

CHAPTER 1

Where the cities end. Intramural urban fabric, walls and *continentia aedificia* between epigraphic evidence and classical Roman jurisprudence

Pierangelo Buongiorno

Dipartimento di Giurisprudenza, Università di Macerata,

Via Crescimbeni 30/32 - 62100 Macerata

p1.buongiorno@unimc.it

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ABSTRACT

The paper offers an in-depth review of legal, literary and epigraphic sources for defining key terms and concepts of spatial organisation such as *urbs*, *oppidum*, *suburbium*, *ager* and the Augustan notion of *continentia aedificia*.

KEYWORDS

Urbs, *oppidum*, *suburbium*, *ager*, *continentia aedificia*

At the end of the 19th century, in an essay that would become a point of reference for decades in the debate about the legal aspects of organisation of space in the ancient city, Lodovico Zdekauer highlighted how city walls did not necessarily constitute an element of division, and how the land and built-up residential areas adjacent to the walls were instead continuous with the spaces within them.¹ This is certainly significant for Rome and also for the majority of the cities that constituted its empire, as suggested by evidence in historiographic and epigraphic sources but also in the texts of classical jurisprudence (even if these are not very numerous due to the selectivity of the Justinianic compilers). The aim of this contribution is to revisit the main evidence available to us in order to trace the evolution of the legal relationship between the Roman city and the spaces immediately adjacent to it up to the classical period.²

1. *URBS* AND *OPPIDUM*

It is necessary to start from a premise that establishes the rules of the game, so to speak. In classical technical and legal terminology, there are essentially two terms that describe an

¹ See ZDEKAUER 1889, 276.

² I am grateful to Daniel Diffendale for having translated this chapter.

urban agglomeration: *urbs* and *oppidum*. From the fragmentary evidence from jurisprudential literature available, it appears that both of these terms were discussed in Pomponius' *Enchiridion*, probably systematically, as suggested by paragraphs 6-7 of *D.* 50.16.239, which not coincidentally precede the definition of *territorium* (which follows at *D.* 50.16.239.8) by the same author:³

(6) The word 'city' is derived from the verb *urbo*, which means to mark a boundary with a plow. Varus says that the curve of a plowshare, which is ordinarily used for tracing the boundaries of a city about to be built, is called *urbum*. (7) The term 'fortified town' (*oppidum*), is derived from *ops*, for the reason that its walls are constructed to provide for the safety of property. (8) The word 'territory' means all the land included within the limits of any city. Some authorities hold that it is so called, because the magistrates have a right to inspire fear within its boundaries, that is to say, the right to remove the people. (transl. S.P. Scott)

According to Pomponius, the term *urbs* derives from *urbum*, meaning the curvature of the plough, from which derives also the verb *urbare*, meaning 'to define with the plough', to trace furrows – precisely what was usually done when founding a city. The definition of Pomponius recalls one apparently attributable to Alfenus Varus, which is likely the same upon which *D.* 50.16.87 (MARCELL. 12 *dig.*) also depends, a text to which we will return later, and which brings together the notions of *urbs* and *Roma*, connecting the *urbs* with the circuit walls that surround it.

The *urbs*, however, is not the only form of residential agglomeration provided with a circuit wall. The idea of fortification of a cluster of houses and public buildings is, in fact, stronger in the term *oppidum*, whose etymology, according to Varro (*ling.* 5.32.141), could be traced back precisely to the idea of *ops*, that is, of defence.

What distinguishes *urbs* from *oppidum* is the fact that the former is surrounded not just by walls but also by a *pomerium*, a sacred boundary of Etruscan origin but also adopted widely in *Latium vetus* – including for Rome (VARRO, *ling.* 5.32.142-143). Despite the relatively limited number of sources, this is a topic on which an impressive body of literature has accumulated, with recent turns towards an anthropological interpretation of the phenomenon. After all, the delimitation of the *pomerium* was one of the most ancient rites in the cultural *koiné* of central Italy and appears to have survived in Roman culture into the late empire, when it no longer had any relevance, and therefore its sacred origins remain in the background.⁴

From a legal perspective, the *pomerium* is in fact closely connected to the delimitation of the *auspicium urbanum* (GELL. 13.14.1) and therefore to the distinction between *imperium domi* and *imperium militiae*, with its implications for the applicability of the *provocatio ad populum* and the deployment of the *exercitus armatus*.⁵

³ 'Urbs' *ab urbo appellata est: urbare est aratro definire. et Varus ait urbem appellari curvaturam aratri, quod in urbe condenda adhiberi solet.* 7. 'Oppidum' *ab ope dicitur, quod eius rei causa moenia sint constituta.* 8. 'Territorium' *est universitas agrorum intra fines cuiusque civitatis: quod ab eo dictum quidam aiunt, quod magistratus eius loci intra eos fines terrendi, id est summovendi ius habent.* See now NASTI 2023, 200-205, who nevertheless remains in doubt about the systematic nature of Pomponius' treatment.

⁴ Among the extensive literature on the *pomerium*, two fixed points remain MOMMSEN 1876, and 1879, 23-41, and MAGDELAINE 1990, 279-303, but see more recently the studies of DE SANCTIS 2007, 503-26; MACCARI (MACCARI 2014, articles in *Studi Classici e Orientali* from 2015, and most recently MACCARI 2019, 139-59, with reference to previous articles at 158-9; now the detailed monograph of EMMELIUS 2021, with further bibliography. For a reading of VARRO, cf. also PIRAS 2013, 295-313.

⁵ On the relation between *pomerium* and the *auspicia* of magistrates, see now above all HUMM 2024, 313-36, but cf. also the useful considerations of SINI 2011-2012, § 2.

From a spatial point of view, the delimitation of the *pomerium* also determined the definition of a physical space within the circuit of the city walls, aimed at preserving the space adjacent to the walls. As Livy writes (1.44), no buildings could be built against the inside of the walls, and the land had to remain pure from any contamination by human use. This space, which was not permitted to be ploughed or inhabited, was called the *pomerium*, not so much because it is located behind the wall, but because the wall is located behind it:

The word *pomerium* is interpreted by those who look only at its etymology as meaning ‘the tract behind the wall’, but it signifies rather ‘the tract on both sides of the wall’, the space which the Etruscans used formerly to consecrate with augural ceremonies, when they proposed to erect their wall, establishing definite limits on either side of it, so that they might at the same time keep the walls free on their inward face from contact with buildings, which now, as a rule, are actually joined to them, and on the outside keep a certain area free from human uses. This space, which the gods forbade men to inhabit or to till, was called ‘*pomerium*’ by the Romans, quite as much because the wall stood behind it as because it stood behind the wall; and as the city grew, these consecrated limits were always pushed out for as great a distance as the walls themselves were to be advanced.⁶ (transl. Loeb)

The space between the *pomerium* and the walls evidently served to facilitate the magistrate’s exercise of *imperium militiae* and the conduct of defensive manoeuvres along the walls by the assembled people in arms. This function, moreover, coincides with what we know of the legal status of the walls themselves, which belonged to the sphere of *res sanctae*, and therefore were removed from *commercium humani iuris* and considered *res nullius*. Usually placed under the protection of Quirinus, a guardian deity (linked to Hercules), the walls could not be violated, damaged or trespassed, nor even restored, it would seem, without specific authorization. As Pomponius specifies, the prescribed punishment is death, since traversing the walls other than through the city gates is considered a hostile act and an abomination, analogous to the behaviour that led to the killing of Remus, slain because he wanted to scale the wall.⁷

A series of citations from jurists dating back to the school of Sabinus and Cassius underlines how the regime established for the walls of Rome (which possessed a *pomerium*) had also been extended to the walls of *municipia*, which is to say walls that enclosed *oppida* that rarely had a *pomerium*. Occasional exceptions are mostly *municipia* in *Latium vetus*, e.g., *Aricia*. The municipal walls are therefore also *res sanctae* and it is forbidden to build anything on them (*D.* 1.8.8.2 [MARCIAN. 4 reg.]), or even to restore them, except with the express authorisation of the emperor or the provincial governor (*D.* 1.8.9.4 [ULP. 68 *ad ed.*]). Such an authorisation was necessary to be able to satisfy that *pulchritudo iungendi* referred

⁶ *Pomerium, verbi vim solam intuentes postmoerium interpretantur esse; est autem magis circumoerium, locus quem in condendis urbibus quondam Etrusci qua murum ducturi erant certis circa terminis inaugurato consecrabant, ut neque interiore parte aedificia moenibus continuarentur, quae nunc volgo etiam coniungunt, et extrinsecus puri aliquid ab humano cultu pateret soli. Hoc spatium quod neque habitari neque arari fas erat, non magis quod post murum esset quam quod murus post id, pomerium Romani appellarunt; et in urbis incremento semper quantum moenia processura erant tantum termini hi consecrati proferebantur.*

⁷ *D.* 1.8.11 (POMP. 2 ex var. lect.): *nam cives Romanos alia quam per portas egredi non licet, cum illud hostile et abominandum sit: nam et Romuli frater Remus occisus traditur ob id, quod murum transcedere voluerit.*

to by Pliny the Younger (3.19.2), for instance, and of which we find archaeological traces when looking at private buildings excavated in Rome or Pompeii, often in ways that transgressed natural boundaries. We would therefore expect that the superfetation carried out by Calpurnius Piso *supra portam Fontinalem... iungendarum domum privatarum causa* (SCPP, ll. 106-108), for example, had received an explicit concession by the emperor. The *renuntiatio amicitiae* would have entailed the additional penalty of demolition of these private structures that stood on a *res sancta*.⁸

In sum the distinguishing element between *urbs* and *oppidum* is the presence of a *pomerium*, and *urbes* are all those urban areas whose foundation involved the tracing of a *pomerium*, that is, a furrow delimited by a plough in accordance with an ancient Etruscan rite; the city walls would later be erected in relation to (and adjacent to) this sacred enclosure. The sequence *urbs oppidum vicus* of the epigraphic *lex agraria* of 111 BCE in the fourth of the surviving *kapita*, which regulated the assignment of *loca publica* within residential contexts, and which some scholars have considered a ‘terminological anomaly that is difficult to interpret’,⁹ seems to suggest nothing other than this taxonomy: agglomerations equipped with walls and *pomerium* (*urbes*), agglomerations equipped with walls (*oppida*) and agglomerations without walls (*vici*).

In short, if the *urbs* by definition is Rome, all the *coloniae civium Romanorum* are *urbes* (in the sense of urban agglomerations whose external boundaries were traced with the furrow of a plough in implementation of a sacred rite) since they were built in imitation of the city of Rome. It follows that these *coloniae* also had their own *pomeria*: traces of the existence of such pomerial enclosures can be found, for example, in *kap.* 73 of the *lex Coloniae Genetivae Iuliae* and in *CIL* X, 3825 on Capua. Furthermore, a significant number of colonies deducted between the Caesarean and Augustan periods bear the name of *urbs* in their institutional denomination, for instance, the *colonia Iulia Urbs Triumphalis Tarraco*, *Urbs Iulia Nova Carthago*, *Salacia cognominata Urbs Imperatoria*, *colonia Urbs Iulia Baeterrae Septimanorum*, *Urbs Victrix Hesca*, *Urbs Iulia Gaditana* and, in Italia, probably, *Urbs Salvia in regio V Picenum*.

More than half a century after the *lex agraria* of 111 BCE, however, in the statute of the *Colonia Genetiva Iulia*, the intramural residential area of the *colonia* is consistently referred to as *oppidum coloniae* (kk. 73-76, 91, 99). This suggests the beginning of a semantic shift in the notion of *oppidum* (perhaps also due to the tralatistic nature of many of the *kapita* in the municipal and colonial statutes) to indicate more generally clusters of buildings organised according to urbanistic criteria and delimited by a circuit of walls, regardless of whether they had a *pomerium*. Similarly, *oppidum* is used to refer to Aricia, even though we know it had its own *pomerium* (VARR. *ling.* 5, 32, 143; PLIN. *nat.* 3, 63).

In short, as time passed, the terminology became looser. Not only did the conceptual distance between *urbs* and *oppidum* shrink (already in CIRC. *rep.* 1, 44 the terms seem to be used synonymously), but there is evidence, albeit extremely sporadic, of the term *pomerium* even indicating generically the line of demarcation between the city and the countryside. An ex-

⁸ On the regime of the walls see, most recently, MALENICA 2014, § III with bibliography. The theme of construction along the ‘Servian’ walls undertaken by members of the elite is also clearly evident in the case of Maecenas, whose *horti* stood on the Esquiline astride the walls in the stretch between the *Porta Esquilina* and *Porta Querquetulana*: see HÄUBER 1991, *passim*.

⁹ Thus SISANI 2015, 130.

ample is Papinianus on the sale of slaves (*D.* 18.7.5 [PAP. 10 *quaest.*]), where he refers to the *pomerium* of any city (*pomerium cuiuslibet civitatis*) to indicate its urban core.¹⁰ This is the only testimony of the use of *pomerium* that has survived in jurisprudential literature.

2. SUBURBIUM

As we have seen above, POMPONIUS links the definitions of *urbs* and *oppidum* with that of *territorium*. This term refers to the set of agricultural lands (*universitas agrorum*) within the boundaries (*intra fines*) of a given *civitas*. Thus, for the jurist, the expression *intra fines civitatis* also establishes a link between the *urbs/oppidum* (the urban core) and the *ager* (the rural territory). It is precisely this demarcation, analogous to that between *polis* and *chora* in the Greek-speaking world, that raises the question of where the city physically ends and to what extent the territory immediately outside the city walls is continuous with that within.

Let us begin with the concept of *suburbium*. This term, originally coined for the territories surrounding the *urbs Roma*, has no technical or legal significance. Indeed, in classical literature, *suburbium* is essentially a *hapax legomenon*, documented only once in the late Republican period; this is a famous text by Cicero (*Phil.* 12.24), which specifies that the concept of *suburbium* refers to the space in the vicinity of the *urbs* that can be reached and returned from on the same day, *eodem die*. We are evidently dealing with a subjective measure, which nevertheless can be estimated as no further than 10–12 miles. More widespread is the adjective *suburbanus*, attested over a hundred times, which should essentially be interpreted in the same sense as the noun *suburbium*: that which is in the vicinity of the urban agglomeration, such that it can be visited in a day, arriving and returning by evening (as suggested, for example, by PLIN. *nat.* 8.144: *...e suburbano redeuntem, cum advesperavisset...*). Thus, the *praefectura* of Atina, in Latium, which was more than a day's journey from Rome, is ironically defined, again by Cicero (*Planc.* 19), as *non tam suburbana*. Livy, for his part, writes of *suburbana litora* and *suburbani loci* (LIV. 23.32.19; 33.6.7).

The notion of *suburbanus* obviously concerns not just Rome, but any urban agglomeration in general. The *suburbani loci* to which Livy refers surround the city of Larissa in Thes-

¹⁰ Similarly, EMMELIUS 2021, 353, with bibl. I cannot agree with SISANI 2016, 65–80, part. 67, according to whom, due to a ‘slittamento semantico apprezzabile a partire almeno dal II sec. d.C., ... (il) termine *pomerium/pomeria* ... in autori come Apuleio e Servio e nei testi giuridici passa a significare il suburbio delle città’ (cf. also ID. 2014, 362). Even though in some sources from the Imperial period *pomerium* clearly designates a strip of land immediately outside the city walls, I hesitate to draw a general rule from this for all ‘juridical texts’ (a formulation which is, moreover, decidedly anodyne, since it brings together fragments of jurisprudential works and texts from the imperial chancellery), especially considering the further testimony cited by Sisani in addition to Papinian is *CTh.* 10.3.5, namely a constitution of Arcadius and Honorius from November 400 CE, which refers to *aedificia*, areas and places *quae aut includuntur moenibus civitatum aut pomeriis sunt conexas*, i.e. spaces adjacent to the demarcation line of an urban centre (cf. also MARGNO 2020, 157). This concept was further explicated by the same chancellery a few months later (July 401 CE) in a constitution that refers to *aedificia... intra muros posita vel etiam muris cohaerentia*, that is, buildings that fall within the walls or are connected to them. Cf. DUBOULOZ 2003, 107. On the other hand, MOMMSEN 1879, 27, according to whom the editor of *CTh.* 10.3.5 ‘offenbar unter dem Einfluss jener Schulerklärung, das im praktischen Gebrauch damals verschollene Wort mit löblichem Schülerfleiss verwerthet’, is not far-fetched. I intend to return to the exegesis of *D.* 18.7.5 elsewhere.

saly. Epigraphic evidence from Italy and the western provinces, moreover, documents certain *pagi* that are expressly classified in their name as *Suburbani* (the most famous is the *pagus Augustus Felix Suburbanus* of Pompeii, not coincidentally a *colonia*, and therefore an *urbs*¹¹). But in general, references to suburban *agri*, *fundi*, *praedia*, *horti*, *domus*, and *villae* often recur in written sources without allowing any conclusions on a specific legal regime for this suburban space.

In any case, the *loci suburbani* must have had a significant economic value (their proximity to the city clearly made them easy to cultivate and visit), and in my opinion, this is the reason for prohibiting *curatores* and *tutores* to alienate *praedia rustica vel suburbana* unless the deceased had provided otherwise in his will or *codicilli* (*D.* 27.9.1.2 [ULP. 35 ad ed.]). This prohibition was introduced by an *oratio in senatu habita* of Septimius Severus on 13 June 195 CE and was evidently aimed at protecting assets perceived as being of great economic value. The same is suggested by Cervidius Scaevola, who records the repeated exhortations of a testator who advised the appointed heirs not to alienate or pledge the *praedium suburbanum* or the *domus maior*, without however such *nuda praecepta* determining an insurmountable constraint (*D.* 32.38.4 [SCAEV. 9 dig.]; but see also *D.* 32.93 pr. [SCAEV. 3 resp.]).

If, on the other hand, the notion of *suburbium* does not appear to correspond to any particular legal regime, at least in the classical period, a different perspective emerges if we assume that the continuity of habitation immediately outside the walls surrounding the urban fabric is the distinguishing element between the city and its territory.

3. *CURA AQUARUM*

In his *De aquaeductu urbis Romae*, the senator Sextus Julius Frontinus, who had been appointed to the *cura aquarum* in 97 CE,¹² presented a report on the state of Rome's water supply to the emperor Nerva or Trajan. This insightful treatise by a dedicated public official contains not only technical data, but also an interesting dossier of legislative acts connected to the preservation of public waters: six *senatus consulta*, all proposed by the consuls Q. Aelius Tubero and P. Fabius Maximus (i.e. in 11 BCE), and a law approved on 30 June 9 BCE (the *lex Quinctia*).¹³

The six *senatus consulta* are faithfully reproduced by Frontinus, evidently excerpted from the *tabularium* or from a cento which had previously collected them, with only the *praescriptiones* and the *discessionis eventus* at the end of each *decretum* omitted.¹⁴ The sixth *senatus consultum* regulated the undue occupation of spaces intended for canalisation work by trees, buildings or the construction of local roads.¹⁵ Anyone who contravened this regulation would

¹¹ Possibly located between modern Boscoreale and Boscotrecase: cf. GRIMALDI 2013, 65-70, but for a *mise au point* on the Pompeian *pagi* cf. above all DE CARLO 2008, 71-80.

¹² FRONTIN. *aq.* 102.17

¹³ For the *senatus consulta* see FRONTIN. *aq.* 100, 104, 106, 108, 125, 127 (on which see FIRA I2, 41; VOLTERRA 2017, 134 nos. 60-65); for the *lex Quinctia* FRONTIN. *aq.* 129 (on which see ROTONDI 1912 [1990], 453; FIRA I2, 14; *Roman Statutes* 63). Cf. PEACHIN 2004, *passim*, and on Frontinus, MAGANZANI 2012, 135-53.

¹⁴ BUONGIORNO 2016, 17-60.

¹⁵ FRONTIN. *aq.* 127.1.

be fined 10,000 sesterces:¹⁶ to this end, the Senate had established the power of the *curatores aquarum* to investigate, in the form of *cognitio extra ordinem*. The Senate also considered the question of how to define the urban area, i.e. where *Roma* ended.

As was common from the Augustan period onwards, the *decretum* opens with the reasons for the deliberation (*cum... corrumpantur*), followed by the decree of the *patres*.¹⁷ The latter establishes both the obligation to maintain a distance of 15 feet from springs, arches and walls, and the obligation to maintain a distance of 5 feet from subterranean channels and conduits (*rivos qui sub terra essent et specus*). It is specified that these fall within the urban and peri-urban fabric: *intra urbem et urbi continentia aedificia*.¹⁸

The *verba* of the *senatus consultum* reveal a certain systematic approach, with provisions relating first to general works and then to provisions relating to hydraulic works typically falling within the urban and peri-urban fabric. This interpretation is also usefully corroborated by the aforementioned *lex Quinctia* cited in Frontinus.

The *lex Quinctia* established, among other things, that anyone who maliciously damaged aqueducts and drainage systems would be sentenced to pay 100,000 sesterces if their damage prevented water from flowing into the city of Rome or from being distributed to concessionaires *in urbe Roma et in iis locis, aedificiis quae urbi continentia sunt erunt, in his hortis, praediis, locis* (FRONTIN. *aq.* 129.4). Another *senatus consultum* from 11 BCE, also referred to by Frontinus (*aq.* 104.1), takes its cue from a *relatio* by the consuls on the number of public fountains (*salientes*)¹⁹ installed by Agrippa *in urbe... intraque aedificia urbi coniuncta*, i.e. within the *urbs* and in the inhabited *continuum* immediately adjacent to the *urbs*.

The text of the *lex Quinctia* and the *senatus consulta* of 11 BCE therefore document unequivocally how, at the height of the Augustan period, the administrative organisation of Rome and its immediately surrounding areas knew a distinction between the *urbs*, that is, the part of Rome falling within the Servian walls and the *pomerium* (at the time substantially coinciding), and a part outside the walls made up of *loca* and *aedificia* classified as *urbi continentia* (or *coniuncta*), that is, adjacent to the *urbs*.²⁰

How and, especially, when did this development come to be consolidated? And above all, what was its relationship with older forms of division of urban and extra-urban spaces?

¹⁶ FRONTIN. *aq.* 127.2.

¹⁷ FRONTIN. *aq.* 127.3: *cum ad reficiendos rivos specusque <* * *> per quae et opera publica corrumpantur; placere circa fontes et fornices et muros utraque ex parte quinos denos pedes patere et circa rivos qui sub terra essent et specus intra urbem et {extra} urbi continentia aedificia utraque ex parte quinos pedes vacuos relinqui...* There is a lacuna in the text at this point, possibly due to the loss of a line of text. For a review of the proposed integrations, see RODGERS 2004, 318.

¹⁸ I adopt here the edition of RODGERS 2004, 113, followed also by MAGANZANI 2012, 141-2, which is based on the restitution of the text by BÜCHELER 1858, 48.

¹⁹ Numbering 500, if we trust PLIN. *nat.* 36.121. On Agrippa's plan for water supply in relation to the topography of the *urbs*, see EVANS 1982, 401-11.

²⁰ For information on the *continentia* (*aedificia*), beyond the already-cited work of ZDEKAUER 1889, 273-91, see LEIST, G.A. 1900, *RE* 4.1, 1149 s.v. *Continentia urbis*; DE RUGGIERO, E. 1910, *DizEp* 2.2, 1185 s.v. *Continentia (urbis)*; a survey of the attestations of this *iunctura*, almost all of a juridical nature, in VOLLMER, F. 1906-1909, *TLL*, 710 s.v. *contineo*. In contrast to the formulation *aedificia continentia*, that of *continentia aedificia* is to be preferred. It is widely attested in the sources with the adjectival participle *continentia* consistently set off by attributive position (e.g., *D.* 27.1.45.3 [TRYPH. 3 *disp.*] e *D.* 33.9.4.4 [PAUL. 4 *ad Sab.*]).

4. THE 'THOUSAND PACES'

The Republican practice documents an archaic norm for the organisation of space, namely that of the thousand paces from the *urbs*. This spatial limit of the *urbs* dates back at least to the origins of Republican practice, and according to an authoritative hypothesis, it was religiously motivated and connected to the creation of sanctuaries.²¹ According to Livy (3.20.7), for example, in its original configuration the right of 'appeal to the people' (*provocatio ad populum*) ended within a thousand paces from the *urbs* (*neque provocationem esse longius ab urbe mille passum*), beyond which the consul exercised a repressive power over *cives* that was 'substantially identical' to that granted to him over enemies.²²

The *mille passus* are continuously documented from the end of the third century BCE onwards.²³ The *Lex Oppia*, approved in the midst of the war with Hannibal, established that no woman could possess more than half an ounce of gold, wear clothes of different colours or travel in Rome or other cities on a two-horse chariot if the distance was less than a thousand paces, with a sole exception for public sacrifices (Liv. 34.1.3). A *senatus consultum* of 170 BCE delegated to the praetor M. Raecius the task of recalling to Rome senators from all over Italy, except those absent *rei publicae causa*. An obligation for *patres* to reside in Rome was established and a ban imposed on traveling further than a thousand paces (*ne quis ultra mille passuum ab Roma abesset*, Liv. 43.11.5).

Valerius Maximus (2.4.2) records a *senatus consultum*, approved in 154 BCE and deliberated on the *sententia* of P. Cornelius Scipio Nasica Corculum, which among other things established *ne quis in urbe propiusve passus mille subsellia posuisse sedensve ludos spectare vellet*.²⁴ This prohibition on attending shows while seated, in the *urbs* and within the first thousand paces from it, constitutes the earliest attestation of the formula '*in urbe propiusve passus mille*' that we find attested with minimal stylistic variations in numerous legislative texts. For example, among the requisites to take part in juries of trials *de repetundis*, the *lex Acilia* (123 BCE) defined a *domicilium* within a certain territorial limit of Rome, once again reckoned at a thousand paces: *queiue in urbe Romae propiusve urbem Roma]m p(assus) M domicilium non habeat*.²⁵ And again, in the first *kaput* of the *lex Cornelia de sicariis*, introduced by Sulla, the *praetor iudexve quaestionis* was given jurisdiction to judge criminal offences committed in the city of Rome or within the first mile (*eius quod in urbe Roma propiusve mille passus factum sit*).²⁶

Nonetheless, in relation to *viae publicae* and their upkeep, staging of *ludi*, transit of beasts of burden, the extracts of the laws of the Roman people inscribed on the *tabula Heracleensis* refer on several occasions to specific regulations for the *Urbs* and the first mile (*propiusve urbem Romam passus M*),²⁷ mentioning in particular six magistrates responsible for cleaning streets: four within the *Urbs* (*Illiviri viis in urbem purgandis*) and two for the first mile from it (*Ilviri viis extra urbem propiusve urbem Romam passus M purgandis*).²⁸ We will return to this last point further on.

²¹ COLONNA 1991, 209-32 [= ID. 2005, 693-716], to which add CURCIO 2020, 137-64. On the relationship between *pomerium*, *ager effatus* and the areas facing the Servian walls, see CARLÀ 2015, 599-630, esp. 625-8. Still stimulating in methodological terms, VALETON, 1898, 1-93.

²² SANTALUCIA 1994, 92.

²³ Here follows a rapid review of examples. For a further survey see also DUBBINI 2019, 143-7.

²⁴ On the topic see MARINO 2018, 381.

²⁵ *Lex Acilia repetundarum* (CIL I2, 583 = FIRA I2, 7 = *Roman Statutes* 1), ll. 13-14 e l. 17. On the topic LICANDRO 2004, 114-16.

²⁶ ULP. 7 *de off. procos. sub tit. de sicariis et veneficiis*, Coll. 1.3.1.

²⁷ *Tab. Heracl.* (CIL I2, 593 = ILS 6085 = FIRA I2, 13 = *Roman Statutes* 24), ll. 20, 25, 50, 64, 67, 68, 77.

²⁸ For an interpretation of the pleonastic titlature of these magistrates see ZDEKAUER 1889, 283-4.

From an examination of these cases, it clearly emerges that the space within the first mile of Rome constituted a sort of appurtenance of the *urbs* that enjoyed specific legislation comparable to that of the *urbs* proper. The *urbs* and the first thousand paces from it constituted what Léon Homo defined as a ‘comensorio’, beyond which extended the *ager*, whose limits could in turn be defined negatively with respect to the boundaries of the surrounding cities: *Fregennae* and *Veii* to the north, *Fidenae* to the north-east, *Ficulea* to the east, *Gabii* and *Tusculum* to the south-east, *Bovillae* and *Aricia* to the south, *Lavinium* and *Ostia* to the south-west.²⁹

We now need to ask where the *Urbs* ended and whence the counting of the thousand paces began. The question has been variously answered, but the most concrete hypothesis is that the latter were counted from the circuit of the Servian walls and its gates.³⁰ In this regard it is useful to recall the affirmation of Alfenus Varus, transmitted by Ulpius Marcellus (*D.* 50.16.187 [12 dig.]): *Ut Alfenus ait, ‘urbs’ est ‘Roma’, quae muro cingeretur et rell.*³¹ we will return later to the intricacies of this fragment.

The criterion of a thousand paces from the *urbs/oppidum* is also found in the *lex coloniae Genetivae Iuliae*.³² *Kaput* 91 refers explicitly to the requirement for decurions to reside in *ea col(onia) oppido propiusve it oppidum p(assus) M.* The text confirms that the thousand-pace rule outlined for Rome was reflected in the regulations of the colonies and, given that the *lex Ursonensis* dates between 47 and 44 BCE, it was still fully in force at the end of the Caesarean period.

One should also not be misled by the peculiar wording of one of the *kapita legum* contained in the *tabula Heracleensis*, which, ll. 20-21, opens the section of regulations for the repair of roads in Rome. The regulation established the obligation for owners of buildings facing the street to maintain the relevant tract of the roads serving their buildings, in accordance with the provisions laid down by the competent aedile.³³ Recently, it has been argued that this is the first attestation in a regulatory text of the concept of the inhabited *continuum* of Rome and its surroundings. Yet a closer reading of the text reveals two distinct levels. Firstly, we have the spatial context to which the regulation applies in abstract terms, namely Rome and its immediate surroundings defined as the area within a thousand paces. Secondly, the rule only applies in practice to those areas within the first mile of the walls that show signs of residential agglomeration.³⁴ However, this does not necessarily mean that such agglomerations, even if located within the first mile of the walls, were immediately adjacent to the urban and peri-

²⁹ Cf. HOMO 1976, 99, and LO CASCIO 1997, 14.

³⁰ See ZDEKAUER 1889, 277 and n. 3 with the sources.

³¹ The reading of Pomponius’ definition of *urbs* (*D.* 50.16.239.6 [POMP. *l.s. enchir.*]: ‘*Urbs*’ ab urbo appellata est: urbare est aratro definire. Et Varus ait urbem appellari curvaturam aratri, quod in urbe condenda adhiberi solet), which also depends on Alfenus, and to which QUERZOLI (2013, 104-5, with bibliography) has rightly called attention, seems to confirm that Alfenus focused on the problem of the original tracing of the limits of the *urbs* with the plough, from which derived the definition of the Romulan pomerium and later the layout of the Servian walls. Cf. ZDEKAUER 1889, 275: ‘nel condurre l’aratro si formano, con l’andare del vomero, il solco e la zolla; questa disegna l’andamento del muro, quello traccia il fossato.’

³² *CIL* II2, 5, 1022 = *ILS* 6087 = *FIRA* I2, 21 = *Roman Statutes* 25.

³³ *quae viae in urbem Rom(am) propiusve u(rbem) R(omam) p(assus) m(ille) ubei continente habitabitur sunt erunt, quouis ante aedificium earum quae / viae erunt, is eam viam arbitrato eius aed(ilis), quoi ea pars urbis h(ac) l(ege) obvenierit, tueatur.*

³⁴ On this point see already ZDEKAUER 1889, 278. The useful overview in PANCIERA 1999, 9-15, esp. 10 (= *Id.* 2006, 927-36, esp. 927-8) also points in this direction; ditto SISANI 2023, 473, following my argument in BUONGIORNO 2020, 227.

urban fabric. Lines 55ff. of the same *tabula Heracleensis* support this interpretation,³⁵ which prohibit daytime transit of the streets located in the *urbs Roma* and, more generally, in places where there are built-up residential areas: *quae viae in u(rbem) R(omam) sunt erunt, intra ea loca ubi continenti hab<i>tab<i>tur et rell.*

The criterion of a thousand paces beyond the *urbs* was still applied by Augustus in 21 BCE. As Cassius Dio (54.6.6) reports, it was in this year during his consulate with Agrippa that the emperor prohibited (by edict?) Egyptian rites from being celebrated in the city and also ἐν τῷ προαστείῳ ... ἐντὸς ὀγδόου [ἡμι]σταδίου, that is, within the limit of the eighth *stadion* immediately adjacent to the *urbs*. A distance of eight *stadia* is more reasonable than the transmitted ‘half-stadia’, in as much as it suggests that this provision conformed to the rule of the thousand paces.

5. ROME’S EXPANSION

Rome’s demographic expansion of after the end of the civil wars must have resulted in the expansion of the space considered ‘urban’ within a few years³⁶ with the built-up residential areas now pushing beyond the limit of a mile from the walls. In consequence, the city appeared immense to the eyes of a Greek like Dionysius of Halicarnassus, who did not fail to point out how the ancient Servian walls were now incorporated into a much larger urban fabric. The historian of the Augustan period records ‘inhabited places around Rome, which are many and large, undefended and without walls’,³⁷ so much so that ‘if someone wanted to estimate the size of Rome by looking at these suburbs, he would necessarily be misled by the lack of a precise indication to determine to what extent it is still a city and where it ceases to be one; thus the city is closely connected with the countryside, giving the spectator the impression of a city that extends to infinity’,³⁸ especially since the walls are ‘difficult to discover because of the buildings that surround them in many places’.³⁹

³⁵ The text is absent from TODISCO 2016, 712. I would like to reiterate here the reading that I offered – in line with a well-established tradition – in BUONGIORNO 2020, 227-8. The reconstruction by GUIDETTI 2022, 158-9 is arbitrary; with a certain measure of creativity, he hypothesises the loss of the text of an original ‘locuzione formulare’ that would have referred to the thousand paces from the *urbs Roma* in l. 56 of the *Tabula Heracleensis*, thus postulating that the prohibition of vehicles during daytime concerned ‘le vie che si trovano e si troveranno nella città di Roma, <o entro un miglio dalla città di Roma> entro quelle aree in cui vi sia contiguità di abitazioni’: that is to say, an area much wider than the modern *zona a traffico limitato* (ZTL). This is highly unlikely: a limited-traffic zone that encompassed not just the urban fabric within the Servian walls, but also the areas of greater density immediately outside them would be unfeasible even in the mind of a radical environmentalist administrator.

³⁶ For a graphic representation of the relationship between the extramural settlement documented for the Caesarean period and its Augustan-era expansion cf. LAFON 2001, 211-12.

³⁷ D.H. 4.13.3: τὰ περὶ τὴν πόλιν οἰκούμενα χωρία, πολλὰ ὄντα καὶ μεγάλα, γυνὰ καὶ ἀτείχιστα.

³⁸ D.H. 4.13.4: καὶ εἰ μὲν εἰς ταῦτα τις ὁρῶν τὸ μέγεθος ἐξετάζειν βουλῆσεται τῆς Ῥώμης, πλανᾶσθαι τ’ ἀναγκασθήσεται καὶ οὐχ ἔξει βέβαιον σημεῖον οὐδέν, ᾧ διαγνώσεται, μέχρι ποῦ προβαίνουσα ἐστὶ πόλις ἐστὶ καὶ πόθεν ἄρχεται μηκέτ’ εἶναι πόλις, οὕτω συνύφανται τὸ ἄστυ τῇ χώρᾳ καὶ εἰς ἄπειρον ἐκμηκνυμένης πόλεως ὑπόληψιν τοῖς θεωμένοις παρέχεται.

³⁹ D.H. 4.13.5: τῷ τείχει τῷ δυσσευρέτῳ μὲν ὄντι διὰ τὰς περιλαμβανούσας αὐτὸ πολλὰχόθεν οἰκίσεις.

The scenario described by Dionysius of Halicarnassus⁴⁰ for the height of the Augustan period was dysfunctional on a practical level. As a consequence of the progressive expansion of the city's boundaries beyond the walls, and in consideration of 'religious scruples and considerations of political expediency <that> suggested not to modify, not even minimally, the original juridical-sacral limit', there must have been numerous legal problems related, for example, to the residency or property of the inhabitants, which an elaboration of the notion of (*urbi*) *continentia aedificia* would have allowed to resolve, at least in part.⁴¹

The development of a residential *continuum* close to the city proper, even though it extended beyond a thousand paces from the walls, took on the appearance of a new 'mobile border' (in the words of Filippo Coarelli),⁴² malleable to the needs of a society undergoing demographic and topographical expansion. There are reasons to date this development to the high Augustan period, though it is difficult to specify the year exactly. Certainly after 21 BCE, if we are to believe the aforementioned passage from Dio 54.6.6 on the suppression of the Egyptian cults, and before 11 BCE, the year of the *senatus consulta* copied by Frontinus. By 7 BCE, when the XIV *regiones* were created⁴³ (seven of which extramural!),⁴⁴ the notion must have been fully established.

In this regard there are several crucial aspects. In 20 BCE the *cura viarum* was instituted and the *miliarium urbis* was set up at the north-west end of the Forum, beside the *aerarium Saturni* (Dio 54.8.4). The *miliarium urbis* was a marble column clad in bronze, which served as starting point of all the roads that led from Rome into the empire. In this same period (already in 20 BCE according to Mommsen,⁴⁵ or between 16 and 13 BCE if we believe Dio 54.26.7⁴⁶), during the absence of Augustus from Rome, the Senate had decreed a downsizing of the vigintisexvirate to a vigintivirate, suppressing the four *praefecti Cap(uae) Cum(is)* and, more importantly, the *Ilviri viis extra propiusve urbem Romam passus M purgandis*. The abolition of this latter magistracy is a clear sign that the domain of these magistrates was considered obsolete, since the space of a thousand paces immediately outside the *urbs* was no longer considered an autonomous area of jurisdiction. In other words, the (*urbi*) *continentia aedificia* had become an integral part of the spatial reality of Rome.

But the problem did not concern only Rome. There must have been other contexts, in Roman Italy as well as in the provincial *coloniae*, in which demographic growth had rendered the *oppida* as originally laid out no longer adequate to accommodate all their inhabitants. Nor is it a coincidence that *kaput* 62 of the *leges Irnitana* and *Malacitana*,⁴⁷ a Flavian reworking of Augustan municipal laws, extended norms originally conceived for the *oppidum* to yet-to-be-constructed *continentia*⁴⁸

⁴⁰ Source overlooked by TODISCO 2016.

⁴¹ QUERZOLI 2013, 106-7.

⁴² COARELLI 1997, 90.

⁴³ On the creation of the *regiones* of Rome see FRASCHETTI 2005, 171-80, and now PROCCHI 2020, 114-17 with bibliography.

⁴⁴ Cf. FRÉZOULS 1987, 382.

⁴⁵ MOMMSEN 1887, 604.

⁴⁶ On which see now GALLO 2018, 55-6.

⁴⁷ For the *lex Malacitana* editions in *CIL* II, 1964 = *ILS* 6089 = *FIRA* 12, 24; for the *lex Irnitana* I follow WOLF 2011.

⁴⁸ PHILLIPS 1973, 95 also thinks of a *tralician* clause, which 'would derive from a charter of Augustan or early Julio-Claudian date'. On the other hand, formalisation of the *de facto* existence of *continentia* also in provincial contexts is demonstrated by a third-century inscription from *Sicca Veneria* (*CIL*

(*quae ei oppido continentia aedificia erunt*⁴⁹) by restricting the regulation on demolition of buildings found in the *lex municipii Tarentini* (*kaput* 4)⁵⁰ and in the *lex coloniae Genetivae Iuliae* (*kaput* 75).

As already mentioned, Flavian-era municipal legislation re-elaborated material of the Augustan period. The prescriptions of *Irn.* 62 recall the same climate within which the Augustan-era antiquarian Verrius Flaccus recorded the extension of the second definition of *vicus* found in the gloss of Festus 502 and 508 L. – namely the Caesarean definition of ‘neighbourhood’ as buildings inside cities that are distributed along streets and among districts separated from one another and distinguished by different names –, also to neighbourhoods outside the *oppida* and adjacent to them (*quae continentia sunt his oppidis*).⁵¹

6. CONTINENTIA

To better understand the process by which the notion of ‘adjacency’ took root in Augustan juridical culture, I would add a further point. *Kaput* 91 of the *lex Irnitana* – which explicitly recalls the prescriptions of *kaput* XII of the *lex Iulia de iudiciis privatis* (17 BCE) and those of the senatorial deliberations interpreting said *kaput*⁵² – confirmed that the distinction between *legitima iudicia* and *imperio continentia iudicia* (already mentioned by Gaius)⁵³ had been introduced into the legal system by the Augustan legislation itself.⁵⁴ As Gaius explains, the *legitima iudicia* are those that are conducted within the radius of a thousand paces from Rome, between Roman citizens and before a single *iudex*, and become extinct if no judgment is reached within a year and six months.⁵⁵ Instead:

VIII, 1641 = *ILS* 6818 = *AE* pigr 1991, 1685 = *FIRA* III, 55 b) that explicitly refers to *continentia coloniae nostrae aedificia*; on this inscription see GAGLIARDI 2006, 376-7.

⁴⁹ The text of *Irn.* 62 and *Mal.* 62 must also have corresponded with *kaput* 62 of the *lex* of the *municipium Flavium Ostipponensis* (*CIL* II2, 5, 959, where, however, the formula ‘*oppido continentia aedificia*’ is restored; a fact that seems to have escaped TODISCO 2016, 713 and n. 17).

⁵⁰ *CIL* I2, 590 = *ILS* 6086 = *FIRA* I2, 18 = *Roman Statutes* 15.

⁵¹ *Altero, cum id genus aedificio<rum defi>nitur, <quae in oppidis aedificantur (sive continentur?), aut> quae continentia sunt his oppidis, quae<que>... itineribus regionibusque distributa inter se distant, nominibusque dissimilibus discriminis causa sunt dispartita.* For a reconstruction and exegesis of this gloss see LETTA 2005, 81-96. Hardly or not at all convincing are the attempts at reconstruction of the gloss by E. Todisco, most recently in TODISCO 2011, part. 57-70. On the profound perplexities raised by the reading proposed by Todisco see, justly, LETTA 2012, 65-9.

⁵² *legis Iuliae quae de iudici(i)s privatis proxime lata est kapite XII // senatusve consultis [[ad it kaput]] ad it kaput legis pertine/ntibus.*

⁵³ *GAIVS inst.* 4, 103: *Omnia autem iudicia aut legitimo iure consistunt aut imperio continentur.*

⁵⁴ The identification of the *lex Iulia* specified in *Irn.* 91 has been the object of sometimes rather heated debates, above all in relation to the *duae leges Iuliae* mentioned by *GAIVS inst.* 4, 30: an accurate examination now in BEGGIO 2015, 131-5, who substantially favours the hypothesis by TALAMANCA 1999, 218, of the existence of two laws, one of general scope on *iudicia privata* and another on the administration of justice in the *municipia*, and who also draws attention to *TAC. ann.* 13.28.2. For different views, see LAMBERTI 1993, 208-20; BERTOLDI 2001, 37-44, esp. 40-44, with KUNKEL 1962, 34. I will return to this point at greater length elsewhere.

⁵⁵ *GAIVS inst.* 4, 104: *Legitima sunt iudicia, quae in urbe Roma vel intra primum urbis Romae miliarium inter omnes cives Romanos sub uno iudice accipiuntur; eaque e lege Iulia iudiciaria, nisi in anno et*

Courts dependent on magistral authority are defined as those before assessors, or those which are under a single judge but involve a foreigner as judge or party. The same definition covers any courts beyond the first milestone from the City of Rome, whether in causes between Roman citizens or foreigners. They are described as dependent on magistral authority because they are only effective as long as the person who set them up holds authority. (GAIVS *inst.* 4, 105, transl. W.M. Gordon, O.F. Robinson).⁵⁶

The *imperio continentia iudicia* include judgments of a recuperative nature, i.e. those held in Rome under an *unus iudex* but in which a *peregrinus* (whether the *iudex* or one of the parties to the case) intervenes, as well as all judgments held beyond the first mile from Rome. These are therefore *iudicia* whose duration is closely connected to the term of office of the magistrate who presides over them: in this sense, they are *imperio continentia*, in that they expire together with it.⁵⁷ The connection between *iudicium* and the magistrate who establishes it, expressed with the formula ‘*continens* + dative’, expresses the same sense of ‘conjunction’ that is characteristic of the notion of *urbi continentia aedificia*.⁵⁸

In the ongoing debate surrounding the notion of *contineo/continens*, it is worth noting that the development of the ‘overseas provinces’ or *transmarinae provinciae* and, conversely, of the (*Italiae*) *continentes provinciae* also dates back to the Augustan era. The former are known from epigraphically attested senatorial resolutions concerning Germanicus, as well as from scattered references in historiographical sources. Agrippa had already been entrusted with missions to the East, but the development of the category of ‘overseas provinces’ seems to be later, attributable, if not to the mission of Tiberius in 6 BCE,⁵⁹ certainly to the appointment of Gaius Caesar *ad ordinand(as) trans]/marina[s provincias*, according to the formulation used by Verrius Flaccus in the *Fasti Praenestini*.⁶⁰ On the definition of (*Italiae*) *continentes provinciae*, clearly developed to draw a distinction, we are instead informed by a later text of Ulpian (1 *off. cos.*, D. 50.16.99.1).⁶¹

sex mensibus iudicata fuerint, expirant. Et hoc est, quod vulgo dicitur e lege Iulia litem anno et sex mensibus mori.

⁵⁶ *Imperio vero continentur recuperatoria et quae sub uno iudice accipiuntur interveniente peregrini persona iudicis aut litigatoris; in ea causa sunt, quaecumque extra primum urbis Romae miliarium tam inter cives Romanos quam inter peregrinos accipiuntur. ideo autem imperio contineri iudicia dicuntur, quia tamdiu valent, quamdiu is qui ea praecepit, imperium habebit.*

⁵⁷ This would also explain the anxiety, mocked by JUVENAL (*sat.* 16.42) and noted by SERVIUS DANIELIS *Aen.* 2, 102), with which the beginning of the ‘judicial year’ was awaited. For these two texts and a detailed study of the relationship between *legitima iudicia* and *imperio continentia iudicia* see now FARGNOLI 2015, 126–53, with extensive bibliography.

⁵⁸ As far as I can see, this aspect has so far been overlooked with the sole exception of JHERING 1880, 668 n. 929. But on the use of *continens* in the sense of *iunctus* see also NICOLAU 1935, 352, followed by BALZARINI 1971, 452 n. 8.

⁵⁹ VELL. 2.99.4.

⁶⁰ *AEpigr* 1980, 214 = EDR077655. Similarly, ARNAUD 1994, 253. Unsurprisingly, VELLEIUS PATERCULUS also traces this notion back to practices of the Late Republic such as that of Pompey *ex lege Manilia*. As Arnaud observes, he made use of categories contemporary at the time of writing.

⁶¹ ‘*Continentes provincias*’ accipere debemus eas, quae Italiae iunctae sunt, ut puta Galliam: sed et provinciam Siciliam magis inter continentales accipere nos oportet, quae modico freto Italia dividitur. An echo of the reception of this category already in the Augustan period also in Liv. 28.12.12, a passage that suggests that, at the time, *Sicilia* was understood to be a *transmarina provincia*. In general Livy pays attention to such categories: at 31.48.7, for example, he uses the idea of *continentia tecta* rhetorically in reference to the *coloniae* of *Placentia* and *Cremona*.

We should understand the neighboring, contiguous provinces to mean those which are joined to Italy, as for instance, Gaul. We should, however, include the Province of Sicily among them, as it is only separated from Italy by a narrow arm of the sea. (transl. S.P. Scott)

The *continentes provinciae* were, therefore, in territorial continuity with *terra Italia*, a continuity that the sea did not guarantee. And thus, if Ulpian considered *Sicilia* a *continens provincia* in view of the narrow strip of the sea, Tacitus (*ann.* 2.43.1) explained that the characteristic of the *transmarinae provinciae* was that these *mari dividuntur*.

The adoption of the notion of ‘continuity’ – spatial (as in the case of *aedificia* or *provinciae*) or figurative (as with *iudicia*) – expressed by the verb *contineo* thus appears to be of Augustan origin, that is, the work of a generation of jurists among whom figures such as Gaius Ateius Capito and Marcus Antistius Labeo stand out (even if the latter was ‘non-aligned’ with the regime).

The aforementioned text of *GAIVS inst.* 4, 104–105 permits some further considerations. It explicitly states that among the requirements for *legitima iudicia* was that they be conducted ‘in the city or within the first milestone from the city of Rome’ (*in urbe Roma vel intra primum urbis Romae miliarium*). This formula seems to suggest that, at the moment of the promulgation of the *lex Iulia* (17 BCE), the category of *urbi continentia aedificia* was not yet completely abolished (which it seems to have been, by contrast, in the *lex Aebutia*). It is, however, worth asking whether the *senatus consulta* interpreting the *lex Iulia iudiciorum privatorum*, cited at *Irn.* 91, had not also worked in this direction.⁶²

The measure of the thousand paces had certainly not been superseded:⁶³ it was simply that the mechanism of its calculation had changed. It is no coincidence that at the beginning of the third century CE Aemilius Macer specified in his comment on the *lex Iulia de vicesima hereditatum* of 5 CE (1 *ad leg. vic.*, *D.* 50.16.154), that the distance of one thousand paces had to be calculated from the edge of the *continentia aedificia*, that is, from the limit of the inhabited area of the city: *mille passus non a miliario urbis, sed a continentibus aedificiis, numerandi sunt*. As is widely agreed,⁶⁴ this clarification by Macer was necessary to define the extension of the respective territorial spheres of the *procuratores vicesimae hereditatum* established by the *lex Iulia* responsible for Rome and Italia respectively.⁶⁵

7. *URBS* AND *CONTINENTIA*

This explains the concern of Roman jurists to define the spaces of Rome: the *urbs* proper, that is, the ‘parte nucleare’ of the city,⁶⁶ which ended at the Servian walls; the *urbi continentia*

⁶² Also, in *Irn.* 91, the formulation *itaque iis omnibus de ea re et in eos dies in quos ex h(ac) l(ege) licebit denuntiandi intra it municipium et mille passus ab eo municipio* would seem to suggest that by *municipium* was meant the sum of ‘*oppidum* + *continentia aedificia*’ and that therefore the thousand paces *ab eo municipio* were counted from the confines of these.

⁶³ After all, the *senatus consultum* conferring posthumous honours on Germanicus called for, on the anniversary of his death, the closing of the *templa deor(um) immortalium quae in urbe Roma {m} prop {r} iusve urbem [Romam passus (mille) sunt erunt quot annis]*. On this point see, rightly, DUBBINI 2019, 145.

⁶⁴ See already HIRSCHFELD 1877, 66, followed by many others, most recently DEMICHEL 2006, 306 with bibliography.

⁶⁵ Cf. DEMICHEL 2006, 307.

⁶⁶ Thus CASAVOLA 1992, 20–21, with an overview of the fragments cited below. On these aspects see also GAGLIARDI 2006, 371–6.

aedificia, which together with the *urbs* made up the *urbs Roma* (*VR* in the *litterae singulares* of Valerius Probus), with its ‘mobile boundaries’; and finally the first mile, calculated from the edge of this movable boundary.

The most straightforward passage for the modern reader to understand is PAVL. 1 *ad ed.*, D. 50.16.2pr., which specifies that the notion of *urbs* referred to the area within the walls, while the more general notion of *Roma* also included the *continentia aedificia* (*‘Urbis’ appellatio muris, ‘Romae’ autem continentibus aedificiis finitur, quod latius patet*): the text was probably developed within the framework of the description of the *vadimonium Romam faciendū*.

More generally, however, the jurists of the Antonine and Severan periods assumed that the spatial area of *Roma* was everything that fell within the *urbs* and the *continentia*. Neratius, if we accept that his text refers to *urbi continentia aedificia*, considered *stabula* located outside the *continentia aedificia* not to be comparable to *praedia urbana*, not because of their intended use (shelters for the use of the inhabitants of the peri-urban area), but rather because of their physical location, ‘because they are separated from the other buildings’ (*cum a ceteris aedificiis separata sint*), thus limiting their assimilation to *praedia urbana* only with regard to a landlord’s rights of seizure.⁶⁷

Tryphoninus, on the other hand, considers a tutor to be appointed in *Roma* only if appointed by the *praefectus urbis* or praetor, or by a will *Romae confecto vel in continentibus*.⁶⁸ Two texts of Ulpian establish that only those who are *extra continentia urbis* are considered absent from court proceedings.⁶⁹ Another lacunose passage (ULP. D. 48.22.14pr., reconstructed on the basis of *Bas.* 60.54.14) suggests that ‘a person is said to be exiled when he is forbidden to enter a province or a city and its *continentia* either permanently or temporarily’ (*relegatus est is cui interdicitur provincia aut urbe continentibusve in perpetuum vel ad tempus*).

In any case, that the *continentia* were the natural extension of *Roma* must already have been clear to Sabinus, as is suggested by PAVL. 4 *ad Sab.*, D. 33.9.4.4.⁷⁰ This passage, on the

⁶⁷ NER. 1 *membr.*, D. 20.2.4.1: *Stabula quae non sunt in continentibus aedificiis quorum praediorum ea numero habenda sint, dubitari potest. et quidem urbanorum sine dubio non sunt, cum a ceteris aedificiis separata sint: quod ad causam tamen talis taciti pignoris pertinet, non multum ab urbanis praediis differunt*. The interpretation of this text, however, is disputed. Some have understood the expression in *continentis aedificiis* as referring to a generic proximity of the *stabula* to other buildings, e.g. FRIER 1980, 107 and MENTXAKA 1986, 160. See now also CASTAGNETTI 2023, 68–9 and 113–16, which I think highlights how the negation *non sunt in continentibus aedificiis* offers a plausible interpretation of Neratius only if it is read in the literal sense of ‘shelters not surrounded by other constructions’, such that, being separate, they cannot be assimilated to urban properties.

⁶⁸ TRYPH. 3 *disp.*, D. 27.1.45.3: *Romae datos tutores eos tantum accipere debemus, qui vel a praefecto urbis vel a praetore vel in testamento Romae confecto vel in continentibus dati sunt*.

⁶⁹ ULP. 39 *ad Sab.*, D. 50.16.173.1: *Qui extra continentia urbis est, ‘abest’: ceterum usque ad continentia non abesse videbitur*. ULP. 8 *omn. trib.*, D. 50.16.199pr.: *‘absentem’ accipere debemus eum, qui non est eo loci, in quo loco petitur: non enim trans mare absentem desideramus: et si forte extra continentia urbis sit, abest. Ceterum usque ad continentia non abesse videbitur, si non latitet*. By contrast, PAUL. 3 *ad ed.*, D. 3.3.6, considers present at Rome *et qui in foro et qui in urbe et in continentibus aedificiis*. On these passages see also PLATSCHEK 2005, 194–6.

⁷⁰ *Si ita legetur ‘penum, quae Romae sit’, utrum quae est intra continentia, legata videtur an vero ea sola, quae est intra murum? et quidem urbes fere omnes muro tenuis finiri, Romam continentibus, et urbem Romam aequae continentibus*. The mere absence of the governing clause (in the absence, that is, of further formal criteria for attributing the lemma to Sabinus) is not, as ASTOLFI 2001, 2–3 and n. 4 reminds

subject of *penus legata*, concludes with the observation that almost all cities end at their walls, whereas *Roma* is composed of the *urbs* and the *continentia*. Therefore, if the *penus quae Roma sit* is to be bequeathed, so too will be the provisions located in the *continentia*.

On the other hand, even before Sabinus, Labeo seems to have had a clear notion of *continentia* in the sense of *aedificia* adjacent to the urban fabric as well. Ulpian records Labeo's opinion that the *actio aquae pluviae arcendae* could be brought only in the case of water that had injured it by being diverted from the *continentia* (*aedificia*) to the immediately adjacent *ager*; in contrast, if water that had flowed naturally from the *ager* to the *continentia* immediately adjacent to it, the *dominus* of the *ager* would not have been liable.⁷¹ As already noted by Lodovico Zdekauer, this is the 'earliest notice we have of the commonality and union between the *continentia* and the city'.⁷²

In short, from the beginning of the Imperial period, jurists were aware of the *definitio per differentiam* between *urbs* and *Roma*,⁷³ with the latter extending to the limits of the *continentia aedificia*. It was a matter of providing hermeneutical categories to readers of jurisprudential works, clarifying the misunderstandings that could arise when reading the texts of laws. We referred earlier to Macro's contribution on the calculation of the thousand paces in defining the jurisdiction of the *procurator vicesimae*.

Two further texts considering the *continentia* as an integral part of the notion of *Roma* must be considered, one by Terentius Clemens and the other by Ulpian, each taken from their respective commentaries *ad legem Iuliam et Papiam* and included in *D. 50.16*.⁷⁴ Neither necessarily suggests that the *continentia* were explicitly mentioned in the *lex Iulia de maritandis ordinibus* nor in the *lex Papia Poppaea nuptialis*,⁷⁵ but they allow us to glimpse the possibility that in the text of these laws there was a generic reference to *Roma*, without specifying whether this term referred only to the *urbs* or also to the (*urbi*) *continentia* (*aedificia*), as already argued by Gothofredus in the 17th century.⁷⁶

It was therefore a question of updating the provisions of normative texts, adapting them to the *Zeitgeist*; the jurists did the same, updating the opinions of their predecessors where these were still widely circulating. It seems therefore possible to interpret along these lines the text of Marcellus (12 *dig.*), excerpted in *D. 50.16.87*:⁷⁷

us, a sufficient motive to suppose that that clause was '*Sabinus ait*'. A core of Sabinian thought is undeniable: see ORMANNI 1962, 620.

⁷¹ *D. 39.3.1.20* (Ulp. 53 *ad ed.*): *Apud Labeonem autem invenio relatum, si ex agro meo aqua fluens noceat loco qui est intra continentia, hoc est aedificio, non posse me aquae pluviae arcendae conveniri: quod si ex continentibus profluens in meum agrum defluat eique noceat, aquae pluviae arcendae esse actionem.*

⁷² ZDEKAUER 1889, 288; his tentative proposal that said 'notizia' alluded to a regulation already introduced in the Twelve Tables, however, is unconvincing.

⁷³ Thus MARRONE 1994, 593 [= *Id.* 2003, 539]. By contrast MARTINI 1966, 292 n. 412, held categorically that these texts did not contain a *definitio* in the strict sense.

⁷⁴ *D. 50.16.147* (TER. CLEM. 3 *ad leg. Iul. et Pap.*): *Qui in continentibus urbis nati sunt, 'Romae' nati intelleguntur. D. 50.16.139pr.* (ULP. 7 *ad leg. Iul. et Pap.*): *Aedificia 'Romae' fieri etiam ea videntur, quae in continentibus Romae aedificiis fiant.*

⁷⁵ As instead supposes TODISCO 2016, 712.

⁷⁶ GOTHOFREDUS 1653, 282-3.

⁷⁷ *Ut Alfenus ait, 'urbs' est 'Roma', quae muro cingeretur, 'Roma' est etiam, qua continentia aedificia essent: nam Romam non muro tenus existimari ex consuetudine cotidiana posse intellegi, cum dicemus Romam nos ire, etiamsi extra urbem habitaremus.*

Alfenus says the City of Rome includes all that is encircled by its walls; but Rome also consists of all the buildings which adjoin it, for it should not be considered to be merely bounded by its walls, for when we say that we are going to Rome, we do so according to the ordinary acceptation of these words, even if we live outside of the city itself. (transl. S.P. Scott)

Lenel places the text palingenetically under a rubric pertaining to the opening of wills, so that it seems to refer to the need to define the spatial bounds within which a will could be considered to have been opened at Rome.⁷⁸ While for Alfenus, who was active at least until the beginning of the Augustan era, the definition of the term *Roma* was limited to the *urbs*, and the thousand paces were counted beginning from the latter, Marcellus specifies that this notion should now be integrated with the *continentia aedificia*.⁷⁹ Moreover, the fact that *Roma* was not limited to the circuit of walls that enclosed the *urbs*, was proven by the everyday custom of saying that one was going to *Roma* even if one lived outside the *urbs*, as Marcellus notes. This argument is based on *consuetudo loquendi* and, better than anything else, allows us to appreciate the dialectic between common sense, spoken language and technical-legal elaborations.⁸⁰ This is perhaps one of the most effective signs of the evolutionary interdependence between a society and its law, for the reconstruction of whose processes research on the history of law, and indeed historical research *tout court*, should always strive.

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⁷⁸ According to SACCOCCIO 2017, 105-6, (with literature review), in connection with the formalities relative to the application of the *vicesima hereditatum*.

⁷⁹ Personally, and for reasons to be detailed elsewhere, I am not inclined to believe that the assertion '*Roma*' *est etiam, qua continentia aedificia essent* should be ascribed to Alfenus (as recently argued by SACCOCCIO 2017, 105-6, and PROCCHI 2020, 115).

⁸⁰ On this point see at length GUZMÁN BRITO 1997, 439-40. And exactly this *consuetudo loquendi* cited by Marcellus highlights the captiousness of the theories of GOODMAN 2007, esp. 14-17, 68-74, according to whom the existence of a 'periphery' in the modern sense should be sought also in the Roman world, a periphery that would have occupied an intermediate space between city and countryside. On this point I agree with the evaluation of SACCOCCIO 2017, 106-7.

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