flaminius and M. Claudius Marcellus), as *mitis admodum* (quite indulgent).<sup>125</sup> Admittedly, Livy is speaking here specifically of the *lectio senatus* and the review of the *equites*, but Laffi rightly asks whether there were not other species of indulgence, which might extend to not being punctilious in ascertaining whether Latins presenting themselves had fulfilled any criteria for migration from their communities and thus for application for registration in the census.

Plutarch to some extent bears this hypothesis out, suggesting a maximalist attitude to registration; the censors certainly recorded a total of 258, 318 citizens, an increase on the total for the previous census of 243, 704 (tentatively corrected by Brunt from 143, 704). Tarpin makes the attractive suggestion that an attempt was forced on them to remedy deficiencies in the previous census. The censors, Plutarch says ‘admitted as citizens all those who registered themselves, as many as were of free parents; they were compelled to do this by the tribune Terentius Culleo, who acting with contempt towards the aristocrats, persuaded the *dēmos* to decree this’; Terentius was the same man who – as retribution? – would be given by the Senate the task of the *conquisitio* of the Latins to be repatriated in 187 (below, sect. 5. 6).<sup>126</sup> The censors had also taken steps to regularise the condition of the Campani, who had been punished

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<sup>124</sup> It may be relevant in this regard that there is some evidence in the decade or so after the end of the Hannibalic war that Romans were more willing to accept the return of their own citizens, captured in war, through *postliminium*, than during the war, when they had resolutely set their faces against ransoming them: LEIGH 2005, 87. n. 114.

<sup>125</sup> Liv., 38. 28. 1-2 (with LAFFI 1995, 57-8). The ‘mildness’ of the censorship in this regard might, however, be evoked in contrast with the severer census which was to come in 184, in which a larger number of senators were expelled, including some important figures, unlike the nobodies passed over in 189: cf. WALSH 1993, 156. TARPIN 2014, 169, 171, suggests that the *tumultus* of 193, hot on the heels of a standard levy (Liv., 34. 56, with BRISCOE 1981, 136-7) and subsequent heavy recruitment, may have made Latins migrate to Rome in that year to escape local conscription (although had they presented themselves at the Roman census in that year they would have been liable to conscription for the legions, a problem which Tarpin evades by denying that Latin migrants were registered as citizens).

<sup>126</sup> Plut., *Flam.* 18. 2; census figures: Liv., 35. 9. 2 (194/3 B.C.); 38. 36. 10 (189/8 B.C.); see BRISCOE 1981, 156; BRUNT 1987, 13, 71-2; LO CASCIO 2008; BRISCOE 2008, 125-6; TARPIN 2014, 169. The complaisance of these censors when it came to compiling the lists of citizens (no particular discrimination in their registration of free-born males) might imply a contrasting reserve regarding the registration of freedmen, a perennially controversial topic.

after the recapture of Capua, by being left in a juridical limbo in 210: free but not allowed to become Roman or Latin citizens.<sup>127</sup> From this situation the Campani had sought to be released, by petitioning the Senate to decide where they should be registered in the census. The Senate decided that they should make their declarations to the censors at Rome – or, as Livy later notes, they had been ‘compelled’ (*coegissent*, 38. 36. 5) to register at Rome. This was a recognition that they at least had some legal status, rather than being effectively ‘stateless’. It was probably not, though, a restoration of citizen status, as they had to petition in the next year (188) to be allowed to marry Roman wives, and that those who had already done so should have these marriages, as well as any offspring from them, declared legitimate. If their citizenship had been restored by this registration in 189, the first request to the Senate would not have been necessary – in effect they were asking for *conubium*; the need for retrospective validation of marriages and offspring shows that they had been in a juridical limbo. Furthermore they still had no *patria*, as Capua was not an autonomous community any longer; registration at Rome was perhaps a first step to Rome assuming the position of *patria* towards them, one which probably wished already to include them in the levy. In any case, this looks very much like a move in the same spirit of indulgence, relaxing the treatment of disloyal citizens, rather than maintaining a punitive exclusivity towards them. In view of all this it seems plausible that the census of 189 had seen a significant surge in the number of immigrant Latins being added to the citizen rolls. The census of 204/3 had registered 214, 000 citizens, and this total included special enumeration of those serving abroad as well as those making a *professio* at Rome (Liv., 29. 37. 5-6); the real figure for 194/3 cannot be known, but that for 189/8 (258, 318) citizens represents an astonishing increase of over 15% in fifteen years. If, as seems probable, the Campani were not registered as *ciues*, significant growth (always allowing the reliability of the figures, not a given) must be explained in other ways, and registration of Latins across this time period offers one such explanation.<sup>128</sup>

### 5. 3. *Latins at the Roman census: what Happened?*

The role of the censors as gate-keepers to the citizen body, and the attitudes with which they approached this task, thus assume a position of fundamental importance in the process of

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<sup>127</sup> Liv., 26. 34. 6-7, with TARPIN 2014, 164-5, 169-70.

<sup>128</sup> Liv., 38. 28. 4 (189 B.C.), 36. 5-6 (188 B.C.); SHERWIN-WHITE 1973, 211; Brunt 1987, 63-6; BRISCOE 2008, 104 (drawing on the magisterial Oxford DPhil thesis of M.P. POBJOY, *Campania from Republic to Empire*), 123-4; TARPIN 2014, 170, although he thinks the Capuans *were* registered as Roman citizens (rather than *at Rome*), and that there was no significant registration of Latins in 189/8.

migration and integration of non-Romans. Castello noted that the information the censor needed to ensure compliance with any or preconditions laws was hard to come by; thus the motivation, still less the requirement, to investigate every, or indeed any, claim cannot be assumed. This in turn made it very likely that many statements by those presenting themselves for registration would be taken on trust.<sup>129</sup> Rather than being subject to any paper-trail audit, the Latin immigrant may have had to swear an additional oath at the point of making the census declaration, that he had fulfilled all the necessary requirements in order to be able to move permanently to Rome and present himself at the census.<sup>130</sup> Such an oath, added to the census declaration to fulfil a specific supplementary aim, is attested in 169, when the censors announced a *lex* which required *iuniores* who had not already enlisted to swear to their age, and that they would attend at any *dilectus* held during the censorship of the censors then in office.<sup>131</sup> If my guess is right, putative laxness on the part of the censors may (also) have manifested itself in terms of not asking for the oath, or of accepting perjured assurances, or of not taking steps to challenge or investigate suspicious declarations. It seems certain that thousands of Latins must have had their declarations (and oaths, I would argue) accepted at every census between 199 and 187, with 189/8 possibly seeing intensification of such activity.

We might wonder whether, rather than the Latin immigrants simply taking their place in the queue in the Villa Publica with everyone else making the *professio* to the censors, there were not distinct times at which those who were making their first *professio* as citizens (including perhaps freedmen), would come forward to give their details. Gianfranco Tibiletti went so far as to argue that the immigrant Latins who presented themselves at the census for the first time were recorded in in separate special lists, as Latins. Livy offers no help here, although the face-value interpretation of his words is that the normal procedure was followed, and this is what most scholars have assumed.<sup>132</sup> If there was a separate set of lists, the praetor's

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<sup>129</sup> CASTELLO 1958, 226-7; BROADHEAD 2003, 141; ID. 2004, 325-6 (rightly noting that similar issues must have faced the citizen returning to the Roman *ciuitas* via *postliminium*).

<sup>130</sup> Cf. BROADHEAD 2004, 326 (referring to an oath intrinsic to the *standard* census declaration, citing Dion. Hal., 4. 15. 6; CRAWFORD 1996, I, no. 24 (*Tabula Heracleensis*), ll. 146-8), 330 (more like what I am proposing as a *supplementary* oath). What I imagine might have been sworn to could include, for example, that he was not fleeing any criminal investigation, was not *infamis*, not in debt, was not leaving to avoid *munera* in the Latin community; and perhaps most important, that he had left offspring behind him in his community.

<sup>131</sup> Liv., 43. 14. 5. On the importance of sworn testimony in validating official transactions, and its prevalence over documentary proof: GARDNER 1986; cf. BROADHEAD 2004, 324-5, 330. See also below, sect. 6. 7, on Liv., 41. 9. 11-12 (with BRISCOE 2012, 69-72).

<sup>132</sup> TIBILETTI 1961, 241-2, 247-8; cf. HUMBERT 1978, 113; but see LAFFI 1995, 46-7; ID. 2017, 88-9. TARPIN 2014, 171, insists that we do not know where such Latins were listed, but given what Livy says, this seems to be creative *aporia*; at *ibid.* 173 he writes of Latins registered with the censors as *incolae*, but it is hard to see why a five-yearly declaration of being an *incola* would be useful.

investigation in 187 (sect. 5. 6, below) would have been very simple: he would have had to do no more than find and repatriate all the individuals named in a single set of lists; and that does not sound like a *conquisitio*. This, however, does not rule out the existence of separate, specific *times* for individuals in this category to present themselves.

Indeed, the declarations of our Latin *arrvistes* would not have been the same as those of established Romans. Presumably when a Latin presented himself at the census (prior to 187), he could declare property inherited, or purchased (via *commercium*), which lay within the *ager Romanus*, but it was far from inevitable that he would have any such property to declare, still less a *domicilium* in Roman territory.<sup>133</sup> This is to say that the censor would be able, in some cases, to make an informed guess at the point of declaration that the man in front of him was not a Roman. An Ovius (from Fregallae), or a Dasius (from Brundisium), anyone with non-Roman onomastics, might draw attention to his origins simply by declaring his name. Furthermore the Latin, a first-time participant in registration, would probably be in his forties at least if he had left a son behind in the Latin city (see below, sect. 6); those who had only one son would not therefore declare any male offspring to the censors. But the censor would be able to do more than guess: the Latin making his first *professio* would not, as the census declaration required (at least by the end of the Republic) be able to declare his tribe.<sup>134</sup> Thus a number of factors combined which would almost certainly reveal this man, in a queue of Roman citizens, as the one who was not a Roman citizen.

Assuming that the censors accepted the Latin immigrant's right to make a *professio*, they would then place him in a class and a century on the basis of his property declaration, as well as recording his wealth and his dependants (if any). In Cicero's proscription for the ideal laws of Rome in the *de legibus*, one of the things which censors were to do was to distribute the citizens among the tribes.<sup>135</sup> Cicero's laws were, as Quintus remarks, very close to the existing laws of Rome, and while the censorship is one of the magistracies whose powers Cicero manipulates in his ideal laws, there is no doubt that the censors did move citizens from better to worse tribes (and *uice uersa*), assigned tribes to freedmen, and placed newly

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<sup>133</sup> BROADHEAD 2003, 137, 145, imagines many Latins would sell up their property in the Latin colony, and move to Rome with the proceeds; these would then be declared as cash when the next census came.

<sup>134</sup> CRAWFORD 1996, I, no. 24, l. 146 (Tabula Heracleensis), for declaration of tribe along with other information required for the census.

<sup>135</sup> Cic., *de leg.* 3.7: *populique partis in tribus describunt, exin pecunias aequitatis ordinis partiunt, equitum peditumque prolem describunt* ('Let them distribute the parts of the People into tribes, and then divide them by wealth, age, and *ordo*. Let them order the children of the equestrians and the infantry').

enfranchised communities in specified tribes.<sup>136</sup> In which case, it would have been the censors who assigned the Latin immigrant his tribe, and as Laffi argues, this seems to make the act of registration the most important moment of transition into Roman citizen status for the migrant.<sup>137</sup>

For our migrating Latins, then, registration in the census was evidently the crucial final step in the exercise of an existing ‘right’ to acquire Roman citizenship under defined (or customary) terms. The two-stage process has some broad similarities with the procedure by which non-Romans could be enrolled in Roman colonies (and which certain Ferentinates had abused less than a decade before – see below, sect. 8): a potential citizenship was conferred by the enrolment in the colony, but it only became actual with the foundation of the colony. In the case of the Latin presenting himself at the census, even though this enrolment is the last element, we see the same two-stage process, where fulfilment of both stages is necessary to actualise the citizenship; perhaps, as I have argued, reinforced by an oath at the point of their declaration. As Laffi notes, the Latin complaints were about those who had been acquiring Roman citizenship in the years before 187 by *both* migration and registration (*per migrationem et censum*, 41. 8. 11) – if registration in the census were not central to the problem of the loss of their citizens, the Latins would not have mentioned the fact in their complaints.<sup>138</sup>

#### 5. 4. *The Declaration at the Census: what Did it Mean?*

Once all these stages of the process had been completed (making and recording of the declaration, assignment of class, century and tribe), do we assume that we can speak of the definitive conferral of citizenship on the Latin immigrant, as was the case in the Hellenistic

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<sup>136</sup> Registration of new citizens in tribes: e.g. Liv., 8. 17. 11-12; 38. 36. 9; cf. Fest., p. 212L; of freedmen in tribes: e.g. Liv., 9. 46. 14 (304 B.C.); 45. 15. 1-7 (168 B.C., with BRISCOE 2012, 648-51). See further Cic., *pro Caec* 99; *de orat.* 1. 183; and LAFFI 2019, 180-2, on the role of censors in enfranchising those manumitted.

<sup>137</sup> LAFFI 2019, 178-9, 181-2; cf. COŞKUN 2009a, 70-1, 188 n. 595; it does not, however, follow, that because the registration in the census is constitutive for the censors, it is not also declarative, and thus potentially limited in its impact, for the individual making the declaration.

<sup>138</sup> Registration at the census: SHERWIN-WHITE 1973, 314. GABBA 1989, 220, was wrong to claim that registration at the census was ‘simply an incidental consequence of migration’, although right to point out that many migrants to Rome did not register, and remained *incolae*. TARPIN 2014, 174 states that (i) a law was required for citizenship to be conferred, mainly correct but see Laffi 2019 for the constitutive role of the censor in granting the citizenship to *peregrini* registering in the census – in any case, as Livy says, there was a law (*lex dabat*) on which, see sect. 6. 6, below; (ii) Latins could not have claimed Roman citizenship simply by settling in Rome – but as far as I can see almost no one argues this. Livy is quite clear in 187 and 177 that citizenship comes *per migrationem et censum*, and it is very hard to understand *per censum* as anything other than registration on the lists of Roman citizenship.

examples considered above, upon registration in the community of destination? It seems, in fact, that this is something of grey area. In the *Pro Archia* Cicero says:

*sed, quoniam census non ius ciuitatis confirmat ac tantum modo indicat eum qui sit census ita se iam tum gessisse, pro ciue, ...*

But, since the census does not confirm the right of citizenship, and only indicates that he whose name was recorded in the census has for a long time conducted himself as if he were a citizen, ...<sup>139</sup>

It suits Cicero's argument here to play down the importance of the census for proving citizenship, since Archias' name did not appear on any Roman census-rolls; instead Cicero appealed to Archias' engagement with Roman socio-legal culture, such as making wills under Roman law and entering into inheritances left to him by Roman citizens. Nevertheless, just as it is true that not all Roman citizens were registered in the census, so it is true that not all those registered in the census were Romans. Suppositious Roman citizens, such as the Italians who registered in the 90s B.C. not to prove citizenship but to usurp it, and were weeded out by the *quaestio* established under the *lex Licinia Mucia* of 95, must have been registered at pretty much every census. As noted above, the level of scrutiny of claims to citizen status at the census fluctuated, and much of the time must have been fairly nugatory.<sup>140</sup>

If the declaration made at the census did not by itself confer citizenship, the record of registration could be used to confirm citizen-status, and would have been so used by Cicero, had he had such a record to fall back on in Archias' case. The declaration made to the censors created a presupposition (even if not always a correct one) of citizen status, and the assignment of a tribe to the new citizen does, as Laffi has stressed, play a constitutive role in making that citizen status effective; nor should we underestimate the force of sworn testimony in the Roman world.<sup>141</sup> Cicero was being disingenuous in the *pro Archia*, but he could hardly have made a claim about the value of the census declaration which was obviously wrong or absurd. Thus

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<sup>139</sup> Cic., *pro Arch.* 11; discussion by LAFFI 2019, 176-8, stressing the reasons for Cicero to be disingenuous, and raising doubts about the universality of the juridical axiom normally derived from his statement; see also KREMER 2006a, 30; COŞKUN 2010, 113-15.

<sup>140</sup> *Lex Licinia Mucia*: Asc., p. 67-68C ('a great number of them [*sc.* the Italian peoples] were conducting themselves as if they were Roman citizens', *pro ciuibus Romanis se gereret*); the law set up a deeply-resented *quaestio* which was the instrument by which suppositious citizens *in suae quisque ciuitatis ius redigeretur* ('each should be returned into the legal status of his own community'); see also TWEEDIE 2012, with earlier bibliography; TARPIN 2014, 175-6, although I am not wholly persuaded by his argument that this was this first law to address migration and usurpation of the citizenship.

<sup>141</sup> LAFFI 2019. Prolonged residence (and assimilation) at Rome by Latin *incolae* might encourage them to 'behave as if they were Roman citizens', in other words *pro ciuibus Romanis se gerere* (see previous note); Cicero's anxious wish that they should mind their own business suggests that many did not (*off.* 1. 125). Statements under oath vs documents in validating official transactions: GARDNER 1986.

the position he adopts, and indeed the repatriation of the Latins after the *conquisitio* by Terentius Culleo (below), leave an awkward impression that registration in the census was not always enough to guarantee that the resulting citizenship would always be unassailable.<sup>142</sup>

### 5. 5. Demographic Challenges of the Latin Colonies

Let us return to the events of 187. Livy does not say explicitly that the Latin embassies asked the Roman Senate to intervene following their complaints, but it is important to note how telegraphic, condensed and elliptical Livy's account is here. A lot has been compressed or omitted. It would be very surprising if the Latins had simply ventilated this grievance in such numbers, without seeking redress. In any case, the Senate paid serious attention to the complaints.<sup>143</sup> It was only twenty-two years since twelve of the Latin colonies had declared themselves unable to furnish the number of men demanded for the war with Hannibal (209 B.C.), an unprecedented scandal, and a refusal for which they were heavily punished in 204. Each defaulting colony had to submit its census returns, using the Roman formula, to Rome, under oath of the local censors that it was accurate; the *implication* of the censorial date in 39. 3. 5 is probably that the census operations of these Latins were henceforth to be synchronised with those of the Romans.<sup>144</sup> Further turbulence in the demographics of Latin colonies was something to be avoided at all costs by all parties. Now the Latins themselves were seeking the Senate's help to avoid a repeat of the showdown of 209. Demand for soldiers in the first quarter of the second century never quite reached the level of even the last two years of the Hannibalic War. Nonetheless, the years 200-189 saw, on Brunt's figures, an average of over 135, 000 Italian allies levied annually for service with Roman armies under the *formula togatorum* (or *pro numero cuiusque iuniorum*, as Livy puts it, 34. 56. 6)<sup>145</sup>, of whom a

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<sup>142</sup> MOMMSEN 1887, 374; LURASCHI 1979, 64 n. 116; LAFFI 1995, 65-6; FERRARY 2012, 128; TARPIN 2014, 174 (taking Cicero's statement at face value); cf. LAFFI 2019, 176 (more nuanced).

<sup>143</sup> SHERWIN-WHITE 1973, 107.

<sup>144</sup> Liv., 27. 9. 6 - 10. 10; Liv., 29. 15; TIBILETTI 1950, 189-191 = ID. 2007, 133-5; GABBA 1989, 202; BROADHEAD 2001, 78, 88; ID. 2003. 134.; ID. 2004, 327.

<sup>145</sup> Liv., 34. 56. 5-7, 12-13. Although there is no explicit evidence to prove it, most scholars have thought that the *formula togatorum* (see BRUNT 1987, 545-8; BISPHAM 2007a, 23, 61-2) operated as Livy says at 34. 56. 6, by requiring troops 'in proportion to the number of *iuniores* of each (community)'. If so, it should then be asked why Livy, in the context of this levy only, tells us about the principle of proportionality at routinely work (he may of course be contrasting it with the *tumultus* which is to follow). Some have argued that what Livy is describing here is a *departure* from the normal operation of the *formula togatorum*, a concession in the face of continuing demographic pressure (e.g. TOYNBEE 1965, II, 130 n. 2, cf. BRISCOE 1981, 136-7); but as BRUNT *ibid.* 548 notes, the implication of such a view is that the 'normal' operation of the *formula togatorum* was unfair, as it was not based on a *pro rata* levy of *iuniores* from each community. It may then be the case that Livy's source here mentioned the basis of the *formula togatorum* since something was done to it in 194/3 (a census period), making the levy of 193 the first under a 'revised' *formula togatorum*. This could intersect

significant number will have been Latins – perhaps not less than a quarter of the total; for the period 181-176 the corresponding figure is just under 107, 000, and for the period 172-168, just over 111, 000. It was essential for all parties to maintain the Latin colonies’ ability to meet the demands of the *formula togatorum*, let alone to deal with the consequences of a *tumultus* like that declared after the Ligurian incursions of 193, which saw (in addition to the normal levy) discharged allied and Latin contingents of the consular armies of 194 required to report again for service in Etruria with the consul L. Cornelius Scipio, who was also permitted to enlist from the towns and rural districts along his march.<sup>146</sup>

### 5. 6. *Conquisitio and Repatriation.*

In response to the Latins’ complaints, the *praetor peregrinus*, Q. Terentius Culleo, was instructed to institute a search (*conquireret*, 3. 5) for their missing citizens. Any man of whom the Latins – that is, their local authorities – could prove that he or his father had been registered in the census in a Latin community during or after the census of 204/3 B.C. (the first census for which the recalcitrant colonies of 209 had been placed in ‘special measures’), should be compelled to return to the community in which he had been so registered. Taken literally, Livy’s text seems to say that Culleo was tasked with tracking down all of the *multitudo* of immigrant Latins, but that he repatriated a subset of that total: those who, when the census registers of the Latins were analysed, could be found to have been included there within the specified temporal parameters. Broadhead imagines that the Latin allies brought copies of their census records with them; this is not to be excluded, and since the *onus* to demonstrate that any individual was liable for repatriation lay with them (*probassent socii*), there must have been considerable work for the Latin *legati* to do, with the praetor and his staff, to produce the final

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interestingly with our other evidence of demographic stress in these years, for example if the burdens of the *formula togatorum* had either been revised down, or recalibrated to take account of up-to-date figures of allied population; but this must remain conjecture. TARPIN 2014, 169 argues that this passage, on a levy which Livy says applied *sociis et Latino nomine*, implies the delivery of specifically Latin census figures to Rome; perhaps, if we are dealing with an adjustment to the *formula togatorum*, it might be that the census of 194/3 was the first point at which *all* Latin colonies sent their census returns to Rome.

<sup>146</sup> On recruitment, see BRUNT 1987, 422-6, note esp. Table XII, and his comment (425): “I confess to surprise at viewing these figures. They seem to show that the requirements for manpower were still enormous after the Hannibalic war had ended”. Using the ‘corrected’ figures in Brunt’s Table IVb (*ibid.* 45), we may, with due allowance for all the uncertainties involved (*cf.* BRUNT *ibid.* 44-60), note that Latins available for service in 225 B.C. (Pol., 2. 24) are reckoned as 85, 000, just over 25% of the allied total. Already Afzelius, on the basis of Livy’s figures, (1944, 78-9) had argued that there was no significant let-up in demands on allied manpower for the Roman wars of the first quarter of the second century, compared with the average levels of recruitment across the Hannibalic War; *cf.* BADIAN 1958, 149; TOYNBEE 1965, II, 128-9, 134-5 (arguing that allies were subject to more demanding deployments); SHERWIN-WHITE 1973, 216-17. Fears of a repeat of crisis of 209 (and punishments of 204): BROADHEAD 2003, 142

lists of those affected. We should remember, however, that from 204/3 onwards the Romans had been provided with the census records of the twelve defaulting colonies under the terms of the punishment of the latter. In the case of those communities the Romans had good records to consult from this censorship onwards; nor is it beyond the bounds of possibility that other colonies had voluntarily submitted their returns to Rome, partly to show loyalty, and partly to increase the chances of being able to alert the Romans to evolving demographic problems (see below on the case of Narnia, sect. 8). Indeed, such a hypothesis seems to be supported by Livy's comment that the submission of census records to Rome from 204/3 onwards was something 'which had never been done before'; as Broadhead astutely remarks, this could be understood to mean that the practice had thereafter become common. If so this would surely have started with the other Latin colonies.<sup>147</sup>

Some 12, 000 Latins were repatriated as a result of this *conquisitio* (3. 6).<sup>148</sup> It is not an unreasonable assumption that not all those who could have been sent home were in fact identified and repatriated, and that the number of 12, 000 thus under-represented to some extent the total number of those who had emigrated since 204/3. Even so a total of 12, 000 men moving from the Latin colonies to Rome translates into an average of some 750 Latins a year moving to Rome between 204/3 and 187, which, assuming an even distribution across the colonies, would mean 25 colonists leaving each colony every year.<sup>149</sup> Of course, we cannot know whether there was a steady drift across the period in question, or whether some colonies

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<sup>147</sup> Liv. 29. 37. 7; BROADHEAD 2003, 134; ID., 2004, 327-8, 330. LAFFI 2017a, 53-4, building on the analysis of TIBILETTI (1950, 193-5 = ID. 2007, 137-9) suggests that the grounds on which Cosa was refused a *supplementum* in 199 (below, sect. 8. 2) may have been linked to the fact that Cosa, as a loyal colony in 209, had not been obliged to submit its census records to Rome whenever the Romans held a census, and thus could not prove a demographic need. This is speculation, as he admits, but even if correct, it does not preclude a later change by Cosa with regard its census; note that in 197 they were allowed to add to the *numerus* of their colonists, which might mean that such a change had been made (TARPIN 2104, 167, 169, 171, 181 & n. 148, assumes that the loyal colonies of 209, indeed *all* Latins, submitted their returns voluntarily, and that the impetus to draw conclusions from these numbers came from the Senate); note also n. 145, above, on possible changes in 194/3. The specification that the Cosans not recruit anyone who had been on the enemy side during the Hannibalic War may suggest another reason for the initial refusal: they had proposed enrolling elements considered untrustworthy.

<sup>148</sup> On this passage see LAFFI 1995, 43-7, with earlier bibliography; BROADHEAD 2001, 70-3, 76-9; ID., 2003, esp. 141-8. LAFFI, *ibid.* 43 (following GÖHLER 1939, 64) argues, probably rightly, that 'expulsion' here means a restoration of domicile in the city of origin, not a temporary exclusion. Presumably any family members who had migrated to Rome had to return to the colony with the repatriated (*cf.* LAFFI 2017b, 88). ISAYEV (2017, 40) transposes the repatriation of the 12, 000 individuals from 187 to 177 (as well as seeing additional legislation in 173, when there was only a consular edict (see below, sect. 7); nor was their migration 'clandestine' (*ibid.*), since they registered in the census.

<sup>149</sup> At which rate it would take 160 years for the complete emigration of a community of 4, 000 colonists. But the problem was surely not evenly spread: Cosa had lost a third of its original colonists by 197 (see below, sect. 8. 2); see also ISAYEV 2017, 44.

lost more citizens than others, although the fact that *all* of Latium joined in the representations to the Senate suggests that this was a problem affecting every Latin colony to an appreciable degree (and a uniquely Latin problem, given that those migrating were also becoming citizens). Arguably the flow of migrants to Rome accelerated after the Hannibalic War, as Rome quickly entered upon her imperial destiny in the East, and the value of Roman citizenship increased correspondingly (something demonstrated by the desire of the Ferentinates in 195 to acquire Roman citizenship through enrolment in a colony, see below sect. 8).<sup>150</sup>

### 5. 7. *Were the Repatriations of 187 in any Sense Illegal?*

What is clear, however, and very striking indeed, is that Rome was prepared, at the urging of the Latins, to set aside the Roman citizenship of these 12, 000 individuals, and reduce its own citizen body by that amount in order to support Latin interests, or, more accurately, the interests of the authorities in the Latin colonies. The People was not asked, as far as we know, to agree to this cancellation of citizen status. This is all the more remarkable in the light of a political dispute of the previous year (188). In this year the tribune C. Valerius Tappo had proposed that the *municipia* of Formiae, Fundi and Arpinum, whose inhabitants at that point still possessed only the *ciuitas sine suffragio*, should be granted full citizen rights. No fewer than four tribunes of the *plebs* vetoed the bill, on the grounds that it had not been brought before the People with the sanction (*auctoritas*) of the Senate. The ensuing debate is almost entirely truncated by Livy, but the upshot was that the opposing tribunes were ‘instructed’ (*edocti*) that it was the prerogative of the People, not the Senate, to bestow citizenship on whomsoever it wished. The veto was withdrawn, the bill passed, and under the instruction of *plebiscitum Valerianum* the censors enrolled the beneficiaries in the tribes specified in the legislation.<sup>151</sup>

Now, if the People alone, regardless of the sanction of the Senate, had the right to bestow the citizenship as it saw fit, the same must be true of the authority for the removal of citizenship. This much is surely implicit in the right of *prouocatio*, and is made quite explicit in Cicero’s *pro Caecina*.<sup>152</sup> For the Senate, using praetorian *coercitio* now to repatriate Latins,

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<sup>150</sup> Cf. SHERWIN-WHITE 1973, 110; LAFFI 2017b, 88.

<sup>151</sup> Liv., 38. 36. 7-9; see FERRARY 2003, 112, 129 = ID. 2012, 124, 140, noting that Livy records this plebiscite not for its content, which was probably unexceptionable, but because of the constitutional issues it raised; see also MOURITSEN 2007; LAFFI 2019, 172; it is incautious to assume this moment marked the end of the *ciuitas sine suffragio*.

<sup>152</sup> *pro Caec.* 78, cf. 80, 98, 101; *dom.* 77; *pro Balb.* 27 (on which passage and its implications, leaning away from an absolute blanket application: URSO 2004-5, 154-5; LAFFI 2017b, 105); Liv., 45. 15. 3-4; GALSTERER

thousands of Latins, who had been registered in the census and thus considered themselves Roman (a status which the censors had endorsed and fortified by assigning a tribe), seems a highly paradoxical outcome in view of the assertions of popular authority in precisely this area the previous year. There has been no shortage of scholars denouncing the repatriations of 187 (and 177, sect. 6, below) as ‘illegal’ (despite no indication that anyone at the time objected in these terms, or indeed at all).<sup>153</sup> How can we explain this paradox? We may begin by noting that the paradox *might* be only apparent: Livy’s account, as I have already noted, is very condensed. That he does not mention, for example, a plebiscite or law which sanctioned expulsion as the outcome of the *conquisitio* may not mean that none was passed – important elements of the narrative in 187 are missing.<sup>154</sup> If, however, we were to insist on the oddness or unconstitutional nature of the Senate’s action here, we might then seek to explain it from a number of viewpoints. One such perspective might be that the initial request to repatriate these Latins represented an opportunity for the Senate to reassert its authority in an area where that authority had recently been dented by the tribune Tappo (and that challenge may itself not have been unrelated to the censors’ relaxing of punitive measures against the Campani in 189, following the Senate’s decision that they should be registered in the census at Rome).

From another angle we might imagine the Latins, whose request must have involved some ‘objective’ grounds for repatriation, to have argued that the migration and registration of many Latins was in some way defective, or contrary to law or precedent – indeed, some of the same arguments which Livy sets out in the sequel, in 177 (see sect. 6), may well, indeed I believe are very likely to, have been made in 187. Whatever it was, this element of illegality or impropriety must also invalidated any right to remain in Rome as *incolae*; and whatever the argument the Latin authorities used, the Romans felt that it could be applied only to those who had emigrated in or after 204/3, and who were registered in their communities at that point. There is no way of knowing if this was a criterion which they were urged to use by the Latins,

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1995, 80. On *prouocatio* and popular power over questions of citizenship, see LINTOTT 1972; ID. 1987, 42, 47, 49; ID. 2009.

<sup>153</sup> Thus DE SANCTIS 1923, 569-70, followed by HUMBERT 1978, 115-17, 120-2, saw the *lex* of Liv., 41. 8. 9 (see further below, sect. 6. 6, 6. 8), which he describes invoking ‘vecchio diritto ... patti antichissimi ... trattati’ without specification as to date, as the original source of the *ius migrandi*, and the edict of 187 as clearly violating the rights of those who had migrated, while recognising the relief of the Latin authorities; *cf.* HUMBERT 1978, 113, on the difficulty of retroactive removal of citizenship by the Senate (noting also that

Culleo was the *praetor peregrinus* (*cf.* MRR I, 368), which may imply an *a priori* definition of the problem as usurpation of citizenship by foreigners, but see BRISCOE 2008, 217); COŞKUN 2009a, 162-5; TARPIN 2014, 171 (I take it his text should read “Roman magistrates should <not> have been in a position to withdraw”). Lack of pushback against the repatriations by contemporaries: TARPIN *ibid.*, 171 n. 76; LAFFI 2017b 105.

<sup>154</sup> See FERRARY 2003, 123 = ID. 2012, 128.

or one which they decided to employ themselves. Whichever is the case, it was a criterion which embraced every single immigrant Latin falling within the specified parameters:<sup>155</sup> in other words, the criterion for repatriation concerned the date of registration in a Latin community, and not being identified as a rule-breaker, unless *everyone* in this temporal cohort was by definition breaking a rule or law. If the Senate could point to irregularity or illegality in the process of gaining citizenship *per migrationem et censum*, then it would have grounds for anticipating and deflecting protests from the People.

Finally, as we have seen, in contrast to citizenship conferred by the People through statute (whether directly, as with the *plebiscitum Valerianum*, or indirectly, via laws allowing generals to enfranchise individuals or units *uirtutis causa*),<sup>156</sup> citizenship obtained by voluntary registration in the census was not beyond challenge. To quote Luraschi, registration in the census ‘aveva soltanto carattere dichiarativo e non già costitutivo dello *status civitatis*’ (LURASCHI 1979, 64 n. 116).<sup>157</sup> In the end, citizenship claimed in this way remained to an extent precarious, and consideration of its legal basis becomes dependant on an examination of any statutory basis underlying a supposed right to become Roman *per migrationem et censum*. To this issue we shall return in the next section; for the present we should note that we cannot be certain whether the Roman authorities were *removing* a citizenship, with the expelled subsequently regaining their Latin citizenship on their return to their communities, by, essentially, a type of *postliminium*; or whether those authorities were *denying* a citizenship which they claimed to be usurped or incorrectly asserted. Each possibility entails rather different judgements about the whole episode.<sup>158</sup>

We might also consider good old-fashioned xenophobia as a factor: there was scope for the Senate to justify what it did in these terms, which could well find traction on the People, and thus override any impulse by the People to exercise its superior authority in this area. This was the kind of claim which C. Fannius would make sixty years later to torpedo popular support for C. Gracchus’ legislation *de sociis*, asking the audience in the *contio* whether they imagined

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<sup>155</sup> BROADHEAD 2004, 327, arguing that there was no easy way of sorting legitimate migrants from rule-breakers; the means to distinguish them could have been that employed in 177, the institution of a *quaestio*.

<sup>156</sup> For individual enfranchisements, see SÁNCHEZ 2007; TARPIN 2014, 176-83; RAGGI 2016.

<sup>157</sup> Note, however, the arguments of LAFFI 2019: if the declaration in the census did not put citizenship beyond doubt, the act of the censor in assigning a tribe was a more serious act, constitutive of citizenship; it was not necessarily definitive for all that.

<sup>158</sup> For repatriation as loss of Roman citizenship, and subsequent automatic reacquisition of Latin citizenship: LURASCHI 1979, 64 n. 116; Laffi 2017b, 89 & n. 11, citing also the earlier view of P. Frezza.

that, if citizenship was given to the Latins, they would have a ‘place’ in the *contio*, where they stood listening to him, or be present in the games or the public festivals.<sup>159</sup> In this spirit, Livy’s comment *iam tum multitudine alienigenarum urbem onerante* (39. 3. 6) at the close of his brief account has been taken by Frézouls as a surviving trace of an originally xenophobic stance by the Romans, which caused the expulsions; a situation over-written later by an apologetic senatorial tradition which invented the idea of the Latin requests for repatriation. This argument has, rightly, not found favour, but there is undoubtedly a xenophobic tinge to Livy’s passing editorial comment here. *Iam tum* points to composition with hindsight in a period in which the presence of non-Romans in the city was politically contentious, and in which non-Romans, even Latins, might be classed as *alienigenae*, ‘those born elsewhere’. The period between Gaius Gracchus’ tribunate and the Social War offers a possible context, but the term may be one imported into the historical narratives from conditional rhetoric even as early as the speeches made to the Roman People to justify the unusual expulsion of those who had thought themselves to be their fellow-citizens.<sup>160</sup>

#### 5. 8. *Further Observations.*

Laffi notes two further implications of Livy’s account of the events of 187. Firstly, that anyone who had emigrated to Rome before 204 was not affected by the *conquisitio* and the repatriation, even if his registration in a Latin colony at that date could be shown; and secondly, that those who were *incensi* in their own community were safe from repatriation. To take the second implication first, such individuals would not have been in Latin census records in any case, but this could, hypothetically, have counted against them if they tried to obtain citizenship by migration and registration: they would find it harder, if required, to prove a Latin origin. To judge from the *lex Osca Bantina* which specifies that the *incensus* at Bantia must be whipped in the *comitium*, a provision likely to have been borrowed from the *lex* of the nearby Latin colony of Venusia, there were formal disincentives to failing to present oneself for the Latin census.<sup>161</sup>

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<sup>159</sup> Iulius Victor, *Ars* 6. 4 = MANUWALD 2019, 32 F3: *si Latinis ciuitatem dederitis, credo, existimatis uos ita, ut nunc constitistis, in contione habituros locum aut ludis et festis diebus interfuturos.*

<sup>160</sup> FRÉZOULS 1981; BROADHEAD 2003, 144 offers another, but I think less persuasive, reading, cf. LAFFI 2017b, 98, who, however, draws attention to the oddness of the word *alienigenae* as applied to Latins, on which see further BRISCOE 2008, 217 (the word is generally used of enemies or strangers); URSO 1994; MERCOGLIANO 2014, 204. For an unknown number of Macedonian residents in Rome, expelled in 171: Pol., 27. 6. 3.

<sup>161</sup> CRAWFORD 1996, I, no. 13; cf. Cic., *pro Caec.* 99; Liv., 1. 44. 1; Dion. Hal., 4. 15. 6; Gaius, *Inst.* 1. 160; *Tit. Ulp.* 11. 11; Zonar., 9. 19; LO CASCIO 2008, 150-1 (punishment of *incensi* at Rome lapsed by this period); TARPIN 2014, 180-1, 183; LAFFI 2017, 88; ISAYEV 2017, 46-7.

The first of these implications, on which we have already touched, is the significant one, and much turns on whether any cogent explanation can be offered. It is possible that the recruitment debacle of 209 led the Romans to take the view that at least some Latin census records ran the risk of being partial or unreliable (individuals might decline to register in order to avoid military service, or might offer incentives to magistrates to delete their records or to ignore the consequences of being *incensi*). From 204 onwards, however twelve Latin colonies had to submit their sworn census records to Rome, where they might be monitored by the censors or others in authority. The other Latin colonies, although not subject to this level of enforced compliance, nevertheless surely took extra care to have their census documentation in good order and beyond reproach, as a defence against further Roman interference. I have suggested (sect. 5. 6, above) that some of them may even have submitted their records voluntarily. What, then, was at stake in choosing this census date, rather than an earlier one, may not be the superiority or greater robustness of any claim to the citizenship on the part those Latins who had emigrated, and then registered in the census in 209 (or a prior one); but rather the reliability predicated of the Latin records after 204/3, or a significant proportion of them.<sup>162</sup> It may also have been relevant that the repatriation of those who (or whose fathers)<sup>163</sup> had been registered in Latin communities in or after 204/3 would have concerned a more desirable cohort from the point of view of those conducting the levy in the colonies, compared with those registered in previous censuses. A man aged twenty in 204, for instance, would still in 187 have almost a decade of potential military service ahead of him, whereas a man at that age in 209 would have only a few years left in which he could be subject to conscription, and so on, the further back one goes.

Finally, the sequel, to which we are about to turn, entails another very important conclusion. While the Romans carried out a rounding-up and repatriation of those who had emigrated in the previous seventeen years, and who were entered on the Latin citizen lists, they apparently did nothing to ban such emigration outright; as we shall see, quite possibly they could not do so. Even if, despite Livy's silence, a ban (or even a restriction) was introduced, it proved ineffectual, and could not be enforced. Emigration and registration by Latins started up again, and on a scale sufficient to generate new complaints in a decade later.

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<sup>162</sup> LAFFI 1995, 44.

<sup>163</sup> On this specification see BRISCOE 2012, 68-9.

## 6. The Crisis of Latin Migration II: 177 B.C.

(6) *mouerunt senatum et legationes socium nominis Latini, quae et censores et priores consules fatigauerunt, tandem in senatum introductae.* (7) *summa querellarum erat ciues suos Romae censos, plerosque Romam commigrasse; quod si permittatur, perpaucis lustris futurum ut deserta oppida deserti agri nullum militem dare possent.* (8) *Fregellas quoque milia quattuor familiarum transisse ab se Samnites Paelignique querebantur, neque eo minus + aut hos aut illos + in dilectu militum dare.* (9) *genera autem fraudis duo mutandae uiritim ciuitatis inducta erant. lex sociis nominis Latini, qui stirpem ex sese domi relinquerent, dabat ut ciues Romani fierent. ea lege male utendo alii socii alii populo Romano iniuriam faciebant.* (10) *Nam et ne stirpem domi relinquerent, liberos suos quibusquibus Romanis in eam condicionem ut manu mitterentur mancipio dabant, libertinique ciues essent; et quibus stirpis deeset quam relinquerent, ut <...> ciues Romani fiebant.* (11) *postea his quoque imaginibus iuris spreis, promiscue sine lege sine stirpe in ciuitatem Romanam per migrationem et censum transibant.* (12) *haec ne postea fierent petebant legati, et ut redire in ciuitates iuberent socios; deinde ut lege cauerent ne quis quem ciuitatis mutandae causa suum faceret neuē alienaret; et si quis ita ciuis Romanus factus esset, <...>. haec impetrata ab senatu.*

[6] The senate was also moved by the embassies of the allies of the Latin name; these had importuned both the censors and the previous consuls, and were at last brought into the senate. [7]. The main thrust of their complaints was that citizens of theirs had been registered in the census at Rome, and that most of those had moved their homes to Rome; if this were allowed, within a very few census periods it would be the case that the abandoned towns and abandoned fields would be unable to supply a single soldier. [8] The Samnites and Paeligni were also complaining that four thousand of their households had moved across to Fregellae, nor for that reason ... ?either the former or the latter? ... to provide ... fewer soldiers ... in the levy. [9] Now, two types of deception had been introduced to allow individuals to change citizenship. A statute at that time allowed that allies of the Latin name, who left behind in their home community offspring of their own, might become Roman citizens. By the abuse of this statute, some were causing injury to the allies, others to the Roman people. [10] For in order not to leave offspring in their home community, they were giving their children into slavery to any Romans whatsoever, on this condition, that they should be manumitted, and should be freedmen citizens; and those who lacked offspring whom they might leave behind, in order that ... were becoming Roman citizens. [11] Afterwards, these semblances of legal process were cast aside too, and indiscriminately, without the sanction of a statute, and without offspring, men were moving across into the Roman citizenship by change of residence and registration in the (Roman) census. [12] The ambassadors were seeking that these things should not happen thereafter, and that the Romans should order the allies to return to their respective citizenships; that they should prescribe by statute the no one should make his own, not dispose of, another individual for the sake of changing their citizenship; and if anyone had been made a Roman citizen in this way .... These requests they obtained from the senate.<sup>164</sup>

It is usually assumed (and I think rightly) that, as in 187, the embassies of 177 represented the whole *nomen Latinum*; Cicero (below) is sufficient to prove that at least *some* Latin colonies were represented. Livy's words do in principle allow an interpretation like that of Michel Tarpin, that only Latin communities facing demographic upset appealed for remediation by the Senate.<sup>165</sup> However, it seems harder to reconcile what we know about the events of 177 and 173 with this position, than with the orthodox view.

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<sup>164</sup> 41. 8. 6-12; the text is that of Briscoe's Teubner (1986); translation again mine. On this passage see the excellent analysis of LAFFI 1995, 47-72; and commentary by BRISCOE 2012, 61-6, 68-72 *cf.* ASTIN 1989, 188; GABBA 1989, 217f.; KREMER 2006a, 32-40.

<sup>165</sup> TARPIN 2014, 172.

## 6. 1. *Livy's Account and Papirius' Speech*

Compared with his account of the events of 187, Livy paints a fuller and more complex picture of the problems surrounding migration and registration in the census. He gives more details of the complaints of the Latin envoys, who sought an end to the abuse of the rules governing such *mutatio ciuitatis*. This is a central text for both the legal and socio-political aspects of 'migration' in the second century, one which also allows us to nuance some of the arguments advanced in sect. 5 about the complaints of 187. It is also worth stressing at the outset that, while this passage has been mined by both historians and legal scholars, it is the *oratio obliqua* summary (*summa querellarum*) of a speech of complaint, one meant to persuade its hearers to apply a remedy; this is rarely borne in mind in analysing its contents. The tenor and the language are those of suasion (*deserta oppida, deserti agri ... sine lege, sine stirpe*, and so on): the whole is highly rhetorical, with Livy surely applying his own touches to whatever he found in his source(s). All readers should be on their guard not to confuse attempts to move the Senate on the one hand with objective reporting of circumstances on the other. Indeed, some reading between the (in some cases imperfectly preserved) lines is needed to unpack all the implications of Livy's summary version.

In fact, it is possible to guess one indirect source for the essentials of the Latin complaints which Livy records: precisely, a speech delivered in the Senate on this very topic. Cicero, in the *Brutus*, discussing great orators 'among the Latins and the allies', names L. Papirius Fregellanus, who was considered *disertissimus*, and was roughly coeval with Ti. Gracchus P.f.; he adds that Papirius spoke in the Senate 'on behalf of the Fregellans and the Latin colonies'.<sup>166</sup> Ti. Gracchus P. f. is the consul of 177 (in his first consulship). Since Cicero dates Papirius as a coeval of Gracchus, presumably at his *acme*, and since we know that Papirius addressed the Senate on behalf of the Latins (including the Fregellans), it seems almost perverse not to accept that the speech to which Cicero alludes was one of those made to the Senate in 177, to which Livy refers. It is from there not an egregious step to imagine that

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<sup>166</sup> *Brutus* 170. The MSS read *colonis*, 'colonists', but, despite the arguments of BADIAN 1955; cf. ID. 1970-1, 391 n. 56 (who wanted the speech to be on behalf of the Latin emigrants to Rome and the Italic emigrants to Fregellae, urging that both groups could retain their new statuses), there is no way of elaborating a satisfactory context in which a speech could be made 'on behalf of the Fregellans and (the) Latin colonists' (why should the latter be taken separately from the former?). Cicero must rather mean the Fregellans and the (other) Latin colonies (which had similar grievances), and like Malcovati, in the first edition of *ORF*, I read 'coloniis' (though in subsequent editions she returned to the MS reading, see e.g. MALCOVATI 1953, 100); LAFFI 1995, 49 n. 15 is rightly cautious on the precise thrust of Papirius' speech; cf. ID. 2017a, 55 n. 20.

Papirius' speech was one of those, perhaps the most important of those, whose tenor Livy's summary captures. Papirius' speech must have had a specific Fregellan agenda which we cannot reconstruct; but it was surely also congruent with the broader Latin wish to have the rules governing emigration tightened, and illegal *emigrés* repatriated.<sup>167</sup> Papirius was probably thus instrumental in swaying the Senate, and this 'signature' speech earned him his place in the brief catalogue of Latin and allied orators in the *Brutus*. It is also possible that direct or indirect knowledge of the contents of this speech explains why Livy's account of the legal complications aired in this year is more detailed than that of 187; as I have suggested above, we should not exclude the possibility that some of the arguments ventilated in 177 had also appeared in the appeal of 187.<sup>168</sup>

## 6. 2. Latin, Samnite and Paelignian Demography.

Before Papirius and his fellow ambassadors finally (*tandem*) got their chance to speak, the appeals of the Latins (*socium nominis Latini*) had been ongoing for some time: they had begun in the previous year, and had 'importuned' (*fatigauerunt*) the censors of 179/8, and the previous consuls (*cons.* 178, M. Iunius Brutus and A. Manlius Vulso), suggesting some reluctance on the part of the Senate to engage with the issue.<sup>169</sup> An appeal of the Samnites and Paeligni, separate from that of the Latins, was heard at the same time, as it also concerned migration by which the communities of origin felt they had been damaged, and for which they sought remediation; the destination was a single Latin colony, Fregellae. We do not know whether this was a case of corporate action by *ethne*, or whether in fact *some* Samnite and Paelignian communities were complaining; whatever the full extent of this migration, it will probably not have been evenly derived from all Samnite and Paelignian communities.<sup>170</sup> At any rate they seem to be the only non-Latin *socii* involved; we have no information on the chronological depth of the situation of which they complained. The Latin embassies carried their case with (*mouerunt*) the Senate; Livy does not say what the outcome of the Samnite and

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<sup>167</sup> For 177 as the date for Papirius' speech, and the difficulties of attaching it instead to the revolt of Fregellae in 125 B.C. (proposed by MÜNZER, *RE* 18, *s.u.* 'Papirius' no. 19, col. 1011, followed by BADIEN 1955); see MALCOVATI 1953, 99-100 (= MANUWALD 2019, 11 F1); MALCOVATI 1955, 137-40; DOUGLAS 1966, *ad loc.*; SUMNER 1973, 102; LAFFI 1995, 49 n. 15; COARELLI 1998, 34-5.

<sup>168</sup> Cf. LAFFI 1995, 53, emphasising the different circumstances of the two appeals.

<sup>169</sup> BROADHEAD 2004, 324.

<sup>170</sup> Given that the ability of the 'Samnites and Paelignians' to meet the ongoing demands of the *formula togatorum* was at issue, the answer to this question depends on whether the *formula* operated in these parts of Italy at the level of the *ethnos*, or at the level of individual communities or *populi* (these will perhaps not always have been distinct, as with the Marrucini?).

Paelignian appeal was (but see below, sect. 6. 7); their presence is, as far as we can tell, parenthetical to Livy's Latino-centric narrative. 4, 000 households are said to have moved, thus perhaps not fewer than 12, 000 persons in total; by comparison, note that Fregellae is estimated to have had an initial population of 2, 500 male settlers. This figure is a precious one in an area where we are desperately short of numbers; it is a third of the number of Latins repatriated from Rome after seventeen years of emigration prior to 187. We may also note, on Brunt's 'correction' of Polybios' figures for the levy of 225 B.C. in the face of the Gallic invasion of Italy, that the Samnites were able to supply 77, 000 men, and the central Italic peoples, including the Paeligni, 34, 000; thus 4, 000 heads of families would represent a little under 4% of their notional combined manpower capacity.<sup>171</sup> While Livy says that the complaints of the Samnites and Paelignians were solely about emigration to Fregellae, this migration may have been only the most signal instance of a wider phenomenon of central Italic emigration to a number of destinations, including, but not limited to, Rome.<sup>172</sup> Latin colonies, many of which were large and wealthy communities, were clearly able to attract significant numbers of immigrants from neighbouring communities (as we shall see in the case of Narnia, sect. 8, below). These incomers would need to be supported from the produce of the territory, but would not be liable for *munera*, at least not for military service, unless made citizens of the colony. In any case, the sense of Livy's Latin here seems to be that the Samnites and Paelignians were still being asked to supply the same number of soldiers, despite the erosion of their demographic base.<sup>173</sup>

The anxieties of the Latins, Samnites and Paeligni were demographic in nature, relating especially to the levy, as Livy makes explicit when discussing the complaints of the last two (*in dilectu militum dare*); at least this was the aspect stressed before the Senate. A continuation of the prevailing trend would, they claimed, soon lead to the desertion of their lands and

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<sup>171</sup> Pol., 2 24; BRUNT 1987, 44-60, & Table IVb. See also BROADHEAD 2003, 134; ISAYEV 2017, 44.

<sup>172</sup> See TIBILETTI 1950, 204 n. 3 = ID. 2007, 148 n. 3; LAFFI 1995, 49; TARPIN 2014, 174; LAFFI 2017a, 55-6; ROSELAAR 2019, 32-6 discusses evidence for the presence of Italians in Latin colonies. For a good discussion of Samnite and Paelignian immigration into Fregellae, and its wider context, see COARELLI 1998, 35-41; Narnia: Liv., 32. 2. 6-7.

<sup>173</sup> FRÉZOULS 1981 argued that the Latins and allies had no interest in getting their émigrés back, but rather in having the demands made on them under the *formula togatorum* reduced to reflect changing demographics in their communities; and that it was the Romans who wanted to get rid of the Latins who had usurped the citizenship. This seems hard to accept, not least since no convincing explanation is offered of how and when Livy's sources came to deform the historical tradition to make the Senate look scrupulously fair rather than self-serving; see LAFFI 1995, 62-3, and sect. 5. 7, above. As BROADHEAD notes (2003, 137, 143-4) Frézouls' hypothesis requires considerable over-population in the communities concerned; for lower-class emigration as neutral for local élites as long as there was no resulting problem with mobilisation, see McDONALD 1944, 21.

consequent failure to supply troops to Rome. This as a structural fear of not having enough men, in the end, to be able to meet their obligations under the *forumula togatorum*. There remains, however, the issue of where the critical area of attrition was within these communities: across the social spectrum? within the élite? among the equivalent of the *assidui*? or among those below whatever *assiduus*-type property-threshold applied in the Latin colonies? Since 204/3 the census in the twelve colonies which had defaulted in 209 had been conducted in the same lines as the Roman census (see above, sect. 4. 5, 5. 6, 5. 8, also suggesting that other colonies later adopted this procedure). The outcomes in Latin colonies were thus likely to have a substantial degree of congruence with the timocratic taxonomy which the Roman census encoded. Castello argued that the drain on the Latin colonies from emigration was an élite problem, involving the loss of upper class personnel, wealth and prestige. His arguments have faced some pertinent criticism from Broadhead. Nevertheless, Broadhead himself does not demonstrate that Latin equivalents of the *capite censi* would have been registered (as opposed to counted) in the Roman census when their time came.

Indeed, as Oscar Wilde might have put it, such poor Latins had nothing to declare but their genius;<sup>174</sup> if so, what was the point in seeking to obtain citizenship *per censum*, even allowing the unlikely hypothesis that destitute individuals from Aquileia or Venusia would face no obstacles in relocating to Rome? In other words, the bulk of those migrating and seeking citizenship at the census must have been those who could be registered in one of the five Roman property classes.<sup>175</sup> The loss of *assidui* or their equivalent must have been the most pressing problem for the Latin communities, and the spectre of attenuation here explains their complaints about no soldiers and empty fields. Yet they must also, surely, have feared a loss in terms of wealth, cultural engagement and a general thinning out of the political class. We may note that according to the terms of punishment of the twelve colonies in 204 B.C., where a colony was unable to supply the required number of cavalry, they could supply three infantry instead, suggesting that foot soldiers / *assidui* were thought to be easier to come by than well-to-do cavalry troopers.<sup>176</sup> The communities which complained were surely troubled

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<sup>174</sup> This ‘declaration’ does not appear in print before 1918 (HARRIS 1918, 75; cf. *Concise Oxford Dictionary of Quotations* (Oxford, 1981), 272, WILDE no. 2), but was attributed to Wilde at the point where he passed through Customs in New York in 1882.

<sup>175</sup> CASTELLO 1958, 225-6, 230-1; push-back by BROADHEAD 2003, 138-9.

<sup>176</sup> BRISCOE 2012, 64, obelizes the words *aut hos aut illos* in Livy’s text, despite the wish of LAFFI to see here Livy’s gloss on the Samnite and Paelignian complaints (1995, 50); see also LINTOTT 1992b, 76; KREMER 2014, 235. Emigration mainly by the lower orders: BROADHEAD 2001, 80, cf. 83; ID., 2003, 131, 138-9; LAFFI 2017b, 95, 100; population resilience as a key concern for Latin colonies: ID., 2001, 86-9; ID., 2003, 135-9; ID. 2004,

by concerns about their identities, about cultural, social and economic viability in the face of what was (or seemed to be), a significant number of departures for Rome and elsewhere, departures which, at least in the case of those to Rome, not only removed male citizens but consciously dismantled family structures.

Anxiety about the levy had already been intensified in the case of the Latins, by the punitive measures taken against the twelve colonies in 204. With the death of Philip V of Macedon in 179 some allies must (with justification) have feared that Rome would swiftly move to engineer a conflict with his successor Perseus,<sup>177</sup> not least since Ti. Sempronius Gracchus' treaty of 178 with the Celtiberians facilitated a redeployment of Roman resources; there was also an ongoing conflict in Istria. The Romans had been engaged in continuous campaigns in northern Italy and in Iberia throughout the post-Hannibalic war period (see above sect. 5. 5, for brief quantification). The ensuing strain on local levies may have been compounded by emigration, to northern Italy as well as to Rome (as Broadhead has argued), and adverse economic consequences of the Hannibalic War.<sup>178</sup> The spectre of default within the economy of the *formula togatorum* was also the risk most likely to have traction on the Senate in Rome, carrying as it did the implications of structural limitations on Rome's ability to mount multiple military operations concurrently, and indeed to continue to exercise hegemony in Italy. The focus of the complaints by the allies are not so much about the present impact of migration, but (what are presented as) the relatively short-term consequences (*perpaucis lustris futurum*)<sup>179</sup> of a continuation of the prevailing situation; the success of some in moving to Rome and becoming citizens was encouraging increasingly abusive emulation by others. In other words, the Senate was presented with claims of a demographic time-bomb set to explode in the relatively near future. This formulation punctiliously made clear that there was no threat a repeat of the disastrous expedient of the refusal to supply troops at the point of demand, as had been attempted in 209. Rather, it allowed the Latins to remain faithful to their current obligations while raising serious concerns about possible compliance in the future, but not so far in the future that they could not concern the Senate.

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316-17; socio-economic problems caused by emigration (beyond the levy): TOYNBEE 1965, II, 138-9; GABBA 1989, 223-4; BROADHEAD 2003, 136-40; LAFFI 2017b, 90-1.

<sup>177</sup> Fear of a conflict with Macedon already in 177: Liv., 41. 19. 4.

<sup>178</sup> Emigration to northern Italy: BROADHEAD 2000; LAFFI 2017a, 57; demographic and socio-economic strains imposed by the war: LAFFI 2017a, 51-2, 60.

<sup>179</sup> Mention of *lustra* also underlines the importance of the census as the keystone of institutional architecture at both ends of the migration route.

### 6. 3. Migration: Motives and Means

In contrast to the mindset of the colonial authorities, individual Latins probably had a different perspective, especially after the conclusion of the existential imperative of the struggle with Hannibal. Certainly Rome's mindset was moving quickly from one of grim defiance to optimistic assertion of her power; pressure quickly came for the repeal of wartime measures like the *lex Oppia*.<sup>180</sup> With the end of the war opportunities began to proliferate within Italy and the growing empire, and Latins (and others) will have wished not only to take advantage of conditions which now favoured personal and social mobility, but, in the case of the Latins, to resume 'customary' rights of migration to Rome.<sup>181</sup> Indeed, many of the original settlers in Latin colonies had been Romans who had renounced their Roman citizenship to participate in the foundations; that these origins remained potent is shown by the Senate criticising the twelve recalcitrant colonies for behaviour most disgraceful for *Romans*.<sup>182</sup> The physical relocation of Latins could not be stopped (whatever the possible legal brakes applied, see below, sect. 6. 3, 6. 6), and once in Rome, the most that was required to complete the process and become a citizen was either a modicum of misrepresentation by the would-be citizen at the census, or a degree of laxity, or the conscious wish to pursue goodwill by allowing registration, on the part of the censors.<sup>183</sup>

The principal point of the Latins' complaints (*summa querellarum*) was the same as that in 187, except that Livy reverses the order. Whereas earlier the issue had been migration to Rome followed by registration in the census, in 177 the problem was that Latin citizens had

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<sup>180</sup> Liv., 34. 1. 1 – 8. 3, 7. 7-13 (195 B.C., with BRISCOE 1981, 39-63). Prior to its repeal, we should note, the opportunities for display of wealth and status available to elite women in Latin colonies were superior to those in Rome ... at least, so the tribune Valerius claims in arguing for its repeal: Liv., 34. 7. 5-6; BISPHAM, forthcoming.

<sup>181</sup> Of course, Rome was not the sole Latin destination. Expanding Roman power created economic opportunities resulting in some medium- or long-term emigration to the Greek East. The substantial presence of Latins (and others) on Delos, and *a fortiori*, in centres like Smyrna, comes a generation or two later than the period with which we are dealing here, but note Liv., 38. 44. 4 (187 B.C.): under the terms of the *SC* settling the conflict with Ambrakia, Romans and 'allies of the Latin name' are not to pay harbour-dues there (GABBA 1989, 224-5; HARRIS 1992, 94), although BRISCOE 2008, 155-6 points out that Livy's wording cannot be used to exclude the possibility that other Italian allies also enjoyed the privilege; *cf.* the many eastern contacts of L. Rammius of Brundisium, extending as far as king Perseus himself (Liv., 42. 17. 2-9: Rammius and Perseus, but see BRISCOE 2012, 210-11 on the *nomen*); and the tombstone of P. Ramius Nicephorus at Larisa in Thessaly (*JG* 9, 2.858, mid-third century); see further HELLY 1983; LINTOTT 1992a, 17; LINTOTT 1993 7, 9; and for context ROSELAAR 2019, 62-93.

<sup>182</sup> Cic., *pro Caec.* 98 (Romans settling in Latin colonies); Liv., 27. 9. 10-12; on Livy's rhetoric here, see BISPHAM 2006, 82-3. On the significance of Roman ancestry in the decision of Latins to migrate to Rome, see LAFFI 2017b, 88.

<sup>183</sup> LAFFI 1995, 57-8, 77, suggests the decline of a more lenient 'Scipionic' attitude to the census in the face of a more conservative 'Catonian' one.

registered in the census, and of those many had moved to Rome (*ciues suos Romae censos, plerosque Romam commigrasse*), a move which our earlier discussion of *commigrare* invites us to think of as intended to be permanent. The exact interrelationship of (a) registration and (b) migration in 177 is not self-evident. Livy's word order is probably not simply to be explained by *uariatio*; on that assumption *plerosque* makes no sense – some of those who registered did not then migrate. Had the Latins, after the expulsions of 187, adopted new tactics, registering in the censuses of 184/3 and 179/8 (remember that initially the complaints which were finally heard in 177 had been appeals to the censors and the consuls in 178), and only then, with registration effected, been in a position to choose between remaining in the Latin communities, or moving to Rome?<sup>184</sup> On the assumption that (a) Livy's source was clear on the two procedures, and (b) that Livy understood what he found there, I am inclined to think that there was a change in Latin procedure, since *commigratio* in 177 is made logically dependent on *professio* at the census.<sup>185</sup> In any case the nexus of migration and registration in the census (and by implication repeated laxness on the part of different censors)<sup>186</sup> remains at the heart of both the practice of individual Latins and the objections of their communities.

#### 6. 4. Migratory Misconduct: Evading the Law.

After the parenthetical mention of the Samnites and Paeligni, Livy reverts to the complaints of the Latins, and adds more detail (*autem*). We learn that two ways of fraudulently obtaining Roman citizenship as an individual (*mutandae uiritim ciuitatis*) had been introduced. Each of these represented a loophole in an existing *lex* (on which more below, sect. 6. 6), which 'was giving', or 'continued to give' (*dabat*), the possibility for a Latin to become a Roman citizen, if he left *stirps* (offspring) of his own in his home (Latin) community (*domi*). This was intended to obviate the demographic effects of migration: the community would lose an individual, but not a lineage. The *lex* aimed to make migration a zero-sum game.<sup>187</sup> The

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<sup>184</sup> It is not clear whether any who chose to stay would have remained in the Latin community as Roman *incolae*, or whether some form of double-citizenship would have come into play (see section 5. 1, above).

<sup>185</sup> *Contra* BRISCOE 2012, 64, who makes a case for the Latins describing the same process as had been raised in 187; *cf.* LAFFI 1995, 49: these two complaints, ten years apart, were the same in substance. Even in 187 not all those who migrated to Rome and became citizens through registration in the census would have remained resident in Rome itself; indeed registration in a rural tribe would imply a *domicilium* established outside Rome. It may of course be that the order of events was also *professio* and then *commigratio* in 187, and that Livy has there, in his more condensed account, reversed the two items; if so, my reconstruction of the events of 187 would need to be reconsidered.

<sup>186</sup> LAFFI 2017b, 95.

<sup>187</sup> *Stirps* should mean 'offspring', *i.e.* not just 'sons', as it is often translated (*e.g.* LAFFI 2017b, 91-2), although it is likely that sons were most often in question; BRISCOE 2012, 62, thinks that a daughter would have to be

problem was that Latins emigrants had hit upon ways of satisfying the letter of the law while undermining its spirit; this happened in two ways, damaging both the community of origin and that of destination.

(i) would-be migrants were selling their children as slaves to Romans, who would then, by prior agreement manumit them, at which point, as *libertini*, they would become Roman citizens.<sup>188</sup> This must have been done prior to the Latin's registration in the census at Rome, otherwise he could not have satisfied the conditions of the *lex* in the first place. In this way not only was the Latin community striped of the migrating individual, but potentially his entire lineage in direct descent. It is a sobering reflection on the relative prestige of Roman and other citizenships in Italy that a son would prefer to be (or a father should prefer his son to be) a *libertinus* in Rome than an *ingenuus* in, as it might be, Spoletium.<sup>189</sup>

(ii) Livy's text is incomplete at this point, but the dodge in question here was one which allowed those without offspring to emigrate regardless, and the common supplement, that such men adopted sons in order to leave them behind, seems inevitable, and to be confirmed by *suum facere*, opposed to *alienum*, a little later. It remains obscure, however, in what way, other than the negative implications of the loss of an adult male to another community, the Latin city was impacted negatively by this adoption.<sup>190</sup> Subsequently, even these counterfeits of legal

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married to count as *stirps* in this context. Existing offspring of those who later emigrated were Latins, not Romans; presumably the intention of the legislator was that should these sons, in their turn, wish in due course to emigrate, they would be bound by the same constraints. On whether or (more probably) not the wives of migrating Latins could also obtain the citizenship, see VOLTERRA 1951, 656-8 = 1991, 240-2; if not, then presumably further children born of this union would be Latins, citizens of the community in which their mother was still be registered. TIBILETTI 1953, 213-14, noted the similar (but not identical) provision in a Lokrian law on the foundation of Naupaktos, of the early fifth century, where any colonist wishing to return to Lokris without penalty had to leave behind a brother or son: MEIGGS-LEWIS 1988, no. 20; *cf.*: GRAHAM 1964, 40-68, 224-32; HUMBERT 1978, 116 n. 92; BROADHEAD 2001, 86-7; COŞKUN 2009a, 107-11.

<sup>188</sup> As LAFFI notes (1995, 52-3, 55; ID. 2017b, 91) the specification that the offspring left behind had to be *ex sese*, 'sprung from themselves', attempted to preclude precisely the possibility of adoption specifically to qualify an individual for migration to Rome (something which in itself presupposes a supply of adoptable children within the community in question).

<sup>189</sup> CASTELLO 1958, 246-8; and LAFFI 1995, 54-5; ID. 2017b, 93; ISAYEV 2017, 43-4, for discussion and doxography on this expedient. LAFFI *ibid.*, 54, followed by BROADHEAD 2004, 321, notes that the strategy of sale and subsequent manumission requires reliable associates within the Roman citizen body; *cf.* LAFFI 2017b, 93, 95. If a man had several offspring, it is possible, of course, that he left one behind, temporarily enslaved, and that the other(s) moved to Rome with him, although the status of such children remains unclear, as it is not clear that they would become Roman when their father migrated and made his *professio* (see above n. 187). The status of *libertini* within the state was itself the subject of continuing debate in the second century: at least by the census of 174 freedmen with property worth more than 30,000 HS, or a son over five years of age, could be registered in the rural tribes in the census (Liv., 45. 15. 1-7; 168 B.C.).

<sup>190</sup> The relevant pages of the manuscript (*Codex Vindobonensis*, or Österreichische Nationalbibliothek, Lat. 15) of this section of Livy, relating to the events of 177, had been lost by 1665, when the MS reached Vienna. Modern editors thus have to rely on the 1531 edition of Grynaeus, published by the Froben press: see Briscoe's

right (*imagines iuris*) were abandoned, and men began moving to Rome (*transibant*) and becoming citizens by migration and census (*in ciuitatem Romanam per migrationem et censum*), regardless of *lex* and lineages.<sup>191</sup> This is important: once the law was in disarray, the Latins ceased following, or even dodging, its provisions, and reverted to what thus seems to be an earlier form of obtaining the citizenship, the same which Livy says was being employed up to 187: *per migrationem et censum*. Livy does not say that this was not considered legitimate, but implies that it represents a different route into the citizenship, independent of the terms of the *lex*.

### 6. 5. *The Remedies Sought.*

The embassies, to deal with the problem now and in the future, asked the Senate to do three things. The first was to return the ‘allies’ to their own communities (*ut redire in ciuitates iuberent socios*); presumably this means *both* those who had evaded the law on the technicalities described, *and* those who, ignoring the law, had used the older route of *per migrationem et censum*. Secondly, they asked for both the selling and adoption of sons for the purposes of changing one’s citizenship to be made illegal by statute.<sup>192</sup> Finally, they asked for something to be done about anyone ‘made a citizen’. It is normally assumed that the *lacuna* in the text here should be filled by a request that citizenship obtained by the means here being denounced was to be null and void. This closing of a loophole would be typical of the ancient legislative mindset; it aimed to prevent any migrant Latins, now or in the future, appealing their deportation (for example, to the tribunes). It is unfortunate that we do not know how this was to be achieved.<sup>193</sup>

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1986 Teubner edition of Books 41-5, pp. iv, vi; and *apparatus criticus* for this passage; LAFFI 1995, 48, 55f.; BRISCOE 2008, 216; ID. 2012, 3-4. The subject of *ciues Romani fiebant* is unclear: the adopter, or by some further subterfuge, the adoptee? The former seems more likely. See also BROADHEAD 2004, 319-21, exploring problems in the actual implementation of the dodge reconstructed here (I am not sure why the Latin censor plays a role in either sale or adoption of a son, however); COŞKUN 2009a, 178-84; BRISCOE 2012, 62-3; TARPIN 2014, 172; LAFFI 2017b, 93-4, discussing also the problem of the *iniuria*.

<sup>191</sup> Cf. BROADHEAD 2004, 325.

<sup>192</sup> LAFFI (1990, 297; cf. ID. 1995, 59-61; BRISCOE 2012, 65; LAFFI 2017b, 94-5) must be right to argue that the legislation here sought by the Latins was intended to limit the rights of *Romans* to buy and then free a citizen of a Latin community. There was no sense in which Rome could enforce what Latins ought to have been able to control in their own communities (but in fact seem not to have controlled), that is the initial sales; it would also have been difficult for a *Roman* statute to prevent a Latin using an action of civil law (adoption) within his own city, although it could perhaps have sought to limit the exercise of *commercium* for illicit ends. Latin cities would have had to adopt any law passed to this end, for it to apply outside the *ager Romanus*.

<sup>193</sup> For the sense required to fill the *lacuna*: LAFFI 1995, 61; ID. 2017b, 95. Laffi argues that what is meant here is that *future* infractions of the *proposed new* law would result in the citizenship so usurped being null and void. This might be correct, although it would be characteristic of Roman legal provisions, whose language Livy apes

## 6. 6. *Livy's lex: Date, Purpose and Nature?*

We now come to the fulcrum of the discussion, a “source of endless debate” (TARPIN 2014, 172).<sup>194</sup> On our interpretation of the *lex* mentioned by Livy, which ‘was giving’ the right to migrate if a *stirps* were left behind by the emigrant, turns our view of not only the legal basis for Latin migration, but also the character and implications of the changes to that migration, also attested by Livy. How were rights, laws, customary practice and even perhaps creative illegality interwoven, and how did they act on each other, in the first quarter of the second century? As a preliminary, we should remind ourselves of what we noted above (sect. 6. 4): Livy assumes that there were two separate routes (one or both perhaps enforced by a supplementary oath, see sect. 5. 3, above) for acquiring Roman citizenship open to Latins. One was via existing *legislation* (the *lex*), while the other appears to be an older (? more precarious), *customary* process, *per migrationem et censum*, which had been in use prior to 187, and became the ‘default setting’ once the *lex* had fallen into desuetude from being held in contempt.<sup>195</sup> When either of these routes appeared is a vexed question: as we have seen (sect. 4, above), not only do we have next to nothing in terms of further evidence to bring to bear, but we have also shown that neither the *foedus Cassianum* nor the settlement of the Latin War in 338 can be shown on present evidence to have a strong, or even modest, claim to being the context for the institution of Latin rights to migrate, either legal or customary.

On Salmon’s initial view (discussed above, sect. 4. 5) of the *ius Ariminensium*, those who were made to return to their colonies in 187, and again in 177, would have been men who emigrated in the two generations between 265 and 204 from colonies founded in or after 265. Colonies founded in this period had no right, he argued, to seek extra *coloni* from Rome, because they *should* be retaining their own populations owing to limitations placed on the right of their citizens to migrate; this restriction, which involved leaving *stirps ex sese* in the colony, was the law to which Livy refers in our passage. This ingenious reconstruction suffers from going beyond the evidence, and deploying it selectively; as Sherwin-White noted, it looks as if the complaints of 187 and 177 about migration were made by *all* the Latins; further, there is

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here, to formulate a prohibition which was both retrospective and anticipatory; Livy’s meaning is most naturally as I have taken it in the text above.

<sup>194</sup> TARPIN himself (2014, 172 & n. 78) leaves the question open; see also KREMER 2006a, 36-8.

<sup>195</sup> Two routes: cf. BRISCOE 2008, 216 (possible depending on the date of the *lex*); at ID. 2012, 61-2, however, Briscoe seems more inclined to see Livy’s *lex* as an original part of the right to citizenship *per migrationem et censum*.

no evidence that the character of Latinity altered significantly for the worse for colonies founded after 268.<sup>196</sup>

If there is no good reason for placing Livy's *lex* in 268/265, and linking it to the mysterious *ius* of the XII colonies, might it belong closer in time to 177? As I noted above, 204 has been canvassed by some scholars. To examine the claims of this year to have seen the passage of a law requiring *stirps ex sese* as the requirement for migration, we need to return to the repatriations of 187. As we saw above (sect. 5. 6), Livy says that those Latins in Rome who were found to have been registered in a Latin census in or after 204/3 were repatriated. His brief summary implies that it was the 'right' of *mutatio ciuitatis* obtained *per migrationem et censum* was deemed invalid, or deemed to be so for those registered 204/3 B.C.<sup>197</sup> I argued above that the main driver for choosing 204 as the cut-off date for deciding who would be expelled was the availability in Rome of copies of some Latin census records from this point onwards, as part of the punishment of the recalcitrant colonies (I suggest that other Latins may also have brought their records not long after; sect. 5. 6, 5. 8, above). These were already deposited in the *tabulae publicae* in Rome, as required by the censors in 204/3 (Dio Cass., 17 fr. 57. 70 for their agency).

It is, however, also possible that 204 was also chosen as the cut-off because something changed in that year with regard to the legal position governing citizenship consequent on migration. Livy's (dense but detailed) account of the punishment of the colonists in 204 does not make any mention of such a change (nor does Dio's fleeting mention), but the idea is not absurd. Given that the problem was demographic attrition, it would make sense for the Roman authorities not only to punish the failure of the twelve colonies to supply troops, but also to help prevent a recurrence, by tightening the rules about migration. Since we have a *lex* in Livy which does this, attested as existing in 177, and in search of a context for its creation, and we have a context in which we see the consequences of a demographic crisis being managed, a pardonable temptation arises to date Livy's *lex* about *stirps ex sese* in 204/3. This would explain why those who were registered in Latin communities prior to 204 were not repatriated, whether or not they had left offspring behind them. This is the thesis of Castello; while I find

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<sup>196</sup> MOMMSEN 1887b, 637-9 (supposed deterioration of Latin rights after 268); SALMON 1936, 57-61; SHERWIN-WHITE 1973, 103-4; cf. BROADHEAD 2001, 77.

<sup>197</sup> That the phrase *per migrationem et censum* derives from a legal formula governing how enfranchisement following could happen is assumed by e.g. TOYNBEE 1965, I, 586; II, 140; SHERWIN-WHITE 1973, 110-11; and doubted by BROADHEAD 2001, 70.

Livy's silence on any legal change damaging for his argument, it is nevertheless sufficiently attractive to make it impossible to dismiss out of hand.<sup>198</sup> On this reading, the punishments which Livy records as meted out to the twelve recalcitrant colonies in 204 (the introduction of a tax; and the requirement – very probably – to synchronise census-taking with the holding of the census in Rome, and – certainly – to have the results of each census sent to Rome for audit) would have been part of a wider package of measures designed to deal with potential demographic drift in (all) the colonies. One implication of accepting this reading would be that Livy has suppressed much of the relevant detail about the complaints of 187: the problem would then not be (or not only be) one about the illegitimacy of citizenship *per migrationem et censum*, but about the setting aside of the putative law of 204 about *stirps ex sese*. If one wished, instead, to insist that obtaining citizenship *per migrationem et censum* was the nub of the problem, one could imagine that the twelve colonies punished (or all colonies) also saw the right of obtaining Roman citizenship by this route revoked or suspended in 204/3, whether by a statute passed by the Roman People, or a *senatus consultum* directed at future censors, or by adjustment to the *leges* of the colonies, with commissioners appointed to draft a supplement to the existing *lex*.

It is also worth trying to consider such measures as not wholly punitive, but perhaps as an example of 'tough love', something extended to the whole of the *nomen Latinum* to achieve necessary solutions sought both by Rome and by the colonies. For those Latin colonies which in 209 were having trouble meeting their obligations under the *formula togatorum*, restrictions to (some or all forms of) legal migration to Rome and consequent *mutatio ciuitatis* would actually assist in meeting the requirement to supply fixed (indeed, for the twelve recalcitrant colonies, increased) numbers of troops. The eighteen loyal Latin colonies in 209, led by the Fregellan representative M. Sextilius, had made a virtue of ostentatiously meeting their troop-quotas and even being willing to exceed them. That does not mean that they found it easy to do so, only that they were determined to advertise their loyalty to Rome whatever the cost.<sup>199</sup> The Senate can hardly have been unaware of the strains imposed by the Hannibalic War across the socio-economic spectrum, and the possibility that other Latin communities besides the twelve might in future seek to default cannot have been ruled out (see above, sect. 6. 2). While the Senate could not condone the failure of any colony to meet its obligations to supply troops,

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<sup>198</sup> Restriction of the *ius migrandi* in 204: CASTELLO, 1958, 215-22, 226, 264.

<sup>199</sup> Liv., 27. 10. 3-4; COARELLI 1998, 34-5, on the leadership role exercised by Fregellae.

it could assist all of them to continue to do so by cutting off or limiting one source of demographic attrition, namely *mutatio ciuitatis* by means of *migratio* and *professio*. We should, then, not exclude the possibility that in 204 the Romans acted, by one of the routes suggested above, to restrict, whether for the immediate future or in the longer term, what had previously been a sanctioned and well-trodden route into the Roman citizenship for citizens of all Latin colonies.

Another solution proposes a different, initially attractive, context for the *lex*, one much closer to Livy's mention of it in 177, namely an innovation limiting the *ius migrandi*, prompted by the expulsions of 187. This view, explored by Salmon and others, following an intuition of Mommsen, makes the not unreasonable assumption that the repatriation measure of 187 would have been logically followed and secured by legislation to make future migration more difficult.<sup>200</sup> At face value, and given that Livy's account of the expulsions of 187 is clearly very compressed, this hypothesis is attractive, and I was initially persuaded. Yet it will not do. Livy recounts a process which must encompass the following sequential stages: promulgation and passing of the law; observation of the law; introduction of two forms of deception to evade the spirit of the law; general contempt of the law once evasion is seen to be widely practised; the law is ignored and Roman citizenship reverts to being obtained *per migrationem et censum*. It stretches credibility (and even credulity) to argue that all these phases could be gone through in a decade; rather, this sort of evolution from compliance to contempt to complete desuetude looks like the kind of development which would play out over a generation (or more). Livy's brief summary condenses what must have been a gradual, drawn-out evolution of Latin attitudes. This scenario would also require that the *lex* about leaving behind offspring was already being evaded by 187, despite Livy's silence.<sup>201</sup>

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<sup>200</sup> MOMMSEN 1887b, 638, who thought some restrictions had already been applied to the *ius migrationis* after 268, and that shortly before 177 those communities with an as yet unrestricted right were now required to adopt the rules described in Livy. For the restriction in 187, or between 187 and 177, of a long-standing Latin right to migration (originally enshrined in the *foedus Cassianum*, and putatively restricted at various dates): BLOCH & CARCOPINO 1929, 146 (censorship of 184?); McDONALD 1944, 21, 23 n. 92; TIBILETTI 1950, 213 n. 4 = ID. 2007, 157 n.4; BADIAN 1958, 150; TOYNBEE 1965, II, 137-41; SALMON 1969, 93, 102; ; SHERWIN-WHITE 1973, 111 n. 1; and see further the doxography in CASTELLO 1958; HUMBERT 1978: 109 n. 72; LAFFI 1995, 51 and nn. 19-24; FERRARY 2003, 115-16 = ID. 2012, 128 (187 or 186 B.C.); *contra* BROADHEAD 2001, 78; BRISCOE 2008, 216. The right to emigrate on condition of leaving a son is at least as old as the fourth century (but only for the descendants of Romans who had originally enlisted in a colony), according to COŞKUN 2009a, 24, 111-13; agnostic as to date: DE MARTINO 1973, 99; STURM 1992, 722 n. 23.

<sup>201</sup> LAFFI 1995, 53, 57, seeing the problem as one of long-standing, but of recent escalation, argues that Livy's failure to mention evasion of the law in 187 is not significant; *cf.* GABBA 1989, 217-18: the law requiring *stirps ex sese* pre-dated 187; by 187 Latins were using the two dodges Livy describes to get evade it; it was only after 187 that even these were neglected; BRISCOE 2008, 217; ID. 2012, 62. We still, however, have to explain why the twelve colonies punished in 204/3, who had sent their census results to Rome for audit several times

Others have wanted Livy to refer to a law dating to c. 338, passed in the context of the settlement of the Latin War,<sup>202</sup> or to the provisions of the *foedus Cassianum* itself. In the latter case, however, taken at face value, Livy's use of the word *lex* seems to rule out such an identification: as Beloch noted: a *lex* is not a *foedus*.<sup>203</sup> Different again was the 1961 revision of his earlier position by Tibiletti. His second thoughts still favoured seeing this as a law introduced between 187 and 177, but interpreted it very differently. Far from being a restriction to an existing right, the law would have actually *created* particular circumstances in which a class of Latin immigrants already living in Rome was now permitted to obtain the citizenship by registering in the census. This would then be the *first* formal legal statement of the rights of Latins to obtain the citizenship after migration to Rome, under certain conditions.<sup>204</sup>

It has generally been assumed that Livy's *lex* was a Roman statute, passed at some point which cannot be determined with certainty, in order to prevent the deleterious effects of emigration on local social and demographic structures.<sup>205</sup> Such a statute passed by the Roman People would determine outcomes for Romans in Rome and the *ager Romanus*. It would not, however, apply to any Latins or *socii* unless formally adopted by them, through the process known as *fundus fieri*. By this means individual Roman statutes were from time to time voluntarily brought within the juridical frameworks of allied communities, and thus aligned the legal situation regarding specific matters in the adopting community with that in Rome.<sup>206</sup> More recently, Broadhead has argued *lex* here in fact denotes the individual local statutes (or charters) of each Latin colony, in which provisions about the rights and modalities surrounding

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between 204/3 and 189/8, had never taken the opportunity to use those totals to illustrate a manpower drain, and ask for Rome's help in plugging the leak. It may be just conceivable that this was what is meant by *et censores ... fatigauerunt*; cf. Liv., 39. 3. 5, for the onus on the Latin authorities to prove the status of individuals in order for them to be returned to their *patria*; above, sect. 5. 6.

<sup>202</sup> E.g. FRÉZOULS 1981, 119-21; LAFFI 1995, 52.

<sup>203</sup> HUMBERT 1978, 116, but see BELOCH 1926, 196.

<sup>204</sup> TIBILETTI 1961, 239-46; critique at HUMBERT, 110-17, 120, 139; see also BRISCOE 2008, 216-17 (against Tibiletti's inclination to see the law as addressing also Italian allies); cf. COŞKUN 2009a, 107-10, 113-24.

<sup>205</sup> So LAFFI, 1995, 52-3, arguing that there is no evidence that the rules allowing migration and enfranchisement for Latins were ever any different from those which Livy attributes to this *lex*.

<sup>206</sup> On *fundus fieri* see HUMBERT 1978, 118 n. 100; BISPHAM 2007a, 187-9; on the adoption of Roman law by allies: Cic., *pro Balb.* 20: *sed totum hoc, iudices, in ea fuit positum semper ratione atque sententia ut, cum iussisset populus Romanus aliquid, si id adsciuisset socii populi ac Latini, et si ea lex, quam nos haberemus, eadem in populo aliquo tamquam in fundo resedisset, ut tum lege eadem is populus teneretur, non ut de nostro iure aliquid deminueretur, sed ut illi populi aut iure eo quod a nobis esset constitutum aut aliquo commodo aut beneficio uteremur. tulit apud maiores nostros legem C. Furius de testamentis, tulit Q. Voconius de mulierum hereditatibus; innumerabiles aliae leges de ciuili iure sunt latae; quas Latini uoluerunt, adsciuerunt; ipsa denique Iulia, qua lege ciuitas est sociis et Latinis data, qui fundi populi facti non essent ciuitatem non haberent*; see also Liv., 35. 7. 2-5 (with BRISCOE 1981, 153-4; TARPIN 2014, 169); HARRIS 1972.

Latin migration would have been embedded.<sup>207</sup> Broadhead argues against the existence of any *privileged* status which might be understood as a *ius migrandi*, as the fact of high-volume migration as a constant in Italian society would make such a status redundant. Livy's *lex*, on his view, imposed for the first time restrictions (an *exceptio*) on colonial Latins alone, and would have been written into their *leges* in the years after 338 in order to retain colonial population levels.<sup>208</sup>

Broadhead's solution is not without its own problems. We might expect Livy to denote colonial statutes by *leges* and not *lex* – but it would be wrong to hold Livy to high standards in institutional terminology. More importantly, we would have to suppose either that such a regulation appeared in the early Latin colonial *leges* (from the early fifth century, perhaps) and was then retained as a *tralatian* clause in all subsequent charters; or that it was introduced later (say, for example, in 334 with the foundation of Caes) and that earlier *leges* were then 'retrofitted' with the clause about *stirps ex sese*. In either case, the hypothesis needs all the Latin colonial *leges* to contain the same regulation. As I have suggested above, however (sect. 4. 5), what we know about the *ius Ariminense* suggests the opposite may be true: if some Latins found themselves in a favourable situation with regard to arrangements with Roman citizens about contractual guarantees and inheritance (*nexa* and *hereditates*), why should the same not be true of the preconditions for migration and enfranchisement? Nevertheless, Broadhead's solution is in some ways the least bad option, and may be correct. It gets around the awkwardness of assuming a statute law which imposed restrictions and obligations on what individuals could do in their own independent allied communities (see sect. 6. 7, below). It would also mitigate the problem that the repatriations *could* be seen as illegal retractions of citizen-status, executed without the authorisation of the People. If a statute of the Roman People allowed migration and enfranchisement under certain conditions, it could be politically risky for the Senate to repatriate those who had benefitted from the law, those who had abided

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<sup>207</sup> BROADHEAD 2001, 81, 86-9; ID., 2003, 135-6, 141; ID., 2004, 316, 319-21, 329; ID. 2008, 545-5.; for the possibility of *leges* regulating migration between Latin colonies, see already SHERWIN-WHITE 1973, 113, *cf.* KREMER 2006a, 36-7; COŞKUN 2009a, 111-13; KREMER 2014, 232; ROSELAAR 2019, 130; note also GABBA 1989, 217 (for whom the right to migrate was also enshrined in treaties with allies).

<sup>208</sup> *Contra* BRISCOE 2012, 61; HUMBERT 2014, 52-3; LAFFI 2017b, 92 n. 18. Note that Broadhead does not consistently (at least in BROADHEAD 2001) separate out the general phenomenon of mobility in Italy from the specific case of *mobility which entailed citizenship* within the community of destination (*cf.* ISAYEV 2017, 38, 41, who in dismissing the existence of the *ius migrandi* collapses 'mobility' and 'migration to achieve change of citizenship' into a single discourse). To assert the scale and importance of mobility is correct, but it does not follow that its existence makes special arrangements about citizenship arising from migration necessary from time to time.

by it as well as those who had abused it (see above sect. 5. 7). Neglect of a *foedus* (an instrument similar to a colonial *lex*) or the *iura* of Latins and allies, on the other hand, was controversial, but it did happen. Ti. Gracchus' *lex agraria* of 133 caused resentment among Latin and allied communities who lost *ager publicus* to create the new Gracchan allotments, but those who tried to hold him to account were not the tribunes of the Roman People, but the allies themselves, who had to lobby powerful friends like Scipio Aemilianus.<sup>209</sup>

### 6. 7. *The Remedies Provided.*

In response to the Latins' complaints the Senate passed a resolution instructing the consul C. Claudius Pulcher to propose to the people a law *de sociis*.

[9] *legem dein de sociis C. Claudius tulit <ex> senatus consulto, et edixit qui socii nominis Latini, ipsi maioresue eorum, M. Claudio T. Quinctio censoribus postue ea apud socios nominis Latini censi essent, ut omnes in suam quisque ciuitatem ante kalendas Nouembres redirent.* [10] *quaestio qui ita non redissent L. Mummius praetori decreta est. ad legem et edictum consulis senatus consultum adiectum est,* [11] *ut dictator consul interrex censor praetor, qui nunc esset <...>, apud eorum quem <qui> mani mitteretur in libertatem uindicaretur, ut ius iurandum daret qui eum manu mitteret, ciuitatis mutandae causa manu non mittere.* [12]. *in quo id non iuraret, eum manu mittendum non censuerunt. haec in posterum cauta, iussique edicto C. Claudi consulis <...> Claudio decreta est.*

[9] Then C. Claudius carried a law concerning the allies in pursuance of a decree of the Senate, and he issued an edict, that those allies of the Latin name, themselves or their elders, who had been registered in the census among the allies of the Latin name in or after the censorship of M. Claudius and T. Quinctius [189 B.C.], should all return each to his own community before the Kalends of November. [10] An investigation into those who had not so returned was assigned by decree to L. Mummius the praetor. To the law and edict of the consul, a decree of the Senate was added, [11] that a dictator, consul, interrex, censor or praetor, who should be in office now <...>, before any of whom someone was brought to be manumitted and to have his claim to freedom asserted, should administer an oath to he who was manumitting, to the effect that he was not manumitting to effect a change of citizenship. [12]. In any case where the manumitter did not swear this oath, they decreed that manumission should not occur. These measures were stipulated for the future, and men were ordered by the edict of C. Claudius the consul <...> was decreed to Claudius.<sup>210</sup>

We are told nothing explicitly as to the content of the law. We cannot know, for example, whether *de sociis* is Livy's passing gloss, or an accurate reflection of an intention to legislate about the modalities of possible admission of all allies into the citizenship. A number of scholars have indeed taken Livy's words here at face value, and assumed that the *lex Claudia* was aimed at all *socii*, not just Latins, and also that it extended an existing right to migrate from

<sup>209</sup> Ti. Gracchus and allied rights: Cic., *de rep.* 1. 31 (*concitatis sociis et nomine Latino, foederibus violatis*); 3. 41 (*Ti. Gracchus, perseveravit in civibus, sociorum nominisque Latini iura neclexit ae foedera*); cf. App., *BC* 1. 19. 78-81.

<sup>210</sup> Liv., 41. 9. 9-12; again the text is that of Briscoe's Teubner, and the translation mine. See LAFFI 1995, 68-9, 71; BRISCOE 2012, 68-72, for discussion of possible supplements to Livy's text, syntactical aspects of the final section of the passage, and the limited value of various readings for deciding the issue.

the Latins to the wider allied community in Italy.<sup>211</sup> Yet this is to read the passage out of context: for the previous eight sections Livy has been concerned with the decreeing of troop numbers, the expiation of prodigies and the allocation of provinces. The words *de sociis* simply signal a change of topic: having been allocated the numbers of troops they could levy, expiated prodigies and drawn their provinces, the consuls turned to other matters, and the first business before Claudius was the existing matter of the Latin embassies, regarding which the Senate had instructed the consuls to bring a law before the People. Indeed, it was politic to address their concerns quickly, since the decisions recorded just before about how many troops the new consuls could raise foresaw the levying of a total of 29, 000 infantry and 1, 450 cavalry from the allies, including the Latins. The optics of requiring as many as 10, 000 Latin infantry, while leaving Latin concerns about manpower unaddressed, were not such as to recommend themselves. It is, moreover, probable, that the law was, at least in part, congruent with the edict which Claudius published, which concerned the Latins.<sup>212</sup> Whether, however, despite Livy's words *haec impetrata ab senatu*, the *lex Claudia* gave the Latins a statutory remedy in respect of all their demands seems less certain. It seems most unlikely that a Roman statute could tell Latins whom they could and could not adopt, or whether or not they could enslave their sons and sell them to Romans (see also sect. 6. 6, above). The most the law could do was to forbid manumission practised as an accessory to *mutatio ciuitatis*.<sup>213</sup>

The edict ordered the return to their community of all those (*omnes*) of the Latin name, who had been registered, or whose ancestors had been registered, in a Latin census, in or after the censorship at Rome of M. Claudius Marcellus and T. Quinctius Flamininus in 189 B.C.; the edict may have been partly designed to maximise quick dissemination of the terms of the *lex* across the *ager Romanus*. The census of 189, as we noted above (sect. 5. 2), can perhaps be considered as having been relatively lax from the point of view of censorial oversight of

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<sup>211</sup> LAFFI 1995, 50, 52, 57, 64f., 73, 77: while the original *lex* governed the right of Latins to migrate (back) to Rome, the *lex Claudia* of 177 extended the right to all Latins and allies; for extension to all allies at this point see also: McDONALD 1944, 20-1; TIBILETTI 1950, 213 n. 4 = 2007, 157 n. 4; BADIEN 1958, 150 n. 4; TIBILETTI 1961, 239-49; LURASCHI 1979, 91. LAFFI *ibid.*, 54 argues that the sale of a son into slavery, to a Roman, was only possible for those who held *commercium*, which allowed the act of *mancipatio* to take place, and thus only for Latins (*cf.* SHERWIN-WHITE 1973, 109; TARPIN 2014, 163) – thus, in as far as the law addressed this issue, it can only have applied to Latins; see, however, SIRKS 2014, 173-4 (reviewing ROSELAAR 2013).

<sup>212</sup> ROTONDI 1912, 280; DE SANCTIS 1923, 570; GÖHLER 1939, 66-7; CASTELLO 1958, 248-9; DE MARTINO 1973, 448-50, KEAVENEY 1987, 55; LAFFI 1990, 297; WULFF-ALONSO 1991, 159; FERRARY 2003, 113 = ID. 2012, 124.

<sup>213</sup> On the content of the *lex* see LURASCHI 1979, 64-6; GABBA 1989, 218 (cautious); likewise LAFFI 1995, 64, 70, 73; ID. 2017b, 96; ID. 2019, 179 n. 14. On manumission, *cf.* LAFFI 1990, 297; LAFFI 1995, 71-2; inability of Rome to intervene in adoptions by Latins: BROADHEAD 2004, 324.

those who presented themselves. It may thus have represented a good starting point for cleaning house; there may also have been some Latins registered in 189 in their home communities, who had had escaped the repatriation order of 187.<sup>214</sup> The consul's edict, and probably the *lex* as well, given that denial of citizen status was in question, re-asserted the *status quo ante*: as in 187, *mutatio ciuitatis* through *migratio* and *professio* was not considered valid, and those who had adopted this route were deemed not to be citizens, and sent home. This meant that the repatriation was, strikingly, not confined to those who had fraudulently evaded the existing *lex*, which allowed migration on the condition of *stirps ex sese*; rather all Latin *emigrés* who were also registered in a Latin census in or after 189, had to leave. Thus it seems that the existing *lex*, far from being enforced, was not upheld for those who had been registered, or whose elders had been registered, in a Latin community between 189 and 177.

Partly to reassure the Latin authorities that the Roman response was more than fine words, a *quaestio* (criminal investigation) was decreed, under the presidency of the praetor L. Mummius, to deal with anyone who did not go back; one imagines that the Senate expected some of those who had acted within the terms of the *lex* to challenge the repatriation decision. It is also likely that the institution of a *quaestio* in 177 was a reaction to complaints about the 'indiscriminate' expulsions, or the perception of indiscriminate expulsions, carried out by Terentius Culleo in 187.<sup>215</sup> Additionally, a *senatus consultum* required any higher magistrate who was supervising a manumission to require an oath from the owner manumitting the slave for the manumission to be valid, that its aim was not change of citizenship for the individual manumitted. This imposition of an extra level of control on the problem of disingenuous manumission suggests that the *lex Claudia* had already forbidden such manumissions, and that the Senate additionally sought to be prevent individual magistrates either being imposed on, or not doing due diligence about the intended manumittee.<sup>216</sup> Finally, that manumitting someone

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<sup>214</sup> LAFFI 1995, 65-7, rightly notes that the choice of this time limit meant that no individual would not be covered by either the provisions of the Roman measures of 187 or those of 177; he also argues that the specification of a final date for departure could represent a tightening up of procedure, since the measure of 187 had set no such date; it is however possible that Livy omitted any date in the earlier narrative.

<sup>215</sup> On the *quaestio*, see LURASCHI 1979, 65 n. 117 (followed by MANTOVANI 1989, 43-4; LAFFI 1995, 67), who rightly sees a parallel with the *conquisitio* of 187; Luraschi, however, saw the expulsion of the Latins as ordered in virtue of the consul's edict, not the *lex*. LAFFI (*ibid.*) argues that part of the remit of this *quaestio* would be to deal with those who remained on the grounds that their migration to Rome was entirely within the terms of existing law. For 'indiscriminate': BROADHEAD 2004, 327, 329-30. DEROW 1989, 310, was surely wrong to see the consul's action here as an infringement on the rights of the Latins.

<sup>216</sup> LAFFI 1995, 62, 67-8 noting the 'legalese' of this section, argues that it derives from an original document available to one of Livy's sources. On the relationship between the *lex* and the *SC*, and on the presence of the censor in the list of magistracies, see LAFFI 1995, 70-1; ID. 2017b, 96, arguing also that the deployment of the *senatus consultum* suggests a that the *lex Claudia* was a *lex imperfecta*; see also BROADHEAD 2004, 324-5.

to secure change of citizenship for the manumitted needed to be prevented implied that there was still motivation to attempt this. Since one major reason for such manumissions was to evade the *lex* about leaving behind *stirps ex sese* as a criterion for migration leading to citizenship, it seems to follow that such a law was still operating; otherwise there would be no point in trying to prevent one of its signature evasions. Thus it seems likely, although it cannot be proven, that the *lex* mentioned in Livy was not abolished or suspended – and indeed Livy does not say that the Latins asked for it to be.<sup>217</sup>

We may suspect that nothing was done – and that nothing could be done – about the complaints of the Samnites and Paeligni that they had lost citizens to Fregellae; only the people and magistrates of Fregellae could act here, and they probably did not possess the required coercive power. Nor was Rome prepared to intervene here, as she attempted, for example, to do in these years, periodically at least, in the internal politics of the Achaian *koinon*.<sup>218</sup> If the Senate was willing to risk possible consequences on behalf of the Latin authorities over the expulsions of their citizens, she seemed less inclined to help the allies.<sup>219</sup>

#### 6. 8. *Was the Repatriation of 177 in any Sense Illegal?*<sup>220</sup>

The repatriation measure of 177 returned both those who had ignored the law, and those who had used fraud to evade its provisions. Yet the question of compliance with, or contempt for, the law was not, on Livy's testimony, the criterion governing repatriation. Rather the criterion was documentary: the measure repatriated all Latins who had been registered in a Latin colony in or after 189 – regardless of their attitude to the law.<sup>221</sup> Thus, the innocent

<sup>217</sup> Cf. ROSELAAR 2019, 129; *contra* TARPIN 2014, 173, but his reading of the law (*a lex de censu*) and its application seems not borne out by Livy's text.

<sup>218</sup> See for example Pol., 22. 10. 10-13 (187/6), 12. 5-7 (185/4); 24. 8. 1-5 (180); 28. 13. 11 (167); Liv., 39. 33. 5-8, 38. 3-8 (184).

<sup>219</sup> So also, for various reasons, BADIAN 1970-1, 391 n. 56; KEAVENEY 1987, 71 n. 26; LAFFI 1995: 65; COARELLI 1998, 35; BROADHEAD 2001, 89; ID. 2003, 147; LAFFI 2017b, 55; *contra*: ILARI 1974, 76-7; BRUNT 1987, 546; WULFF-ALONSO 1991, 171; TARPIN 2014, 174; ROSELAAR 2019, 130; agnostic: BRISCOE 2012, 65-6. The Senate could, of course, express an opinion on the subject.

<sup>220</sup> LAFFI 1995, 66-7, framing the Roman action as borderline illegal, adduces a passage of Cicero (*de off.* 3. 47): this distinguishes between the 'correct' or 'proper' action of depriving supposititious Romans of the citizenship, and the 'unhuman' one of expelling *peregrini* from the *urbs* (fuller discussion at LAFFI 2017b, 104-5, where he separates contemporary from later perspectives). This passage of the *de officiis* is couched in Stoic ethical terms (*inhumanum*), which would not necessarily have been those used to express a political judgement; LAFFI 2017, 92, 98, however, argues for the difference between our perceptions and those of the Romans, who would have felt entitled in an emergency to use all means at their disposal to find a solution.

<sup>221</sup> HUMBERT 1978, 114-17, 120: some who had legitimately become Romans were illegally disenfranchised (*cf.* MOMMSEN 1887b, 638; DE SANCTIS 1923, 569; McDONALD 1944, 22; TOYNBEE II, 136-51); Humber also

appear to have been punished along with the guilty; this must mean that the entitlement to citizenship claimed under the *lex* mentioned by Livy was upheld, at best, only for those whose names were not, for whatever reason, in any Latin census records in or after 189. We recur again to issues similar to those discussed above (sect. 5. 7) in connection with the repatriations of 187. How the rights enshrined in a *lex* be set aside? How could citizenship be removed without the sanction of the Roman People? Why was compliance with the law punished?

We have already considered some of the possible (and not mutually exclusive) answers: (a) the Senate may have declared that there was something flawed or illegitimate in the basic process of enfranchisement *per migrationem et censum*; (b) given that the conclusion of the transition to the Roman citizenship was effected by registration in the census, claims to citizenship based on a declaration made before the censors might be persuasive, but was also in some sense precarious, and could not be proof against concerted challenge in the same way that enfranchisement by statute passed in the *comitia tributa* or *concilium plebis* would be (see sect. 5. 4, above). In addition we should consider that (c) Livy's *lex* may have been in fact the 'charter' of each Latin colony, rather than a statute of the Roman People. Furthermore, as Broadhead pointed out, the 'indiscriminate' nature of the repatriations may indicate that (d) there was no way, given the evidence required on the one hand, and the evidence easily obtainable on the other, to distinguish between those who had complied with the rules, those who had used specious ruses to break them, and those who had ignored them.<sup>222</sup> Perhaps (e) the evidence of evasion of the law was so widespread that it could not longer be considered an effective basis for claiming citizenship. Finally (f) we may return to the question of double-citizenship raised earlier in this discussion (above, sect. 5. 1). Is it possible that one ground for expulsion was that by being simultaneously registered in Latin and Roman censuses, or by being registered, as it might be, in a Latin census roll in 189, and a Roman one in 184, Latins were thought to be exercising a virtual double citizenship, which the Romans habitually regarded as, or now decided to be, unacceptable?

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argues that the fact that the citizenship of those who obeyed the *lex* was respected no more than that claimed by those who had evaded it, shows that the *lex* cannot be recent. For COŞKUN 2009a, 162-91, these Latins had not yet attained the citizenship, and thus there was no illegal disenfranchisement (citing Cic., *pro Balb.* 27); critique at KREMER 2014, 235-6; reply in COŞKUN 2015, on which see LAFFI 2017b, 89 n. 11. TARPIN 2014, 170-6, downplays Latin migration in the second century, and like COŞKUN 2009a does not accept that such Latin migrants were registered as Roman citizens in the census. BROADHEAD 2001, 79, seems to me to undervalue slightly the targets of the measures of 177.

<sup>222</sup> BROADHEAD 2004, 327; cf. LAFFI 2017b, 97.

## 6. 9. *The Latin Strategy.*

Finally, consideration may be given to what the strategy of the Latins was in approaching the Senate, and how the Senate responded to that strategy. This perspective is which depends on a reconstruction of political calculation of risk versus expediency, of calibration of acceptable versus unacceptable: as such it must be speculative. We have discussed what the Latin authorities were bothered by (depopulation and other consequences of substantial emigration) and we know from Livy what they wanted (return of their citizens, ideally as many as possible, and a tightening up of the rules surrounding migration). How, though, did they go about this? What was essential was to have a good case, something which would have the greatest chance of gaining traction of the Senate. This was not a foregone conclusion: as we have seen, the delay before the Latins were finally heard in 177 is suggestive of the political sensitivities surrounding both the request and the possible remediation granted in respect of that request.<sup>223</sup> It was possible that neither demographic ‘forecasts’ nor other generally gloomy complaints would be sufficient to engage the Senate to act at the scale desired. Blatant illegality, however, might not only have more impact, but would allow the Senate to justify, at least in general terms, a more substantial response, whether to public opinion in Rome, in the Latin colonies, or among the repatriated. So the Latins’ complaint in 177 is made to centre on the ‘legal’ case: there was a perfectly good *lex* about migration, which had already been so routinely evaded that by 177 it was simply being ignored altogether. The Roman Senate’s bluff was being called: would the *patres* condone massive evasion of, and contempt for, this, their, law? In other words, the mention of the *lex* is not dictated by a need to offer a narrative of Latin migration which might also be useful not only to the Senate but to scholars two *millennia* later; rather it is deployed as the maximally effective means of cajoling the Senate into taking action; by extension, it provides a fig-leaf for large-scale senatorial action. The *date* of the law was thus irrelevant to the Latins – which makes it irrecoverable for us – what mattered was the *scale* of illegality in question, which, if taken seriously, would entail remediation at a similar scale. If there had been a more cogent argument available, we might never have heard of the *lex*. The Latins would probably have settled for the repatriation of those who had contravened the spirit of the *lex*, or ignored it; but faced with such a gross neglect of one of the legal underpinnings of Roman control of Italy (that the demographic *status quo* in the peninsula should be upheld), the Senate offered more than the Latin authorities

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<sup>223</sup> Cf. LAFFI 2017b, 95.

asked. A repatriation was ordered on criteria of chronology of registration, similar to those used in 187 (and probably, thus, at the same scale). This does not mean that some or all of the factors (a) to (f) listed in sect. 6. 8 above were not also drivers for repatriation.

#### 6. 10. *The Impact of the Repatriations.*

The scale of the repatriations in 187 and 177 (and thus, by implication, of immigration into Rome in these years),<sup>224</sup> was very considerable, involving tens of thousands of Latins. Some had become citizens *per migrationem et censum*, others had moved after leaving *stirps ex sese*, and an increasing proportion after fraudulently claiming, or simply failing, to do this; yet others had been sold and then freed, becoming citizens as *libertini*. All these, if they had also appeared on a Latin census register after 189, were now repatriated, some having considered themselves citizens for some years.<sup>225</sup> We have discussed the extent to which the repatriations could be considered illegal, and the different justifications which might be invoked by either Roman or Latin authorities (sect. 6. 8. above). Nevertheless, their impact on the repatriated was severe, and must have had important implications for the tone of Romano-Latin relations over the rest of the century; the repatriations come just at the time when we see the demise of the Latin colony in favour of the Roman citizen colony (see also sect. 9, below).<sup>226</sup>

Roman concern not to allow the undermining of recruitment under the *formula togatorum*, and indeed the basis of Roman hegemony, is manifest in the actions taken. Yet the driving force behind both repatriations, despite the frustration of some of their own citizens' private ambitions, came from *Latin local élites* concerned to uphold both demographic and socio-political stability, and their communities' capacity to continue meeting Rome's demands. They were facing nothing less than a crisis, in terms of their own inability to prevent large-scale emigration; traction could be obtained on the problem only at the point of destination, not the point of departure; even that traction was not a given. As well as a series of local problems, there was a threat to the stability and structure of Roman Italy; the solution to these was one

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<sup>224</sup> LAFFI 1995, 76.

<sup>225</sup> Scale of expulsions: BROADHEAD 2003, 145.

<sup>226</sup> Cicero's statement (*pro Sest.* 30) that the Latins and allies were never more aggrieved than when ordered to leave Rome and return to their own communities by a consul may refer to the events of 177; but the reference was probably to more recent repatriations, including those under the *lex Licinia Mucia* in 95 B.C.: LURASCHI 1979, 94 n. 22; GABBA 1989, 218.

which involved considerable practical difficulties.<sup>227</sup> The Latins, I have argued, got more than they asked for in the form of ‘indiscriminate’ expulsions of all Latins falling within a certain temporal catchment. On one level this was a gain, but it also meant that they not only recovered more citizens than they had hoped, but reaped a correspondingly larger harvest of resentment from those compelled to return. Nor could they claim that this was a necessity foisted on them by an unfeeling Senate: Livy makes it clear that Latin co-operation was vital for the *probatio* which put each of the thousands of names on the lists of those to be repatriated. Sadly we can only guess at how the tensions between those in power in these years in the colonies, and those who were forced to return, élite and other, played out, in politics, society, economy, law, land-ownership and so on.<sup>228</sup>

### 7. *The Long Goodbye*

Many Latins, however, did not leave. The effects of the *lex Claudia*, and of the accompanying edict and *SC*, were either not all enforced (in as far as they were enforceable), or were slow to be enforced or obeyed.<sup>229</sup> When the census of 174/3 B.C. was already underway, one of the consuls of 173, L. Postumius Albinus, used a *contio* to disseminate an edict, which stated that those Latins, who were supposed under the edict of C. Claudius to have left Rome by 31 October 177, should not be registered in the Roman census, but all in their communities of origin.

*censa sunt ciuium Romanorum capita ducenta sexaginta nouem milia et quindecim, minor aliquanto numerus quia L. Postimius consul pro contione edixerat qui sociorum Latini nominis ex edicto C. Claudii consulis redire in ciuitates suas debuissent, ne quis eorum Romae et omnes in suis citiatibus censerentur.*

269, 015 individual Roman citizens were counted in the census, a somewhat smaller number, on account of the fact that L. Postumius the consul had issued an edict in the presence of a *contio*, stating that of the allies of the Latin name, who should have returned to their own communities under the terms of the edict of the consul C. Claudius, none of them should be registered at Rome, but all in their own communities.<sup>230</sup>

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<sup>227</sup> Driven by Latin élites: SHERWIN-WHITE 1973, 107; BISPHAM 2007a, 132; LAFFI 2017b, 95-6; ISAYEV 2017, 41. Structural crisis: GABBA 1989, 218, 221, 238; LAFFI 1995, 77; BROADHEAD 2003, 131, 135-6, 138-41 (arguing that the concern about demographic stability extended beyond the Latin colonies and was common to much of Italy), 144-8 (practical consequences); ID. 2004, 319-24, 329-31; LAFFI 2017a, 56; ID. 2017b, 91.

<sup>228</sup> See FRÉZOULS 1981, 123.

<sup>229</sup> *iussi edicto C. Claudii consulis <...>* (Liv., 41. 9. 12) ought to mean that the edict had some effect, presumably that *some* of those whom it affected did actually return home by the Kalends of November.

<sup>230</sup> Liv., 42. 10. 1-3 (the text is that of Briscoe’s Teubner (1986); the translation again mine); for comment on this passage see LAFFI 1995, 72-4; BRISCOE 2012, 183-4). It may be that this edict was aimed not only at those who should have left but had not done so, but also any who had returned to Rome subsequently. Whether anyone was still awaiting a hearing under Mummius’ *quaestio* (even if his *imperium* had been prorogued

This indicates that not only was a significant number of Latins still unwilling to be repatriated, but strongly implies that some who had migrated to Rome before 177, but had not yet presented themselves at the census by that point, now sought to do so *despite* the various public pronouncements of 177. Presumably in 173 the consul was alerted to the problem by one of the censors, namely his brother Aulus Albinus.<sup>231</sup> This was thus not in itself an expulsion order, although there was perhaps an implication that those who did not leave Rome and register in their communities ran a higher than normal risk of being classified as *incensi*.<sup>232</sup> The enforcement of the edict of Claudius enunciated in Postumius' *contio* is presented as linked to a not inconsiderable decrease in the number of citizens registered at the census of 174/3, as compared with the total for of 179/8 (although this Livy's own figures give an *increase* between the two censuses). This is an interesting example of an ancient writer (Livy's source) making a connection between a specific event with demographic consequences (repatriation of Latins) and a change in the census total with respect to the previous one. Livy seems to be saying that the drop in citizen numbers was attributed at the time to the consul having addressed the People in these terms, and we should probably understand that the consul's words were thought to have affected the act of registration carried out by the censors; of course we do not know that other factors which might explain a drop in numbers were not in play.<sup>233</sup> As we noted in sect. 6. 7, the *lex* which allowed migration to Rome and enfranchisement on condition of leaving behind *stirps ex sese* seems to have been left in place. What Livy tells us about the events of 173 certainly leaves open the possibility that there were Latins who had not been ordered to return in 177, or who had subsequently arrived having left offspring in their colony, who would be able to register in the census.

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beyond 177, which is not certain) is unknown – note Livy's *omnes*, which might imply that various groups of dilatory Latins were still in Rome.

<sup>231</sup> *MRR* I, 404, 407-8 for the two brothers.

<sup>232</sup> Broadhead 2003, 133; ID. 2004, 322; TARPIN 2014, 173. We should, I think, imagine that (some) such registrations might take place at some point in the future, and thus not require immediate expulsion: *cf.* LURASCHI 1979, 66 n. 120; *contra* CASTELLO 1958, 251-2; TIBILETTI 1961, 249, KEAVENEY 1987, 53; GABBA 1989, 218; LAFFI 1995, 73-4.

<sup>233</sup> So LAFFI 1995, 72-3, noting also the possible effects of plague on the Italian population in these years (but see now LAFFI 2017b, 98 n. 33); *cf.* BRUNT 1987, 72-4; WULFF-ALONSO 1991, 172; LO CASCIO 2008, 244. The census total for 174/3 was 269,015 (267, 231 in Liv., *Per.* 42); but the only figure for 179/8 (Liv., *Per.* 41) is 258,294 – which may then be wrong: FRACCARO 1947 = ID., 1957; BRUNT 1987, 72-3, 85 (alternatively the figure for 174/3 would have been yet higher: BRISCOE 2012, 183). TARPIN 2014, 173 accepts as real the increase in citizen numbers between 179/8 and 174/3, which he uses to argue for minimal Latin registration in the previous census, which in turn means that Claudius' edict cannot be about repatriating ex-Latin, nor Roman, citizens, but should rather be about dealing with plain migration; it is, however, much more likely that the numerals of the earlier total are wrong than that Livy is wrong to say in the narrative that the later census total was smaller with respect to its predecessor. It is not without interest that the authorities in Rome found it necessary to offer an explanation for the drop in the census total with respect to the previous one.

## 8. *Latin Demography and Migration in Context*

These episodes, in 187, 177 and 173 are often treated as isolated juridical problems. Consideration is also needed of underlying socio-political issues: the wider context of (especially) Latin mobility needs to be analysed, not just in order to understand the evolving legal position, but to assess the wider significance of these episodes for the evolution of Roman power in Italy.<sup>234</sup> Inevitably, there is a temptation to consider these events as elements in an evolving teleology which would culminate in the Social War. Yet before we consider any longer-term implications of the events analysed above, it will be useful to consider four other incidents relating to Latin (and Roman) colonies and their demography which precede those events.

### 8. 1. *Placentia and Cremona.*

In 206, a little before the punishment of the twelve recalcitrant Latin colonies, ambassadors from the two northernmost colonies, Placentia and Cremona (neither of which had been among the dissenting colonies in 209: Liv., 27. 10. 8), appealed to the Senate for help. Their territories were being overrun by Gallic ‘neighbours’ (*accolae*), and a large number of their own colonists had ‘melted away’, leaving the urban centre sparsely populated, and their fields laid waste and abandoned: demographic collapse here had a vivid economic corollary, of just the kind which would be prognosticated by the Latin ambassadors to Rome in 177.<sup>235</sup> The Senate entrusted the protection of the colonies from the Gauls to the praetor Mamilius, but also instructed the consuls to issue an edict, which ordered ‘those who were citizens of Cremona and Placentia to return before a fixed day to the colonies’. Livy presents this episode as part of, and indeed part of the cause of, a directive to the consuls from the Senate, whereby they were to restore Italian cultivators, who had been displaced by the war or impoverished by

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<sup>234</sup> Cf. BROADHEAD 2001, 69.

<sup>235</sup> Despite the presence of Hannibal in Gallia Cisalpina in 218, and the adhesion to his cause of many Celtic peoples, and despite some tense moments, Cremona and Placentia had remained in Roman hands throughout the second Punic War: Pol., 3.40. 3-13; Liv., 21. 25 - 26. 2; WALBANK 1970, 375-7; BRISCOE 1990, 84; GABBA 1990, 71-2. A number of Placentini had, however, been captured by the Gauls, and in 200 the praetor Furius Purpureo returned a staggering two thousand free colonists from captivity to the colony after routing the Gauls: Liv., 31. 21. 18; further captives from Placentia and Cremona seem to have been released from captivity by Cornelius Cethegus in 198, which would explain why some followed in his triumph over the Insubres and Cenomani in 197 wearing freedmen’s caps, one of the most striking sights in the procession: Liv., 33. 23. 1, 4-6; TARPIN 2014, 165-6, noting divergences in the sources (Liv. 33. 36. 15).

its effects, onto the land. Broadly speaking, it is the *auctoritas* of the consuls which persuades farmers to return to their farms; the edict about the Cisalpine colonists seems to be a separate administrative action. What is not clear is from where all these missing farmers were rounded up. Is this an instance of Roman consuls persuading or cajoling farmers back from across Italy (analogous to a Roman proclamation at the Olympic Games in 208 encouraging Sicilians who had fled to Greece to return to the island, where they would be restored to what they had lost: Liv., 27. 35. 3-4, cf. 28. 11. 8)? Or was their action, despite Livy's reference to *Italia*, limited to the *ager Romanus*, and perhaps to urban centres, especially Rome, which had been the refuge of displaced cultivators? Some scholars have argued that the consular edict about the Latin colonists was in effect a repatriation order similar those discussed above, with Latins who had fled to Rome (some of whom would have originally been Romans) now compelled to return to their colonies. This interpretation not impossible, but it depends on the unproven assumption that large numbers of Cremonenses and Placentini had in fact made the journey all the way to Rome to escape the Gauls. A more difficult, but (from the point of view of the colonial authorities) more effective solution would have been to round up reculant Latins wherever they were, and to require their return as a duty owed to Rome, under whose auspices the colony had been led out. In that case, Rome would here be exercising the right to tell Latins where in Italy they could and could not be.<sup>236</sup> In 198, Livy claims that the consul Sex. Aelius Catus 'consumed almost the whole year in compelling the Cremonenses and Placentini to return to their colonies, whence they had been dispersed by the chances of war'. The consul's province was Gallia (Liv., 32. 26. 1-2); this fact, as well as the length of time taken to track down the colonists, and Livy's use of *dissipati* to describe their fate after leaving the colonies, all combine to suggest that Aelius was not simply involved in returning those who had sought refuge in Rome; *a fortiori*, the same ought to be true of scope of the consular edict of 206.<sup>237</sup> The problem was not finally resolved until 190, when the two colonies complained again that their numbers were still falling, from the combined effects of war, illness and Gallic incursions driving colonists to emigrate; this time a *supplementum* of 6, 000 families was decreed, to be divided between the two colonies.<sup>238</sup>

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<sup>236</sup> Liv., 28. 11. 8-12; see BROADHEAD 2001, 87-8; ID., 2004, 319; and COŞKUN 2009a, 156-60, with the comments of KREMER 2014, 234-5; TARPIN 2014, 165-6, an attentive reading, noting *inter alia* that the requirement to return by a certain day echoes the instructions given to soldiers preparing to leave on campaign; LAFFI 2017b, 86-7.

<sup>237</sup> Expulsion from Rome: LAFFI, 1995, 44-5; slightly modified 2017b, 86; *contra*: BROADHEAD 2004, 325; COŞKUN 2009a, 159-60; TARPIN 2014, 165 (but the *undique* which he depends on here (*ibid.* 165 n. 30) comes in different passage of Livy: 39. 3. 4, discussed above, sect. 5).

<sup>238</sup> Liv., 32. 26. 3: [*Aelius*] *totum prope annum Cremonensibus Placentinisque cogendis redire in colonias, unde belli casibus dissipati erant, consumpsit*; Liv., 37. 46. 9-11: *supplementum* of 190 (LAFFI 2017b, 87,

## 8. 2. Narnia and Cosa.

In 199, while the Roman authorities were still trying to get traction on the depopulation of the Latin colonies in Cisalpina, the colonists of Narnia, much closer to Rome, complained to the Senate.<sup>239</sup>

[6] *et Narniensium legatis querentibus ad numerum sibi colonos non esse et immixtos quosdam non sui generis pro colonis se gerere, earum rerum causa tresuiros creare L. Cornelius consul iussus. [7] Creati P. et Sex. Aelii – Paetis fuit ambobus cognomen – et Cn. Cornelius Lentulus. quod Narniensibus datum est, ut colonorum numerus augeretur, id Cosani petentes non impetrauerunt.*

[6] And when ambassadors of the Narnians complained that they did not have colonists to the number required, and that mingled amongst them certain people not of their status were conducting themselves as if they were colonists, L. Cornelius the consul was ordered to see to the election of a board of three men on account of these matters. [7] Elected were P. and Sex. Aelius – both had the *cognomen* Paetus – and Cn. Cornelius Lentulus. What was granted to the Narnians, that the number of their colonists should be increased, the Cosans, when they sought it, did not obtain.

Their concern was that they were not up to strength (*ad numerum*, presumably the number of male citizens fixed at the time of foundation); this, then, was a demographic problem like those discussed above. The words *ad numerum* also suggest that the basis for the Narnian complaint was not anecdotal or impressionistic, but was derived from the local census figures. They also complained that their place had been usurped by non-colonists moving into the colony – these last were ‘not of their status (*genus*)’, and here the immigration of Samnites and Paelignians into Fregellae in the next generation is foreshadowed, although there is no claim that they *pro colonis se gerere* at Fregellae. Unlike the Cisalpine colonies, Narnia had been one of the defaulting colonies of 209 (Liv. 27. 9. 7), and had been punished in 204, and thus would have had to send its census records to Rome for approval thereafter. In 199 there were in fact censors in office: Scipio Africanus and P. Aelius Paetus (the latter also one of the *tresuiri*; of his two colleagues one had been consul, and the other would soon be consul-elect); no census total is preserved for this *lustrum*.<sup>240</sup> It is interesting that the Narnians seem to have had to offer proactive commentary on their own census returns, and ask the Senate to act, rather than being held to account by the Senate over their loss of citizens. This recalls the need for the Latins in

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hypothesises that this supplement was partly made up of Cremonenses and Placentini who had fled to Rome and were still there); cf. ID. 2017a, 52 (noting the contemporary settlement on lands in Samnium and Apulia of Scipionic veterans (Liv., Liv. 31. 4. 1-3; 31. 49. 5; 32. 1. 6, 201-199 B.C.), and the sending of a *supplementum* to Venusia (Liv., 31. 49. 6, 199 B.C.).

<sup>239</sup> Liv., 32. 2. 6-7.

<sup>240</sup> MRR I, 329.

187 to *probare* the registration (within certain dates, in their colonies) of Latin *emigrés* in order to ensure their repatriation (Liv., 39. 3. 5; and see sect. 5. 6, above).<sup>241</sup> The election of *tresuiri* had the result of increasing the number of colonists (via a *supplementum*). We may presume that the suppositious Narnians were expelled (they had probably insinuated themselves onto the census lists): Livy's brief comment implies that there was no love lost between the Narnians and the incomers, probably mainly Umbrians, and this resentment seems to have been more important than the potential gain in citizen numbers from integrating them (or ceasing to challenge their status).<sup>242</sup>

Two years later (197) the Cosans asked again for new colonists to be added to their *numerus*, and this time the Senate allowed 1, 000 new colonists to be enrolled (by the Cosan censors, as it seems) as a *supplementum*, as long as they had not been enemies of Rome after 218. This detail must mean that those recruited were to be Italians, since only they could realistically have been on the enemy side during the war: Roman suspicion of (some) Etruscans, for instance, had lasted throughout the conflict.<sup>243</sup> The number is striking, since the original number of colonists decreed for Cosa seems to have been 3, 000: a third of the colonists were thus missing or had left the colony.<sup>244</sup>

### 8. 3. *Ferentinum*.

Finally, an episode to which we have already alluded, from 195:

[5] *Nouum ius eo anno a Ferentinatibus temptatum, ut Latini, qui in coloniam Romanam nomina dedissent, ciues Romani essent. [6] Puteolos Salernumque et Buxentum adscripti coloni, qui nomina dederant, et cum ob id se pro ciuibus Romanis ferrent, senatus iudicauit non esse eos ciuis Romanos.*

[5] In this year some Ferentini tried to usurp a new legal right: namely that Latins, who had given their names as prospective members of a Roman colony, should be Roman citizens. [6] Those who had given their names were written down as colonists to go to Puteoli, Salernum and Buxentum, and

<sup>241</sup> Cf. LAFFI 2017b, 88; *contra* TARPIN 2014, 167, who claims that the Roman censors would 'immediately see' the demographic decline, *cf.* 171 for the Roman Senate 'comparing' Latin census returns over time.

<sup>242</sup> LAFFI 2017a, 53 suggests that the incomers may either have been formally included in the colony's citizen-lists by the *tresuiri*, or included in the *supplementum*; see TARPIN 2014, 167, nn. 42, 46, for interesting speculation on what these incomers did and did not do in the colony. *ILLRP* 628 from the territory of Narnia names C. Ian[t]ius as an aedile (presumably of the colony): Michael Crawford has suggested to me (*pers. comm.*) that the name could be Umbrian.

<sup>243</sup> Suspicion of Etruscans: HARRIS 1971, 131-42; BRISCOE 1989, 76; DAVID 1997, 62-3; HAYNES 2000, 375, 377.

<sup>244</sup> Cosa: Liv., 32. 2. 7; 33. 24. 8-9. TIBILETTI 1950, 192-6 = *Id.* 2007, 136-40; BERNARDI 1973, 97; GALSTERER 1976, 54; LURASCHI 1979, 72 n. 139; BROWN 1980, 32-3, 45; REGOLI 1985, 51; PIPER 1987, 50; GABBA 1989, 212, 217; LAFFI 1995, 49 n. 15; BROADHEAD 2001, 83 n. 58, 88-9; *Id.*, 2003, 134; TARPIN 2014, 166-7; LAFFI 2017a, 53-4; ISAYEV 2017, 44.

because on that account they were behaving as if they were Roman citizens, the Senate judged that they were not Roman citizens.<sup>245</sup>

In this year some Ferentini had become *adscripti* of three planned Roman colonies (those to be sent out in 194). They had put their names forward for the list of colonists, as it seems that, as Hernici, with the same rights as Latins, they were entitled to do.<sup>246</sup> As recognised by Smith some seventy years ago, the problem to which Livy alludes here was that these Ferentini began acting as if they were already Roman citizens, even though the *deductio* of the colonies was yet to happen. This was brought to the notice of the Senate, who judged that they were not citizens (we do not know from Livy's very condensed account whether they were also barred from participating in the colony). It seems quite likely that the objection came from the Ferentinate authorities themselves; if so their concerns may have been not only that adscription and enfranchisement of this kind were likely to undermine their demographic base, but that some of their citizens were abstracting themselves from local *munera* at the earliest opportunity. Nevertheless, it is not clear that they wished the privilege of becoming *adscripti* to be removed *per se*.<sup>247</sup>

#### 8. 4. *Implications.*

These four episodes are important in different ways, and offer useful context for the events a generation later which we have discussed. All three of the incidents affecting Latin colonies manifest the same undercurrent of demographic strain, and loss of citizen population; in the one case where we can quantify this loss, that of Cosa, it is a third of the number of colonists sent at the foundation, a proportion which puts into perspective the concerns of the Latins manifested in 187 and 177. Indeed, one wonders why these protests took so long to be

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<sup>245</sup> Liv., 34. 42. 5-6; Weissenborn Müller print *qui nomina dedissent*.

<sup>246</sup> The Ferentini were given the same rights as the Latins in 486, when the *foedus Cassianum* was extended to the Hernici; cf. HUMBERT 1978, 213, n. 23. The question of the Latinity of Ferentinum is explored by TARPIN, 2104, 168, although I do not see that the Ferentines are here making a collective demand on behalf of the Latins; rather they are trying as *Latins* to usurp a privilege, to stretch the boundaries of the Roman citizenship available to *peregrini* in Roman colonies.

<sup>247</sup> On this episode see SALMON, 1936, 63; TIBILETTI 1950, 196-8, 215 = 2007, 140-2, 159 (noting also how little the Roman Senate sometimes seems to know about colonial demographic realities); and esp. SMITH 1954, an interpretation followed by TOYNBEE 1965, I, 251 n. 1; SALMON 1969, 184 n. 165; BRISCOE 1981, 115-16; TARPIN 2014, 167-9 (with an apt citation of MOATTI 1993, 11-12), 177 (rightly comparing Marius' enfranchisements via his proposed colonies, Cic., *pro Balb.* 48); LAFFI 2017a, 57-60 (with the qualification that the right to participate in the colony may not have been universal, but sanctioned in the *plebiscitum Atinium* of 197 which ordered the founding of the colonies in question, Liv., 32. 29. 3); disputed by HUMBERT 1978, 108 n. 71 (for whom this is rather an abuse of the *ius migrandi* to Rome); LURASCHI, 1979, 73-5; PIPER 1987; GABBA, 1989, 213, 220; see also SHERWIN-WHITE 1973, 100 n. 6; DENIAUX 1983, 268-70; LAFFI 2019, 169.

made if this level of attrition was in any way typical of Latin colonies. Perhaps, after the divisions in the *nomen Latinum* in 209, and the differential treatment of 204, it took time for resentments to heal and agreement to be reached on presenting a united front, with all colonies complaining together. At Placentia and Cremona we see already the difficulties involved in repatriation, spread out over a more than a decade of colonial complaints and Roman attempts at intervention. The latter, if I have interpreted them correctly, show Rome arrogating to herself the right to reverse the mobility of Latin colonial citizens across Italy, and not just in Rome. Narnia's complaint shows that attitudes of exclusiveness, and resentment of the usurpation of rights by immigrants, were not just confined to (some of) Rome's dealings with her allies. The problem is not with Umbrian *incolae* considered *per se*, but with these *incolae* insinuating themselves into the citizen body, presumably via the local census. The consequent resentment overrides the ostensibly rational course of action, which would be to meet the demographic crisis by admitting more Umbrians to the local citizenship. Instead, the Narnians want 'proper' colonists sent from Rome in a *supplementum*. Rome, for her part, does not intervene proactively, nor does she meet all the requests for demographic renewal from the colonies, or at least not at once. When she does so, she is capable of imposing conditions on the kind of individuals who can be enrolled.

From the Ferentinum episode we may note the strong draw of the Roman citizenship immediately after the Hannibalic War: men were willing to sign up for resettlement in possibly undesirable parts of Italy so that they might become Romans. We may not be unduly cynical to doubt their commitment to permanent residence in a small new coastal settlement, given that Buxentum and Sipontum were found to have been abandoned less than a decade after they had been founded (Liv., 39. 23. 3-4); Puteoli must have looked a more attractive proposition, however.<sup>248</sup> Secondly, it is clear that this was another avenue to the Roman citizenship which was open to Latins, although it is unclear whether they had always been able to enrol for Roman colonies, or whether, in this final period of small coastal colonies, it was felt necessary to open the possibility of settlement to Latins in order to make up the numbers.

### 9. *Implications.*

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<sup>248</sup> CRISTOFORI 2009 = Id. 2011; LAFFI 2017a, 59; ISAYEV 2017, 42, 45.

Latin colonization came to an end during precisely the period of the complaints from the Latins which we have considered, with foundations at Aquileia in 181, and Luca in 180; the last recorded intervention in favour of a Latin colony was the sending of a *supplementum* to Aquileia in 169 (Liv., 43. 17. 1).<sup>249</sup> As an institution, it could be argued that the *colonia Latina* was in something of an existential crisis in the first quarter of the second century, and that the appeals of 187 and 177 manifest simply one aspect of a wider problem, albeit an aspect which threatened the stability of Roman hegemony as much as that of the individual colonies themselves. It has also been argued that the end of Latin colonization in the 170s was exacerbating imbalance in migratory flows to and from Rome, since the influx of Latin migration was no longer offset by the departure of significant numbers of Romans to Latin colonies on a regular basis.<sup>250</sup> Notwithstanding this, however, all the Latin colonies survived down to the Social War, when, perhaps with the exception of Pontiae (literally an outlier), they became *municipia*, of which some went on to have distinguished histories over the next half-millennium, while others became quiet backwaters, in some cases eerily anticipating the situation depicted in Edward Thomas' 1917 poem, *Adelstrop*. The survival of some of them down to the Social War might, perhaps, be attributed in part to the success of the Roman repatriation policy of 187 and 177, and the tightening of rules about migration and enfranchisement. It is possible that this reduced the flow of Latins into the Roman citizenship to manageable proportions, and was a sufficient deterrent to many would be migrants: Laffi even goes so far as to say that by the Gracchan period “[I]’epoca delle grandi migrazioni si era chiusa”. We should be cautious, however, since the loss of Livy’s text after 167 leaves us largely in the dark on this matter; in any case, the need for a *supplementum* to Aquileia in 169 does not inspire boundless confidence.<sup>251</sup>

In any case, the repatriations mark a clear example of co-operation between Roman and Latin authorities, albeit one where the Romans had to be prodded into acting, and where the problem was one which could only be grappled by Rome, and even then with limited effectiveness. The Latin authorities clearly agitated for the return of their citizens, and the Senate granted their request, and (I have argued, sect. 6. 7, 6. 9) went beyond what had been

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<sup>249</sup> Cf. TARPIN 2014, 173 n. 82; he notes (*ibid.* 175) that originally there was a debate over whether to found a citizen or a Latin colony: Liv., 39. 55. 5; SMITH 1954, 20. Perhaps, in what proved abortive signal, the Latin foundation sought to demonstrate that with demographic stability (apparently) restored, Latin colonization could resume on a stable basis; the events of 177 showed that this was delusional.

<sup>250</sup> See KREMER 2014, 227.

<sup>251</sup> Uncertainty about the sequel: BROADHEAD 2004, 318, 329-30; LAFFI 2017b, 98-9.

sought by the Latins, even though it was politically difficult. We may thus concur with the view of McDonald and Toynbee: these episodes represent an example of the co-operation of Latin élites and Roman governing class to protect the viability of the Latin communities, and thus, indirectly, Rome's ability to draw on the Latins for manpower. Whether this was a conspiracy against the interest of the lower orders, let alone framed as such, is however doubtful; but it did result in the Roman decision to take at best questionable, and at worst perhaps illegal, actions, in ordering expulsions at some scale in the wider interests of the socio-political *status quo*.<sup>252</sup>

Nevertheless, it has not escaped the notice of scholars that the measures of 187, 177 and 173 come at the start of a period of worsening relations between Rome and her Italian allies. The repatriations of 187 were followed by the Bacchanalian 'conspiracy' in the next year; Tarpin is surely right to connect the intrusive regulatory behaviour of the Roman Senate in dealing with this problem across Italy (among the Latins too) with the state of mind which allowed the Romans to send home 12,000 favoured allies.<sup>253</sup> Postumius as consul, announced in his edict of 173 that Latins who had been ordered to leave in 177, and had not done so, were not going to be registered in the current census. The same man, we may note, had already behaved overbearingly in his consulship towards the Latin allied city of Praeneste, demanding that its magistrates should come out to meet him, that he should be put up at Praenestine expense, and that the Praenestines should provide pack-animals for his onward journey to Campania. This was pay-back for a perceived lack of respect shown to him when he had previously visited the sanctuary of Fortuna at Praeneste as a *priuatus*. Not only was Praeneste on no rational route to Campania, but such demands on allies were unprecedented, Livy says; the Praenestines' meek acceptance was also held to have legitimated subsequent imitation of Postumius' bad example. Whether or not his edict forbidding the registration of Latins in the census was motivated in part by similar feelings of condescension to Latins we cannot know, but this episode was taken by later writers as marking a turning point in Roman-Italian relations.<sup>254</sup>

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<sup>252</sup> McDONALD 1944; TOYNBEE 1965, II, 136-51; discussion: BROADHEAD 2003, 142-4, 147-8.

<sup>253</sup> TARPIN 2014, 175; on the Bacchanalian affair, BISPHAM 2007a, 115-23.

<sup>254</sup> Liv., 42. 1. 7-12; see BISPHAM 2007a, 134-5, and *ibid.* 113-60 for a survey of Roman-Italian relations, noting the growing preponderance of Roman authoritarianism in that relationship.

Another episode involving a consul may be significant: at the end of 177, C. Claudius, whose *lex de sociis* may well have over-lapped with his edict repatriating the Latins (sect. 6. 7, above), returned to Rome to celebrate a triumph over the Histrians and Ligurians. His donatives to his troops were smaller than those given by Sempronius Gracchus and Postumius Albinus in their triumphs of the previous year, but also differed in one other important respect: the allies and Latins received half the donative which the Romans had been given. The result was that in Claudius' triumph, 'so that you might understand that they were angry, they followed the chariot in silence' (as opposed to engaging in the usual ribald and jocular songs and chants of the triumphing soldiery). While the discrimination against the allies over donatives is sufficient to account for their behaviour, it is not unreasonable to assume that the general's recent *lex Claudia de sociis*, and the repatriation of many Latins (those who had broken or ignored the *lex* and those who had not), as well as the imposition of other measures making Latin migration more difficult, added significantly to the resentment. Note, however, that some scholars have argued for a reduction in Rome's demand for allied troops after 176, by as much as a third, to make their obligations more equal with those required of Romans. The thinking behind the adjustment is assumed to be consistent with Rome's objectives in agreeing to repatriate the Latins.<sup>255</sup>

Hartmut Galsterer has argued that we should be wary of generalising from such isolated incidents in order to derive general patterns of behaviour (and wary of the possibility of Livian embellishment as well). But a number of scholars have tried to locate the repatriations within a wider narrative of declining relations. Thus, for Bernardi, the events of 187 and 177 were the starting point of a Roman intransigence about the citizenship which intensified until it culminated in the Social War a century later. Badian went further, seeing the expulsions as creating, *de facto* a total barrier to the migration of Latins to Rome. Sherwin-White argued that the path to citizenship *per migrationem et censum* had vanished by the time of the Social War, to be replaced by the supposed right of Latins to obtain citizenship *per magistratum* (see below). Frézouls saw here a 'brutal' expulsion order by a xenophobic Senate, instead of the granting of something which the Latins were seeking.<sup>256</sup>

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<sup>255</sup> Donatives of 177: 41. 13. 7-8 (*itaque taciti ut iratos esse sentires, secuti sunt currum* – on the second person apostrophe of the reader here, cf. HORNBLOWER 1994, 149); donatives of 178: Liv., 41. 7. 3. Soldiers' vocalizations in triumphal parades: OAKLEY 1998, 361; ID. 2005, 332-3. Adjustment of numbers levied: AFZELIUS 1944, 62-3; BADIAN 1958, 150, TOYNBEE 1965, II, 132, cf. *ibid.* I, 433, 481; II, 107, 132.

<sup>256</sup> GALSTERER 1976, 167. Decline: DE SANCTIS 1923, 569; BERNARDI 1938, 263; BADIAN 1958, 150, with critique by SHERWIN-WHITE 1973, 215; SHERWIN-WHITE *ibid.*, 110-12 (decline of migration); HUMBERT 1978, 117: the enfranchisement of Arpinum, Formiae and Fundi in 188, which he takes to be the last such promotion

A similar harsh and exclusionary attitude to the citizenship has been argued to underlie Rome's treatment of some Cisalpine *populi*. Among the Celts, the Insubres and Cenomani, acquisition of the citizenship was prohibited; so too Helvetii; and the Iapydes from the head of the Adriatic. The treaties these peoples were compelled to sign as part of their settlements with Rome (from 194 on) stipulated that 'none of them may be received by us as a citizen'. Luraschi and others, however, have argued that the clause aimed not at preventing the incorporation of Celtic elites, but rather concerned the lower orders, whose enfranchisement would raise their socio-economic status in their own communities, perhaps removing them from specific obligations within those communities (military, social, fiscal) and thereby undermining Celtic social structures.<sup>257</sup> More important, probably, was the possibility that such enfranchisements would limit the numbers available for the contingents which these peoples were obliged to furnish to Rome in wartime, a concern which, as we have seen, was central to the embassies of the Latins in 187 and 177, as it had been in the scandal of 209. We can, then, view *these* treaties as evidence not for exclusiveness, but rather of Rome's willingness to reassure the leaders of those polities that she would not permit emigration to undermine their socio-political and military viability.<sup>258</sup>

Yet an understanding of Roman policy in Italy as not only embodying such structural concerns, but also being subject to further corrections to remedy critical demographic developments (as in 187 and 177), does not mean that we should imagine that after 173 we should see the Romans as 'pulling up the drawbridge' in terms of ending the possibility of entering the citizen body consequent on migration. Indeed, as we have seen, the most natural reading of Livy is that Rome *enforced* the requirement to leave *stirps ex sese* as a precondition for migration and registration in the census, rather than *abolishing* the practice (above, sect. 6. 7, 7). In this case it may not be necessary to see the appearance of the right of ex-magistrates in Latin colonies to acquire Roman citizenship as necessarily a replacement or a substitute for

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of *ciues sine suffragio*, was a sign of closing of the Roman citizenship (but see above n. 151), and the repatriations can be considered as the beginnings of unfair and exclusive behaviour towards Italian allies; FRÉZOULS 1981, 127, with discussion by BROADHEAD 2003, 144; TARPIN 2014, 173 is nuanced.

<sup>257</sup> Cic., *pro Balb.* 32; LURASCHI 1979, 41-56, 96-101 (such clauses respect the rights of the other party, rather than disdaining them); GABBA 1989, 229-30; ID. 1990, 76; BROADHEAD 2001, 86; ID., 2003, 135, 141; *cf.* SÁNCHEZ 2007.

<sup>258</sup> For such Celtic contingents: Liv., 41. 1. 8, 5. 5 (with BRISCOE 2012, 40); App., *BC* 42. 188, 50. 219-20 (in the service of the Italian rebels); Plut., *Sertorius* 4. 1; for Ligurian levies: BRUNT 1987, 169 & n. 3. The provision of the plebiscite and *SC* (of 210) which banned any of the Campani from being 'a Roman citizen or of the Latin name' (Liv., 26. 34.6-7) is different, being clearly punitive: TARPIN 2014, 164 n. 28.

the supposed curtailing or decline of a ‘traditional’ *ius migrationis*, as has often been argued. For one thing, the so-called *ius ciuitatis per magistratum adipiscendae* is clearly a measure aimed to satisfy the ambitions of the élite, and could not meet the aspirations of the thousands who had registered as Roman citizens in the first quarter of the second century. For another, there may be a considerable gap between the administrative measures taken by the Roman authorities in 177 and 173, and the introduction of this right for Latin ex-magistrates.

The only sure date is a *terminus ante quem* of 89 B.C.: Asconius tells us that Pompeius Strabo ‘did not set up those [colonies] with new colonists, but gave to the old inhabitants who remained on their land the Latin right, such *that they might have the right which the other Latin colonies (had)*, that is that by seeking magistracies they might obtain Roman citizenship’ (my italics).<sup>259</sup> A likely *terminus post quem* is implied by the Gracchan *lex repetundarum*, which seems (the text is lacunose) to state that the person most responsible for a successful prosecution, who does not want Roman citizenship as a reward, and who shall not have been *praetor* or *aedilis*, shall have *prouocatio* and *uacatio militia* instead. The bronze just before the word PRAETOR carries the letters JTOR (or just possibly JSOR), and given that we are dealing with a list of magistracies, [*dicta*]tor (or just possibly [*cen*]sor) seems to be required. That makes it (on present evidence) very unlikely that we are dealing with a non-Latin community; and it thus follows that this clause refers to Latins, and that (some) Latin ex-magistrates are excluded from the offer of *prouocatio* and *uacatio militiae*. This can only be because they already possess these privileges in virtue of having held one of the said magistracies. If they had held the citizenship, they would have no need of *prouocatio* (*uacatio* is another matter), and so it would seem to follow that there was not yet any automatic entitlement to citizenship on the part of ex-magistrates in communities of the Latin name, and thus the introduction of the privilege which Asconius records all Latin colonies as having would fall between c. 123 and 89 B.C.<sup>260</sup>

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<sup>259</sup> Asc., p. 3C. (*Pompeius enim non nouis colonis as constituit sed ueteribus incolis manentibus ius dedit Latii, ut possent habere ius quod ceterae Latinae coloniae, is est ut petendo magistratus ciuitatem Romanam adipiscerentur*). On the right described by Asconius: SHERWIN-WHITE 1973, 116; LURASCHI 1979, 143-225, 301-29; ID. 1983; PIPER 1988; GALSTERER 1995, 90 KREMER 2006a, 121-35; BISPHAM 2007a, 173-5; COŞKUN 2009a, 134-47; ID. 2009b; CAIRO 2012; BARBATI 2012; ID. 2013; TARPIN 2014, 179-80; MAGANZANI 2017 (a different approach to the topic); LAFFI 2017b, 101; LAMBERTI 2019, 118; LAFFI 2019, 174 (assignment to tribes). For the situation under the Principate: *lex Flavia* ch. 21.

<sup>260</sup> CRAWFORD 1996, I, no. 1, ll. 78-9, with commentary at p. 111. See also BRADEEN 1958-9; MOURITSEN 1998, 108; BROADHEAD 2001, 76, 79-80; BISPHAM 2007a, 128-9, with further bibliography (I was wrong to argue there that Latin ex-magistrates were possibly excluded because they had the citizenship already); LAFFI, 2019, 169 (noting that the enfranchisement may not have been automatic in these cases); cf. COŞKUN 2009a, 132-45 (not a replacement for the *ius migrationis*); TARPIN 2014, 179. Tibiletti, developing the brief thoughts of

In any case, it was possible for a Latin ex-magistrate, like any other successful principal plaintiff, to obtain the Roman citizenship, through the courts under the *lex repetundarum*, should he wish. There may have been other routes to the citizenship too. In the *pro Balbo* Cicero states that two Tiburtines, L. Cossinius and T. Coponius, had been made citizens as a result of successful prosecutions. This was something which Cicero implies was done despite the *foedus Cassianum*, which plays into his wider claims about whether the community of Gades needed to approve Balbus' enfranchisement. It has often been noted that Cicero does not discuss 'the' *ius migrationis* in this context. Those who believe in the concept argue that had the *ius migrationis* been based on a *lex*, which allowed migration and registration as a citizen *without the consent of the Latin state*, it would have been one of the best arguments Cicero could have used to support what was not a very strong case. From this we are supposed to conclude that the *ius migrationis* was a right enshrined in the *foedus Cassianum*; this in turn ought to mean that Livy's *lex* just refers to the rules in force at the time (as we have seen above, the former claim is problematic). It has also been argued that Cicero's silence about the *ius migrationis* at this point in the speech, when he is discussing rewards of citizenship given to Latins, suggests that the right was one enjoyed by Latin colonies only, not all Latins.<sup>261</sup> But it is not clear that Cicero was totally silent. The passage runs:

[54] *quod si acerbissima lege Servilia principes uiri ac grauissimi et sapientissimi ciues hanc Latinis, id est foederatis, uiam ad ciuitatem populi iussu patere passi sunt, neque ius est hoc reprehensum Licinia et Mucia lege, cum praesertim genus ipsum accusationis et nomen et eius modi praemium quod nemo adsequi posset nisi ex senatoris calamitate neque senatori neque bono cuiquam nimis iucundum esse posset, ... num fundos igitur factos populos Latinos arbitramur aut Serviliae legi aut ceteris quibus Latinis hominibus erat propositum aliqua ex re praemium ciuitatis?*

[54] but if by the most harsh *lex Servilia* our leading men, and our most respected and wisest citizens have allowed, by order of the Roman people this route to be open the Latins, that is to peoples allied to us, and if this right is not discouraged by the *lex Licinia Mucia*, especially given that this very type of charge and its name and its rewards are of this sort, namely the no one could obtain it unless by the ruin of a senator and could not be pleasing to a senator or to any good man ... Do we then think that the Latin

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Mommsen, argued that the *ius* was granted specifically to calm Latin discontent in after the revolt of Fregellae in 125 (TIBILETTI 1953); other earlier scholarship, while not necessarily endorsing Tibiletti's views, has assumed that the right of Latin ex-magistrates to acquire the Roman citizenship *preceded* and is implied by the Gracchan *lex repetundarum* (but for the reasons given in the text this cannot be so), and in some sense replaced the moribund *ius migrationis*: TAYLOR 1960, 108-10 (restricted to Latin colonies); SHERWIN-WHITE 1973, 110-12, 214-15; HUMBERT 1978, 102 n. 57 104 and nn. 62-3, 109 and n. 74, 117 nn. 95-6, 120 n. 3. MOMMSEN 1887b, 639-40 thought the privilege attested in the Gracchan period, but perhaps as old as the foundation of Ariminum.

<sup>261</sup> ROSENBERG 1920, 355-6 (although he did not refer the *ius migrationis* back to the *foedus Cassianum*); HUMBERT 1978, 120-2, with doxography.

peoples became *fundi* of either the *lex Servilia* or of other laws, by which the reward of citizenship was proposed for Latin men on some grounds or other?<sup>262</sup>

One word may be important here: *ceteris*. By ‘other’ laws Cicero could in fact mean to comprehend any law which gave access to the citizenship. An obvious interpretation might be that there were laws other than the *lex Servilia* (which is picked as the most controversial – and in contrast to the ‘uncontroversial’ enfranchisements for valour by commanders) which had allowed Latin successful prosecutors to obtain the ‘reward of citizenship’. Yet it cannot be excluded that Cicero is casting his net wider, and suggesting that a number of laws of different types (*aliqua ex re*) existed, all of which allowed access to the citizenship, which was in itself considered a *praemium* or a *beneficium* in post-Social War thought.<sup>263</sup>

Cicero mentions that the route provided to the citizenship by the *lex Servilia* was not hindered even by the *lex Licinia Mucia* (which we have had occasion to mention already, sect. 5. 4 above). Mommsen saw the *lex Licinia Mucia* as marking the effective end of the long decline of Latin rights of migration into the Roman citizenship, and this position has been adopted by those whose overall view of growing restriction has followed Mommsen’s intuition.<sup>264</sup> It is not clear whether Cicero invokes the *lex Licinia Mucia* here because it was widely considered as famously, and wrong-headedly, repressive in its attitude to attempts by non-Romans to obtain the citizenship (in other words its role here is as something generically or stereotypically limiting), or because it actually tried to close down specific routes into the citizenship, beyond setting up a *quaestio* to deal with those who had registered in the census and *se pro ciuibus Romanis ferebant*. It did not, however, modify the *lex Servilia*, as we have seen; and if Asconius is right, it had not affected the rights of ex-magistrates in Latin colonies to become Roman citizens, as he does not imply that it had been terminated prior to 89 (there is an ellipsis of the verb here, so caution is requisite). Nor, in the end, do we actually know when, if at all, the *lex* mentioned by Livy under 177 was ever repealed, or fell into desuetude. Indeed, we do not know that some Latins did not continue to obtain the Roman citizenship *per migrationem et censum* – such a process might be likely to be successful if migration levels were low, and if areas of political pre-occupation were concentrated elsewhere. As Brunt put

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<sup>262</sup> *pro Balb.* 53-4; MOURITSEN 1998, 104-5 discusses this passage, but his argument is somewhat forced here; on the *lex Servilia*: BADIEN 1954; LEVICK 1967; MATTINGLY 1970; SHERWIN-WHITE 1972; Griffin 1973.

<sup>263</sup> Citizenship as benefaction: Cic., *pro Balb.* 21; cf. Vell. Pat., 2. 17. 1, 2. 20. 2-3.

<sup>264</sup> MOMMSEN 1887b. 639 n. 2; cf. ROSENBERG 1920, 345-6; CASTELLO 1958, 252-6; SHERWIN-WHITE 1973, 110-12, 214-15 (judiciously cautious on *lex Licinia Mucia*).

it: “[i]t seems likely than that on occasions between 173 and 95 the Romans allowed Italians in general, and no doubt Latins in particular, to infiltrate the citizen body”.<sup>265</sup>

## 10. *Conclusions*

This study has ended up being much longer than I had ever intended, and I shall try to keep my conclusions brief. I have changed my mind at least twice in significant ways in the course of researching and writing, although I hope that any resulting inconsistencies have been removed. Where I began looking (naively, perhaps arrogantly) for a solution, I have ended up thinking that at the present no reconstruction is capable of commanding majority assent. What I have tried to do, instead of arguing for the cogency of one or other solution, is to demonstrate the labile and uncertain nature of many of the pre-suppositions on which most research has been based; and to test the limits of interpretative possibility in discussing the central episodes of 187, 177 and 173. In the final analysis the evidence is simply not good enough to allow robust characterisations or explanations of Latin or Roman behaviour to be constructed. It has seemed more useful to indicate where the areas of uncertainty or *aporia* lie, and to contribute to a debate on what sorts of questions we ought to be asking, of what evidence, and to what end. The painstaking close reading of the sources which Umberto Laffi undertook for his 1995 contribution has greatly improved our basis for study of these episodes; there is more to be done along these lines, lines which I have attempted in a small way to follow in the foregoing.

Nevertheless, so that no one who has persevered to the end should reach this point only to find they are still waiting for Godot, I shall attempt to draw out what I think may be the less banal conclusions. Much work on these problems is ‘a prioristic’, in that it makes assumptions about Latin rights, or about *migratio*, and uses these assumptions to approach, frame and interpret Livy’s evidence. This would be methodologically improper even if the *a priori* assumptions about the *foedus Cassianum*, or the nature of the settlement of 338, to name the major culprits, were fundamentally sound axioms, derived from good evidence. They are not, however. As has been pointed out, Livy’s passages offer the earliest and first good evidence for Latin *migratio*; this evidence should thus be what allows explanation of what we dimly apprehend, and not what waits to be explained by those same dim shadows. One might even

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<sup>265</sup> BRUNT 1987, 85.

suggest that the *ius migrationis* is a scholarly back-formation from an aggregate of broadly similar dispositions about migration in Latin colonial *leges*.

Furthermore, there is an unspoken tendency to frame Livy's discussion of the repatriations, and especially of the *lex* of 177, which, as I have said, is the fulcrum of the whole issue, as if it were a part of an autonomous and almost self-aware narrative category: the Story of the *Ius Migrationis*. Livy is treated almost as if he has been waiting for us to come along and take his evidence, like the missing piece in a jigsaw, and fit it into its place. I would see things rather differently, and call for parts of Livy's account to be recognised as rhetorical (breathing the spirit, let us say, of Paipirius Fregellanus), and thus by their nature incomplete, partial, elliptical, even disingenuous, and above all contingent. Livy does not mention the law because he is aware of a need to offer ancient historians a footnote which grounds the episode and what was at stake in the familiar world of *Staatsrecht*. Rather the *lex* is mentioned because it is useful for the Latins to mention it, and for no other reason. Its deployment is tactical, and not explanatory: the aim is to draw the attention of the Roman Senate to widespread and long-standing breach and evasion of a *lex*, in order to compel, if possible, its co-operation, withheld these long months. What is said serves a specific purpose, which is not juridical exegesis; what is omitted, distorted, or otherwise manipulated in the wake of this rhetorical agenda we cannot know, but we should assume absent presences, suppressions made in the name of the rhetorical strategy in play.

That said, the date of Livy's *lex* cannot on present evidence be known; but it was not a recent piece of legislation. Indeed it may not have been a piece of legislation in the most common sense of the word; perhaps the least difficult solution is that proposed by Will Broadhead, that *lex* really denotes a series of colonial *leges*, containing a tralatian clause allowing migration to Rome and registration in the census to those who left *stirps ex sese*. I also believe that Livy thought – to put it no more strongly – that there was another route into the citizenship, which reasserted itself once the *lex* was being evaded: citizenship *per migrationem et censum*. If this is right, and it seems to be what Livy says, we would have to reckon with the relationship of this right with the *lex*; it looks very much as if the route *per migrationem et censum* was older than the *lex*; one might guess (and no more) that it was older than the *foedus Cassianum*.<sup>266</sup> After 177 there is no sign that the *lex* was repealed or amended

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<sup>266</sup> Cf. MARTIN 2001, 74 (regal parallels).

– indeed Livy implies the reverse, nor that either of these two forms of migration into the citizenship was closed off. Yet our evidence after 167, when Livy’s text gives out, is even more inadequate than it was when we had him before us.

Perhaps the most important points, which have been made before, but bear stressing again, are these. Firstly, when the crisis of Latin migration broke in 187, Rome had for a quarter of a century been taking decisions with big implications about population and demographics affecting the *nomen Latinum*. We see these in play at Placentia, Cremona, Narnia, Cosa (and also at Ferentinum), where Rome takes on herself the responsibility for saying where Latin colonists can and cannot be, for compelling (or preventing) measures to strength the demographic base, for deciding what rights can and cannot be exercised by Latins, and who can and cannot be enrolled in a colony. The sweeping, ‘indiscriminate’ repatriations of 187 and 177 (and 173) need to be understood against this background.

Secondly, time and again the impetus for these actions comes from the Latins, and their agency is required to make things happen: to engage the Senate (not always easy), to draw attention to patterns in the data with which they have to provide the Senate; and to draw up lists of those to be repatriated (on criteria set by the Senate). The resulting picture is rather paradoxical. The Roman Senate is somewhat reluctant to get involved in measures which will inflame Latin migrants into the citizenship, and perhaps the *populus Romanus* as well; but equally cannot shirk the responsibility to take those politically difficult decisions, in order to mitigate risks to the stability of individual communities, and Roman hegemony in Italy as a whole. The outcome is that the Latin colonies probably get more than they had been seeking. In satisfying the wishes of the colonial authorities, the Roman Senate and the Latin political class surely incurred considerable *invidia* from the repatriated, and this must be true even if their re-integration into their communities was relatively frictionless (and there are good grounds for thinking it was not). Rome acted, albeit grudgingly, to deal with the Latin crisis, and in doing so created resentment among the Latins who were expelled. The consequences for the internal politics of Latin communities, and for Latin attitudes to Roman rule, over the next half-century, must have been considerable. One thinks, in this context, of the revolt of Fregellae in 125, but also of Mouritsen’s thesis that Roman attempts to legislate to deal with what we commonly call the ‘Italian question’ were really aimed at dealing with a ‘Latin

question’, with perceived Latin discontent, and that the condition of the other Italian *socii* was not a matter of concern.<sup>267</sup>

Thirdly, although I talked above of ‘satisfying’ the requests and assuaging the fears of the Latin authorities, it would be better to say ‘trying to satisfy’. Time and again we see that the demographic deficits facing the Latin communities are structural ones, which show no sign of abating (and here our lack of understanding of what happened after 167 is particularly acute). Rome puts in place, albeit only after pressure from the Latins, measures which prove inadequate, or incomplete, or hard to implement, or which, even when attempting to be drastic and far-reaching, are quickly undermined, with the Romans forced to back to square one. With the benefit of hindsight it is puzzling to observe that Rome makes little attempt to adjust the basic parameters of her control in Italy to keep in step with demographic changes – the *formula togatorum* is sacred (although there may, I have suggested, have been an adjustment c. 193), and the relative demographic distributions on which it is premised must be upheld at all costs. It might have been easier, at least on paper, to shift the expectations of recruitment to make them fall where population was growing, not to keep those expectations constant where it was falling away. Rome’s insistence on the submission to her of census figures by the recalcitrant Latin colonies from 204 offered as good a template as could be hoped for something like a statistically-based and evolving synoptic view of population trends, which could have been rolled out across the peninsula (indeed, I have suggested that other Latin colonies followed suit before long). This would have allowed Rome to make adaptations as the situation changed; but the only uses made of such information required input and co-operation from the Latins. One structural change only seems to be associated with the ongoing problems of emigration to Rome, and that is the abandonment of the Latin colony as an institution after the 170s.

Finally, issues of ‘us’ and ‘them’ are not really relevant, although they can of course surface and be instrumentalised in political discourse. Romans are not being particularly exclusive, indeed are not taking a clear proactive stance of any kind. They are cajoled into expelling large numbers of those possessing a particular legal status to deal with the fears of others of the same legal status, who want the migrants returned, and without whose agency there would be no expulsions. A similar, though not identical, polyhedric nexus of prejudice, paranoia and practicality can be seen in the appeal of Narnia to Rome. Narnia in 199 is (still)

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<sup>267</sup> MOURITSEN 1998, 109-27.

in demographic trouble a decade after failing to provide enough troops for Rome (and it is unlikely that punitive levy conditions imposed in 204 helped at all!). Yet, as far as we can tell, although the Narnians could have naturalised a number of Umbrian incomers who were already behaving as if they were colonists, they instead complain to Rome about both the loss of their old population and the usurpation by the newcomers, and ask for new citizens of their own *genus*. We might explain the difference in that many Latin colonists were, in origin, Romans, whereas Umbrians were real, and not rhetorical, *alienigenae*.

Latin colonies are caught up in multiple demographic webs, linking them to Rome and to surrounding communities; these webs do not always prove to be congruent with what Latins feel about their identity, status and rights; and indeed different Latins think differently about the conflicting interpretations of the identity, status and rights of the members of the *nomen Latinum*. The complexities of the different push- and pull-factors for different players make reflection on modern situations of migration and integration, and comparison with the ancient experience, challenging, and in need of nuanced treatment. The experiences of the migrants on the *Gregoretta*, for example, do not display immediate points of contact with those of the Latins expelled from Rome. And yet the fate, and rights, of both groups were subjected to and determined by political considerations, which went beyond their own claims and specific situations: the need to maintain demographic and political stability on the one hand, and the need to be seen to be tough on migrants on the other.

Altay Coşkun's 2009 book on migration, citizenship and expulsion of foreigners in republican Rome was innovative and challenging, a genuinely fresh look at the problem rather than an attempt to defend or make cosmetic adjustments to the existing picture. In the end I was unpersuaded by many of the arguments which Coşkun put forward – but one can often learn more, and be challenged to think harder, by a book with which one disagrees than by one with whose argument one substantially concurs.<sup>268</sup> David Kremer produced a trenchant review of Coşkun's book, in which he displayed his characteristic rigour of thought, powers of analysis, and profound grasp of the subject. I would, though, take issue with one point in that review. Kremer criticises the (for him) unfortunate way in which he sees Coşkun being led to write against the grain of the evidence under the influence of parallels from modern migration studies. He finds this sort of influence 'regrettable' – but can we, should we, attempt to

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<sup>268</sup> See BADIAN 1994, 109: "It will never do any harm to be made to think afresh about what has always been believed". The same stance could be taken over (some of the arguments in) TARPIN 2014.

hermetically seal off the past from the present? The influence of modern migratory contexts is one of the refreshing elements in Coşkun's book; surely similar problems faced in antiquity and today, migratory or other, are not *res dissociabiles*? In order to prevent issues like contemporary migration being reduced to simplistic identity politics, or dog-whistle demagoguery, to hinder extremists from right or left from hi-jacking problems of displacement and integration for their cynical own ends, we need to understand the phenomenon in a nuanced way, in all its complexities, through its different focalizations. Approaches to ancient migration which seek to tease out the nuance and the granularity of different contexts, and the interplay of economic, social, ethnic, and political motivations may also perhaps assist us in keeping an open and honest debate going about contemporary migration.<sup>269</sup>

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<sup>269</sup> COŞKUN 2009; KREMER 2014 ('regrettable' at 237).

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