The Colonate in the Later Roman Empire

Boudewijn Sirks*
University of Oxford, Fellow of All Souls College, Oxford, UK
boudewijn.sirks@law.ox.ac.uk

Summary

In the fourth and fifth century there are people in the Roman empire who are bound to a particular estate in the sense that the estate owner can recall them and impose services. Their status, called the colonate, is low. Often it is assumed to have been widespread or even a general feature of a general change in agricultural exploitation. Various theories about its cause have been formulated: chronic indebtedness of farmers, fiscal reorganisations, emergence of large estates. However, already in the middle of the third century in Egypt a similar but private law contract existed, the paramonè. The insertion into the census of an estate under Diocletian gave it a public law aspect, making the estate owner now the contract partner. It implied a change in status for the colonus. It was consequently never a general phenomenon.

Keywords

Colonate – coloni – Codex Justinianus – Codex Theodosianus – paramonè

1 In legal and documentary sources from the fourth till the sixth century we meet people who are called coloni censibus adscripti, coloni originales, coloni originarii, often merely coloni, sometimes simply censiti, or adscripticii, in Greek enapographoi georgoi or paroikoi. It is clear from these texts that they were subjected to another person, a landowner, and that their attachment to his land made them subjected to this person. This combination of attachment to an estate and subjection to its owner is called the colonate (as in ius

* This article summarises the outcome of my research into the colonate, which will be published by the Cambridge University Press as The colonate in the Roman empire. The reader is referred to this publication for a full exposition of the arguments and of the colonate itself.
In this context, the term *colonus* does not point to a tenant-lessee, as in the Digest or the Republic, but to this qualification, and will be used hereafter as such (although he might be a lessee also). But how did this legal construction come about, how exactly was it construed, is unclear. There are various theories on this. One is that the Republican way of many individual lessees and individual farmers-owners made way for a slave-based exploitation on larger estates. By the end of the second century AD, the supply of slaves dwindled and landlords or large estates were forced to find new supplies of workers. These they found in subletting their estates and fixing the sublessees to their land. The farmers/sublessees gradually came into a state of dependency which needed little to become the colonate in the following centuries. Another view is that the colonate is due to the fiscal reorganisations which Diocletian (r. 284-305) carried out. At a rather early moment in his reign, Diocletian began to reform the taxation system because due to the doubling of the number of provinces and the increase in troops he needed more revenues. In this process Diocletian would have made landowners responsible for the collection of the taxes their lessees owed, which would alleviate the task of the authorities considerably and, since the landowners were more able to carry the fiscal burden, would give the emperor more stable revenues. In compensation Diocletian introduced the bond to the estate for these people so that the landowner could reckon to have enough labour force. To some extent connected with this view is another view according to which all functions and profession became from Diocletian onwards hereditary in order to ensure the functioning of the administration and state. The *coloni* made no exception. In that context they were tied to their land by way of the tax registration. Connected with this is the supposed emergence in Late Antiquity of the great domains as semi-public institutions, which had the right of *autopragia*, i.e. to collect taxes themselves.

1 N.D. Fustel de Coulanges, *Le colonat romain*, in: N.D. Fustel de Coulanges, Recherches sur quelques problèmes d’histoire, Paris 1885, who based his views on, i.a, the lex Manciana for the imperial estates in North-Africa.
2 Texts on the colonate are to be found in the Theodosian and Justinian Code, covering the period 319 to 535. Usually analyses of the colonate begin with the earliest known texts, such as CTh 5,17,1 of 332, in order to build up a picture in the course of time. But these derive from later compilations and taking individual texts out of their contexts may distort their meaning. They were selected and adapted to be included in the context of the compilation, often much later than the moment of original issue. Those compilations represented the actual state of affairs. This is undoubtedly the case for texts in Justinian’s codification, and also for Theodosius’ Code5. Considering this, it is more neutral to reconstruct first the colonate under Justinian, then reconstruct the colonate in 438, and after that to regress to the beginning of the fourth century. Instead of unconsciously anticipating later developments one now can ‘peel off’ additions while assuming that the core is still there. At the end this justifies to assume on merely an essential indication that the colonate was as such present. The advantage of beginning with Justinian’s codification is also that it is almost complete, is supplemented with papyrological evidence of the colonate, and thus may present a good picture of the colonate at that time in as far as laid down in legal texts.

3 Although we can never gauge the reality of life on the land in all its details and moments, we still dispose of sufficiently detailed descriptions to get an idea which suits the purpose of analysing the colonate. Sarris has analysed the economic structure of the household of the Apiones, a wealthy family, in Oxyrhynchus in the sixth century, Rathbone that of Appianus in the third century in the Fayum through the Heroninos Archive, and Bagnall has collected a wealth of material on Egypt in general6. Sarris concentrated on the upper landowning class and we must remember that next to these big households, often consisting of a number of small estates, managed collectively, there were also many farmers, small landowners who lived on and tried to live from their


5 There are scholars who still assume that the Theodosian Code comprised all general laws issued since 312 and thus also obsolete laws, which implies that there was no adaptation to represent the actual situation in 438, but this position is not proved for the Books 1 to 15; see my Did the published Theodosian Code include obsolete constitutions?, Tijdschrift voor Rechtsgeschiedenis, 89 (2021), p. 70-92.

plot of land, or who were tenants or farmhands. The Apion property consisted of directly managed estates (autourgiai), leased village properties (ktêmata) and leased urban properties. The management of these was done by overseers (pronoètaí). An accounting system provided for the overall control. The overseers issued the employed people credit notes (pittakia) as payment for their work which could be exchanged for small denomination money. Thus it was a highly monetarised economy. Amongst the village properties (ktêmata) there were hamlets (epoikia), each run by a manager (phrontistès). These hamlets functioned as a kind of labour settlements from which the work-force necessary to cultivate the managed estates (autourgiai) was recruited. Village properties (ktêmata) were also leased to these people and the revenues were in part used to support the managed estates. Next to all these people there were slaves (paidaria), working on the managed estates. It appears that the people in the hamlets (epoikia) were not workless paupers but on the contrary engaged in all kinds of economic and commercial activities. Yet they, or part of them, were also regularly summoned to work on the managed estates (autourgiai) of the Apiones. If the summons was based on a duty on their part, we may find here coloni. They too will have received something as payment. Next to these groups who were in one way or another linked to the Apiones there were independent small farmers. In short, everybody except the Apiones and their staff tried to scratch a living together.

This pattern of an amalgation of small estates is also visible with the Appianus estates, and this kind of exploitation was not restricted to Egypt. We do not have specific data for other areas except for a legal text from Gaul in the fourth century, but the references in the legal texts to coloni and to the rural life over the empire make it likely that it was like that everywhere. Natural disasters could befall Egypt and other regions and would bring farmers, whether they owned their plot themselves or rented it, to the brink of starvation, if not already into debt.

Another, more regular burden were the taxes and public obligations (munera). Landowners had to pay the land tax (tributum solis) but everybody in the countryside had to pay the poll-tax, the tributum capitis or capitatio humana which was a sum levied per head (cJ 11,48,10). In a large constitution of the year 529 (cJ 11,48,20) Justinian sets out how rents and this tax must be

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7 Sarris, Economy (supra, n. 4), p. 29-70.
9 cJ 11,48,8 of 371, see below.
paid when *coloni* challenge in law that somebody is owner of their land. It appears that they pay this tax either by themselves directly to the tax collectors or turn over to the estate owner the revenues of the land, who then pays it to the authorities. Since the latter implies some kind of lease, the tax must have been the poll-tax: only if somebody owned land he paid, in person, the land tax. Other taxes do not figure here. The first form of paying the tax could also imply that notwithstanding their independence as farmers or farmhands, they were bound as *coloni* to the estate owner (as in CJ 11,48,8), e.g. because of an advance to pay their tax, or in another way. CJ 11,48,8 deals with *coloni* who migrate elsewhere and hire themselves out as free farmhands, earning by that money. They must return, but first pay their debts, viz. as laid down in the estate accounting system. Then they have to pay their poll tax themselves. If the estate owner knew they were fugitive *coloni* and used them without payment, he must pay the tax owed for them. Apparently the first estate owner did not have to do this now. The *colonus* himself was liable in the first place for himself and his family, if present. Some of those texts date from before Justinian, but were applied under Justinian, thus must reflect practice. The economic and social realities behind these rules fit Sarris’ description of rural life.

Justinian also prescribed that it did not suffice to prove the colonate by, e.g., an acknowledgement or a document. There had to be an agreement and at least one supporting document like the registration in the census of the estate. Otherwise there would be the danger that free men were drawn into the worse condition of the colonate (CJ 11,48,22pr.–1, of 531). This text provides the legal essentials of the colonate. A *colonus* was tied to an estate, he was in the power, *potestas*, of the estate owner, he had to pay the poll tax, either by himself or through the estate owner. He entered this status by agreement, was registered, likely through an extract (*adscriptio, apographos*) in the census declaration of the estate, the *professio censualis*, hence the expression *censibus adscripti*, and hence the terms *adscripticii* or *enapographoi* for them. This registration entailed the subjection to the estate owner as owner, not as an individual person because if the estate changed owner, the new owner could exercise this power (CJ 11,48,2; 11,48,7,2). The subjection was voluntary because there had to be an agreement. Was that possible? I shall return to this question.

5 CJ 11,48,22pr.–1, of 531 left open that *coloni* were economically not involved in some kind of tenancy but independent. And indeed, papyri of the fifth and sixth century, many of which come from the Apion estate, mentioning

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10 These words do not figure in the legal sources in this context, but we may deduce them from the designations *adscripticus, censibus adscripti, enapographoi*.
enapographoi georgoi, provide ample proof that the reality of the colonate was not restricted to performing some duties. They had duties but could combine these with various occupations, such as: being steward on the estate of the Apiones or on another estate; being a guard; being a fruitgrower; selling wine. They could collect all public taxes under surety of their properties, which proves that they owned property of which they could dispose. In P.Oxy. LXVII 4615 an adscripticus of the hamlet Monimu leases from his master Flavius Strategius land which lays in another possession of the master. Thus he was free to contract. There was evidently no conflict with their colonate obligations. Receipts provide us also with much information. Apollos and Pecysis were charged with the estate irrigator (P.Oxy. LXVII 4697). The same charge was executed by a number of other coloni. An adscripticia, Aurelia Tarilla, who was in charge of an estate irrigator, needed to replace an axle; the price of which was put down to her account (P.Oxy. LXIX 4797). We even see that coloni succeeded in entering the imperial service or provincial administration. They are removed because it is incompatible with their status: they are subjected people (see below). Since coloni could exercise professions their colonate services will not have implied all year long working but only a number of days work, as the people on the Apion estate would work irregularly.

In short, in spite of his subjected position and link to an estate a colonus was a free Roman citizen and not a slave. He could marry, he could own property, he could contract, he had children, he could in the east become a priest, and

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11 I.F. Fikhman, Coloni adscripticii – ἐναπόγραφοι γεωργοί in den Papyri, Problemy social'nykh otnos'enij i form zavisimosti na drevnem Vostoke, Moskau 1984, p. 166-226; repr. in: Wirtschaft und Gesellschaft im spätantiken Ägypten, Kleine Schriften Itzhak F. Fikhman, hrsg. v. A. Jördens, Stuttgart 2006, p. 190-250, p. 194: P.Lond. III 778 (ἀγροφύλαξ, guard), P.Oxy. XXVII 2478 (πωμαρίτης, fruit grower). Now also P.Oxy. LXXXIII 5384 (a. 584) with a ναύτης. This tallies with our observation that a colonus might be bound by his origo and still not be a farmer.

12 P.Oxy. XVI 1985; P.Oxy. XVI 1896; P.Amh. II 149, P. Erl. 37; P.Oxy. XVI 1979; P.Oxy. XXVII 2478 and P.Oxy. LXIX 4789; P.Oxy. XLIX 3512.

13 πάντα τά δημόσια τῆς δεκάτης ἐπινεμήσεως: P.Oxy. LXII 4350: all the taxes of the tenth indication.

14 P.Oxy. LVII 4615 (a. 505), a lease. Similar cases we find in P.Oxy. 5331 (a. 474) and 5332 (a. 480).

15 Receipts by adscripticii for machine parts: P.Oxy. I 137, LXVII 4616, LXVII 4697, LXIX 4755 (?), LXX 4781, 4782, 4784, 4788, 4793, 4796, 4797 (adscripticia), 4798, 4799, 4801 (adscripticia). Further cases where an adscripticus acknowledges a receipt: 5385 (584, receipt for a cogwheel), 5398 (588, receipt for a cogwheel), 5393 (591, receipt for an axle, the adscripticus is in charge of an estate irrigator), 5394 (592, receipt for replacement part of an irrigator). On this aspect of the adscripticin see now T. Hickey, Wine, wealth, and the state in Late Antique Egypt, Ann Arbor 2012, p. 85-86.
he was a tax payer. He could exercise other professions than farmer. A *colonus* could exercise all kinds of professions, but remained bound to an estate and subjected to its owner. And he could not alienate without his master’s knowledge anything from his property, nor sue him except for extraordinary charges or *iniuriae* (cj 11,50,2,3-4). In a way it resembles the later West-European medieval villeinry (‘Hörigkeit’)16. It is understandable that this status has been characterised as a half-freedom, as an intermediate status between freedom and slavery.

Then, what we also see is that under Justinian the colonate is considered a status, a *condicio*, because in cj 11,48,22,3-4 Justinian sets out that children are liable too (*cum enim pars quodammodo corporis eius per cognationem in fundo remaneat*) and that limitation of prescription cannot release them of the *adscripticia condicio* (cj 11,48,23 pr.). The term *condicio* is an equivalent of *status* (Gai 1,89) which refers to the public law status of man, whether he is free or slave, or being free, whether freeborn or freed (Gai 1,9-12). Gaius also gives another division of persons, viz. that of being *alieni iuris* in contrast to being *sui iuris* (Gai. 1,48-52, 55). *Alieni iuris* are *filii familias*, those *in manu*, *in mancipio* and slaves and now, in Justinian’s times, the *coloni* too (cj 11,48,8,1). But they were also normal citizens who had an *origo*, a place which defined their civic duties (as in the term *originales*).

In a legitimate marriage of Romans the children followed the paternal *origo* but also the *condicio* of their father (Gai 1,56). That was also the case if a Roman married a peregrine woman with whom there was *conubium* (Gai 1,78)17. If a union was illegitimate, for example between a Roman citizen and a slave, children followed according to the *ius gentium* the *status libertatis* and with that the *status civitatis* of their mother and so were either slaves or free citizens, depending on what their mother was. But the sc Claudianum of AD 41-54 ruled that if a free Roman woman cohabitated with a slave and did not leave after a formal warning by the slave’s master, her children would not be freeborn and *sui iuris* (having no father) but slaves, thus following their father’s status. The *ius gentium* rule for illegitimate marriages was in this constellation reversed.

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16 This is not to kindle the discussion whether the colonate was the precursor of feudality and Hörigkeit. The colonate in the east could not be such a precursor anyway. In the west the situation is more complicated and the sources of the sixth and seventh century are difficult to interpret on this point.

17 The *lex Minicia* ruled that even in case of a Roman woman who married a peregrine with whom there was no *conubium*, the children were peregrine: Gai 1,78.
Theoretically this should not have concerned *coloni* and their *condicio* because they were not slaves. Yet when Justinian abolished the senatusconsultum Claudianum in 531-534 (CJ 7,24,1), this also affected unions between *coloni* and free women (*ingenuae*). Their children would now be free from the colonate. Since these children were born from free Roman citizens in a legitimate marriage, thus were and remained free citizens, it means that the senatusconsultum applied here not to the *status libertatis* as such but to the status of the colonate. This status comprised in any case the subjection to the *potestas* of the estate owner, of which Justinian treats when discussing the *capitis deminutio minima*, where *status libertatis* and *civitatis* are retained. Normally we would expect that children would follow the status of their father. Here the senatusconsultum apparently reversed something in order to create such a link. If we consider the senatusconsultum in its original sense (applied to slaves) its application to the *coloni* is impossible. However, if we apply the other categorisation of persons by Gaius with its criterium of *alieni iuris* versus *sui iuris*, a parallel becomes possible. A *colonus* is *alieni iuris* and as such comparable to a slave. The term *ingenuus* is used in those times for someone not subjected to the *potestas* of another. From that perspective an analogue application of the senatusconsultum means that what otherwise would be considered a legitimate

18 CJ 7,24,1 of 531-534: 1. Sed ne servi vel adscripticii putent sibi impunitum esse tale con-
amen, quod maxime in adscripticiis verendum est, ne liberarum mulierum nuptiis ab his excogitatis paulatim huiusmodi hominum condicio decrescat, sancimus, si quid tale fuerit vel a servo vel adscripticio perpetrum, liberam habere potestatem dominum eius sive per se sive per praesidem provinciae talem servum vel adscripticium castigatione competenti corrigere et abstrahere a tali muliere. quod si neglexerit, sciat in suum dam-num huiusmodi desidiam reversuram. – ‘1. But in order that slaves and enrolled tenants may not think that such efforts (to marry free women) will go unpunished – which is especially to be feared in the case of *adscripticii* – and in order that the number of this class of men may not gradually decrease by their intermarriage with free women, we ordain that if anything of that kind is done by a slave or *adscripticius*, his owner shall have the free power, either personally or through the provincial governor, to correct such a slave or *adscripticius* by proper chastisement and to take him away from such a woman. If he neglects this, he may know that such laziness will redound to his own loss.’ (The translation is from *The Code of Justinian*, with *colonus* replaced by *adscripticius*.) (This and other translations of the Codes of Justinian and Theodosius are taken from or based on *The Codex of Justinian: a new annotated translation, with parallel Latin and Greek text, based on a translation by Justice Fred H. Blume*, B.W. Frier, general editor, Cambridge 2016, and *The Theodosian Code and Novels, and the Sirmondian Constitutions, A translation*, eds. Cl. Pharr, Th. Sherrr Davidson, M. Brown Pharr, Princeton NJ 1952.

19 1,16,3: Minima est capitis deminutio, cum et civitas et libertas retinetur; sed status hominis commutatur. Quod accidit in his, qui, cum sui iuris fuerunt, coeperunt alieno iuri subiecti esse, vel contra. This part is taken from Gai 1,162.
marriage with normal public law consequences was apparently not. Regarding the *condicio* it was treated as not a full marriage.

The abolition of the senatusconsultum made that children now followed the status of their mother and were *ingenui*, i.e. *sui iuris* with regard to the landowner (not regarding their father) and so not subjected to his power (thus causing as Justinian implies a loss of labour force: hence he grants the estate owner the power to recall his *colonus*). One would expect the paternal status to be decisive. Evidently the transmission of the coloniary status was a different matter. The senatusconsultum brought children under the *potestas* of their father’s estate owner, but was restricted to this. It resembles, or is a *capitis diminutio minima*: the *coloni* were now *alieno iuri subiecti*. The expression used in this context for these unions is *coniugium non aequale*. It implies that it was a legitimate marriage, not a cohabitation (*contubernium*), yet not a marriage equal to the standard *matrimonium* because one or two parties were subjected to a public law *potestas*. That apparently allowed for an application of the senatusconsultum regarding some public law consequences. Then, for the rest all consequences of a lawful marriage between Roman citizens applied.

The reverse case shows a similar picture. In 530 Justinian said that who was born from an *adscripticia*, i.e. a *colona* and an *ingenuus*, a man free from the colonate, followed ‘according to previous statutes’ the status of his mother.

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20 As stated in the Codex Hermogenianus: *qui alieno iure subjici sunt*, see below nr. 12.
21 That is, between citizens *sui iuris* or, if *alieni iuris*, under paternal *potestas*.
22 *cj* 11,48,21 of 530: pr. Ne diutius dubitetur, si quis ex adscripticia et servo vel adscripticio et ancilla fuisse editus, cuius status sit, vel quae peior fortuna sit, utrumme adscripticia an servilis, sancimus ea quidem, quae in anterioribus legibus cauta sunt pro tali progenie, quae ex mulieribus adscripticiis et viris liberis progenita sit, in suo statu relinqui, et sit adscripticia proles ex tali copulatione procreata. 1. si quis autem vel ex servo et adscripticio, vel ancilla et adscripticio fuerit editus, matris suae ventrem sequatur et talis sit condicionis, qualis et genetrix fuit, sive ancilla sive adscripticia: quod haec tenus in liberis tantum et servis observabatur. quae etenim differentia inter servos et adscripticios intellegetur, cum uterque in domini sui positus est potestate, et possit servum cum peculio manumittere et adscripticium cum terra suo dominio expellere? – ‘pr. So that it is not to be doubted any longer, if anyone has been born from a *colona* and a male slave, or from a *colonus* and a female slave, as to what status he or she should be, or which fortune is worse, whether registered status or slave, we ordain those things that were provided for in earlier laws for such offspring as was born from *colonae* and free males, that it (the issue) be left in its own status, and that offspring of *coloniaria* status be created from such copulation. 1. But if someone has been born either from a male slave and a *colona*, or from a female slave and a *colonus*, he or she shall follow the womb of the mother and be of such condition as she was, whether she was a slave woman or a *colona*: this was observed up to now in slaves alone and free persons. For what difference will be understood between
Again, we would normally expect that the children would follow the status of their father and be free from the colonate too. To follow the status of the mother makes the legitimate marriage (coloni were not slaves and the ius gentium on illegitimate marriages was not applicable) nevertheless treated as if illegitimate. This effect is introduced by ancient statutes. If the coniugium non aequale rule had already existed, the children would have followed the status of their mother. Thus the statutes introduced the coniugium non aequale with automatically this effect. And since on account of that in the case of coloni marrying ingenuae children would have been free of the colonate, the senatusconsultum had to apply to prevent that. In that way all children would be coloni and labour supply on the land secured. It is indeed the express motive behind Justinian’s correction of the abolition of the senatusconsultum and we may assume it was the motive before too. Children could wander away but in the end they could be summoned by the estate owner to return and to perform services, to know the services connected with the colonate (cj 11,48,22,4 and 11,48,23pr.).

What, however, was the reason to treat such marriages as coniugia non aequalia? Justinian says it in the same constitution: both slaves and coloni are in the potestas (dominium) of somebody else. Coloni can like slaves be released from their status through manumission by their estate owner. They have by that a deteriorior fortuna (cj 11,48,22,1), i.e. a bad condicio. On this basis the coniugium non aequale rule applied, with this effect that the rule of the ius gentium applied. This application implies that the colonate was already a particular status, or else the rules over its transmission were unnecessary.

In the Justinian era the colonate was a status, entered voluntarily by agreement. It implied subjection to the potestas of a landowner and the duty to perform services for him. Yet there was in theory ample opportunity to follow other occupations. It did not impair all other faculties a free Roman citizen had (in that respect a colonus’ position was better than that of a filius familias). One point is, however, not clear: the connection with the poll tax. Justinian

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23 Perhaps this was done because the supply of slave labour had diminished: W. Scheidel, *The Roman slave supply*, in: The Cambridge world history of slavery, ed. K. Bradley, P. Cartledge, Cambridge 2011, p. 298, 306. Around AD 300 warfare was not really an option anymore; and were the other sources still sufficient? But the colonate offered advantages over slavery.

24 *cj* 11,48,21,1; ... et possit servum cum peculio manumittere et adscripticium cum terra suo dominio expellere.
mentions that they pay it themselves or through their estate owner. The latter possibility is in itself not remarkable. But other texts in his Code shed light on this. They were applied in the second half of the fourth century but retained for the new status and rules they introduced.

These texts presumably led to a differentiation made between the *coloni* of old, who were now called *adscripticii*, and another, new kind of *coloni*, called *coloni liberi*. This status was introduced in 371 in Illyricum, after the devastations by the Goths in that province25, and later in the equally visited province of Thrace (CJ 11,52,1). To alleviate the burden on the rural people the *capitatio humana*, the poll tax, was abolished. As the constitution says, the effect for the *coloni* was that their obligation to stay on the estate was lifted. This is an important remark: it means that the colonate was accessory to the duty of the poll tax. The *coloni* were now released from this and might migrate. To avoid such a loss of labour the duty to remain was by the same statute imposed (implying that the estate had become their *origo*, which nobody could change at will)26, as was their duty to till the land and could be ordered so by their landowners, but the disadvantages of the colonate were abolished27. As *inge-nui* they were now free from the landowner’s *potestas: coloni liberi*, ‘free’ *coloni*.

25 CJ 11,52,1 of 393: pr. Theodos. Arcad. et Honor. AAA. Rufino pp. Per universam dioecesim Thraciarum sublato in perpetuum humanae capitationis censu iugatio tantum terrae solvatur. 1. Et ne forte colonis tributariae sortis nexibus vagandi et quo libuerit recedendi facultas permissa videatur, ipsi quidem originario iure teneantur, et licet condicione videantur ingenui, servi tamen terrae ipsius cui nati sunt aestimentur nec recedendi quo velit aut permutandi loca habeant facultatem, sed possessor eorum iure utatur et patroni sollicitudine et domini potestate. 2. Si quis vero alienum colonum suscipiendum retinendumve crediderit, duas auri libras ei cogatur exsolvere, cuius agros transfuga cultore vacuaverit, ita ut eundem cum omni peculio suo etagnatione restituat. – ‘pr. Throughout the entire diocese of the Thraces, after the removal of the census of the personal capitation tax, the tax assessment for land alone should be paid. 1. And lest by chance the capability seem to be permitted to *coloni* to wander off with the dissolution of their tax bonds and to withdraw to wherever they want, they themselves are to be held by the law of their origin, and although they may seem to be free-born in their condition, even so they are considered slaves of the land to which they have been born and they should not have the capability of withdrawing to wherever they want and to change their places, but the estate owner shall exercise a right over them as well as the solicitude of a patron and the power of an owner. . . .

26 The estate owner got the authority to recall them, as if he was still their patron. That implies that he was that no longer. Probably he had to submit a claim with the authorities to recall fugitives to their *origo*.

27 The registration in the census must have remained but all legal disadvantages must have been struck. On the other hand, here was no longer any private law aspect present: it was a public duty now and the authority of the landowner a public one too. Could he release them? Most probably not.
That furthered agriculture: labour force was secured for the landowners, the *coloni* were now free of potential oppression and debts on account of the poll tax, while the financial loss will have been negligible for the state. In the province of Palestina this status was introduced too (CJ 11,51,1). Later on Anastasius introduced the commutation of the colonate into the ‘free’ colonate for those *adscripticii* who had fulfilled their duties during 30 years (CJ 11,48,19).

These texts show that there was a connection between the poll tax (*capitatio humana*) and the colonate. The insertion of the colonate agreement in the public register had as effect that the *colonus* was now added to the tax assessment of the estate owner. It concerned therefore the tax assessment (*professio*) of the estate (CJ 11,48,6; D. 50,15,4,8). The effect was that either the estate owner paid his poll tax (see CJ 11,48,20,3) or guaranteed it, as, if the *coloni* contest the ownership claim of somebody, it is required for the *coloni* (CJ 11,48,20pr.: *... ut, si tales coloni, quales supra diximus, idoneum fideiusserem totius summ- mae quae ab his dependitur praestiterint*). The colonate was therefore based on a guarantee for the payment of the poll tax. Like when the surety of hypothec or pledge falls away when the debt for which it is given is paid or annulled, so the colonate fell instantly away with the poll tax. And the reaction of Justinian and his predecessors show that the reason behind arranging this was to safeguard agricultural labour.

This is, in a nutshell, the state of the colonate under Justinian. It was, in as far as the incomplete transmission of the Theodosian Code allows, roughly the same in 438. The constitutions on the *coloni liberi* in Illyricum, Thrace and Palestine will have stood in one of the incompletely transmitted books. On the other hand, the Theodosian Code informs about the situation in the west which was not interesting for Justinian and thus not included in his code.

In the west the recall of fugitive *coloni* was since the fifth century high on the agenda. Long periods of limitation of prescription for this were set, which led, on account of marriages, to the question of determining how to deal with the offspring. An elaborate regulation on the attribution of children of *coloni* was developed and applied in 438 (CTh 5,18,1; 5,19,1). We may relate this to the disorder in Italy and Gaul during and after the incursions of the Goths in the early fifth century – a disorder, absent in the east. Many *coloni* will have used the opportunity to migrate elsewhere and work under better conditions or as free farmers. Almost all these laws we do not see included by Justinian. He compiled for the east.

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28 E.g., a change in the east after Theodosius was that *coloni* could become, under restrictions, priests, which was never the case in the west.
The Theodosian Code deals also in other ways with the undesired distancing of coloni from their estate, either because the owners fiddle with the census registration in order to attach them to other land, or because the coloni take the initiative as above and flee. The financial consequences had to be regulated. Coloni both from imperial and private estates enlisted illegally in the imperial administration and were removed (CJ 11,48,11; 18; 11,63,4; 11,64,1; or might stay after a period: CTh 6,35,14,1). Their status made them unfit for this: they were not ingenui. It implies that they were already in the status of subjection. In these years – the middle of the fourth century – we see in the sources the coniugium non aequale criterion applied, based on the subjected position of the coloni and other groups, in order to solve the question which condicio in a mixed marriage the offspring should follow. The combination of coniugium non aequale and the senatusconsultum was extended to imperial coloni and others, bound in imperial services like the mint, the mines or purple snail divers (e.g., CTh 10,20,10; 17; 14,7,1). It presumes the existence of a condicio. Indeed, we also find the designation condicionales in 333 for these subjected persons.

11 With the last phrase we already use the texts as testimonies to the moment they were issued. They demonstrate how certain aspects of the colonate present in the Justinian and Theodosian Codes were in the course of time encapsuled in law and indicate the circumstances which led to these. But regarding what I consider the essentials of the colonate (a guarantee for the poll tax, an agreement for this inserted into the estate assessment, a subjection to the estate owner with the duty to perform services), we have not yet seen any introduction and we may assume that these were already existing in the early fourth century. The early texts confirm this.

In 332 fugitive coloni were to be returned to their estate owners and the capitatio had to be paid for the period of their absence, which implies that the coloni were responsible for this, could be recalled and stood in the power of the landowner (CTh 5,17,1 of 332).

29 It concerns people like the conchylolaguli (purple snail divers), fabricenses, metallarii and corporati, who all provided services necessary for the administration. In Justinian’s times they still figure (CJ 11,7-10, 17, 18, 29). Further we find condicionales who are called tabularii in CJ 8,17,7pr. (Leo): here coloni must have been meant. Condicionales are already mentioned in 333: CTh 8,1,3.

30 CTh 5,17,1 of 332: Imp. Constantinus A. ad provinciales. Apud quemcumque colonus iuris alieni fuerit inventus, is non solum eundem origini suae restituat, verum super eodem capitationem temporis agnoscat. Ipsos etiam colonos, qui fugam meditatur, in servilem conditionem ferro ligari conveniet, ut officia, quae liberis congruunt,
Next to the colonate on private land there was the colonate on senatorial and imperial land. These *coloni* were privileged. They were exempted from trade tax and superindictions, they had a special venue in litigation (the imperial administration), they did not have to do *munera sordida*, like cleaning sewage systems. They were in 325 also exempted from any office or duty in a town (*CJ* 11,68,1; it led to abuse by town councillors: they had themselves appointed *colonus rei privatae* to escape their duties). In 319 *coloni* of the *domus* of the emperor or of his *res privata* who were able to manage, viz. an estate, or to work on the land, were to be recalled. It follows that in 319 on imperial lands there existed already a colonate. The *condicio* as a special status existed as such in 317 for *monetarii* (*CTh* 10,20,10).

12 These are our earliest explicit constitutions on *coloni*. It means that around 332, and for imperial lands around 319, the situation of *coloni* (*coloni originales*, *coloni originarii*, etc.) both on imperial and private lands, was essentially the same as in 438 and later 534. What about the time before 332-319? The turn of the century?

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merito servilis condemnationis compellantur inplere. Dat. iii Kal. Novemb. Pacatiano et Hilariano cons.. – ‘Any person in whose possession a *colonus* that belongs to another is found not only shall restore the aforesaid *colonus* to his birth status but also shall assume the capitation tax for this man for the time that he was with him. *Coloni* also who meditate flight must be bound with chains and reduced to a servile condition, so that due to their condemnation to servility, they shall be compelled to fulfil the duties that befit freemen’.

31 *CJ* 11,68,2 of 319: Constantinus A. Ianuario com. orientis.. Colonos nostros, qui sunt privati vel ad ratiocinia gerenda vel ad colendos agros idonei, retrahi iubemus ac tantum colendi nostris rebus addici, quin etiam in posterum observari, ne quis eorum rem privatam cuiusquam gerendam aut aliquid ministrandum suscipiat. – ‘We order our *coloni*, who are *privati* (i.e., unburdened by their obligation) either suitable for keeping accounts or for cultivating fields, to be brought back and to be assigned only to performing our business, and that it be observed henceforth that none of them undertake to manage anyone’s private business or to perform any service’.

32 Where we see issue of land under *emphyteusis* already in 319, *CJ* 11,63,1 (translation by Codex of Justinian altered).

33 They have to pay the *capitatio humana*, their estate owner can be charged for that, they cannot migrate formally from the estate, they are subjected to the *potestas* of their estate owner, their status is a *condicio* which render them unsuitable for public offices. They are registered in the census of an estate. The estate becomes by that their *origo*, their equivalent of their hometown. By that they are subjected to the power of the estate owner. This makes their situation into a *condicio*, a lower status of freedom which renders them unfit for public offices. Their *origo* passes on to their children in the same way as the citizenship of a town but as soon as it is a *condicio*, the *coniugium non aequale* and the senatusconsultum Claudianum apply. The estate owner can be liable for the payment of...
From Justinian we learn that the colonate was entered voluntarily and had to be documented as such. It was in origin an agreement between estate owner and *colonus*, perhaps with special conditions. Since it linked to the poll tax and was laid down in the census registration, it was done as a provision for the debt for poll tax. The landowner gave an advance, guaranteed or paid the tax, and the *colonus* rendered services under the orders of the landowner, being by that obliged to stay in or near the estate. The agreement offered both parties an advantage: the *colonus* had less financial worries, the estate owner disposed of labour force on demand. Is it possible to find earlier similar arrangements?

Indeed, such a legal construction is known for the middle of the third century on the Appianus estates in the Fayum. From the Heroninos Archive it appears that there was a kind of workers on the estates called *metèmatiaioi*. They were free people who for a set period were employed on the property. Part of their agreement was the *paramonè*, the promise to stay for a definite period on the property. They too were included in the property accounts, receiving *opsonia* and money. The *paramonè* construction is already known in the first century AD.\(^{34}\)

However, as Hengstl underlines, the duty to remain on the estate was secondary. *Paramenein* cannot be the decisive element because to stay somewhere is an obligation inherent in several agreements, such as in a labour contract, or in a nursing contract. An agreement may contain the word *paramonè*, but does not have to, as long as the distinguishing elements are present.\(^{35}\) These are that the *paramonarios* owed a debt, either for a sum paid out or for a credit, and that he promised to be at the service of the creditor and do what the creditor ordered him to do, instead of paying interest.\(^{36}\) This promise implied that he stayed where the creditor stayed, around or in his house, not to move away.

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35 Hengstl, *Arbeitsverhältnisse* (supra, n. 34); Rathbone, *Economic rationalism* (supra, n. 6), p. 116 also mentions that the landowner paid the taxes for his worker.

36 Although Rathbone mentions in two examples the debt, this aspect is further neglected by him, see Rathbone, *Economic rationalism* (supra, n. 6), p. 117 n. 43 referring to Hengstl, *Arbeitsverhältnisse* (supra, n. 34) but not applying Hengstl's criterion. R. Bagnall, *Egypt in Late Antiquity*, Princeton N.J. 1993, has nothing on *paramonè*. He and Sarris focus on *paramenein* as the distinguishing criterion.
sometimes with the express obligation to stay day and night at his disposal. He would receive some loan for his services, coupled sometimes with food or the like, and the creditor could also agree to pay taxes for him – Rathbone mentions that the landowner’s steward paid the taxes and organised the performance of public duties. The sum had to be paid off in order to end the paramonè. If that did not happen, the situation would continue forever. Prematurely it could only be ended by a formal release (dialysis). Only the paramonarios could repay the debt, but others might be in the agreement as well and be liable too.

The position of a paramonarios may seem deplorable, but for people without any means of subsistence it was not so bad an arrangement, because on subsistence level they were at least secured by the paramonè against the fiscal claim and further needs by the credit, as Rathbone also emphasises. Hengstl emphasises that the paramonè should be differentiated from credit in general. Credit serves primarily the debtor’s need for capital. Paramonè serves primarily the creditor’s need for labour force. Hence it is a misfeasance if the debtor abandons his work. His obligation to stay should not be seen as a surety for the credit. If the debtor did not pay off and the creditor did not proceed to execute his claim, it became a permanent bondage. It provided the landowner with a reservoir of labour force at low cost. That was, as we saw, also the motive behind the colonate and the introduction of the ‘free’ colonate.

The paramonè looks very similar to the colonate, but is still private law. It may have still existed under Justinian separate from the colonate. The agreement does not have to be restricted to Egypt. CTh 11,1,26 refers to provinces in quibus haec retinendae plebis ratio adscribitione servatur. The western Pauli Sententiae, dating from the fourth or fifth century, say that a free man can

37 As Rathbone says for a debt on account of a loan, an antichretic loan: Rathbone, Economic rationalism (supra, n. 6), p. 116-117. However, the use of antichresis is legally not correct. It applies to the use of a pledge by a creditor, but the colonus was not a pledge or debt-slave. For the staying day and night see also note 41.
38 Rathbone, Economic rationalism (supra, n. 6), p. 133.
39 Hengstl, Arbeitsverhältnisse (supra, n. 34), p. 31-32.
40 It is possible that Nov. 14 proemium when mentioning syngraphai refers to paramonai, which would mean the construction was still used under Justinian, see Sarris, Economy (supra, n. 4), p. 168. Nov. 14 of 535 forbids brothels and by that the acquisition and use of girls for prostitution. It says that these girls are lured by food and clothes, which they have to pay by prostituting themselves. This is formalised in syngraphai and the lenones give guarantees, presumably for the girls to the suppliers. This would fit the paramonè. The girls would have to remain until they had worked off their debt.
lower his status in engaging a contract of hire for day and night\textsuperscript{41}. This suggests a subjected relationship as the \textit{paramonè} and the colonate, be it formulated in a different legal form.

13 However, one ingredient which Justinian mentioned and with which \textit{coloni} are connected in their synonyms (\textit{censibus adscripti}, \textit{censiti}) is still missing: the census. The census had originally three functions: to ascertain who were liable for the army (the \textit{populus Romanus}, i.e. the Roman citizens), to establish the wealth of each, and to ascertain status, class and rank\textsuperscript{42}. After 212 AD its main function was now as tax register. As such it acquired also the function of ownership register: who pays taxes will most likely be owner. This is expressly mentioned for donation of slaves and land in 290\textsuperscript{43}. And what was valid for ownership, was valid for lesser rights.

An estate owner had to register in the declaration for his estate (the \textit{professio}) next to his land his animals and slaves for the \textit{capitatio} owed by him for them. We know he registered \textit{coloni} too. If the \textit{paramonè} was done to guarantee the payment of the \textit{capitatio humana}, an extract (\textit{adscriptio}, \textit{apographos}) was apparently inserted and the \textit{coloni} registered. By that the estate owner would either pay for them or guarantee their payment. By the agreement the \textit{coloni} (including wife and children, they were liable for the poll tax too which the \textit{colonus} had to pay) were already in private law under the orders of the landowner. The fact that the \textit{colonus} had obliged himself to stay near or on the estate was in private law enforceable. But the registration of this agreement and obligation in the census and the fact that he or the landowner would pay his tax on the estate, and his duty to stay close, must have sufficed to make the estate his domicile, his \textit{origo}: then, taxes were assessed and levied in one's domicile (except for the land tax which was levied where the possession lay). Although registered \textit{coloni} were not property, it is not impossible that their registration was interpreted as establishing – similar to an adjudication – a power by the landowner over them, less than ownership, similar to that over persons \textit{in mancipio} who were also free, yet in the \textit{potestas} of their creditor;

\textsuperscript{41} ps 2.18.1: Homo liber qui statum suum in potestate habet et peiorem eum et meliorem facere potest: atque ideo operas suas diurnas nocturnas nocturnaque locat. – ‘A free man who has his status in his power can make it worse and better, and thus he leases his work force day and night’.

\textsuperscript{42} J.W. Kubitschek, \textit{s.v.} census, PW 5. Hb., Stuttgart 1897, 1914-1924; 1922-1924 on the recognition of the civil status as \textit{senator} or \textit{eques}. U.E. 1.8 mentions the \textit{manumissio censu} as a thing of the past. But slaves were still registered, the census was proof of ownership and could be used to transfer in case of a donation: CJ 8,53,7 (290), 8 (290).

\textsuperscript{43} CJ 8,53,7 of 290; CJ 8,53,8 of 290.
and the landowner was the creditor. It further cut the link between the original contract partners: a new landowner guaranteed but also exercised the *potestas*. This fits expressions later used and it implies that the census could define and fixate in this way one's status, as it did for slaves, yet restricted to *potestas*. That may have also led to the *coniugium non aequale* rule and the application of the senatusconsultum Claudianum. If not, we must assume that among the mentioned ‘previous statutes’ of Justinian (cj 11,48,21) there was one which formalised this in public law before 333 (when *condicionales* in CTh 8,1,3 are existing).

14 It was assumed that Diocletian introduced the colonate as such. If we have to look for a decisive moment that the colonate became a public legal institution, it is in the estate census registration of *paramonarioi* and persons in a similar agreement for their poll tax. The existing theories fall short. The colonate did not come into existence on its own as a result of widespread indebtedness among farmers, but incidentally, individually, and linked to the poll tax. Nor did the emperor make landlords in general liable for the poll tax of their lessees, because it would only apply to *paramonè* agreements including the poll tax. Nor did it make landlords tax collectors of their underlings: it was possible for the *colonus* to pay it himself to the tax collectors. But it was in so far here and there already present in Egypt in the private law form of the *paramonè* done for the taxes.

It may have been that Diocletian suggested the registration in the census to stabilise the tax levy: better to have the landlords also formally answerable than on a voluntary basis. The census made the estate for *coloni* their *origo*, their domicile, being registered for the poll tax on it. The term *originalis* or *originarius* is a bit duplicious. It refers both to the domicile as to the origin of the *condicio*, which converge in the census registration. A constitution of the year 293/294 by Diocletian introduced the rule that nobody could change his *origo* at his own will (cj 10,39,4)44. In other words, one needed official permission. We do not know exactly why the emperor ruled this but it would have served the assessment and levying of taxes and liturgies, since the domicile was the basis here and this may have been the motive. Anyway, with the use of the census the *paramonè* moved partly into public law.

15 Is it possible to identify a distinct moment for this transition? The *Lex Romana Burgundionum* 14,6 says that *coloni* may not alienate anything of their

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44cj 10,39,4 of 293/294: Diocl. et Maxim. aa. Secundo. Origine propria neminem posse voluntate sua eximi manifestum est. – ‘It is manifest that no one can be excluded by his own wish from his own place of origin’. 
peculium without consent of their master. It refers to this to a constitution by Diocletian and Maximinian, thus to a constitution of the year 293/294. If that reference is correct (but why not? the Gregorian and Hermogenian Codes were for the law drafters available), this prohibition implies that the colonus was under the potestas of his landowner, an essential element of the colonate. This element remains meaningless without the context of the colonate as related before. Other evidence for this year lacks, it will have been present in the lost Hermogenian Code, yet combined with the survey for 332 and 319 which evidenced the colonate of 438 as already existing in the second decade of the fourth century, the reference may suffice to fill the lacuna in information. It justifies to assume that already in 293/294 the colonate existed basically in its form of 438.

When the Tetrarchy was created in 293, it began reforms which required more state revenues. First the tax collection was improved, after which the taxation system was reformed based on an existing system. In that context a new use of the census registers may have taken place: the introduction of the census registration of paramonai regarding the poll tax. It may have happened in or just after the census of 292. If that is correct, it is suggested that the colonate in its legal form, with coloni censibus adscripti, came into being in or shortly before 293/294.

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45 *Lex Romana Burgundionum* 14.6: 'Nec servum vel colonum peculium suum posse distrahere, insuper et ementes furti actione tenendus, secundum constitutionem Hermogenianorum sub titulo: de eorum contractibus, qui alieno iuri subiecti sunt, vel Theudosiani legem libro v, sub titulo: nec colonus inscio domino suo alienet peculium vel litem inferat ei civilem, ad Nebridium vicarium Asie'. – ‘Neither a slave nor a colonus can sell his peculium, he is held liable for theft, also those who buy, according to the constitution of the Hermogenian Code, title: on the contracts of those who are subjected to the power of another, or to the law of the Theodosian Code, title 5, title: nor may a colonus without the knowledge of his master alienate his peculium or raise a civil suit against him, to Nebridius, vicar of Asia’.