VI.

The colonate in the west of Europe after ca. 500 AD

Von

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Summary: The colonate as it was established under Diocletian depended on the credit an estate owner provided to a farmer. The latter had to provide at any moment services instead of interest and consequently had to reside in or near the estate. If the credit was used for the poll tax and the credit agreement was inserted into the census of the estate, the colonate in its public law form was created. It involved also a change in the status of the colonus. The subservience to the estate owner made his status into one of a subjected status which passed on to the offspring. In the east abolition of the poll tax implied the lifting of the colonate. In the west, in provinces of the former West-Roman Empire, we see in the sixth century a colonate which is hereditary but which has to all appearances no connection with the poll tax, if that still existed. It seems that a group of law texts which only deal with the descent of *coloni* was interpreted as standing on their own, not connected with taxation. In this way, it is submitted, the colonate shed its fiscal component and became a category of mere personal law.

Key Words: colonate, coniugium non aequale, senatusconsultum Claudianum, taxation

I. Introduction

The colonate has its roots in the economic and social conditions of the Mediterranean societies and received a legal form in the Roman empire from Diocletian onwards. It concerned those who toiled on the land as farmers or farmhands: the *coloni*. Farming was never easy in Antiquity. Although farmers often complain about their business, and although the demands of states and society are very complex in modern western Europe, being a farmer in Antiquity was perhaps simpler but certainly far more on an existential level. The staple food was grain. Means of improving the harvest were meagre. There were no pesticides to prevent plant illnesses, and bad weather or a drought could equally ruin the crop. What they nevertheless accomplished in irrigation is admirable. But a bad harvest could bring them to the verge of hunger, a series of such harvests would mean starvation. Part of their

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harvest was used as seed for the next year, another part to feed the farmer and his family. A choice had to be made if the harvest did not suffice for both ends (next to taxes or the rent). Or a loan was necessary to supply the shortage. In Antiquity there were moneylenders in the commercial centres, but did they also exist in the countryside? There is no sign of this. But some rich landowners could lend money. If it concerned a farmer with his own land, a hypothecary surety would have been possible on the real property. With lessees, only the personal property and agricultural equipment (plough, donkey, etc.) could be charged, albeit that it remained in possession of the lessee, or else he could not work. If it concerned a farmer who had hardly or no property or a farmhand who permanently or temporarily worked for a farmer (like the seasonal worker of Mactar)[1]). There was nothing which could serve as security. Still, a solution was found, a kind of antichresis. In return for a loan or a credit, the debtor agreed to be available to render services whenever his creditor demanded, which work would serve instead of interest and perhaps even instead of payment. This agreement is found in Egypt in the early empire under the name of *paramone.* The essential element is the credit, but the agreement implies that the debtor has to remain at or near the creditor's estate (unless of course he has performed what he had to do in a year or other fixed term). He promises to be always available and do what he was ordered made him subjected to the landowner. If the credit included the poll tax and perhaps other taxes or liturgies the debtor had to fulfil, it could be inserted in the tax declaration of the creditor's estate by way of an *adscriptio* or *enapographè*. The debtor would be registered under the chapter of *coloni* (while under another chapter the slaves were registered). In this way, the tax office could have first recourse for the tax due on the landowner, but if the *colonus* paid himself, the registration would merely serve as security. However, the registration in the census also formally changed his status in so far that his subjection to the landowner was formalised as similar to being *in mancipio*, from which only manumission could free, and connected to the land, not to the person of the landowner. This possibility, which was introduced under Diocletian and which made a *paramone* into the *colonatus*, would provide poor farmers and farmhands with the certainty that the authorities would not proceed against them and also with the possibility of buying food and goods from the landowner (their account in the estate ac-

[1]) Louvre, inscr. MNC 953, Ma 1872; see J.-M. Lassère / M. Griffe, Le moissonneur de Mactar, Vita Latina 143 (1996) 2–10. This man probably already disposed of some land, yet he had to hire himself out for more income.

counts being charged). The nature of the agreement implied first, that there was a landowner wealthy enough to give credit, large enough to have a use for an additional workforce (although he might just do it to help his lessees and hired farmhands), and second, that there were farmers in need of this. Such an incidental basis is in line with what CTh 11,1,26 (a. 399) says: this *adscriptio* is only used in certain provinces[2]).

Hence, the colonate was not a general change in how agricultural exploitation in the Roman empire was done. Instead it was an addition to a panorama of possibilities to exploit the land: slavery, hire, lease, self-exploitation, or a combination of these[3]). In the east the connection with the taxation and tax register continued, and where in the fourth and later centuries *coloni* would be released from their duty to stay on or near the landowner's estate if the poll tax was abolished, a new duty to remain was introduced, the subjected status remaining abolished: the so-called 'free colonate'. Thus the Roman colonate was continued under Justinian in combination with the free colonate.

In the west, however, a change occurred. In the Edict of Theoderic [ETh] there is no vestige of the link with taxation, nor in the Lex Romana Burgundionum [LRB] or Lex Burgundionum [LB], and even if these laws were meant to comprise the most important rules, taxation was apparently not one of these, and it is doubtful whether the less important rules including taxation were still applied (see below). In the Breviarium (Lex Romana Visigothorum [LRV]) the *capitatio* in CTh 5,17,1 is in the *interpretatio* called *tributa* and may refer to the land tax. The link with the poll tax and its registration is absent. The *coloni* are in these and other texts subjected to their status by descent only, linked to a plot of land. The character of the colonate has changed and many a scholar has raised the justified question, whether we see here the beginnings of the later medieval *servage* (villeinage, Hörigkeit). For that reason, my survey of the *Roman* colonate ended here; the *pre-medieval*

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[2]) See on the colonate as established under Diocletian B. Sirks, The Colonate in the Roman Empire, Tijdschrift voor Rechtsgeschiedenis 90 (2022) 129–147; extensively in B. Sirks, The Colonate in the Roman Empire, Cambridge 2024, particularly Part 5. The following references are only to the book.

[3]) See, for example, P. Garnsey, Cities, peasants and food in classical antiquity, Cambridge 1998, ch. 8: Non-slave labour in the Roman world, 134–150; N. Lenski, Peasant and slave in late antique North Africa, c.100–600 CE, in: R. Lizzi Testa (ed.), Late Antiquity in contemporary debate, Newcastle upon Tyne 2017, 113–155; J. Banaji, Aristocracies, peasantries and the framing of the early Middle Ages and P. Sarris, Aristocrats, peasants and the transformation of rural society, c.400–800, both in the Special Issue of Journal of Agrarian Change 9 nr. 1 (2009) 59–91 and 1–22.

colonate is different. In the following I treat the ETh, letters of Pelagius and Gregory the Great, the *interpretationes* of the Breviarium, the Formulae of Frankish Gaul, the LRB and the LB, some testaments, covering by that the areas of Italy, Gaul and Burgundy. Additionally, a note on the *collegiati* as apparently socially equal to the *coloni* is included. The criterion of descent is important for establishing the status of the *coloni*, but other provisions and dispositions in the laws are also important since they show the social and economic position of the *coloni*. For that reason all dispositions and other texts are discussed.

II.

II.1 The coloni in the Edictum Theoderici Regis (ETh)[4])

In 1579, a text was published, collated by the famous French humanist Pierre Pithou (Petrus Pithoeus) from two manuscripts, which are now lost. It is an edict containing 154 sections and is a law code made by the order of Theoderic the Great for his subjects, Roman and Goths[5]). The current view is that Theoderic the Great issued it (a. 489/493–526)[6]). In any case, for ex-

[4]) See S.D.W. Lafferty, Law and society in the age of Theoderic the Great, A Study of the Edictum Theoderici, Cambridge 2013, 22–53 with an extensive exposition on the ETh and its author, and the overcritical review on the same by Detlef Liebs in ZRG RA 132 (2015) 560–570; also H. Siems, Handel und Wucher im Spiegel frühmittelalterlicher Rechtsquellen, Hannover 1992, 277–288, who on p. 283 states that the texts show a considerable closeness to Italian sources and not Justinian's codification; other publications: O. Licandro, Edictum Theoderici, Un misterioso caso librario del Cinquecento, Roma 2013; K. Ubl, Das Edikt Theoderichs des Großen, Konzepte der Kodifikation in den post-römischen Königreichen, in: H.-U. Wiemer (ed.), Theoderich der Große und das gotische Italien, München 2020, 223–238; S. Schmidt-Hoffner/H.-U. Wiemer, Die Politik der Form: Das Edictum Theoderici, das Prätorische Edikt und die Semantiken königlicher Rechtsetzung im postimperialen Westen, in: Chiron 52 (2022) 335–412.

[5]) The edition used is by F. Bluhme, Edictum Theoderici Regis, in: MGH Legum sectio, V: Formulae merowingici et karolini aevi, acc. Ordines judiciorum Dei, Hannover 1875–1889, 145–170; auch in: MGH Legum sectio, V: Lex Romana Burgundionum, Hannover 1863, 579–623.

[6]) See D. Liebs, Die Jurisprudenz im spätantiken Italien (260–640 n.Chr.), Berlin 1987, 191–194; W. Kaiser, Zu Fehlzuschreibungen von Rechtstexten im frühen Mittelalter am Beispiel der Lectio legum, in: A. Bruns et al. (eds.), Festschrift für Rolf Stürner zum 70. Geburtstag, Tübingen 2013, 946: The Edict can be traced in North Italy in the 9th century. Siems (n. 4) also assumes he was the author. O. Schipp, Der weströmische Kolonat von Konstantin bis zu den Karolingern (331 bis 861), Hamburg 2009, 273–274 is of the same opinion. His latest book, O. Schipp, Den Kolonat neu denken, Heidelberg 2022, which adduces new aspects to the eco-

ample, the explicit reference to Nov.Val. 30,2 in c.68 proves a link between the *condicio originaria* of the Edict and the colonate of the Theodosian Code [CTh]. Apart from c.142, which also stems from this Novel (see below), this explicit reference allows for connecting other sections with the Theodosian Code and other novels next to the references in c.12 and c.154[7]).

For analysing the dispositions of the Edict I follow the current view and assume an application in Italy, Dalmatia, and part of Sicily, and perhaps in the Ostrogothic part of Gaul. We are dealing with an edict of Theoderic the Great[8]), Likely issued in 500 and a rephrasing and reworking of earlier Roman law[9]). The purpose of the Edict was to restore order in the provinces, as its preamble says, by laying down the rules for both Romans and barbarians (the usual term for the Ostrogoths in the Edict)[10]). The Edict is indeed much

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nomic circumstances of ancient agrarian exploitation and which provides much non-legal literature on farmers in Antiquity, I could not incorporate into Sirks, Colonate (n. 2), since my book concentrates on the legal aspects of the colonate. For the present text, I restrict myself to ch. IX "Der Kolonat in Spätantike und Frühmittelalter" of Den Kolonat neu denken loc. cit., since that chapter deals with the colonate in the outgoing Late Antiquity. It, however, often refers for these matters to Schipp's book of 2009. The latest publication by R. Jacobi, Zur Verfasserschaft des Edictum Theoderici, ZRG RA 139 (2022) 359–362, confirms the Ostrogothic origin.

[7]) G. Vismara (ed.), Edictum Theoderici, in: Ius Romanum Medii Aevi pars I,2 b *aa* α, Milano 1967, 137–138 the references in the Edict to the Theodosian Code and the Posttheodosian Novels; also mentioned in Fontes Iuris Romani Antejustiniani [FIRA], vol. II: Auctores, ed. J. Baviera/J. Furlani, Florence 1968, 681–710 (where the Digest is suggested too as a source) and in Theodosiani libri XVI cum constitutionibus Sirmondianis, adsumpto apparatus P. Kruegeri, ed. Th. Mommsen, Berlin 1904 [Mommsen], and in Leges Novellae ad Theodosianum pertinentes, ed. P.M. Meyer, Berlin 1905 [Meyer]. An explicit reference as regards the present subject is in ETh c.68 (*servato novellae legis tenore*).

[8]) On him, i.a., now A. Goltz, Barbar – König – Tyrann, Berlin 2008.

[9]) Lafferty, Theoderic (n. 4) 39–40 regarding the date, 52 regarding the sources. Notes 24 and 25 on p. 62 mention the presumed Roman law sources; see for these Bluhme (n. 5); also S. Lafferty, Law and Society in Ostrogothic Italy: Evidence from the Edictum Theoderici, Journal of Late Antiquity 3.2 (2010) 337–364, here 346. The latest comprehensive survey of the question of authorship and date is Schmidt-Hoffner/Wiemer's (n. 4).

[10]) It covered both public and private law. The latter comprised partly what was *ius gentium* within the private law and would have also applied to Goths. But the rules concerning landed property applied to Goths also, as we know from the Ravennate papyri that they owned land. These aspects deserve more attention. Lafferty, Theoderic (n. 4) 48, 52 considers the Edict as a comprehensive survey of that law, most important at that time for the judges and practitioners, where access to the Theodosian Code was difficult. Besides, the expertise of the law was lower than before: As to his

occupied with public order. That poses the question of the position of the Theodosian Code. Was the Edict intended to replace the Code in these matters? From the epilogue, it appears that this was not the case: what the Edict did not regulate had to be done in the usual way (*Quae comprehendere nos vel edicti brevitas vel curae publicae non siverunt, quoties oborta fuerint custodito legum tramite terminentur*). We see separate codes for Romans and Barbarians in the kingdoms of the Visigoths and Burgundians. The Edict, however, was meant for both groups. Much in the Edict is Roman law and Theoderic says it was taken from Novels and the *ius vetus*[11]). He had the authority to issue edicts. There are various theories on its purpose, but in the context of this research into the colonate it suffices that the prologue of the Edict intends to respond to current problems, hence had a practical goal, and is said to draw from previous legal regulations. Thus it is justified to draw conclusions about in any case the official views on the colonate. In those days and in those provinces, we cannot expect high-level legal expertise after the years of invasions and war. But since the Edict refers to the usual way for matters, not covered by the Edict, it seems that there still existed the normal way of doing business in law[12]). Apparently the Theodosian Code and other law were still authoritative where the Edict gave no regulation. That elicits

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example of ET 94, I would suggest that *parens* might comprise both Romans with *patria potestas* and Goths without that. This does not necessarily imply that *parens* did not mean the *pater familias*. On the other hand, the *patria potestas* may have been less significant in the west by that time, see A. J. B. Sirks, Emancipazione come rite de passage (= Ravenna Capitale), Santarcangelo di Romagna 2019, 177–187; German version: idem, Emanzipation als rite de passage, ZRG RA 137 (2020) 331–341; see for the recent discussion on the nature of the Edict supra n. 4. It, therefore, does not matter much if it were composed by a private lawyer (Licandrio) or the king, nor whether it was just a collection of practical problems and not a systematic work (Ubl), while it does not matter at all that it may have had a symbolic function too (Schmidt-Hoffner/Wiemer). More interesting is whether it was intended as supplement to or 'aggiornamento' of the Theodosian Code on specific points, perhaps even a collection of *interpretationes*.

[11]) Lafferty, Theoderic (n. 4) 46ss. on the purpose of the Edict. Several texts are adapted sections of the Pauli Sententiae. Lafferty investigates some of these, but this does not bring anything regarding the *coloni*, apart from that they are considered low, as in PS 5,22,2 (ET 104) on the level of the *humiliores*.

[12]) From the letters of Gregory the Great, it appears that the law was applied on the required level – but these date from a century later and after the restoration by Justinian, with the introduction of his compilation, see B. Sirks, Traces of legal business in the letters of Gregory the Great (= Ravenna Capitale), Santarcangelo di Romagna 2020, 113–127.

another question which we cannot go into here: If the *interpretationes* in the Breviary were initially made in the second half of the fifth century in Italy, may we compare them with the Edict[13])?

With Theoderic a period of stability began after the interval 476–493 of Odoacer's rule, which continued till Justinian invaded in 534 Africa and Sicily. One view is that Italy prospered, another is that a decline set in. Lafferty takes a mediate view: although there was undoubtedly a ruralisation of life and economy, reflected in the Edict, urban and commercial life were still important[14]). The fiscal system was continued and stabilised by Liberius (Praetorian Prefect from 493 till ca. 500), who successfully arranged the granting of *sortes* to the Goths[15]). The fiscal revenues came, so Bjornlie, basically from the land in the form of *tributum*. But revenues dwindled and the administration had to reduce its size. The introduced taxation on trade helped, but not enough. Leaving the question of the settlement of the newcomers like the Goths aside, it appears from Wickham's and Bjornlie's descriptions that the old fiscal structure was in so far still intact that the landowners were registered per *civitas* (including the surrounding territory) and that per *civitas* an aggregated tax revenue was established. Also the system of equalising lesser-yielding estates with better-yielding ones in the books (a kind of *peraequatio* to keep the expected total revenue constant) was still in use. Whether the old

[13]) See Sirks, Colonate (n. 2) sect. 45. It is assumed with good arguments that the *interpretationes* were made in Gaul, but considering that those on the Novels may have been made in Italy when these were organised in collections, we may not exclude the possibility that they, or some of them, were drawn up in Italy originally. Di Cintio allows for an Alarician editing, see Sirks loc. cit. 455.

[14]) On the economic conditions of the Ostrogothic kingdom see Chr. Wickham, Framing the early Middle Ages, Europe and the Mediterranean 400–800, Oxford 2005, 92–93: Theoderic maintained and repaired the fiscal system; see on the conditions under the Longobards Wickham ibid. 115–120: The tax system evaporated, as in Francia; Lafferty, Theoderic (n. 4) 205ss. extensively on the economic aspects of the Ostrogothic period. Sh. Bjornlie, Law, ethnicity and taxes in Ostrogothic Italy: a case for continuity, adaptation and departure, Early Medieval Europe 22/2 (2014) 138–170, here 148ss., discusses the monetary aspects and characterises the economy as a taxation or fiscal economy which occasioned a distinction in two kinds of land ownership.

[15]) According to Wickham (n. 14) and P. Porena, L'insediamento degli Ostrogoti in Italia, Roma 2012. As to the *tertiae*, accorded to the Goths, Bjornlie (n. 14) 158–160 thinks it concerned an assignment made on a higher level of accounting, viz. from the sum of all tax contributions of a *civitas* and thus not contributions from individual lands, nor consisting of direct land grants. Also, the king directed fiscal revenues directly to his functionaries.

system of first fixing the future expenses and then distributing these proportionally over the *civitates* was still followed is not clear. What we do not find mentioned next to the *tributum* and the trade tax is the *capitatio humana*. Is it conceivable, that it was abolished in exchange for a slight increase in the land tax, which was easier to levy? In that case the *coloni originarii* would have been liberated from the fiscal link and no longer be subjected (a security disappears with the debt it is set for). For that reason, the status of *coloni liberi* was introduced in the east, but we do not see the latter category in the Edict. The *coloni* were still subjected and land bound. Thus, even if the colonate still depended on the fiscal link, its abolition did not change the position of the *coloni*. Moreover, their position became even worse as we shall see.

The *gesta municipalia*, the recording of deeds for, e.g., real estate transfer, continued under the Ostrogoths. Although the duty of the town council, the burden fell mainly on the *defensor civitatis*, sometimes a magistrate, if there was no one, by three curials (cc.52, 53)[16]). This tradition is also testified in the Breviarium (Brev. 2,4,2 = CTh 2,4,2) and the Lex Romana Burgundionum (c.22,4), and continued in Gaul, vide the Formulae Andecavenses 1. Such records were also used to register the status or domicile (cc.64, 80).

The Edict mentions *coloni* or *originarii* in twenty sections[17]). The term *colonus* as such is broad and often accompanied by the adjective *originalis, originarius* or *adscripticius* for the bound person; in the Edict, the adjective is a noun (e.g. cc.61, 63, 65, 66, 67)[18]). Whether the *originarii* were precarists, lessees or hired hands is open and apparently had no connection with their status. Since Goths could also own land, the Edict applied to them if the *coloni* were attached to their land.

II.2 Procedure:

The Edict begins with the court procedure[19]), in the middle of which, after the justification of self-defence, abduction (*raptus*) figures[20]). Abduction might be used to force a marriage but was forbidden by Constantine in CTh

[16]) See Lafferty, Theoderic (n. 4) 112–113 for the maintenance of the *gesta*.

[17]) The sections 21, 22, 48, 56, 63, 64, 65, 66, 67, 68, 80, 84, 97, 98, 104, 109, 121, 128, 142, 146, 148, 150, 152. The references to similar or identical texts in the Roman law sources are based on those in Bluhme's edition (n. 5).

[18]) Lafferty, Theoderic (n. 4) 98–99. He does not distinguish 'lowly tenants', *coloni* and *originarii* (167), apparently assuming that a *colonus* is in the classical use of the word a tenant (lessee). But we see in the Edict that the context always makes evident that *coloni* are *originarii* and thus bound to the land.

[19]) On which in detail Lafferty, Theoderic (n. 4) 102–134.

[20]) See for *raptus* Th. Mommsen, Römisches Strafrecht, Berlin 1899, 701–702.

9,24,1, included in the Breviarium[21]). The reason for this positioning is perhaps because if parents do not raise an accusation, they are punishable, and the slave who tells the authorities of the concealment of abduction receives freedom (cc.18, 19)[22]). Forcible abduction in the presence (or with the help) of a crowd of somebody else's slave woman or *originaria* is punished with death for an *ingenuus* (as in c.17), and similarly for a slave or *colonus* if committed with her consent (c.21)[23]). If the *conductor* of their estate knew it and did not prevent it, or even ordered it, he was to be punished likewise. If the *dominus* of the *conductor* knew this or ordered this, the estate (*possessio*) from where the abductor came was confiscated (c.22)[24]).

Liberti, *originarii* and slaves are not allowed to sue their patrons or masters or their children or to testify in cases concerning these, both in civil and criminal cases; the sanction is capital punishment (c.48)[25]). Slaves and freedmen were forbidden to do so regarding crimes in CTh 9,6,2 (= Brev. 9,3,1) and immediately punished with death, CTh 9,6,3 (= Brev. 9,3,2 = CJ 9,1,20) and CTh 9,6,4 (= Brev. 9,3,3). *Coloni originales* were forbidden to do so in CJ 11,50,2,1–2, a constitution from the Theodosian Code, but there it presumably merely implied a *denegatio actionis* in civil cases[26]). In criminal cases the sanction in CTh 9,6 and the Breviarium is punishment by death. The Edict follows this but extends it to *originarii*. It implies a social downgrading.

II.3 Marriage and the coniugium non aequale:

The same liability of the master we see in c.63: *si servus alienus aut originarius ingenuam virginem per vim corruperit, aut stuprum viduae per vim intulerit, convento domino, rebus discussis atque patefactis, capite feriatur* / If another's slave or *originarius* should forcibly ravish an *ingenua* virgin, or has forcibly sex (*stuprum*) with a widow, he will be punished by

[21]) See J. Evans-Grubbs, Abduction Marriage in Antiquity: A Law of Constantine (CTh IX.24.1) and Its Social Context, JRS 79 (1989) 59–83.

[22]) Lafferty, Theoderic (n. 4) 182.

[23]) This could be where lovers tried to force consent to their marriage, see J. Evans-Grubbs, Law and Family in Late Antiquity, Oxford 1995, 183–193.

[24]) FIRA (n. 7) refers to CJ 9,13,1 for both sections, but that reference is misleading. They are not cases of rape as in CTh 9,23 and 24, but applications of the Lex Iulia de vi publica et privata, since c.21 underlines it is a *violentiae crimen*. CTh 9,10,1 (= Brev. 9,7,1) states the death penalty for *violentia*, CTh 9,10,4 (= Brev. 9,7,3) formulates the liability of the owner of the slave who committed violence.

[25]) Schipp, Weströmischer Kolonat (n. 6) 305–306; Lafferty, Theoderic (n. 4) 143.

[26]) Bluhme (n. 5) ad c.43 refers to CTh 9,6,3. FIRA (n. 7) does not refer to this constitution.

death after his master has been summoned and the facts have been pleaded and laid open[27]). Here, it is also the master who is cited in court. The punishment for violating a widow meant already for an *ingenuus* death on account of adultery (c.60)[28]). Did he do this with a virgin *ingenua*, there was still a loophole for him: If he were of high status, he had the opportunity to marry her, whereas in the absence of status, death was the penalty for *ingenui* (and thus certainly for those lower in status) (c.59). C.63 shows that slaves and *originarii* were handled more harshly and that the master or landowner was responsible in the first place, which again implies *potestas*. In c.64 this subjection is made clear in that it is imposed on an *ingenuus*:

> Ancillam alienam virginem vel originariam cuiuslibet aetatis, quisquis ingenuus, nulli tamen quolibet modo obnoxius civitati, corruperit, si dominus voluerit, aut corruptor ipse rogaverit, et apud gesta professus fuerit, mansurus in domini mulieris potestate, eius quam vitiavit contubernium non relinquat, nec, eadem mortua, discedendi habeat facultatem. quod si dominus ancillae non consenserit, aut ille profiteri noluerit, tunc aut huius meriti duo mancipia domino tradat, eius iuri profutura, si eius substantia patiatur: aut si hoc implere non potuerit, caesus districtissime fustibus vicinae civitatis collegio deputetur; quod iudex eiusdem loci, periculi sui memor, implere et custodire debebit.
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> Any *ingenuus* (who is subiected to no town in any way), who debauches another's virgin slave woman or *originaria* of any age, if the master wishes this, or if the debaucher himself asks, and it has been declared in the *gesta*, will remain in the power of the woman's master. He may not relinquish the union with her whom he has debauched, nor may he have the license to go way after her death. But if the slave's master has not agreed or that man has not wanted to make the declaration, he should hand over two slaves of this quality to the master who will be his, if his (the master's) assets suffered. Or, if he cannot implement this, he must be assigned to the nearby town's collegium, after being very harshly beaten with sticks. The judge of the same place will have to execute and take care of this, being mindful of his risk[29]).

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[27]) See on *stuprum* Mommsen, Strafrecht (n. 20) 691–692; on rape in Late Antique Italy see U. Vihervalli, Wartime rape in late antiquity: consecrated virgins and victim bias in the fifth-century west, Early Medieval Europe 30 (2022) 3–19.

[28]) Having consensual sex with a widow was likewise *stuprum*, unless she was *vilis vulgarisque*. Also, if the widows did this openly as their profession (*artis operam aut ministerii laborem publice exercere*) both participants were not culpable (c.62).

[29]) See Lafferty, Theoderic (n. 4) 96–98 for his discussion of cc.63 and 64. E. Höbenreich, Betrachtung über Beziehungen zwischen Freien, Kolonen und Sklaven, RIDA 54 (2007) 275–292, 284–287 assumes that *ancilla* in the second part probably meant *originaria* , which is likely, or otherwise there would be no sanction here for the case of a corrupted *originaria*.

With an *ingenuus* is not primarily meant a freeborn person but somebody who is not subjected to the *potestas* of somebody else (who is not his *pater familias*; see below, on p. 332). In this case, it is further excluded that he is a curial[30]). If the perpetrator wants to stay with the slave woman, and if her owner consents, he must register his submission to her master in the municipal records and then may stay, even must stay after her death. It implies that he is now bound to the estate. His union, however, is not called a *matrimonium* but a *contubernium*. That indicates a *coniugium non aequale*: their statuses are different. It is the *coniugium non aequale* which made the application of the Senatusconsultum Claudianum to *colonae originariae* possible (see below)[31]). It implies that the *ingenuus* remained in his status and further that he was not subjected to a town as curial. It further means that, as before, the *originarius* in Ostrogothic Italy was still in the *condicio colonaria*. The *ingenuus* remains free, but he is now under the *potestas* of an estate owner. His change of domicile is registered in the town register. These apparently served as status registers, just as the census previously (or perhaps the *gesta* included the census). His *origo* is now on the estate but he likely did not become an *originarius*[32]). If he or the master does not want this, he must pay damages – if the master suffered a loss – or, if he cannot pay, get a good flogging and then degradation to be *collegiatus* of a town, viz. on the level of a public slave being forced to work. Becoming a *collegiatus* in case of a refusal was part of the punishment, which, as we may assume, will have been registered similarly[33]). This second part of c.64 (the case of no consent) is not found in Nov.Val. 31 or elsewhere and was probably introduced under the Ostrogoths.

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[30]) For this meaning of *ingenuus* see Sirks, Colonate (n. 2) 71, 73, 74, 93, 157–158. The text does not imply that curials could perpetrate such crimes without punishment. But curials, obliged to serve their council but staying in the countryside, had to be returned by the landowners to their towns: Nov.Maiorian. 7,1. C. 64 should not provide a way to escape this.

[31]) See Sirks ibid. sec. 26.

[32]) The sanction in the first part seems to be inspired by Nov.Val. 31,5, a Novel which does not deal with debauchery or defilement. There, the emperor speaks of vagrants who, in search of food, clothing and shelter, offer their services – precisely what we might expect as reason to enter the colonate – and then engage with *colonae*, after which they leave. There the emperor orders that if he is an *ingenuus* and wants to marry a *colona*, he must register in the municipal register his *habitaculum*, his abode, to which he is then bound, reserving his *ingenuitas*. But having his domicile on the estate puts him in this respect under the power of the estate owner.

[33]) Schipp, Weströmischer Kolonat (n. 6) 295–296; for c.64 see Höbenreich (n. 29) 284; Lafferty, Theoderic (n. 4) 168.

At a particular moment in the fourth century, one or more constitutions were issued which placed *coloni* (and certain other groups, *monetarii*, for example) as persons, in public law, subjected to the authority of another person, being obliged to remain in one place and to deliver services, in this respect on a level just above slaves[34]), but for the rest being free citizens: the *condicio colonaria*. As a result a marriage between a *colonus* and somebody not in this way subjected (an *ingenuus* or *ingenua*) was valid but considered for their status as one of *ius gentium*. The effect was the *coniugium non aequale*. As a result, children would follow their mother's status. But a constitution made it possible to extend the application of the Senatusconsultum Claudianum from unions between freeborn women and slaves to marriages between *coloni* and *ingenuae*. The Senatusconsultum Claudianum originally only applied to unions between a free woman and a slave. If she did not leave him, she and her children became slaves as well. Its extension made children *coloni* too instead of following their mother's status and being *ingenui*. For marriages between *colonae* and *ingenui* the *coniugium non aequale* produced *coloni* straightaway. Considering the other groups, the lower *condicio* was already an institution early in the fourth century. The special application of the *senatusconsultum* may have been introduced at a later moment, its aim being the preservation of as many as possible *coloni* for agriculture. The *senatusconsultum* was abolished in the east in 531–534 (CJ 7,24,1) but not in the west where it had a lasting effect on the status of the offspring: If somebody else's slave or an *ingenuus* had children with an *originaria*, these children followed the status of their mother (c.66)[35]). The combination of both effects may have been the origin of the rule of the "schlechtere Hand" (worse hand)[36]). Considering the slave, this is again according to the classic rule, in respect of the *ingenuus* it is the effect of the *coniugium non aequale*[37]). It accords with CTh 5,18,1,4

[34]) H. Nehlsen, Sklavenrecht zwischen Antike und Mittlalter, Göttingen 1972, 129–131, concludes that they have nothing in common with the original independent *coloni* and are so much put on the same level as slaves, as they may be considered unconditionally as unfree people.

[35]) Bluhme (n. 5) ad c.33 refers to CTh 5,15,8,1 and CJ 11,48,16 (*secunda vetera constituta*); similarly CJ 11,48,21 pr. refers to *anteriores leges*; Schipp, Weströmischer Kolonat (n. 6) 292.

[36]) See Sirks, Colonate (n. 2) sec. 10 and 26. The effect was that the entire offspring would always be *coloni*, whether father or mother was of colonate origin; for the "schlechtere Hand" see note 160.

[37]) The addition of *alienam* ('another's') in c.64 makes it clear that the law concerns claiming the offspring. There would be no question of this with a slave woman or *originaria* of the same *dominus*, see Sirks, Colonate (n. 2) sec. 10.3–5.

(a. 419) and CJ 11,48,16 for *coloni originales*. Offspring of an *originarius* and another's *originaria* should be divided: two-thirds go to the *dominus* of the man, one-third to the *dominus* of the woman (c.67)[38]). This is in line with the division in the *interpretatio* of CTh 5,18,1,3[39]).

II.4 Migration and limitation of prescription:

That the *originarii* of the Edict were the same *coloni originales* of the Theodosian Code is further confirmed by c.68: If an *originaria* had been away from her estate for more than twenty years, her master lost his claim for her, but not for her children begotten in that period (as CTh 5,18,1,3 says), according to the new law, *servato novellae legis tenore* (i.e., Nov.Val. 31,2 which again repeats CTh 5,18,2)[40]). Something is lacking. Nov.Val. 31,2 says that substitutes for all children must be given because it is impious to separate children from their parents; c.68 does not say this and the children remain behind. Were the times harsher? Was it because there was a general shortage of slaves or *coloni*? The Edict speaks of slaves *cuiuslibet nationis* (c.70), as being around and drawn from Romans and Barbarians. Lafferty thinks there was a shortage (but see below, at c.84)[41]). There is no mention of whether a new master acquired the woman, as Nov.Val. 31,1 rules. It poses again the question, of how far the Edict replaced the Theodosian Code.

The Edict has no section on a prescription regarding male *originarii* (like CTh 5,18,1 pr.). C.69 (inspired by Nov. Maiorian. 7,1) concerns the acquisition by prescription of a curial, *collegiatus* or slave, who have not contributed any *conlatio* to their *patria*, by an estate owner who has possessed (*possederit*) them for thirty years[42]). As Lafferty says, the *conlatio* will have been any

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[38]) Bluhme (n. 5) ad c.67 refers to CTh 5,18,1,3; Schipp, Weströmischer Kolonat (n. 6) 292.

[39]) It says that the woman has to be returned within the prescription period of twenty years, with one-third of her offspring; two-thirds remained with the *colonus*. Conversely, the constitution lets one-third return with a substitute for the mother and eventually substitutes for sons.

[40]) c.68: *originaria ex quo de ingenuo solo discesserit, intra vicennii spatia repetatur. quod si originaria, expletis viginti annis, domino sub hac praescriptione perierit, simul eius agnatio, intra viginti annos suscepta a domino mulieris servato novellae legis tenore non pereat*; see Lafferty, Theoderic (n. 4) 95, without comment.

[41]) Lafferty, Theoderic (n. 4) 159 says that "their number was considerable", but on 220 that Italy was "plagued by acute labor shortages", on 240: "as the peninsula continued to be beleaguered by an acute shortage of men, resources". A considerable number, however, may still not suffice for proper agrarian exploitation.

[42]) c.69: *quisquis curialem, aut collegiatum, aut servum, per triginta annos pos-*

compulsory service[43]), evidently in a town. That the curials are mentioned is not so strange. By the sixth century, their status was low, and the government was taken over by notables like the *defensor civitatis*. Curials may have fled to the countryside to escape this and lived with a *colona* (see Nov. Maiorian. 7 pr.). They, too, were 'acquired' (*eos praediorum dominis iubemus adquiri*) by estate owners (perhaps in the way as described in c.64) but kept their *ingenuitas*. Slaves will have become slaves of their new owner, *collegiati* will have remained *condicionales* and were thus now *originarii*. Because *originarii*, scil. *alieni*, are not mentioned, it seems that for male *originarii* no release of their condition by prescription was possible. Perhaps c.12, on the prescription of thirty years in litigation (taken from Nov.Val. 35) was applicable.

If somebody in good faith took up a slave or *originarius* who pretended to be an *ingenuus*, he had to take him to the *gesta* and have him make up a deed declaring that he was an *ingenuus*. If his master reclaimed him after this, he had to be returned immediately and the recipient experienced no trouble (c.80)[44]). But if somebody had incited him to flee, he had to return him with his savings and *peculium* and three other persons of the same value (c.80)[45]). If somebody knowingly took up a fugitive slave or somebody else's *colonus*,

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sederit, qui nullam patriae suae collationem subisse monstratur, eos praediorum dominis iubemus adquiri: quia in nullo tricennalis legis saluberrimum constitutum sub qualibet patimur occasione turbari: quam sive adversus privatum, sive adversus fiscum, suam, quemadmodum leges praecipiunt, obtinere convenit firmitatem. et quia frequenter scimus tales calumnias in perniciem dominorum, conniventibus rusticis aut curialibus excitari, quo conlationem praestitisse dicantur: hoc eatenus valebit, si sciente possessionis domino, et non reluctante, aut certe procuratore, conductoreque eius, cum dominus in transmarinis fuerit regionibus constitutus, conlationem praestitam, fuerit adprobatum. The mention of a slave in connection with the *collatio*, understood as contribution, is strange; unless we assume that the case of fugitive slaves was inserted here for convenience.

[43]) See J.H.W.G. Liebeschuetz, The decline and fall of the Roman city, Oxford 2001, 104–109 and 110–136, with the rise of the bishop as a permanent functionary ibid. 137–168. Here, but already in 342 (see CTh 12,1,33), they seek refuge in joining estates; see also Schipp, Weströmischer Kolonat (n. 6) 308 on c.69: Lafferty, Theoderic (n. 4) 26 for *conlatio*. The term does not exclude taxes, but slaves did not pay taxes, and as Lafferty says it concerns contributions to the home town.

[44]) This part has no corresponding text in the Theodosian or Justinian Codes.

[45]) ETh c.80: *qui mancipium alienum sollicitaverit, tres alios eiusdem meriti, et ipsum domino cum peculio suo reddat. quod si quis a quolibet bona fide suscipitur quo se dicat ingenuum, suscipientis haec debet esse cautela, ut eum ducat ad gesta, et se profiteatur ingenuum: quo facto dum a domino servus aut originarius postulatus fuerit et probatus, solus sine retinentis incommoditate reddatur.* The recidive sanction has similarity with the sanction of CJ 6,1,4,1; on this text Schipp,

or hid him, he had to return him with his savings (*peculium*) and earnings (*merces*) to his master, and on top another of the same value. If it happened a second or third time with the same person, he had to turn over three extra persons (c.84)[46]). This is the same as CJ 6,1,4,1 (a. 317) on the recidive of fugitive slaves[47]), and does not indicate a shortage of slaves. We do not see any mention of taxes which were lost and must now be compensated by the second possessor – as we see no taxes in CTh 5,18,1,2 which demands only their assets and earnings: *cum omni peculio atque mercedibus*; similarly CJ 11,48,8 pr. speaks of person and gains; but another (lost) constitution may have covered the taxes. Cc.80 and 84 resume probably a part of a lost constitution from the Theodosian Code on the recall of fugitive slaves and *originarii*. In the Edict the *colonus* may have been retained from the original[48]). The sanction of CJ 6,1,4,2 applied in any case here to them as well, be it not restricted to recidive.

II.5 Power and contractual liability of the landowner:

The landowner was not liable for debts of those in his *potestas*. In c.121 the constitutions CTh 2,31,1 and 2,32,1 (Brev. 2,31,1 and 2,32,1) on lending money to an *actor*, slave, *procurator, conductor* or *colonus* are combined in a resumé. Creditors could not claim such a loan from the master if it was against the master's wish, nor did they have a preference on the assets of the debtor. After having paid their masters what they owed him, the debtors had to discharge their creditors out of their personal property

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Weströmischer Kolonat (n. 6) 280–281, according to whom the first law on this delict was CTh 5,17,2 (a. 386).

[46]) c.84: *quisquis servum sive colonum alienum sciens fugitivum susceperit aut occultaverit, ipsum domino cum mercedibus et peculio eius et eiusdem meriti alterum reddat. quod si secundo aut tertio eundem fugitivum idem apud quem fuerat, suscipiendum esse crediderit, praeter ipsum, cum mercedibus, tres alios domino eius tradat. mancipium tamen ipsum, ne forte propter capiendum lucrum callide et dolose a domino ad domum eius, qui susceperat, immissum fuerit, oportet in examinatione torqueri: ut si per interrogationem in quaestionem positi constiterit a domino suo ad domum alterius fraudulenter immissum, fisci protinus compendiis adplicetur.* This derives from CJ 6,1,4, a constitution of Constantine, with differences, see M. Navarra, La recidiva nell'esperienza giuridica romana, Torino 2015, 149s. n. 16 ; and on the interesting treatment of recidivism in Roman law in general, ibid.; see further Schipp, Weströmischer Kolonat (n. 6) 278– 280, 281 with ample literature; Lafferty, Theoderic (n. 4) 184; also on this text Nehlsen (n. 34) 130.

[47]) Bluhme (n. 5) ad c.84 cites a CTh 9,5,1, but that cannot be the present CTh 5,9,1.

[48]) Which may have stood in a lost part of Book Five of the Theodosian Code.

(*peculium*)[49]). That explains the claim of the landowner to the *peculium*. It also shows that a *colonus* had, in principle, a debt towards his landowner.

Whoever owned legally and possessed land, could transfer from this *rustica mancipia* of both sexes – even if they were *originaria* – to other land in his ownership or even assign them to the *ministeria urbana* (services) of a town as *urbani famuli*[50]). These transfers would be valid and irreversible; no claim about the *origo* would succeed. The master could even alienate by deed persons of this condition (*supradictae condicionis*) without the land (c.142)[51]). The first part seems to draw partly on CJ 11,48,13,1 (a. 400), only transmitted in Justinian's Code, whereas the second part derives from Nov. Val. 35,18, which abolished the prohibition of CJ 11,48,7 pr. to transfer *coloni* ('rustica utriusque sexus mancipia, etiamsi originaria sint') from one estate to another. In the first part, the master can also assign these, including *originarii* to services in the town (*urbana ministeria*), which is new. They were registered there in that case. New is also that these people may be ceded, sold or donated to anyone, without any portion of their land, if attested by a deed. It puts them on the same level as slaves, albeit we must assume that they, by deed, were assigned to a new land. Lafferty sees this as an indication of labour shortage. Yet if somebody sells slaves or *originaria*, he is not short of them. Instead the distribution of workforce over the estates will have been a problem, hindering efficient exploitation[52]). It also implies that the estate owner no longer registered his folk for the poll tax and that registration bound them merely to an *origo*.

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[49]) Bluhme (n. 5) ad c.121; Schipp, Weströmischer Kolonat (n. 6) 307–308; Lafferty, Theoderic (n. 4) 221.

[50]) Those labourers will have been a kind of city workforce for the ingratiating assignments and rather a slavish task, done by a *collegium* which is also mentioned in c.64; likely to be identified with the *collegiati*, see below.

[51]) c.142: *liceat unicuique domino ex praediis, quae corporaliter et legitimo iure possidet, rustica utriusque sexus mancipia, etiamsi originaria sint, ad iuris sui loca transferre, vel urbanis ministeriis adplicare, ita ut et illis praediis adquirantur, ad quae voluntate domini migrata fuisse constiterit, et inter urbanos famulos merito censeantur: nec de eiusmodi factis atque ordinationibus, velut sub oppositione originis, quaestio ulla nascatur. alienare etiam supradictae conditionis liceat dominis, absque terrae aliqua portione, sub scripturae adtestatione, vel cedere, vendere cui libuerit vel donare*. Bluhme (n. 5) ad c.142; Schipp, Weströmischer Kolonat (n. 6) 284–287; Lafferty, Ostrogothic Italy (n. 9) 337–364, here 353–354; Lafferty, Theoderic (n. 4) 218, also referring to CTh 2,32,1 and 2,32,1. Nehlsen (n. 34) 125 interprets *rustica originaria* here as "Abhängige" (dependent people) bound to land, referring to Nov.Val. 35,18.

[52]) Lafferty, Theoderic (n. 4) 218–219: "a result of the manpower shortage".

If *rustica mancipia* had merely concerned slaves attached to land as *instrumentum*, the text would have said the obvious. However, *mancipium*, although usually meaning slave, can be used for any servant, as does *famulus*, and the references to an *origo* and *condicio* shows that it must have concerned *originarii* (with slaves there is no question of an *origo*)[53]).

II.6 Crimes[54]):

Where it concerned crimes, the position of *originarii* was also bad in Ostrogothic Italy. On cattle rustling c.56 set the death penalty with a fourfold compensation imposed on the rustler's assets. Were the rustler a slave or *originarius*, his master was cited under these laws and had to pay compensation according to the law (as just formulated, i.e., for the fourfold), or surrender him to the public authority so that he be punished with death[55]). It looks like a noxal liability, which implies that the *originarius* was seen as under the *potestas* of his landowner, but the *deditio* was to the public authority to mete out a public punishment. Arson was punished capitally by burning if committed out of enmity by a slave, *colonus*, *ancilla* or *originarius* on somebody else's *casa*, *villa* or *domus* (c.97), which is a harsher punishment than that of the mines or forced labour of PS 5,20,2 for *humiliores* arsonists[56]). It is a typical mirror punishment which still existed in imperial times[57]). That the *colonus* is mentioned next to the *originarius* does not seem consequential, placed as he is between slave and *ancilla*. Similarly, c.98, on slaves or *coloni* setting by accident fire to land neighbouring that of their master, seems to be drawn from PS 5,20,3 and 4 (*colonus*, in that case being inserted in the

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[53]) Schipp, Weströmischer Kolonat (n. 6) 286 reads *rustica ... mancipia etiamsi originaria* as referring to slaves, of whom some were bound to an *origo*. Their owners could now transfer them to another working place. This interpretation poses questions. Owners of slaves were in principle free to do with their slaves whatever they wished and could transfer them anywhere; and slaves were indeed included in the *professio censualis* but that did not necessarily entail a tie to this *origo*.

[54]) Nehlsen (n. 34) 140–152 deals intensively with the position of unfree in the criminal law of the Edict. Here the treatment is restricted to the social position of *coloni*.

[55]) Lafferty, Theoderic (n. 4) 169, assuming here a *noxae deditio*, apparently overlooked the words *publico iudicio*; on rustling see Lafferty, Theoderic (n. 4) 69–72.

[56]) In c.97 an *ingenuus* just paid a compensation. If he had no capital, then he could be flogged and perpetually banished; see also Schipp, Weströmischer Kolonat (n. 6) 302.

[57]) Mommsen, Strafrecht (n. 20) 646: Arson was considered equal to murder: XII Tab. 8,10; D. 47,9,9.

Edictum since it is absent in the Pauli Sententiae). Their master had to compensate the damages or could hand over the perpetrator to the judge to be punished: again like a *noxae deditio* but not identical as in PS 5,20,4, where the damaged owner got the slave to deal with him as he liked[58]). Apparently the public aspect of the crime made handing over to the public authority more important than to the owner.

If a slave or *colonus* dug up boundary stones without their *dominus* knowing or ordering this, they were punished capitally. If the latter had ordered it, he forfeited one-third of his property but his underlings were nevertheless put to death. The latter punishment also applied if it was done by order of the master (c.104)[59]). The first part is also found in PS 5,22,2, with work in the mines for slaves and forced labour for *humiliores*. Again, punishments are harsher than before, and the *colonus* is put on par with slaves.

If a slave or *colonus* committed robbery without their *dominus* knowing this, the latter would be liable for the fourfold, and after a year for the simple. But if he had known of this, he had to surrender them for their guilt (*noxia*) to the judge to be punished. What they had gained from their crime had to be returned. If their master, being cited, said the perpetrator had fled, it sufficed to cede the execution to the plaintiff (c.109)[60]). Here CJ 3,41,4 (293), a rescript of Diocletian and Maximian on noxal liability of slaves, seems to have been the model, with the *colonus* added[61]). Perhaps there was a similar, later constitution with this addition present in the Theodosian Code, on which this was based and which is not transmitted.

C.128 defines a general liability of the *dominus* for delicts or crimes of *filii in potestate*, *servi* and *coloni*, which resembles the classical noxal liability, now with the addition of *aut colonus*. He had to surrender them to the judge for punishment if he refused to defend them. Only the *filii familias* had the option to defend themselves, if they wanted (c.128)[62]). The latter canon is

[58]) Thus, it was not a *noxae deditio* in the pure private law sense – as Lafferty, Theoderic (n. 4) 169, however, suggests, referring to the rules of noxal surrender.

[59]) Schipp, Weströmischer Kolonat (n. 6) 304–305.

[60]) Bluhm (n. 5) ad c.109; Schipp, Weströmischer Kolonat (n. 6) 303–304 who mentions CJ 3,41,4 as the example. Lafferty, Theoderic (n. 4) 169 suggests this is a *noxae deditio*. but that is not the case.

[61]) CJ 3,41,4 mentions that after a year a noxal action (*furti*) may be raised and the slave can be surrendered. This is not said in c.109, notwithstanding the mention of the slave. Lafferty, Theoderic (n. 4) 82 sees this as the result of loosening legal precision. However, it was instead due to this, that a *colonus* could not be surrendered noxally, despite his being *in potestate*, since he was a free man.

[62]) Schipp, Weströmischer Kolonat (n. 6) 301.

compliant with D. 9,4,32–35. As for the surrender to the judge instead of to the harmed party, as we already saw in c.56 and c.109, there are classic precursors of this (D. 9,3,1,8, D. 2,1,7,3, D. 9,4,4,2)[63]). What, however, is new, is, that also crimes of *coloni* – like arson in c.98 – lead to a liability of the master[64]). There is nothing of this kind in the well-transmitted Book 9 of the Theodosian Code; perhaps it was in the lost part of Book 5. As such this liability is the logical consequence of the *potestas* of the estate owner over his *coloni*, in analogy to his liability for *filii* and slaves.

II.7 Coloni in two Ravennate papyri:

Being partly drawn up under the Ostrogothic rule, the Ravennate Papyri comprise deeds safeguarded in the Church of Ravenna, and two of them mention *coloni*[65]). In one of these, P.Ital. I,3 (a. 525–575 AD), *coloniae* are mentioned on which *coloni* are settled, who have to render to the Church of Ravenna money and various goods and livestock, but some also have to render *operae* on one, two or three days per week[66]). Were these people *originarii* or free people? It is hard to say since *originarii* could lease, and rent could be set in money, goods (including life stock) or both. On the other hand, the colonate offered support. Why not only one or more days a week work if the farm allowed it[67])? In another papyrus, P.Ital. I,13 (a. 553), parts of two *massae* are donated to the Church of Ravenna … *id est massae Firmidianae ... et* [....]*ilianae ... cum omni instrumentoque suo omnibusque ad se pertinentibus, cum adti*[*guis*] *colonicis subsequentibusque suis, finibus, terminis, servitutibusque earum, cum mancipiis, quae in designatis massis esse noscuntur* /… that is of the *massa Firmidiana* … and … [....]*iliana* … with all its outfit and all that pertains to it, with all adjacent *colonicae* and their implicit boundaries, borderstones, and the servitudes of these, with the slaves which are known to be in the designated *massae*. *Colonicae* are farmsteads (as in

[63]) See M. Kaser, Das römische Privatrecht, II. Teil, München 1971, 431 at note 50.

[64]) For c.98 see also Schipp, Weströmischer Kolonat (n. 6) 303.

[65]) The edition is J.-O. Tjäder, Die nicht-literarischen Papyri Italiens aus der Zeit 445–700, Lund 1954, Stockholm 1982.

[66]) P.Ital. 3,13, l. 2–7: *gal*(*linas*) *XIII, ọvạ ẹXXX, p*(*er*) *ebd*(*o*)*m*(*ad*)a oper(*as*) *II./ gal*(*linas*) *VIII*, *ova LXXX, p*(*er*) *ebd*(*omada*) *oper*(*am*) *I. gal*(*linas*) *XḶ, ova ẹẊ, p*(*er*) *ebd*(*omada*) *oper*(*am*) *I./gal*(*linas*) *XVI,* [*ova C*]*LX, p*(*er*) *ebd*(*omada*) *oper*(*as*) *III./ gal*(*linas*) *X, ova C, p*(*er*) *ebd*(*omada*) *oper*(*as*) *III./gal*(*linas*) *X, ọva C, oper*(*as*) *III.*

[67]) We do not know whether more was requested than chicken and eggs, but if it were chicken farms, there would have been enough time to work also elsewhere. What speaks against the idea that the *operae* were the result of a *condicio* is that in the other cases no work is requested. But it is of course possible that on other *coloniae* no *originarii* worked.

LB c.38,8 where *coloni* were settled on them); perhaps with *coloniae* the same is meant. *Mancipia* is translated with slaves, but refers perhaps to, or also, to *coloni*? In that case they would be bound to the *colonicae* and would be *originales*[68]).

II.8 The status of the originarii in the Edict:

Considering the nature of the Edict as a compendium to restore order which did not set aside the existing law, we may assume that at least in theory the rules of the Theodosian Code on *coloni* and the colonate remained valid. The Edict then focuses on those aspects that were directly important for reestablishing order. Next to this, the Edict may contain rules that were in the Code in one of the first five books but which were not transmitted[69]). But its formulations and choice of subjects also indicate the contemporary interpretation of the law and the appraisal of the colonate. From the Edict texts, a status (*condicio*) presents itself, which we may call a colonate. *Coloni*, who are called consistently in the Edict *originarii*, which underlines their link to an *origo*, have a status which is based on the descent as follows from cc.65 and 66 and the application of the Senatusconsultum Claudianum in c.64. The status of their father or mother decides the status, one parent suffices. If they marry a person not subjected to *potestas* (an *ingenuus*), their union reveals itself as a *coniugium non aequale* which leads to this effect, viz. a lower status. They are bound to an estate or plot of land and have to render services to its owner. They stand in the *potestas* of the landowner.

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[68]) T.S. Brown, Gentlemen and officers, Imperial administration and aristocratic power in Byzantine Italy A.D. 500–800, Roma 1984, 200 says that by the ninth and tenth century the term *colonus* had ceased to refer to a personal status and denoted only economic obligations: as an attachment to a *casa colonaria* and payment of duties; Brown ibid. 198: technically free but tied to the land. But this raises the question of how they would be attached: based on a lease or based on a personal status, with attachment to this *casa*? That their obligations had been converted into money payments is certainly possible considering that they had to sell grain to pay the tax in money; for *colonica*, see Lexicon latinitatis medii aevi, Turnhout 1975: "tenure d'un colon"; Mediae Latinitatis lexicon minus, ed. J.F. Niermeyer/C. van der Kieft, Leiden 2002: also "tenure d'un colon"; see Wickham (n. 14) 270–272 for land management in the fifth century. I must leave aside the question of whether we see here seigneurialisation: see J. Percival, Seigneurial aspects of Late Roman estate management, The English Historical Review 84 (132) (1969) 449–473.

[69]) Bluhme (n. 5) has, wherever possible, mentioned the connection with other legal sources. In some cases, it was not possible, but this does not have to mean this rule, issued by Odoacer or Theoderic, was new; it might have been contained in the first five books of the Theodosian Code.

There is no sign of a link with the taxes, particularly not with the poll tax, the only important tax for all inhabitants. As it is, we do not know whether the poll tax was still levied under the Ostrogoths. Abolition of it would have set the *coloni originarii* free, unless a 'free' colonate was introduced as in the east. However, all we find is that the colonate continued and was determined by descent, irrespectively of any poll tax. Thus it was in the Edict a status of personal law and not an administrative status. It entailed subjection to the *potestas* of their landowner, subjection to his recall, and a duty to service. These aspects are the same as in the Theodosian Code, so we may assume they were the continuation of the *condicio colonaria*[70]). That goes also for the attribution of status.

CTh 5,18,1 (a. 419, Ravenna), Nov.Val. 27 (a. 449), 31 (a. 451), and 35 (a. 452) formulated for the west the conditions for the transmission of the status to offspring without connecting it with the taxation (unlike CJ 11,48,19 and 20 for the east, both from the Theodosian Code). Because of the situation in 419 it is hardly believable that the connection with the poll tax did no longer exist in the west at that time. The Code contains in book 11 extensive legislation on taxes and taxation. A more specific connection between poll tax and colonate (as in CJ 11,48,10 or 11,49,1 for the east) may have stood in a lost constitution in Book 5 of the Theodosian Code. Hence we must assume that in 438 the Roman colonate as formed under Diocletian still existed. Besides, the constitution of CTh 5,18,1 did not focus on that point but on the recall of fugitive *coloni* and the problem of the claim to their offspring. But as a consequence, later readers could interpret those texts as establishing the colonate independent from taxation. It sufficed to read the texts restrictively and in combination. This was indeed the case because the *interpretatio* to Nov.Val. 27 refers to Nov.Val. 35. The result was that if the link with the poll tax was lost, the *potestas* of the landowner and all its consequences remained in force, contrary to the east where the 'free' colonate was introduced to counteract potential migration. The origin of the later colonate as a personal status lies here. Also the interest in the descent may have supported this shift. When it occurred cannot be ascertained. Considering the *interpretatio*, it likely happened around or after 468 when the last revision of the Post-Theodosian Novels took place, or, probably, when Odoacer took over in 476. In any case we see in 506 the shift reflected in the *interpretatio* to CTh 5,17,1 where the colonate is a status one is born into. Amongst historians only Schipp sees also CTh 5,18,1 as essential for the turn in the nature of the colonate; accord-

[70]) The *interpretatio* to Nov.Val. 35 speaks of *mancipia originaria vel coloniaria*.

ing to him, this turn happened in 419 when the constitution was issued. That, however, is not probable given the arguments set out above, it must have happened later[71]).

How many of such *coloni* existed in Ostrogothic Italy we do not know[72]). The social position of the *coloni originarii* was low, apparently lower than before. The texts on delicts and crimes make a difference between an *ingenuus* on one side and slaves (*servi*) and *originarii* or *coloni* on the other side (c.21 on abduction, cfr. CJ 9,13,1; in c.89 the distinction between *honestiores* and *viliores*). It also fits the levelling with slaves and *filii familias* in cc.56, 109 and 128. They were still free people but under *potestas*, hence *alieni iuris*.

This is where we read *originarii*; where we read merely *coloni* in the Edict caution is warranted. In c.146 both *colonus* and *dominus* have the right to sue for harvest stolen because both have an interest. PS 2,31,30 may have been the model. Here *colonus* may mean the *originarius* on a *colonica* who has to render part of the produce, but also the not bound lessee[73]). But in c.148 slaves and *coloni* taken by the enemy and returned must be restituted to their masters, unless they have been sold by the enemy to another[74]). A not bound *colonus* could of course be enslaved by the enemy and sold, but if returning, there would be no question of him having to return to his landlord. Hence it must concern here *originarii*. The cc.150 and 152 mention *rustici alieni* who are ordered a charge by somebody other than their master, or who are killed. In spite of the use of the word *rusticus*, their legal status will have been that

[71]) Schipp, Kolonat neu denken (n. 6) 126, 130–131, 133 (Nov.Val. 31, 35), 134–135 (Nov.Val. 35), making thus also the pivotal connection between the three central constitutions as defining the new personal status ("Geburtsstand") of the *coloni originales.* Schipp ibid. 143 assumes further that the *coloni* were all lessees and originally subjected to a "Bodenbindung" which was now dissolved and replaced by a bond to their "Grundherr". I assume he means by this that their status was now a personal law status. But did the link to the plot of land not remain? Will not the owner of the "Boden" have been the same as the "Herr" of the "Grund"?

[72]) Lafferty, Theoderic (n. 4) 167: "By the sixth century the peninsula had become a region in which rural dependants were mostly unfree." He also adduces P.Ital. 3 for this assumption. I sympathise with his view but cannot share it: We do not know the figures, and there was no need to regulate in the Edict the free lessees. The existing law sufficed.

[73]) Schipp, Weströmischer Kolonat (n. 6) 287. Lafferty, Theoderic (n. 4) 74 does not enter into this question but sets out the change in legal procedure.

[74]) FIRA (n. 7) suggests CJ 8,50,10, which concerns only free people and slaves, and *colonus* has been added. But the principle is stated in various places, see Lafferty, Theoderic (n. 4) 163.

of *originarii* given the use of *alienus* and the power of their *dominus*, who may sue the other party[75]).

What caused the rather harsh régime regarding the *coloni originarii*? Apparently, on the land the need for this kind of labour (unlike slaves, they had to feed themselves, unlike tenants, they could not abscond) had become more pressing. It had already been a problem in the beginning of the fifth century (see CTh 5,18,1) and as it seems did not diminish. The Edict often mentions slaves and *originarii*, and it is evident that they were engaged in agriculture. This need for their work did not translate in a better treatment, on the contrary. The fact that the status now passed from parents to offspring may have contributed to this. The picture we get is of people bound to land and kept there, entirely at the estate owner's will, potentially transferable, and subjected to harsh punishments for crimes. This may also have been caused by the fact that it were the Goths who ruled now Italy and relied on a hard régime to maintain their power, notwithstanding the pacifying words of Athalaric and Cassiodorus[76]). It was likely something their Roman fellow landowners would not have objected to. Release through limitation of prescription was possible but will have been very difficult because not only flight should succeed, but the fugitive should be able to sustain himself during many years. A bright spot may have been the need for labour force: It might have made it easier to find work elsewhere.

We may conclude that formally this colonate of the Edict is the continuation of the colonate of the Theodosian Code (a. 438) in a part of the former territory of the western emperor, ruled by Theoderic, as the reliance on previous law proves. The continuation lies in the use of Roman legal texts of earlier times for this situation, yet adapted and interpreted to a changed context, an adaptation which might have grown gradually during the second part of the fifth century. The last constitution known for the west was issued in 473 by Glycerius, the earliest texts of Cassiodorus are from 507, the Edict is presumably from 500. We do not know much about what happened under Odoacer's rule of eighteen years[77]). New rulers mostly let things stay as

[75]) Lafferty, Theoderic (n. 4) 354 speaks of rustics. But the context seems to point to *coloni*.

[76]) Cass. Var. 9,13,8 (Athalaric): *vos armis iura defendite, Romanos sinite legum pace litigare*; Cass. Var. 12,5,4: *dum belligerat Gothorum exercitus, sit in pace Romanus*.

[77]) See M.A. Nagl s.v. "Odoaker", Paulys Realenencyclopädie der classischen Altertumswissenschaft, 34. Halbband, Stuttgart 1937, 1888–1896; G. Halsall, Barbarian Migrations and the Roman West, 376–568, Cambridge 2007, 285.

they were[78]): we see that also Theoderic took over the existing structure and made only necessary changes, like the organisation of justice[79]). The taxation continued but must have been simplified[80]). It is possible that the poll tax has already disappeared under Odoacer. That made the *coloni* utterly dependent on their master and did not improve their situation. Their status is a kind of bondage. That would fit the development of society and administration in those days[81]), And the focus on personal status decided by descent.

III.

III.1 Coloni in Italy in a letter of Pelagius II and in the letters of Gregory the Great[82]) :

Next to P.Ital. I,3 of Ravenna we encounter *coloni* in sixth-century Italy in several non-legal texts. Under the Popes Pelagius II (Pope from 579 till 590) and Gregory the Great (ca. 540–604, Pope from 590 till 604), Italy was partly under the domination of the Longobards, who invaded Italy in 568 and established several dukedoms over the peninsula, and partly under Byzantine government where this was still established: viz. Sicily, South Italy, and a stretch of land from Rome over the Apennines towards Ravenna and the Adria, roughly what would later become the Papal State. In the Byzantine part, Byzantine law should have been the norm since the promulgation or validation of the Justinian compilation and subsequent Novels in 554, and we see indeed in one letter of Gregory explicit references to Justinian's legislation, but there are also implicit references[83]). It should have been the norm in

[78]) See I. Wood, The Merovingian Kingdoms 450–751, London 1994, 62–63: Taxation in Gaul was centered around the towns, but the tax registers (of Poitiers) were out of date, so tax inspectors of the king came to re-assess the people. This implies that things had been left as they were, used, and even updated.

[79]) Lafferty, Theoderic (n. 4) 101–155 on the law.

[80]) Ibid. 225–229 for the evidence of land taxation.

[81]) See Liebeschuetz (n. 43) 342–399; Lafferty, Theoderic (n. 4).

[82]) See for Gregory P. Eich, Gregor der Große, Bischof von Rom zwischen Antike und Mittelalter, Paderborn 2016. T.S. Brown (n. 68) 127 thinks Gregory used for this period the term *condicio* to denote the hereditary obligation to perform a certain occupation, although it is mostly used for slaves and peasants who were bound to the soil.

[83]) D. Norberg (ed.), S. Gregorii Magni Registrum epistularum libri VII–XIV (= CCSL), Turnhout 1982, 13,49: a letter of 603 to the *defensor* Johannes, who was sent to Spain to judge cases, with excerpts of the law required for this purpose, from Nov. 123,8,19,21 and 22; CJ 1,2,3; CJ 1,3,10; CJ 1,12,2; see for the context of the letter and three other lettes to Johannes with legal quotations W. Kaiser, Nachvergleichungen von Novellen- und Codexzitaten in einer frühmittelalterlichen

the Longobard part, too; theoretically, if between 554 and 568, there would have been sufficient time and opportunity to establish this law. That, however, is the question, as we shall see. The Church of Rome owned many estates, a consequence of the donations to it, and had to supervise the possessions and administration of other churches. The Pope, or rather his office, had to solve many questions relayed to him.

In a letter from Pelagius II (Pope from 556 till 561), reference is made to a *colona*. A certain Clarentius, allegedly born from a slave woman of the Church, persuaded Dulcitia, a widow, a servant of the church, from the *massa* Tarpeiana, to live with him. However, then he became disobedient and rejected his due servitude, calling himself a curial. It was mentioned that he had had first a wife, born on a possession of the church, from *coloni* of the church. From her *peculium* he held a small plot of land. The Pope orders Melleus to investigate the complaint of Dulcitia and if the imputations are correct, and if Clarentius is indeed born from a slave woman, or in a legal way subjected to the church, to recall him with his belongings to the *massa* of the church. He is not allowed to leave Dulcitia[84]). Here, the church has a *colona* who has a *peculium* which included or with which a plot of land was bought.

Sammlung mit Exzerpten aus dem Register Gregors d. Gr. (Reg. 13,49 [50]), ZRG RA 125 (2008) 603–644, 605–613; for implicit references M. Conrat, Römisches Recht im frühesten Mittelalter, in: ZRG RA 34 (1913) 13–45, 33–45; translations: J.R.C. Martyn, The Letters of Gregory the Great, transl. with introd. and notes, Bd. 1–3, Toronto 2004; V. Recchia (ed.), Gregorio magno, Lettere I–III (= Opere di Gregorio magno 5,1), Roma 1996.

[84]) Pelagii I Papae Epistulae quae supersunt (556–561), coll., notulis historicis adornavit Pius M. Gassó, ad fidem codicum rec., praef. et indicibus instruxit Columba M. Batlle [Montserrat 1956, 167 Nr. 64], 3. Aufl. curr. M. Schütz/V. Trenkle/I. Werner (= Regesta pontificum Romanorum, 1: A sancto Petro usque ad A. DCIV), Göttingen 2016, 331 Nr. 1976: spring 559: *Pelagius [Papa] Melleo subdiacono … Dulcitia, ecclesiae nostra famula, Tarpeiana massa consistens, huiusmodi querelam suam in nostris sensibus intimauit, dicens, quod postea quam eam defuncto marito [suo] contigit viduari, Clarentius quidam nomine ex ancilla ut perhibetur, ecclesiae procreatus, diuersis blanditiis atque suasionibus praefatae mulieris animos inclinando in suo eam curasset as<s>icere consortio, ex qua etiam filium procreasset. Nunc autem post coniunctionis suae non paruum tempus, quippe iam nato et educato filio, nullis ut perhibetur rationabilibus causis exstantibus, eandem mulierem detrusisse, atque in eam prosiluisse contumaciam, ut ad declinandam seruitutem debitam, curialis sibi nomen audeat usurpare; qui eiamt primam in ecclesiae possessione genitam ex colonis ecclesiae habuisse memoratur uxorem …. Ex cuius peculio quemdam agellum dicitur hactenus detinere; sed et alia non pauca in suo fertur habuisse peculio. Quapropter experientia tua praesentis iussionis vigore suscepto, eodem detento Clarentio, causae totius veritatem diligenter agnoscens, quae*

In a decrete Pelagius forbids heads of churches and monasteries to accept slaves and *originarii* who, under the pretext of a religious calling, want to enter the service (*famulatus*) of a church or a monastery. They should not exchange one kind of obedience for another nor subvert public order and thus must be returned to their masters[85]).

In the Registrum Epistularum of Pope Gregory the Great, several times *coloni* (also under the name of *rustici*) are specifically mentioned[86]). The ecclesiastical estates were distributed throughout Italy, Sicily and Sardinia; at the end of the sixth century, Sicily was very important for the ecclesiastical finances[87]). In these letters, the status of these *coloni* is not always clear. The use of the adjective *ecclesiasticus* in ep. 1,70 or *ecclesiae* (*nostrae*) in epp. 1,42; 9,35; 13,37 and 14,5 is in itself not a cogent argument to assume they belonged to the Church as bound *coloni*.

III.2 Coloni on ecclesiastical land and financial and other problems:

In ep. 1,42 (a. 591) *coloni* are mentioned[88]). In this extensive letter, meant to settle various problems in the ecclesiastical possessions on Sicily, Gregory admonishes with regard to the farmers of the Church (*rustici ecclesiae*) that

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de memorati persona seu rebus ecclesiastica requirit utilitas exequatur, et, si eum de ecclesiae ancilla genitum, uel alio modo legitimo iuri ecclesiae constat obnoxium reperiri, cum omnibus rebus suis in massam ecclesiae festinet reuocare et ei praefatam mulierem, quam sibi ipse asscivit in consorto sociare, nullatenus habituro de cetero eam relinquendi licentiam; previous edition in J.-P. Migne, Patrologiae cursus completus, series Latina, vol. 69, Paris 1856, c.418.

[85]) Migne (n. 84) vol. 67, Paris 1848, c.306 nr. 14, a decree by Pope Pelagius: *Generalis etiam querela vitanda præsumptio est, qua propemodum causantur universi passim servos, et originarios dominorum jura possessionemque fugientes sub religiosa conversationis obtentu vel ad monasteria sese conferre, vel ad ecclesiasticum famulatum, cohibentibus quoque præsulibus indifferenter admitti. Quæ modis omnibus est amovenda pernicies: ne per Christiani nominis institutum aut aliena pervadi, aut publica videatur disciplina subverti.*

[86]) 1,42 (Sicily, May 591); 1,70 (Sicily, August 591); 9,30 (Sicily, Oct. 598); 9,37 (Rome, Oct. 598); 9,43 (Oct. 598); 9,129 (Sicily, Febr.–April 599); 13,37 (Sicily, June 603); 14,5 (Sicily, Sept. 603). We find them also under the name of *rustici* (9,203): *Rustici ecclesiae* are kept from leaving.

[87]) On the management of the ecclesiastical properties H. Grisar, Verwaltung und Haushalt der päpstlichen Patrimonien um das Jahr 600, Zeitschrift für katholische Theologie 1 (1877) 526–563; more recent but less extensive Martyn (n. 83) I 91–99; on Sicily T.S. Brown (n. 68) 113.

[88]) Brown ibid. 85 thinks that most of the cultivators on the papal Sicilian estates were free and that ‘free’ *coloni* were permitted to enlist in the army.

their grain will be paid according to the public prices (*iuxta pretia publica*) – and not at a lower price as when the harvest is abundant. All should bear the loss due to shipwrecking (scil. in transporting grain from Sicily). And the management should pay for loss due to its negligence. Unacceptable is – wrote the pope – that a bigger *modius* was used for the grain to be delivered in volume to the storehouses of the Church[89]). In some *massae* of the Church a tax (*exactio*) is levied with unjustified additions, which bear upon the farmers (*rustici*)[90]). Gregory then orders that the farmers' resources should be examined and they, in total, should pay a normal *pensio*, viz. the lump sum of all *pensiones* and not more, and individually their own *pensio*[91]). Further, he forbids the use of false weights when levying the *pensiones* from the *coloni ecclesiae* (apparently measured in grain): False weights must be broken[92]). We do not know whether these burdens were recurrend[93]).

Pensio means primarily 'payment', but has also, departing from this, the meaning of 'interest', 'tax', 'rent'. The use of this word in ep. 1,42 and ep. 4,21 does not necessarily have to mean that the *coloni* paid a rent or tax. If 'free' *coloni* had to work on their plot of land, its owner could still require them to render part of the revenue as compensation. *Pensio* could also refer to this. What argues for this is ep. 9,37 where the *colonus ecclesiae* Argentius gets

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[89]) Apparently there was an agreement that the farmers sold their grain at a certain price, which was not kept when, due to abundance, the market price was lower. As to the extra charged, Gregory refers to this as what may get lost during transportation overseas. *Modius* must refer to the *epimetrum*, see B. Sirks, Food for Rome, Amsterdam 1991, 157, 203.

[90]) According to T.S. Brown (n. 68) 200 we cannot draw a sharp distinction between the rent payable to the landlords and the taxes payable to the state. The 'fiscal' rent collected from the cultivators formed an object of constant manipulation and negotiations between the landowners and the government.

[91]) Brown ibid. mentions for the Exarchate of Ravenna as customary prestation ⅒ (sometimes ⅐) of wheat and ¼ (sometimes ⅓) of wine. Evidently Brown discusses métayage contracts. Under the Lombards these figures were ⅓ and ½ resp. But landowners had of course other means to exact surpluses.

[92]) Martyn (n. 83) I 164 translates *Ante omnia hoc te volumus sollicite adtendere, ne iniusta pondera in exigendis pensionibus ponantur. Sed si qua talia invenis, frange et nova et recte constitue* with "that unjust burdens are not being placed upon them in exacting taxes. But if you discover such burdens anywhere, relieve them and establish new and fair ones."

[93]) Gregory kept a strict control on the rural possessions of the Church. In 2,36 he orders the bishop of Melita in Africa to collect the *pensiones* the farmers refuse to pay, but also to check, in case it is too high, how much they can pay. Ep. 5,31 is directed to the managers of lands in Gaul and also deals with the exploitation.

back his *terrula*. He does not have to pay *rationes ecclesiasticae* because he has to perform the *cura hospitalitatis*, and so the expenses for this equal his relief from the *rationes*. Similarly purchasing grain from the *coloni* and leaving it to them to pay the tax levied on their plots of land could have been an arrangement. The advantage of this system is manyfold: The Church would have its grain, which it could use and/or export, the *coloni* would participate in a (modest) monetary system, and the Church would not have to bother about the taxes[94]). In this way, *pensio* would mean indeed tax, but not a tax the *coloni* as individuals were subjected to. They simply had to work at least so much as to render directly to the *conductores* the money destined for the Church, which it needed to pay its taxes. In this way the Church would have simplified its accounting system. Despite these uncertainties, it is beyond doubt that the dependency of the *coloni* was no longer linked to their estate owners paying their *capitatio* or other personal tax.

An argument for such a shortcut in paying taxes is ep. 1,42 of Gregory. In it, he orders the managers to pay off the debts the farmers (*rustici*) incurred when they had to pay the first instalment of the tax (*burdatio*, *tributa*) before they could sell their harvest. The farmers borrowed from the *actionarii publici*, apparently the tax accountants, formerly the *tabularii*. Lastly, one should not charge farmers (*rustici*) more than one solidus for a marriage, or less if they were poor. This marriage duty (*nuptiale commodum*) was for the *conductores*. As to the *conductores*, the managers for the Church, it happened that when they died the Church seized their property, their relatives being barred from inheriting. Gregory ordered that this stop and that their relatives succeed them as their heirs. Further, if a *conductor* had taken away something forcibly from his *colonus* without right yet had not returned this to the *colonus* when reclaimed, this misbehaviour should be corrected. *Conductores* should never be appointed for a bribe, because that leads to frequent change of *conductores* and thus to land left uncultivated.

The position of the *coloni* on these lands is not clear. Martyn assumes the lands of the Church were leased to *conductores*, lessee farmers, for life and to one or two heirs[95]). On each farm there were *coloni* or *rustici*. These had

[94]) Martyn (n. 83) I 164 n. 242 calls it "a tax on cultivated property exacted by the public treasury, on the 1 January, May and September. The first is at issue here, on olives." But we do not know what kind of tax, e.g., the *burdatio* was, the levy of which forced farmers to borrow money. Unfortunately, Martyn's translation does not give references. The entire ep. 1,42 deserves extensive treatment from the fiscal and financial points of view.

[95]) In ep. 5,31 *conductores* are sent out to Gaul to administer ecclesiastical lands

a semi-servile status, being technically free but tied to a specific parcel of land. These agricultural labourers were the antecedents of the serfs of the Middle Ages. The lessee farmers had to pay the rent and the imperial tax (*burdatio*)[96]). The letter, however, speaks of *rustici*, not of *conductores* who are burdened with the *burdatio*. As to the *exactio*, it appears that the *rustici* have to pay together a fixed total. This total may refer to what was fixed in the tax assessment register for the *massa*. Thus contrary to what Martyn suggests, it were the *rustici* who had to pay. The *rustici* or *coloni* were under a kind of supervision by the *conductores* as suggested by the *nuptiale commodum* and by the injustice done to *coloni* by *conductores*. How, then, could land be uncultivated if the *conductor* changed and not the *colonus*? Since it are the *rustici* who pay and not the *conductores*, and the *conductores* can oppress the *rustici*, the *conductores* must have been supervisors, appointed by the Church, and not lessee farmers. In that case a quick changing would result in a lack of supervision and might cause non-cultivation by *rustici*. The designation would have been taken over from earlier times when the land was indeed leased out and managed by those who then sub-let. It would now refer to their managing tasks. They were not tied to a plot of land[97]).

In ep. 13,35 (a. 603) the *modius* according to which the *coloni ecclesiae* had to deliver the grain to the *conductores* was false; Gregory orders to break the false weight and use the defrauded money to buy food in every *massa* for the poor and needy *coloni*. The *coloni* were of the Church and the management over them was done by *conductores* (as we already saw in ep. I.42).

III.3 A colonus as a builder:

That a *colonus* did not have to be a farmer but was a status follows also from ep. 9,43 (a. 598). In this letter Alexander Frigiscus, *colonus* of the Church of Rome, worked for three years in Catania to build a church. He apparently got paid less than he should have been. Gregorius orders to see to it that this is set right. If Alexander had been a mere builder, there would have been no reason to mention that he was a *colonus*, so it must have referred to his status and *ecclesiae nostrae* means that the Church of Rome was his *domina*[98]). Applying this

there. They must cash *pensiones*. In ep. 6,10 it appears that the income in Gaul cannot be sent over to Italy and therefore must be spent in Gaul.

[96]) According to Martyn (n. 83) I 94, these *conductores* were free people (tenant farmers) who contracted *fundi* from the Church, in which *fundi coloni* (agricultural labourers) were residing who had to cultivate these for them.

[97]) T.S. Brown (n. 68) 198–199 concedes the difficulty to get a good picture of how in North Italy the agricultural exploitation was structured.

[98]) The putting out of labour reminds of the Lex Romana Burgundionum, ed.

to ep. 9,37 (a. 598), the Argentius mentioned herein – on whom the *cura hospitalitatis* rested – will have been a tied *colonus* too[99]). Further, ep. 9,30 (a. 598) is addressed to the *coloni* and the *familia* of the Church on Sicily: It orders them to be obedient to the *defensor* of the Church and not to make difficulties. That would not easily be said to free lessees and it fits their position of dependence.

III.4 Coloni on massae

In another letter, ep. 9,129 (a. 599), to the manager of the ecclesiastical possessions of Syracuse, Gregory reminds him of the *defensor* Petrus who originated from the *massa ecclesiae nostrae Iutelas*: evidently a *colonus*. Petrus must be reminded that his sons may not marry a woman from anywhere but only from the *massa* to which they are bound by law and by their *condicio* (*qua lege ex condicione ligati sunt*). This must be made clear to all *coloni*. They may not marry people other than those born on the same *massa*. Such a marriage might lead to the departure of a *colonus* from the *possessio* he or she is tied to and to live elsewhere. They have to live and marry on the *massa* where they were born. This makes clear that the *coloni* are *originarii*, bound to their *origo* which is here the *massa*. Not surprisingly, if the *massae* were the administrative unit for the authorities or Church. A *massa* was a complex of *fundi* which were administered and managed as one unit – a managerial system we also see in the case of Heroninos in the third century AD[100]). They must stay on it and work there. Also in a donation of 587 *coloni* are part of the *massa*[101]). The case of Alexander Frigiscus does not have to contradict this: He may have worked elsewhere as builder with permission or on order of the Church. That he or she might marry within the *massa* may have given some

F. Bluhme (= MGH Leges III), Hannover 1863, 581–592, 6,4, where that is assumed too.

[99]) In 9,37 Argentius, *colonus ecclesiae nostrae*, has to perform the *cura hospitalitatis*. For that reason, he has to get a piece of land free from contributions to the Church to fulfill his duty for the rest of his life; for the *cura hospitalitatis* see R. Rizzo, Papa Gregorio Magno e la nobiltà in Sicilia, Palermo, in: Biblioteca dell'Officina di Studi Medievali 8 (2008) 239–240. The Byzantine officers had the right to demand compulsory services from the local population, T.S. Brown (n. 68) 116. References to this are also in the correspondence of Gregory the Great and in the Summa Perusina 2,7,23 (incl. *hospitalitas*). There was also corruption, see Brown ibid. 117–125.

[100]) See D. Rathbone, Economic Rationalism and Rural Society in Third-Century AD Egypt: the Heroninos Archive and the Appianus Estate, Cambridge 1991, 22–43.

[101]) Reg. Epist. Greg., Epp. 2 Appendix I, p. 437.19/20: *cum mancipiis, colonis suis vel cum omni iure et proprietate eorum*.

choice of partner, but that he or she may not marry outside the *massa* must have curtailed him or her in the freedom of marriage. At least any division of offspring as foreseen in CTh 5,18,1 and later Novels (Nov.Val. 31 and 35,19) would be prevented by this since both parents and their offspring would belong to the same *massa*. That legislation was issued for migrated *coloni*, to bring order in obscure situations by returning offspring to the *origo* of their parent. Here such situations would be prevented. Within the *massa*, transferring *coloni* was possible since the estates belonged to the same owner (CJ 11,48,13 pr., a western constitution. It implies that the status of the *coloni* was one of sufficient subjection that this inroad on the freedom of marriage was possible.

III.5 The case of the Jews in Luni:

In ep. 4,21, of May 594, to Venantius, bishop of Luni (in North Italy on the border between Liguria and Tuscany, near modern La Spezia, occupied by Narses in 552)[102]), it appears that Jews in Luni had Christians as slaves. Pope Gregory feared that these simple souls might be converted and circumcised, not by persuasion but by force. So he ordered Venantius to make clear to their owners (the Jews) that according to the law Jews were not allowed to own Christian slaves, and these became free (*secundum piissimarum legum tramitem*). Venantius must set them free according to the purport of the law (*ex legem sanctione*). This is indeed the contents of CJ 1,10,1 (a. 339) and 2, a constitution of Justinian[103]). As to those Christians who worked on the fields of the Jews and who had to render *pensiones* to the Jewish owners (likely of the same nature as those in ep. 1,42 for Sicily, namely rent in kind, or the amount of the land tax burdening their plot) Gregory wrote the following:

> Hi vero qui in possessiones eorum sunt, licet et ipsi ex legum districtione sint liberi, tamen quia colendis terris eorum diutius adheserunt, utpote conditionem loci debentes, ad colenda quae consueverant rura permaneant, pensiones praedictis viris praebeant, cuncta quae de colonis vel originariis iura praecipiunt peragant. Nihil eis extra haec oneris amplius indicatur. Quod si quisquam de his vel ad alium migrare locum, vel in obsequium suum retinere voluerit, ipse sibi reputet, qui ius colonarium temeritate sua, ius vero dominii sibi iuris severitate damnavit.
>
> "Those in fact who are on their landed possessions, though they themselves are strictly according to the law free, nevertheless, because they have stuck for a long

[102]) See on Luni C. Delano Smith/D. Gadd/N. Mills/B. Ward-Perkins, Luni and the 'Ager Lunensis', The rise and fall of a Roman town and its territory, Papers of the British School at Rome 54 (1986) 81–146.

[103]) Justinian imposed a fine of 30 pounds of gold and the release of the slave into freedom.

> time to the plots of land to cultivate these, namely as owing the status (*conditio*) of the place, should stay to work the farms which they have been used to, should give the payments (*pensiones*) to the said men, should do all what the legal rules prescribe for *coloni* or *originarii*. Nothing more than this burden may be imposed on them. But if anyone of these people wants to move to another place or wants to withhold his services, he should think it over for himself, how much the law on the colonate has condemned [him] for his thoughtlessness and the law of the *dominus* indeed itself with the severity of the law [too]"[104]).

In Gregory's time parts of Italy (including most north of the Po) were under Longobard rule, and the remaining parts (including Rome) and Sicily were Byzantine, where Justinian's legislation was in any case in 554 in force[105]). Luni would have just been included in the Byzantine area of the Exarchate at that time. Underlying Gregory's letter would, in that case, have been the East-Roman law, and consequently, CJ 1,10,2 by Justinian forbade Jews to have Christian slaves. If the Theodosian Code was still valid, CJ 1,10,1 (a. 339) forbade Jews to purchase or receive in any way Christian slaves and also forbade them to circumcise these slaves; otherwise, this was valid being included in Justinian's Code. One of the sanctions was that the slaves were free, but likely with their former Jewish owners as patrons. Regarding those farming for the Jews, Gregory says that, though they are strictly according to the law now free, they have lived so long on the fields, namely being obliged to the status of a place (*conditionem loci debentes*). Now the *ius colonarium* applies to them. This is the restriction of their newly gained liberty; for the rest, they are free people. It looks like the 'free' colonate. There was no legislation on Christian *coloni* tied to land, owned by Jews[106]). Further, Justinian's

[104]) The translation by Martyn (n. 83) I 303 has in the final part the freed person as the subject, who should blame himself: He has found fault with the law on the colonate by his arrogance and even with the law on property by the severity of the law for himself.

[105]) In the Sanctio Pragmatica pro petitione Vigilii (App. VII.11) (a. 554), Justinian says that he confirms (*obtinere sancimus*) the rights and laws in his *codices* which he had already sent to Italy. W. Kaiser in his Zum Zeitpunkt des Inkrafttretens von Kaisergesetzen unter Justinian, ZRG RA 127 (2010) 172–201, 193–197, interprets this as that they had already gained force by their publication. But if *obtinere sancimus* means 'we order to gain force' (as said for the law, issued after 534 and now sent), does it not imply that the lawbooks had already been sent but had not yet been declared applicable? From Nov. 14 it appears that an express order was necessary for constitutions to be valid in the newly conquered territories. It is a point that needs discussion but is not essential here for the Luni case because that took place after 554.

[106]) F.C. von Savigny, Ueber den Römischen Colonat (= Abh. Akad. Wiss. Berlin, hist.-phil. Klasse, 1822–1823), Berlin 1825, 1–16, 13, Neudruck mit Nachtrag, in: ders., Vermischte Schriften, Bd. 2, Berlin 1850, 1–66, thinks it concerns those

legislation did not know of an acquisitive prescription of *coloni*[107]). Nov.Val. 31,1 (= Brev. Nov.Val. 9,1) has an acquisitive prescription, yet for fugitive *coloni.* On the other hand, Theoderic's Edict 69 has an acquisitive prescription for curials, *collegiati* and slaves who have not contributed their *collatio* for the estate owners where they reside. Since the text also mentions *rustici*, perhaps we should read slaves as referring to *coloni*, particularly since slaves did not have to pay a *collatio.* In that case, the Edict would apply. Otherwise, Gregory's decision remains enigmatic because he had no authority to impose the colonate or change *obsequium* into colonate[108]).

III.6 The status of the coloni on ecclesiastical land:

At the turn of the sixth and seventh century *coloni* lived on estates of the Church, grouped in *massae* and exploited by *conductores.* They worked the land and were expected to pay a *pensio*, hence they had a plot of land to till. For that, they rendered grain, which was then measured and/or bought by Church officials. The money received was used for payments. The *coloni* lived in *massae* and were bound to their *condicio.* They had to work on their *massa*. That indicates the *condicio colonaria* of the Edict. Further, they were not allowed to marry outside of their *massa*. This is a new rule unless it were a strict interpretation of the obligation to stay on the farm. But if on their *massa* only *coloni originarii* lived, it would result in the whole offspring being *coloni* as well.

IV.

IV.1 The coloni in the interpretationes of the Breviarium Alaricianum (Lex Romana Visigothorum)[109]):

The South of Gaul and a major part of Spain was ruled by the end of the fifth century by the Visigoths until in 507 the Franks, who lived in the North

freed Christian slaves who were considered necessary for the fields and therefore were made *coloni*, with the proviso that if their Jewish masters wanted to withdraw them from their plot, they forfeited their *ius colonarium* and the *coloni* became fully free. I cannot read this interpretation in the text.

[107]) Some authors read in CJ 11,48,19 an acquisitive prescription of lessee-farmers, who then become 'free' *coloni*; see Sirks, Colonate (n. 2) sec. 13.2 and 13.4 for the refutation of this view.

[108]) See also Schipp, Weströmischer Kolonat (n. 6) 290–291.

[109]) Edition: Lex Romana Visigothorum, instr. Gustavus Haenel, Leipzig 1849. The Lex influenced later legal compilations like the Lex Romana Curiensis, various Epitomae, the Frankish Capitularies or even laws like the Lex Baiuvariorum. I do not deal with these since they relate to a society with a different concept of *coloni*, see Schipp, Weströmischer Kolonat (n. 6) 310ss. with a good survey. After the Franks beat the Visigoths at Vouillé in 507, the latters' rule in Gaul was restricted to

of Gaul, defeated them at Vouillé. The Visigoths retreated to Spain, keeping only Septimania (in the South of Gaul). Their kings ruled over a population of Romans and Visigoths. To provide a law compendium for his Roman subjects, the Breviarium Alaricianum was compiled by order of the Visigothic king Alaric II and confirmed by him in 506[110]). It is a selection of texts from the Theodosian Code, coupled with Posttheodosian Novels, parts of the Pauli Sententiae, parts of Gaius and some fragments from the Gregorian and Hermogenian Codes and a fragment of the Responsa of Papinianus. The collection is complete and therefore presents by way of its selection – in as far as it followed the Theodosian Code – the entire written complex of Roman law rules as currently applied in the Visigothic kingdom[111]). The texts taken from

Septimania, but the Breviary remained in force in the part of Gaul that had formerly been part of the Visigothic kingdom. The research of L. Di Cintio, L'Interpretatio Visigothorum' al 'Codex Theodosianus', I: Il libro IX, Milano 2013, eadem, Nuove richerche sulla 'Interpretatio Visigothorum' al 'Codex Theodosianus', Libri I–II, Milano 2018, is until now restricted to the Books 1, 2 and 9. As far as the texts treated by her are relevant here, they are cited; for the economic conditions see Wickham (n. 14) 102: In the North under the Franks there was a breakdown of the tax system, whereas south of the Loire land tax registration remained for a long period in force.

[110]) See on the sources of the Breviarium Haenel (n. 109); see further on this H.H. Fitting, Ueber einige Rechtsquellen der vorjustinianischen spätern Kaiserzeit, ZRG RA 10 (1872) 317–340; idem, Die sog. westgothische Interpretation, ZRG 11 (1873) 222–249; L. Wenger, Die Quellen des römischen Rechts, Wien 1954, 555–558; M. Conrat, Breviarium Alaricianum, Leipzig 1903, repr. Aalen 1963; R. Lambertini, La codificazione di Alarico II, Torino 1991; D. Liebs, Römische Jurisprudenz in Gallien (2. bis 8. Jahrhundert), Berlin 2002, 109–110, 166–176 with literature; M. Rouche/B. Dumézil (eds.), Le Bréviaire d'Alaric, Aux origines du Code civil, Paris 2008. The article herein by D. Bondue, Esclavage et colonat dans le Bréviaire d'Alaric, 91–101 does not bring anything new. Conrat's book is a rearrangement of the laws in the Breviarium in a way, reminiscent of the German Civil Code. It is helpful as a survey of the law for the Romans as under the Visigoths, but in the context of this study on the colonate, of little use because he did not use the *interpretationes* (actually, astonishing for a man so capable). For the Visigoths, lawbooks existed also, but there is no trace of *coloni* in these; see further D. Liebs, Art. Lex Romana Visigothorum, in: HRG ^{2}III, Berlin 2014, Sp. 918–924; further, Sirks, Colonate (n. 2) sec. 45 and 46 in detail on the legal position of the *coloni* in the Breviarium.

[111]) J.M. Piquer Marí, El colonato visigodo a través de las interpretaciones del Breviarium Alarici al Codex Theodosianus, in: Codice Teodosiano e tradizione giuridiche in Occidente (= Ravenna Capitale), Santarcangelo di Romagna 2016, 113–163, speaks of a Visigothic colonate. Ibid. 118 note 16 he assumes that the norms of the Breviary did not only concern *coloni* of Romans, contrary to what Schipp, Weströmischer Kolonat (n. 6) 313 thinks. Piquer bases his research on the Breviary.

the Theodosian Code, the two other Codes, the Novels and the Pauli Sententiae are usually accompanied by *interpretationes*[112]). What is of interest is the places where another view than that of the Code peeks through. The Breviarium answers the question of which law in the Visigothic territories applied to the Roman inhabitants. These texts were taken from the *leges* and *ius*, the Visigothic king had no authority to change them (he could only issue edicts for the Romans). But their application might be different and indeed often was: the *interpretationes* demonstrate this[113]). Thus, to know the law on the colonate in the late fifth century Visigothic kingdom, we have to consider in the first place the *interpretationes*.

The position of the *colonus* had changed considerably[114]). A central text is CTh 5,17,1 (Brev. 5,9,1)[115]) , which deals with the return of a fugitive *colonus*.

> Apud quemcumque colonus iuris alieni fuerit inventus, is non solum eundem origini suae restituat, verum super eodem capitationem temporis agnoscat. 1. Ipsos etiam colonos, qui fugam meditantur, in servilem condicionem ferro ligari con-

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But this collection was made for the Roman subjects, not the Visigoths. Unless we find Visigothic sources which deal with *coloni*, as we are able for the Burgundians, and unless these show differences with the Roman colonate (as we do not see with the Burgundians), it is from a legal point of view terminologically not warranted to speak of a Visigothic colonate; even if we find that the Visigoths used the colonate and applied Roman law rules. It may be different with changed economic or social conditions. But the Code of Euric mentions no colonate. For the presence of bound *coloni* we have as evidence such testaments as that of the Roman Victor of Huesca, see Sirks, Colonate (n. 2) sec. 49 and below. M. Bueno, El Breviario de Alarico (= Atti Accademia Costantiniana XIV), Napoli 2003, 629–637, here 632 cites Reccesvinth who in 660 forbade the use of Roman law from now on (Liber Iudiciorum 2,1,10). That indicates its application until then. How do we know whether the compilers focused on productivity? Should we not then have had more constitutions like CJ 11,48,1?

[112]) See Sirks, Colonate (n. 2) sec. 45 and 46.

[113]) See Di Cintio (n. 109). Her work deals with other themes. An example: the last phrase of the *interpretatio* to CTh 1,4,3: *Sed ex his omnibus iuris consultoribus ex Gregoriano Hermogeniano Gaio Papiniano et Paulo quae necessaria causis praesentium temporum videbantur elegimus.*

[114]) On this A. Santilli, Quaedam servitus, in: Societas – ius, Munuscula di allievi a Feliciano Serrao, Napoli 1999, 275–291, here 280; A. Koptev, The Colonate in the Theodosian Code, in: J.-J. Aubert/Ph. Blanchard (eds.), Droit, Religion et société dans le Code Théodosien, Genève 2009, 261–285, here 264–270; Piquer Marí (n. 111) 113–163; Sirks, Colonate (n. 2) sec. 46 for the change in the Lex Romana Visigothorum and the *interpretationes*.

[115]) Piquer Marí (n. 111) 144–151. Since the Mommsen/Meyer edition of the Theodosian Code is the modern standard edition, references are to this edition when referring to a text of the Breviary.

veniet, ut officia, quae liberis congruunt, merito servilis condemnationis compellantur inplere.

interpretatio: Si quis alienum colonum sciens in domo sua retinerit ipsum prius domino restituat et tributa eius quamdiu apud eum fuerit cogatur exsolvere: ipse vero qui noluit esse quod natus est in servitium redigitur.

"Any person in whose possession a colonus who is subjected 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. 1. Coloni also who meditate flight must be bound with chains and reduced to a servile condition, so that by virtue of their condemnation to slavery, they shall be compelled to fulfill the duties that befit freemen.

interpretatio: If any person should knowingly detain in his own household a colonus that belongs to another, he shall first restore the man himself to his owner, and he shall be compelled to pay his tributa for as long a time as the man was with him. But the colonus himself who was unwilling to be what he had been born shall be reduced to slavery"[116]).

First, the status as phrased in the *interpretatio* experienced a shift. The *colonus* is born into his status and he may not deny this. Since he can be enslaved he was still a free man before, be it subjected to the *potestas* of a landowner, as follows from the *interpretatio* to CTh 5,19,1 (Brev. 5,11,1):

Non dubium est colonis arva, quae subigunt, usque adeo alienandi ius non esse, ut, et si qua propria habeant, inconsultis atque ignorantibus patronis in alteros transferre non liceat.

interpretatio: In tantum dominis coloni in omnibus tenentur obnoxii ut nescientibus dominis nihil colonus neque de terra neque de peculio suo alienare praesumat.

"There is no doubt that coloni do not have the right to alienate the fields that they cultivate, to the extent that even if they have any belongings of their own, they may not transfer them to others without the advice and knowledge of their patrons.

interpretatio: Coloni are held obligated to their owners in all things, to such an extent that without the knowledge of their owners they may not presume to alienate either any of the land or any of their own peculium"[117]).

Second, was there in 506 still a link to the fiscal system? CTh 5,17,1 refers to the *capitatio*, the poll tax, but the *interpretatio* to *tributa*. It is not clear. According to Wickham, the taxation system had already changed under the

[116]) Translation: The Theodosian Code and Novels and the Sirmondian Constitutions, ed. Clyde Pharr/Theresa Sherrer Davidson/Mary Brown Pharr, Princeton 1952. Mark that meditation to flee sufficed to be chained in order to work, although intent in general did not suffice for condemnation to a punishment. Thus contrary to Pharr's translation suggesting a change in personal status it must have implied a correctionary measure.

[117]) Translation ibid.

Visigoths because the kings treated the land as their personal property, which did away with a complex tax infrastructure. What remained in the Frankish period was the landtax, which was likely only levied on a local level[118]). Wickham has distinguished two systems of public revenues and wealth: one is tax-based, the other land-based (or rent-based). In the first, public revenues consist of taxation through a fiscal system of levying from everyone; in the second, only the land-owning population pay what we may call rent (though not rent as in a lease). In the Roman empire the emperor derived much income also from his own lands and the system was somewhat mixed. However, under the barbarian kings, there was a shift to the land-based system, which reduced the need for a fiscal organisation[119]). In such a shift, the need for and possibility of levying a poll tax would disappear. On the other hand, if the taxation on land was now conceived as a rent to the king, every single part of the land might be assessed individually. Further, LRB c.38,8, LB c.67, and P.Ital. 3 and 13 attest to the existence of *colonicae* (see above)[120]). In that case *tributa* may refer to the tax quote imposed on the settlement. Since the *colonus* had to work the land, he would also have to produce the tax quote, although not he but the owner had to pay. If a *colonus* had absconded, that tax would not have been paid. In that case, the person who hid and used the fugitive *colonus* would not have to pay the poll tax but the land tax for the *colonica*.

If we may accept this reading of the *interpretatio* we may assume that the Alarician *interpretatio* presents a factual transition in the colonate while the copied constitution still represented the official view (connected with other included texts on tax imposition and levy; it may have been wishful thinking, under the Franks it changed anyway). What also argues for this is the selection of CTh 5,18,1 (Brev. 5, 10,1) and the Nov.Val. 27, 31 and 35 (Brev. Nov. 8, 9 and 12) in the Breviarium. All deal with the recall of fugitive *coloni* and *colonae* and the claim to offspring. It follows from the *interpretatio* to Nov.Val. 31, which refers to new constitutions (i.e., Novels) that the Alarician compilers saw a coherence here. All these texts only mention the submission to the colonate based on descent (see also above, under the ETh). There is no text in the Breviarium nor in the *interpretationes* where a clear link to fiscality as a necessary element of the colonate is mentioned; compare in the east in

[118]) Wickham (n. 14) 102–108.

[119]) Wickham ibid. 58–59, 86.

[120]) It is tempting to see here the precursor of the demesne and the manorial system, but Wickham (n. 14) 263–264 assumes a rarity of this in the immediate post-Roman period.

CJ 11,48,10, 11,48,20, and 11,49,1[121]). These texts will have led the compilers to see the colonate as simply a personal status, which descended from father or mother on offspring. It is possible that this was already existing in 468, or that it came about after 476; we do not know. However, in 506 it was the view in Visigothic territory[122]).

V.

V.1 The coloni in the formularies in the Frankish kingdoms (sixth–seventh century)[123]) :

The Breviarium (Lex Romana Visigothorum) applied to the Visigothic lands in Gaul and Spain. Those in Gaul were, for the greater part, conquered by the Franks in 507. We may assume that the Romans continued, at least in the beginning, to live according to their own law, just as in Visigothic Spain, and that the colonate continued. As stated before, the fiscal structure may have changed. But although the Breviarium and the *interpretationes* continued to be authoritative, we do not know much about the law as actually applied or interpreted. There are some compendia of later times[124]), and there are collections of paragon formulas, used to record legal deeds. In several of these references are made to Roman law or Roman law institutions, such

[121]) The Breviarium has copied a number of texts on taxation: CTh 11,1,15; 11,1,17; 11,3,3; 11,3,5; 11,6,1; 11,7,4; 11,7,20; 11,11,1. They deal with the taxation of the land and the levy of this and provide a minimal fiscal structure. There is no sign of poll tax.

[122]) For the other texts on *coloni* in the Breviarium see Sirks, Colonate (n. 2) sec. 45 and 46. They show that the colonate was, apart from the transmission now severed from the poll tax, the same as in the Theodosian Code and Post-Theodosian Novels.

[123]) For the economic conditions, Wickham (n. 14) 102ss. sees in the North under the Franks a breakdown of the tax system, whereas south of the Loire land tax registration remained to some extent. The formularies of Angers and Marculf: two Merovingian legal handbooks translated with an introduction and notes by Alice Rio, Liverpool 2008, 36 points out that the view of "unfreedom" in these formularies is framed in Roman legal terms but will have differed in social practice. The legal jargon was chosen for prestige and because of its intellectual foundations, yet they were applied to an actual and different situation. She is right. When we read these texts, it is clear that the world behind it is different from the fourth century, even if we consider that social dependence was omnipresent in that century too; see further B. Sirks, Dependencies in the Formulae in the Frankish Kingdom (forthcoming).

[124]) Such as D. Liebs, see Scintilla de libro legum, Römisches Vulgarrecht unter den Merowingern, Die Fuldaer Epitome der Lex Romana Visigothorum, rekonstruiert, übers. und komm. von D. Liebs mit einem Beitrag von G. Schmitz, Berlin 2022.

as the recording of a legal act in the *gesta municipalia*. They also mention *coloni*. There are also phrases or terms which strongly suggest that some or many of these formulas were copies, adapted or not, of formulas used in the Roman empire, in any case in the west, by scribes and notaries. Such a collection is known for Spain, and Jakab has shown that in the empire practice used similar models for sale deeds. Hence it is possible that in other provinces such collections existed too[125]).

The probably oldest formulas are those from Angers, existing in 676 and dating probably from before 600 AD (they may represent a collection with several phases of addition and editing)[126]). Of the about 60 texts ten[127]) deal with somebody being subjected to servitude to a person, or being released from such servitude: This is rather a considerable number. A later collection drawn up by a monk Marculf, the Formulae Marculfi, dates from the second half of the seventh century[128]). It counts 52 texts, of which five deal with the same situation. A similar picture arises from other collections, like

[125]) For Spain, see K. Zeumer (ed.), Formulae Visigothicae, in: MGH Legum sectio V (n. 5) 572ss., collected shortly before 615–620; for sale deeds and provincial praxis see É. Jakab, Praedicere und Cavere, München 1997, and recently É. Jakab, Prozess um eine entlaufene Sklavin (P.Cair.Preis.2 1): Vertrag in der provinzialen Rechtskultur, ZRG RA 125 (2018) 475–526. She deals with the first three centuries, but the praxis she describes continued. In Egypt from the early fifth century onwards, the *tabellio*, appointed by the state, composed legal documents and served as a notary: B. Palme, The Range of Documentary Texts: Types and Categories, in: The Oxford Handbook of Papyrology, ed. R. Bagnall, Oxford 2011, 364; J.L. Fournet, The Multilingual Environment of Late Antique Egypt: Greek, Latin, Coptic, and Persian Documentation, in: The Oxford Handbook of Papyrology, ed. R. Bagnall, Oxford 2011, 428 mentions as an example of collections of model Latin letters P.Bonn, with a strong legal character. Hence it is not besides all probability that the *tabelliones* disposed of models too, if only on basis of or through their own archives. Similarly the *gesta municipalia* could have served as basis.

[126]) K. Zeumer (ed.), Formulae Andecavenses, in: MGH Legum sectio V (n. 5) 1–3; further W. Felgentraeger, Zu den Formulae Andecavenses, in: M. Kaser (ed.), Festschrift Paul Koschaker, Bd. 3, Weimar 1939, 366–375; A. Uddholm, Formulae Marculfi: Études sur la langue et le style, Uppsala 1953; Rio (n. 123) 1–36, 38–46.

[127]) Form. Andecavenses (n. 126) 2, 3, 10, 17, 18, 19, 20, 23, 25, 38; 45: division of slave children analogous to the division of children of *originarii*?

[128]) K. Zeumer (ed.), Formulae Marculfi, in: MGH Legum sectio V (n. 5) 32–112, viz. form. 28, 32, 33, 34, 35. They were a collection drawn up by the monk Marculf, see ibid. 32–36; Rio (n. 123) 1–36, 104–123 who dates the collection at the second half of the seventh century, 107–113. There are later collections of *formulae*, but here, the transition from the Roman empire to the barbarian kingdoms is of interest.

the Formulae Senonenses and Cartae Senonicae, i.e. from Sens and drawn up between 768 and 775. Likewise, we possess a collection of *formulae* used by Visigoths, probably collected in Spain between 615 and 620 and which may also have applied in Visigothic Septimania. It counts 46 texts, of which eight[129]) likewise deal with subjection to or release from servitude. All contain Roman legal terms, but are often mixed with other terms, and they are phrased in the Roman vernacular of those days and not in correct late antique Latin. They pose the question of whether we are confronted here with remnants of the Roman colonate. Can these texts inform us about the *coloni* in the period these formularies were drawn up or collected, thus in the seventh century? Can they inform us also for the previous times and indicate a link with these?

In the Theodosian Code in 438 as it is transmitted to us some matters relative to the colonate are not present but which must have existed: either in Book 5 as the likeliest place or in another recorded part of the law existing in 438, like in the Hermogenian Code (cfr. LRB c.14,6), or which might have been customary law. One is the voluntary engagement of the colonate, evidenced in a *conditionale instrumentum* (or *scriptura*, or *alia chartula*), and its counterpart, the *confessio* or *depositio*, both mentioned in CJ 11,48,22 pr.–2 (a. 531) for the east. The first would have been a deed in which somebody should have obliged himself to the colonate. It could have been deposited (i.e., recorded in the *gesta municipalia*, or registered in the census through *adscriptio*), and the *colonus* to be should have performed a *confessio* (by which we may understand the equivalent of *agnoscere* with public functions, that is, accepting the obligation). Thus, two independent pieces of evidence should be present to prove that a person was voluntarily subjected to the colonate. Theoretically, Justinian could have introduced this in 531, but since he says that it is *nostro iure* not to judge on the evidence of only one testimony in these matters, we may assume that it was the law before 531[130]).

The material which provides an answer to the above questions is nr. 19 of the Formulae Andecavenses and other similar texts regarding the engage-

[129]) K. Zeumer (ed.), Formulae Senonenses, in: MGH Legum sectio V (n. 5) 182–226, viz. *form*. 1–6, 32. They originated in Sens, as did the Cartae Senonicae and the Formulae Senonenses recentiores, Zeumer ibid. 182–185: edited before 775.

[130]) See on this method Sirks, Colonate (n. 2) sec. 2. Theoretically, an emperor may have introduced between 438 and 531 voluntary entry into the colonate. If so, this *novella* would have been outdated (and therefore not included) in Justinian's Code (a. 531). Yet this possibility is ruled out, in any case in essence, by other evidence which proves that it was already the law as existing in 438.

ment of a free person (nrs. 2, 3, 25; nrs. 2 and 28 of the Marculfi Formulae; nrs. 4 and 20 of the Cartae Senonicae; nr. 32 of the Formulae Visigothicae)[131]); nrs. 17 and 18 of the Formulae Andecavenses regarding the force of evidence of the *conditionale instrumentum* (CJ 11,48,22,2); nrs. 20 and 23 of the Formulae Andecavenses regarding the release of the bond (with parallels in nrs. 32–34 of the Marculfi Formulae Liber II, the Cartae Senonicae nrs. 1 and 43, and nrs. 1–6 of the Formulae Visigothicae).

V.2 Reclaiming a person

We have seen that the law of 438 knows of a prescription of 30 years for the *coloni originales* by which the claim of the estate owner extinguished, a limitation of prescription confirmed for the west by Valentinian (Nov.Val. 27). Nov.Val. 31,5 (a. 451) adds to this that if the *colonus* were with a new master, this master, or the one he had stayed longest with during those 30 years, would acquired the same rights over him as had his former master. The rule remained in force as the Breviarium Alaricianum and LRB show (Brev. Nov.Val. 9 = Nov.Val. 31, LRB c.37,6). In the territory of the ETh this rule was not applied.

Do we find a remnant of this in the Frankish kingdoms? Nr. 10 of the Formulae Andecavenses is a formula for recording a procedure's outcome over somebody who has been claimed for services due (*servitium*)[132]). Neither his

[131]) The Formulae Visigothicae were drawn up in the Visigothic kingdom, in Spain: Zeumer (note 125) 573.

[132]) Form. Andecavensis (n. 126) 10: *(a) Incipit iudicius. Veniens homo nomen illi ante venerabile vir illo abbate vel reliquis viris venerabilibus adque magnificis, quorum nomina subter tenuntur inserti, interpellabat aliquo homine nomen illo, quasi servicium ei redeberit; et illi taliter de presente aderat, et hoc fortiter denegabat, quod servicium numquam reddebebit. Interrogatum fuit ipsius illo de sua agnacione alius homines in suum servicium habebat, anon; et ipsi illi taliter locutus fuit, ut hoc non redebebat; nam ipsi illi servicium ei non redebebat, at de agnacione aut de conparato. Ut hoc inter se intenderent, ut dura ipsi illi alius homines de sua agnacione non redebebat, sic visum fuit ipsius abbati vel quibus meus aderant, ut ipsi homo aput homines 12 [sic* Zeumer*], mano sua 13 [sic* Zeumer*] in basileca domne illius in noctis tantis coniurare deberet, quod de annus 30 [sic* Zeumer*] seu amplius servicium ei nonquam redebibet. Se hoc facere potebat, ipsi illi de hac causa contra ipso illo conpascere deberit; sin autem nun potuerit, hoc inmendare studiat. /(b) Incipit noticia ad supradicto iudicio. Noticia sacramenti, qualiter vel quibus presentibus ingressus est illi aput homines tantus ingenuos super altare sancti illius Andecavis civetate, pro eo quod homine nomen illo ipso pro servicium interpellabat ad vicem genetore suo seu et genetrice sua. Iuratus dixit, iuxta quod iudicius ex hoc loquitur: 'Per hanc loco sancto et divina omnia, quod hie aguntur, de annis 30 [sic* Zeumer*] seu amplius sub ingenuetate nomen resedi; nam et ipsi superius nomenatur servicium non rededi nec*

parents were subjected to this, nor was he reclaimed for this in the past thirty years. Hence he is free from this burden (nb: it is the claim for his person, it does not say anything about his whereabouts or present duties). The particulars of this formula recall the conditions set for the colonate in 451 in the west, although the word *originarius* or *colonus* is not used. It is possible that as such the formula depends on a model, used in that time, and that its contents changed due to changes in social relations. But if we apply the formula to the situation in 451, we see that indeed the criteria, applicable in 451, are checked: if the parents are *originarii*, then by implication the defendant must be, by descent, an *originarius* also; and the same goes for the criteria as valid in 438. Further, if he has not been claimed for during the last thirty years, his master, the plaintiff, has lost all rights. The 30 years comply with the extinctive prescription of 30 years for *coloni originales* existing in the Breviarium, the Edict of Theoderic, and the Lex Romana Burgundionum. It is of no concern if he is at present with somebody else, since this person, if any, has not claimed him. In such a case he is to be acquitted and free. The formula may very well date from the middle of the fifth century. It would have had use in the Visigothic and Burgundian kingdoms. Thus it is possible that it survived into the Frankish kingdom which included Angers. The references to the kinship and prescription of thirty years argue for this. That

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redebio; per reverencia loci'. Id sunt, quorum praesencia; translation Rio (n. 123): "(a) Here begins a judgment. The man named A, having come before the venerable Abbot B and other venerable and magnificent men, whose named are entered below, accused the man named C of owing him service; and C was also present, and denied strenuously that he ever owed him service. This C was asked whether [A] had other persons from his family in his service or not; and he said that he did not, and that he himself did not owe him service, whether from birth or as a result of a sale. When it was put to them that this [A] did not receive [service] from other persons from [C's] family, it was decided by the abbot and those who were with him that this man [C] should swear, together with twelve men, thirteen including himself, in the church of Lord D, after a delay of n. nights, that he had never owed him service in thirty years or more. If he managed to do this, this A should give compensation regarding this claim against C; but if did not manage it, [C] should strive to give compensation to [A]./(b) Here begins the record for the above judgment. Record of an oath, [stating] in what manner and in whose presence C came, along with n. free men, to the altar of Saint D, in the city of Angers, because the man named A had accused him of [owing him] service on behalf of his father and mother. Having sworn, he said, according to what had been said in the judgment regarding this: 'By this sacred place and all the divine things which take place here, I have lived under a free status for thirty years or more; and I have not given, nor will I give service to this man mentioned above; [I say this] with reverence for this place.'/ These are the persons in whose presence …"

the text does not have *originarius* or *colonus* – but merely speaks of *servitia* due – could be a particular, but it might also be the result of a change in the colonate which put the rendering of services into the foreground (as we see in the ETh). It did not concern a slave because the focus would have been on the status, not services. The general limitation of thirty years also applied to the *rei vindicatio* (an exception in the *interpretatio* to Brev. 4,8,3, for offspring of *colonae* and *ingenui)*[133]). In Nr. 10 both parents are checked for *servitium* and a runaway slave would have had no chance. On the other hand, we should not forget that CTh 5,17,1 also underlines that *officia* must be performed. All in all, the characteristics of Formula nr. 10 are strong enough to support the assumption that this formula of Angers is at least a continuation, perhaps with some slight adaptations, of an earlier formula of the Roman empire as regards the colonate, that this can be applied to other *formulae* as working hypothesis, and that these formulas can and may be used to reconstruct the situation on the colonate in the middle of the fifth century or in 438.

Several formulas from Sens also deal with the reclaiming of persons: of a slave, bought by a *colonus* of a monastery, who had fled; of a fugitive *colonus*, and the following of a fugitive *colona*. The latter is more detailed, the woman denying being a *colona* (form. Senonensis rec. 5). The plaintiff *repetebat ei, dum diceret, eo quod avus suus nomen ille quondam vel genitor suus ille quondam coloni sancti illius de villa illa fuissent, et ipsa femina colona esse debebat et ipso colonitio malo ordine de ipsa casa Dei effugeret* / He replied to her, as he said, that her grandfather named X once, or her father Y once were *coloni* of Saint Z of villa A, and this woman had to be a *colona* and contrary to the *colonitium* (colonate)[134]) had fled from her own house/farm. (In nrs. 2 and 4 is added that the defendants were negligent, apparently in being there and performing their duties.) The defendant *fortiter denegavit et taliter dixit, quod avus suus ille quondam nec genitor suus ille quondam coloni sancti illius de villa illa numquam fuissent, nec ipsa colonitio de capud suum ad ipsa casa Dei sancti illius numquam redebebat, sed de patre et de matre bene ingenua nata vel procreata fuisset* / She strongly denied and said thus,

[133]) Here a limit of sixteen years is set. But the formula does not mention an *ingenuus* father.

[134]) Lexicon Latinitatis Medii Aevi, Turnhout 1975, s.v. "colonitium, c.: colonaticum: cens; colonaticum": "redevance que doit payer un colon"; Mediae Latinitatis lexicon minus, ed. J.F. Niermeyer/C. van der Kieft, Leiden 2002, s.v. "colonaticus": "les prestations dont les colons sont redevables". Yet these meanings do both not fit the *effugere malo ordine* from the farm in the text, nor does it fit the ablative in the following with the *redebebat*.

that neither her grandfather X nor her father Y had ever been once *coloni* of Saint Z of villa A, nor that she was bound by colonate in person to that very house of God of Saint Z, but that she had been born or procreated as freeborn in good order[135]).

The woman's arguments, which will have been the ones effective for a discharge (she is discharged) are, that a) nor her grandfather or father were ever *coloni* of the church or *villa*, b) she never rendered services to that house, c) but that she was born as full-blooded *ingenua* from both paternal and maternal side (i.e., both were *ingenui*). These arguments tally with the Roman rules about the descent combined with an estate of residence, and that she never rendered services will have supported her proof. In this case, an oath has to be performed by family members from both sides. There is no reference to a registration in public records. This procedure is confirmed by the *carta sacramentale* (form. Senonensis rec. 3) where a similar claim is made and the defendant argues that he is born from a Frank father and a Frank mother, which apparently makes a denial of having ever served superfluous[136]).

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[135]) Zeumer (n. 129) 212–214: Formulae Senonenses recentiores nrs. 1–2, 4–5. In nr. 3 a slave is called *colonus*, according to Rio (n. 123) 24 it means unfree tenant; in 6 a *colona* buys a slave. Nr 4 is the formula for a successful claim. Nr. 5 in full: *Notitia de colona evindicata. Veniens homo aliquis nomen ille, avocatus sancti illius de monasterio sancti illius vel illius abbatis de ipso monasterio, die illo in mallo publico ante inlustre viro illo comite vel ante quam pluris personis, qui ibidem aderant ad universorum causas audiendum vel recta iudicia in Dei nomine terminandum, qui subter firmaverunt, femina aliqua nomen illa ibidem interpellabat. Repetebat ei, dum diceret, eo quod avus suus nomen ille quondam vel genitor suus ille quondam coloni sancti illius de villa illa fuissent, et ipsa femina colona esse debebat et ipso colonitio malo ordine de ipsa casa Dei effugeret. Sic ipsa femina in presente adstetit, et ab ipsis personis ei interrogatum fuit, se ipsa causa esset veritas, anon; sed ipsa in omnibus fortiter denegavit et taliter dixit, quod avus suus ille quondam nec genitor suus ille quondam coloni sancti illius de villa illa numquam fuissent, nec ipsa colonitio de capud suum yso ad ipsa casa Dei sancti illius numquam redebebat, sed de patre et de matre bene ingenua nata vel procreata fuisset. Sic ab ipsis personis taliter ei fuit iudicatum, ut apud 12 [sic* Zeumer*] homines parentes suos, octo de patre et quattuor de matre, si fermortui non sunt, et si fermortui sunt, apud 12 [sic* Zeumer*] homines bene Francos Salicos, in ipso mallo super altario sancti illius, in proximo mallo, quem ipsi comis ibidem tenit hoc coniurare debeat, quod avus suus ille quondam nec genitor suus ille quondam coloni sancti illius de monasterio illo de villa illa numquam fuissent, nec ipsa colonitio de capud suum ad ipsa casa Dei non redebeat. Et si hoc in eo placito, sicut superius insertam est, coniurare potuerit, de ac causa ducta et secura resedeat; sin autem non potuerit, ad ipsa casa Dei se recognoscere faciat. Datum ibi.*

[136]) Zeumer ibid. 212: 2. *Carta sacramentale. Veniens avocatus sancti illius de*

V.3 The obnoxiatio:

Next to formularies for reclaiming a person, subjected to services or the seventh-century colonate there are formularies in which somebody subjects himself to the state of *servitium*: the *obnoxiatio*, which word reminds of the *obnoxietas* of the late antique Roman law[137]). Form. Andecavensis 19 contains the submission of somebody to another through an *obnoxiatio*. He mentions the bad times, his hunger, his poverty, which force him to submit his person – of course of his fullest free will – to the power of another, for which he receives a certain sum (presumably to pay off debts). After this the other person, now his master, may do with him what he wants, as with other unfree persons in his household. A standard penal clause follows, with the fine divided between the master and the fisc[138]). Here we find the same aspects

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monasterio illo a seu et illo a abbate de predicto monasterio illo, castro illo, in mallo publico ante inlustre viro illo comite vel aliis quam pluris, qui ibidem aderant, interpellabat homine alico nomen illo. Repetebat ei, dum diceret, eo quod genitor suus nomen ille a colonus sancti illius de villa illa fuisset, et ipse colonitio de capud suum ad ipsa casa Dei redebeat et exinde neglegens aderat; et ipse in presente hoc fortiter denegabat et taliter dedit in suo responso, quod de patre Franco fuisset generatus et de matre Franca fuisset natus. Unde tale sacramento per suam fistucam visus fuit adchramire, et taliter ei fuit iudicatum, ut ac causa apud proximiores parentes suos, octo de parte genitore suo et quattuor de parte genitricae suae, si fermortui non sunt, et si fermortui sunt, apud duodecim Francos tales, qualem se esse dixit, in illo a castro, in basilica sancto illo, ubi reliqua sacramenta percurrunt, in 40 [Zeumer reads ZL] noctes in proximo mallo post banno resiso hoc debeat coniurare.

[137]) The term is used in Carta Senonica 4 (n. 130), further in Form. Marculfi (n. 128) II, 28; but the act as such is also attested in other *formulae*.

[138]) Form. Andecavensis 29 (n. 126): '… *Et pro necessitatis temporam et vidi conpendium me eciam sterilitas et inopie precinxit, ut in aliter transagere non possum, nisi ut integrum statum meum in vestrum debiam implecare servicium. Ergo constat me, nullo cogente imperio, sed plenissima volumtate mea, et accipi a vobis pro suprascriptum statum meum, hoc est, in quod mihi conplacuit, in auro valente soledus tantus, ut, quicquid ab odiernum diae de memetipso facere volueris, sicut et de reliqua mancipia vestra obnoxia in omnibus, Deo presole, abeatis potestatem faciendi. Et si quis vero, aut ego ipsi aut aliquis de propinquis meis vel qualibet extranea persona, qui contra hanc vindicionem, quem ego bona volumtate fieri rogavi, agere conaverit, inferit inter tibi et fisco, soledus tantus coactus exsolvat, et quod repetit vindecare non valeat, et haec vindicio atque volomtas mea perenni tempore firma permaniat.* …' / 'Both because of the necessity of these times and of life, and also because I am oppressed by the combined weight of hunger and poverty, I am unable to act in any other way than to transfer my unimpaired status into your service. It is therefore established that I, compelled by no authority, but with my fullest will [according to Rio (n. 123), some text must have been lost here], and I received from you in exchange for my aforementioned [free] status the price which pleased me, worth *n.*

underlined as in Nov.Val. 31,5: want and the need for sustenance[139]). Later formulas mention the same elements and may serve to sustain the evidence of the Formulae Andecavenses.

V.4:

The purpose of the above was to see whether in the wording of the formularies traces may be found of earlier formularies, relevant for the colonate and practised in the sixth century in the Visigothic kingdom, or even before that time. Their contemporary use (if we may say that of texts which may have undergone one or more editions) was left out, because the transition of the Roman colonate is subject of our research. The undoubtedly interesting question of whether the colonate of the seventh and later centuries developed out of this, is left to other research; Schipp has done much work in this area. In my opinion it is indeed possible to deduce from form. Andecavenses 10 and 19 how a presumed *colonus* in the sixth or fifth century was examined about his status and the outline of the deed by which a free person entered by agreement the colonate. Being able to trace back from the formularies a line to the fifth-century western empire and at the same time being able to refer to an existing rule in the east (CJ 11,48,21,1) means that it must have been existing legal practice in 438, perhaps even phrased in a constitution now lost of the Theodosian Code which would have been the common basis for both

solidi in gold, so that from this day you may have the power in every way, with God's favour, to do whatever you want with me, as with the other unfree servants in your service. And if anyone, whether myself or any of my relatives or any other person, attempts to act against this act of sale, which I have asked to be made with good will, let him be compelled to pay *n. solidi* [to be divided] between you and the fisc, and let him be unable to assert his claim, and let this act of sale and my decision remain firm for all time'; translation based on Rio (n. 123) who translates *mancipia* by "unfree servants". Usually *mancipium* means slave, but it is indeed unclear whether we are dealing with slaves or people like the obnoxiated person. The plea reminds of Pieous, see Sirks, Colonate (n. 2) note 144.

[139]) Likewise nr. 32 of the Formulae Visigothicae, ed. Zeumer (n. 126) 589, refers to hardship and necessity which obliges to an *obiurgatio*. That can be done since everybody *meliorandi an deterioriandi liberam habeat potestatem* / has the free power to improve or worsen [his status]; and here the person decides: *'statum meum venundandum proposui'* / 'I have proposed to sell my status'. The mention of improving or worsening one's status may have been taken from PS 2,18,1, as Zeumer ibid. 589 n. 3 also suggests, referring further to Carta Cluniacensis 1, ed. A. Bernard/A. Bruel, Recueil des chartes de l'abbaye de Cluny I, Paris 1876, nr. 30: *quod insertum est quod omo bene ingenuus estatum suum meliorare et pegiorare potes*. *Obiurgatio* means reprimand; Zeumer proposes the emendation *obiugationis* or *obligationis*. Perhaps the rubric originally read *obnoxiatio.*

developments in east and west. Its disappearance can even be explained. If there has been such a constitution, the inclusion of CJ 11,48,21 (a. 530) would have made its inclusion in Justinian's second Code superfluous and explain its absence. It must have been possible to enter the colonate voluntarily, and a deed testifying this would have been drawn up. The same goes for the dismissal of a *colonus* from his subservience.

V.5 Release from the bond:

It must also have been possible to release a *colonus originalis* from his bond: It would also have been recorded in a deed or, as in Gaul in the fifth century, by a master in a ceremony in a church and followed by a deed. This latter way is indeed represented in the formularies. In form. Andecavensis 20 (Rubric: *incipit ingenuitas a diae presente*) Ego declares that Tu will be an *ingenuus* from now on, as if he was born from *ingenui* parents, and that he will be no longer obliged to perform *servicium* or *obsequium* to the enfranchiser or his heirs. The church or monastery protects his freedom. In form. Andecavensis 23 (Rubric: *incipit ingenuitas*) the Ego declares that the Tu is released from the yoke of *servitudo*, that he has no longer to perform *servicium*, and that he may lead the life of an *ingenuus*, with his *peculiare* which he may have or earn by work, as if born from *ingenui* parents. However, the snag is that this only applies after the death of Ego, till then he has to perform service. Further, it seems that the protection of the church or monastery may cost him *obsequium* (cfr. Carta Senonica 44). Carta Senonica 1 (Rubric: *ingenuitas*) has the same elements as Formula Andecavensis 23 and enumerates the faculties of a free man, amongst which that to choose one's protector (*defensione vel mundeburdo aecclesiarum aut bonorum hominum ubicumque se eligere voluerit*), i.e. to put oneself into a dependency relation. App. 3 describes an enfranchisement in the church where a *famulus* is enfranchised (*manomittere*) and formally liberated (*vendictaque liberare*). He belongs now to the Roman citizenship, as if born from *ingenui* parents and is not obliged to services on account of his enfranchisement. Other formularies mention the same elements. In a *formula* from Clermont-Ferrand, form. Arvernensis 3 (Rubric: *libertatem*), the Ego liberates (*liberare*) the *ancilla* with her children, which he has *de alode*, viz. in full ownership[140]) and de-

[140]) A.J. Greimas, Grand dictionnaire Ancien français, Paris 2007, s.v. "aleu": "domaine héréditaire, propriété, v. aluè"; Deutsches Rechtswörterbuch https://drw.hadw-bw.de/drw-cgi/zeige?index=lemmata&term=allod s.v. "allod": "Vollgut" usw.; originally only chattel, later including land; O. Auge s.v. "Allod, Allodifikation", in: HRG I, Berlin 2008, Sp. 180–182: "allodium als Familienerbgut, unbelastete[s]

clares them to be *bene ingenui* and released publicly (*absolutus in puplico*), that is, in the church before the bishop, from the yoke of his servitude (*de iugum servitutis meis*). The mention of *cives Romani* and of an *integra et plena libertas* we find in the *interpretatio* to CTh 4,7,1 (= Breviarium 4,7,1), which may have served as inspiration. The constitution, however, does not mention that unlimited freedom. Was it a consequence of the mode of manumission, or was the status of freedman with *obsequium* to perform no longer existing?

It would be wrong to apply the classic Roman law to these documents. The term *ingenuus* had got a second meaning in late antique legal texts. Apart from the *filius familias*, it refers to a person not subjected in public law to the *potestas* of another person. He was in the context of administrative law *alieni iuris*; in other respects he was *sui iuris*. It did not mean, therefore, that he was a slave or half-slave. Slaves were also *alieni iuris* but at the same time basically non-persons in law, could be sold etc. The persons meant here were free Roman citizens who could marry legitimately, have legitimate children, contract, have property, and make testaments. The only restriction was that they had somebody else or an instance who exercised power over them. This power was also restricted: It comprised being able to recall them at will to him or his place, and to demand particular services (e.g., a *colonus*: agricultural services; a *collegiatus*: municipal services; a *gynaecearius*: silk weaving in a state factory). This position was called *condicio* and, namely to distinguish it from the position (*condicio*) of, e.g., a town councillor or an ordinary citizen, a *condicio deterior*. The general name for them was *condicionales*. It concerned several groups: *coloni* and those who worked in the imperial works or supplies, or in municipal services, and were indispensable. The other, better condition was not embellished with an adjective; there was no need for: you were an *ingenuus* or you were not. The persons of a *deterior condicio* could theoretically be released from their subjection but we know of only a few instances of this.

Considering the texts and the vocabulary, it is clear, or at least it deserves serious consideration, that the enfranchisement deeds may not, without more, be compared to the classic manumission texts. If we assume that *ingenuitas* in them refers to the state of not being subjected to the power of somebody else, their field of application becomes wider, these deeds may be applied to slaves but also to other people who are subjected: the *condicionales*. Of

Grundeigentum". In the present context it suffices that the slave woman and her children were chattel and not subjected as such to feudality; for the Formulae Avernenses, see K. Zeumer (ed.), Formulae Avernenses, in: MGH Legum sectio V (n. 5) 26–31.

these in the late fifth century only the *coloni* and the *collegiati* were present in the west. Reversely, such a use of the term *ingenuus* and *ingenuitas* would reflect a society in which dependency as criterium of the state of a person has replaced the classic division of freeborn, freedmanship and slavery. Was this indeed the case? Have we to read the *integra et plena libertas* of the *interpretatio* to CTh 4,7,1 in this sense? That CTh 4,7,1 (a. 321) itself does not express this is to be expected: in that year the classic distinctions were still existent. How did the Church envisage slavery: certainly a useful component of society and confirmed by the Council of Gangra (a. 340)[141]). But some slaves were Christians too. What distinguished them in church from the free Christians, when the Pope calls himself *servus servorum Dei*? Only this: that they legally had to serve others. Is it possible that such a change caused the use of these terms in deeds?

Status is a flexibel concept. The *obnoxiatio* looks like producing a 'Schuldsklaverei', but it is not slavery because, notwithstanding the used terminology, the indebted person does not become a slave. He loses only his *ingenuitas*. And in the case of form. Andecavensis 38 (Rubric: *caucio de homine*) the debtor loses his status only for three days per week till he has repaid the loan. It does not mean that slavery did not exist. It did, but it is present in other texts (see hereafter). Returning to the enfranchisements, these were, as the above makes clear, not for people subjected on basis of a *caucio* who regain their liberty automatically. They must have concerned those subjected by the heredity of their status, viz. the *collegiati* and *coloni*.

VI.

VI.1 The colonate in the Lex Romana Burgundionum (post 506, ante 533) and Lex Burgundionum (post c.500)[142]) :

In Burgundy, where the Burgundians had settled, a lawbook, the Lex Romana Burgundionum, was made by order of King Gundobad (474–516), per-

[141]) Migne (n. 84) vol. 84: Isidorus, col. 111: Concilium Gangrense, praefatio: *… servos a dominis recedentes, et per hunc inusitatum regionis suae habitum sub specie religionis dominos contempsisse …*, and can. 3: *Si quis servum, divini cultus praetextu, dominum contemnere doceat, et ab ejus obsequio discedere, nec ei bona fide et omni honore servire, anathema sit.*

[142]) On the kingdom itself, see I. Wood, The Making of 'the Burgundian kingdom', Reti Medievali Rivista 22,2 (2021) 111–140. In the Burgundian Kingdom, two law codes existed: the Lex Romana Burgundionum, meant for Romans, and the Lex Burgundionum, meant for the Burgundians. Yet P. Amory, The meaning and purpose of ethnic terminology in the Burgundian laws, Early Medieval Europe 2

haps at the same time of or after Alaric's Breviary, for his Roman subjects[143]). It was valid in any case until 533, when the Franks conquered the kingdom. It could, of course, still have been applied after that[144]). Since it sometimes refers to the Theodosian Code for a rule, it apparently was not meant to replace it but to be a mere handy collection of rules in daily use. The compilation, for which given explicit references the Gregorian, Hermogenian, Theodosian Code, the Posttheodosian Novels as well as part of the Pauli Sententiae were used, contains several dispositions on the *coloni*[145]). They are ranked next to slaves (*servi*) in c.6,2, summarising a lost constitution from CTh 5,17. If an estate owner (*dominus*) knows that a *colonus* who dwells with him is somebody else's fugitive slave or *colonus* and does not present him to the judges (*iudices*), or, admonished by the *dominus* of the fugitive to render him, dissimulates this, he will be fined: *multam retemptatoris incurrat*[146]). The text

(1993) 1–28 points out that the first is a meagre law book compared to the second and suggests they may have been used together. That would mean that the idea that they relate to an ethnic division is wrong; they would have been applied territorially in conjunction. It was only later, in Carolingian times, that an ethnic identity appeared: Amory loc. cit. 18–19 sees the Lex Romana Burgundionum as a digest of the Theodosian Code and the Lex Burgundionum as a collection of edicts of the Burgundian kings. The standard edition is L. von Salis (ed.), Leges Burgundionum, Hannover 1892. The FIRA edition (n. 7) is used by me for the LRB, which in the footnotes makes references to the other sources; see on the Lex Romana Burgundionum Wenger (n. 110) 558–560; Liebs, Jurisprudenz (n. 6) 116–118, 176–179 with literature; C. Schott, Art. Lex Burgundionum, in: HRG III, Berlin 2014, Sp. 878–884; Liebs, Lex Romana Burgundionum (n. 110).

143) See Liebs ibid. who assumes it was based on provincial law, influenced by Burgundian and Visigothic law; Schipp, Weströmischer Kolonat (n. 6) 351: valid for both the Burgundians and Romans. However, that makes one wonder why the Burgundians got their own law book.

144) Wood, Merowingian Kingdoms (n. 78) 151–160 rejects any influence of the Lex Romana Visigothorum on the Lex Romana Burgundionum.

145) It concerns the *capita* 12,2; 14,4; 14,6 (a rescript taken from the Hermogenian Code); 14,6 (mentioning a letter to Nebridius, vicar of Asia, and included after CTh 5,19,2 in Mommsen (n. 7); 16,2; 37,6; 46 = Nov.Sev. 2.

146) LRB c.6,2: *quod si dominus servum aut colonum alienum, regionis dumtaxat nostrae, sciens in domo vel in agro suo consistentem iudicibus non praesentat, aut admonitus a fugitivi domino eum adsignare dissimulat, multam retemptatoris incurrat, sicut ultima theudosiani lege: de fugitivis et colonis, inquilinis et servis, legitur constitutum, ad florencium comitem sacrarum largitionum data.* Schipp, Weströmischer Kolonat (n. 6) 355–356 thinks CTh 5,17,3 was literally copied. If that relates to the original constitution it is doubtful. Mommsen (n. 7) copied LRB c.6,2 into the Code as CTh 5,17,3. But the question is: relates *quod … incurrat*, if it is not a paraphrasis, to the entire text or only to the imposition of the fine? I choose the latter.

refers for this to a constitution in CTh 5,17. This constitution must have been CJ 11,48,12[147]). If the representative of an estate owner without his principal's knowledge receives or withholds a fugitive *colonus*, or does not present him to the judge, nor does so when admonished by the master of the fugitive, he will be flogged and has to return the fugitive together with his *peculium* (his savings) and earnings for the work done by him (*exacta operarum solutio*, c.6,4)[148]). The same goes for fugitives found in fiscal lands: In that case, it is the *advocatus* or *procurator fisci* who is held responsible (c.6,5)[149]). The fine the estate owner has to pay corresponds to the fine in CTh 5,17,2. But the compensation for work done in c.6,4 has no parallel in the Theodosian Code. The fiscal link is no longer present, the reference to taxes is turned here into a compensation payment. It could be the consequence of a disappearance of the *capitatio* due to the barbarian takeover and the shift in taxation system as set out above, which would also have affected the regions of Burgundy (see ETh)? In any case, it indicates that the status of the *colonus* was now one based solely on the law of persons.

If a fugitive married a woman of his host[150]), without the latter or his manager (*actor*) knowing this, a substitute of equal value had to be rendered (c.6,3[151]), cfr. Nov.Val. 31,3). After 30 years such a fugitive could no longer be reclaimed due to the general prescription of time (of Nov.Val. 31,1), summarised in c.31,1 generally for, i.a., *fugitivi reperti*. Regarding their position, *coloni*, as well as slaves and *filii familias*, could not oblige their masters or parents in contracts, unless they had been authorised to this purport (*mandatum patris matrisve*, c.14,4)[152]); in itself this is classic Roman law; but we

[147]) See Sirks, Colonate (n. 2) sec. 28.2, 207, and note 122.

[148]) LRB c.6,4: *quod si actor nesciente domino fugitivum suscipere aut tenere praesumpserit, aut iudici praesentare distulerit, factum eius fustuario supplicio a iudicibus vindicetur, et fugitivi dominus servum suum cum peculio, quod habet, et exacta operarum solutione recipiat*; for similar conditions of return: CTh 5,18,1,2, CJ 11,48,8,1.

[149]) LRB c.6,5: *si vero in fisci prediis inventi fuerint, advocatus fisci vel procuratores conditione simili teneantur, si ea, quae supra scripta sunt, implere neglexerint*.

[150]) The text has *mulier*, but since it was done *nesciente domino*, it will have been a woman under some authority of the host, like a *colona originaria*.

[151]) LRB c.6,3: *quod si mulierem eius, cuius ager est, aut habit aut sibi forte, domino vel actore nesciente, coniunxerit, vicariam eiusdem meriti fugitivi dominus dare debebit*.

[152]) LRB c.14,4: *filiis familias, servis vel colonis nihil iuris in contractibus esse permissum, hoc est: nec filium familias in damnum parentum et in eadem regione positis posse pacisci, et si quid pacto adquisierit, patris iure indubitanter adquiri, nec citra mandatum patris matrisve aliquid posse promittere.* Schipp, Weströmi-

may also consider it a reference to CTh 2,30,2 and 2,31,1, which two rules would be special cases of the general rule. Further, slaves nor *coloni* could sell their *peculium*; buyers were considered guilty of theft (that is, considered to be receiving and so covered by *furtum*). For this, the text refers to constitutions from the Hermogenian and Theodosian Codes (c.14,6)[153]. The title in the Hermogenian Code was not taken over in Justinian's Code, but CJ 4,26 comes closest to it. Here CJ 4,26,10, presumably the constitution referred to, declares that this was only so in case the slaves did not have the *libera administratio* of their *peculium*. The mention of the *colonus* will have been taken from CTh 5,19 *ult*[154]. What the text lacks here is the reference to the ignorance of the landowners, required in the earlier law, and to *furtum*. The author ably combined both texts and provided in this way the landowner of a *colonus* with the *actio furti*. However, it demonstrates also that in respect of their *peculium* and its relation to their *domini*, the *coloni* were put at a par by him with slaves in that they did not have *libera administratio*. In texts like CTh 5,18,1 *peculium* must refer to their personal property, perhaps also including working capital, on which the estate owner had a preferential claim, after which other creditors could claim, as in CTh 2,32,1 (Brev. 2,32,1) and in the *interpretatio* to this text. It implies that a *colonus* could be indebted to his landowner. In that sense, it functioned the same as the *peculium* of a slave before rendering account. Here, it is not the proprietary aspect, but the obligatory aspect that is important.

The *coloni* worked near the house of the master or in it, likely on the land, in farms, because c.12, which rules the inquiry into lost animals and things, states that if a slave or *colonus* prohibits a search by an *ingenuus* after stolen goods, they will be flogged and have to pay the value of the thing (c.12,2)[155], for which the author refers to Gaius, i.e. Gai. 3,186, 188, 192 (not present in

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scher Kolonat (n. 6) 362 assumes that *coloni* were now equalised to *filii familias* and slaves. But as free persons *coloni* could never oblige their estate owners without a *iussum* anyway. The rule does not say anything new.

[153]) LRB c.14,6: *nec servum vel colonum peculium suum posse distrahere, insuper et ementes furti actione tenendus, secundum constitutionem hermogeniani 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*.

[154]) Mommsen (n. 7) considers CJ 11,50,2 to have been this constitution mentioned in c.14,6, but it does not have to. Hence I refer to the unknown constitution as CTh 5,19 *ult.*, see Sirks, Colonate (n. 2) 168.

[155]) LRB c.12,2: *quod si aut colonus aut servus taliter querentem prohibuerit, fustuario supplicio a iudicibus eius praesumptio vindicetur, et ab his res perdite*

the Epitome Gai nor in the Gaius Augustodunensis). In c.12.2 it apparently concerns a search not in the main building (*domus*), i.e. of the *dominus* (on which c.12,1), but of a dependent dwelling where these persons resided. This reminds of *inquilini*, dwellers on an estate.

The other texts of the Lex Romana Burgundionum deal with unions and offspring of *coloni originales.* C.46[156]) summarises a novel by Libius Severus (Nov.Sev. 2), which ruled unions between *corporati* of a *corpus publicum* on one side and slaves and *coloni* on the other. In all cases the offspring would be acquired by the estate owner (*possessor*) the *colonus* or slave, male or female, belonged to: They would be slave or be of the *condicio colonaria*. The fisc could not claim children: *sed omnis cognatio possessoris commodis adquirantur.* What precisely was meant by *corpus publicum* is made clear by the *interpretatio* to Breviarum Nov.Val. 12,3 (= *interpretatio* to Nov.Val. 35,3). It is the *corpus* of *collegiati* who had to perform *munera sordida*, thus duties of low esteem of a town, known from the Theodosian Code, but here the fisc claims, not a town[157]). The Novel mentions *corporati* in general and *corporati* of Rome (c.46 does not mention Rome), but does not mention the fisc as claimant. Are we to assume that officials of the king now ran the administration of towns[158])? In the Novel *corporati* claim their children by such marriages for the *corpus*, saving them by that from the *iugum servitutis*. Interestingly, here, it is, nevertheless, that in all cases, the offspring profits the estate owners. C.37,6 summarises Nov.Val. 31,5 in that *ingenui* who as *advenae* marry a *colona* (and *ingenuae* a *colonus*) retain their *ingenuitas* but may not leave the land[159]).

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simplo solvantur, secundum speciem gai, qui hoc de prohibitis statuit; Schipp, Weströmischer Kolonat (n. 6) 364.

[156]) LRB c.46: *id observandum secundum constitutionem novellam leonis et severi: ut si ex marcianitano lito, anderoneco vel quocumque alio corpore publico, et colono aut servo possessoris, colona etiam et ancilla filii nati inveniuntur aut fuerint procreati, ei adquirantur, cuius colonum aut colonam, servum aut ancillam esse consisterit. nec in ulla servile aut colonaria conditione corpus publicum genus faciat, quod corporatus a fisco postea requiratur; sed omnis cognatio possessoris commodis adquirantur, quod ea lege evidenter exprimitur, quae ad basilium praefectum preturii data est*; see Schipp, Weströmischer Kolonat (n. 6) 360–361.

[157]) See for the *collegiati* and *corporati* below.

[158]) Wood, Merowingian Kingdoms (n. 78) 62–63: Taxation was centered around the towns, but the tax registers (of Poitiers) were out of date, so tax inspectors of the king came to re-assess the people.

[159]) LRB c.37,6: *sciendum etiam secundum legem novellam: quisquis ingenuus colone aut ancille, quaeque ingenua servo aut colono se iunxerit, salva ingenuitate discedendi licentiam non habere, secundum legem novellam sub titulo: de advenis*. Höbenreich (n. 29) 284 discusses c.37,5 in connection with Nov.Val. 31,5–6, but

Nuptiae legitimae existed only between *ingenui* (c.37,1), not between *ingenui* and slaves (c.37,5)[160]). Thus from c.37,6 we may take it that a union between an *ingenuus* and a *colona* was legitimate but not *aequale*.

These are all the references to *coloni*. Wherever a social distinction is made, for example in punishment for *furtum*, it is only between *ingenui* and slaves. The author considered the *coloni* not on a par with slaves.

If these were indeed all rules involving *coloni* and existing in the Burgundian kingdom of the early sixth century, drawn to govern daily life, it were something but not much[161]). Even the ETh has more material. However, it was apparently never the purpose of the composers to provide more than guidelines for the most current cases[162]). There was Roman law outside of this text and presumably still applied: the many references to the Theodosian Code and other sources testify to this. Also the testament of Abbo, a wealthy landowner east of the Rhône and in the lower Provence, drawn up in 739, relies to some extent still on Roman law, most of which is not found in the Lex Romana Burgundionum (see below)[163]).

VI.2 Coloni in the Lex Burgundionum:

Further, the Lex Burgundionum, meant for the Burgundians amongst themselves, for conflicts between Burgundians and Romans, and sometimes

c.37,5 does not mention *coloni*. The parallel with the female wanderers, which the *interpretatio* also mentions, is not recorded in the LRB.

[160]) LRB c.37,5: *Inter ingenuum vero et ancillam, sive servum et ingenuam, sicut consensus contubernia facere possunt, ita nuptiae non vocantur, et qui ex his nati fuerint, deteriorem lineam secuti dominis adquiruntur.* Liebs, LRB (n. 142) states that this is the first mention of the principle of the "ärgere Hand", but it is simply the application of unions without *conubium*, as usual in the *ius gentium*. Schipp, Weströmischer Kolonat (n. 6) 360 applies the concept of the "schlechtere Hand". We find the principle of the 'ärgere' or 'schlechtere Hand' in the combination of, first, a disparity of statuses, and second, as consequence, the *coniugium non aequale* which then is combined with an analogue application of the senatusconsultum Claudianum. The result of this we see appear, at any case, in the middle of the fourth century. It continued into the sixth century for the *coloni* and *collegiati*, to melt into the provincial laws. It would fit the 'schlechtere Hand' of later times, but research is required to establish a solid connection; see Höbenreich (n. 29) 284.

[161]) See for the influence of the Theodosian Code in these *decennia* and regions Wood, Merowingian Kingdoms (n. 78).

[162]) Wenger (n. 110) 559; Liebs, LRB (n. 142).

[163]) See P.J. Geary, Aristocracy in Provence: The Rhône basin at the dawn of the Carolingian Age, Philadelphia 1985, 27–33 on the structure of the testament. The area covered by the dispositions would roughly have lain within the boundaries of the Burgundian kingdom. The references to free people in this text do not give a clue to the colonate.

for both nations, dating from the end of the fifth or the beginning of the sixth century[164]), has also rules on *coloni* and *originarii*. In c.7,1 whoever accuses a slave or *colonus* of a crime, has to hand over to his *dominus* his price or a substitute. If the accused is guilty, he will be killed and the price or substitute returned. If the accused does not confess under torture, his *dominus* may retain the price or the substitute. Here, The *colonus* is an *originarius* and belongs to a Roman or Burgundian[165]). In c.17,5 if a Roman *ingenuus* who litigates with a Burgundian has admonished the *dominus* or his *actor* to appear, and the *actor* does not turn up after the second citation to speak for the *colonus* committed to him (*pro originario sibi committo*), then the *actor* will be whipped a 100 times[166]). Evidently Burgundians could own land with *coloni* attached to it, who were subjected to them. C.21,1 says that whoever lends money to a slave or *originarius* of a Roman or Burgundian without his master knowing this, loses his money. It is the continuation or reprise of CTh 2,31,1[167]). In c.38,8, on the hospitality one has to provide for (foreign) travellers, the *colonus in agro regio vel colonica*[168]) who refuses this to someone is to be flogged. C.38,10 prescribes that an *ingenuus conductor* (a manager) if he is in his *villa* and does not provide shelter and fire, must pay three *solidi*, if the *conductor* is a slave he must be flogged. C.38,11 says that this applies and must be maintained to the slaves and *coloni* of all Burgundians and Romans. C.39 deals with wanderers (*advenae*). These must be reported to the judge so that they can be interrogated (c.39). If an *actor* or *colonus* has, without the *dominus* knowing this, taken up or concealed a wanderer, he must be punished with 300 whippings (rather a death sentence if fully executed) and his master must swear that he did not know about this (c.39,3)[169]). Were these *advenae* free but homeless people, whose stay might burden the farm's resources? Or fugitive *coloni* and *collegiati* and was the whipping meant to punish assistance to flight? In the latter case, the difference with the Lex Romana Burgundionum c.6,3 would mean that the Burgundians were harsher for their own *coloni*. C.67 *De silvis hoc observandum est* states that who has an *ager* or *colonica* has a right to a part of a forest, proportional to his property (but a Roman was merely entitled to a half part).

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[164]) See Schott (n. 142); publication on 29 March 517 by king Sigismund. The standard edition is Von Salis (n. 142) with on p. 6–8 an exposition on the dating.

[165]) Schipp, Weströmischer Kolonat (n. 6) 365.

[166]) Schipp ibid. 364, 366.

[167]) Ibid. 361.

[168]) For *colonica* see note 68.

[169]) Schipp, Weströmischer Kolonat (n. 6) 354, 363.

VI.3 The status of coloni under the Burgundians:

Assuming that these rules were considered to be significant enough to be written down in these two Codes, the situation of the *coloni* in Burgundy as considered of immediate relevance (assuming that the Theodosian Code and other law collections were still available) is rather surveyable. They were subjected to a *condicio colonaria*, a status definitively characterised by subjection to a master, apparently an estate owner, and they performed tasks mainly of agricultural nature. Whatever they possessed was subjected to the supervision of their masters: They were not free to dispose of it as they wished, and they could not contractually bind their masters too. Apparently the only way to escape their situation was flight, and indeed after 30 years the Roman *coloni* would be free. But there were rules to recover Roman *coloni* (c.6,2) – they were, viz. c.37,6, not free to migrate –, and perhaps an acquisitive prescription applied also. We do not see a duty to compensate for tax with fugitive *coloni*, although taxes were still levied on land (c.40). For the rest, their status descended upon their offspring. We miss rules on marriages between *coloni* of different estates, but that must have happened too, and the Code provided for this in CTh 5,18. Likewise, it must have been possible to release them from their bond: Abbo's testament refers constantly to releases[170]). However, here neither the Theodosian Code in as far transmitted nor the Breviarium Alaricianum have any explicit texts: It may have been so evident that there was never reason to issue a constitution on the point. It is another argument to assume that the Lex Romana Burgundionum was just a practical compendium for Roman law practised in the Burgundian kingdom[171]).

These rules confirm the low status of the *coloni*, being subjugated to a master. They may live on royal land, on private land, or on a small farm with a plot of land (a *colonica*). The equivalent used, *originarii*, implies attachment to an *origo*, that is, the land they live on or the *colonica*. We see cases where it is understood they are under a *conductor* or *actor* (representatives of the estate owner) and, therefore, working on a farm. Similarly *advenae* are attached to the land their partner lives on. Further, both Burgundians and Romans could be master over *coloni*. That fits this situation since both nations could own land. It implies that the power of a *dominus* over his *coloni* was over a person, attached to his land. Under the Burgundians *coloni* were thus bound

[170]) See Sirks, Colonate (n. 2) sec. 42 for an earlier release in Sidonius Apollinaris ep. 5,19.

[171]) That is Amory's (n. 142) 13 conclusion too, who assumes it was also supplemented by the Lex Burgundionum.

to an estate and under the authority of the estate owner. They are attached to land, but no longer a census registration is present or required. Descent from a *colonus* lays down the status and the estate: These are those of the father or mother, depending on the rules. It has become part of the personal statute, as the status of slaves is, and which is settled by evidence, if necessary, in court.

VII. Coloni in testaments and donation charters

Testaments do not only regulate who is going to inherit or not, and set legacies, but may also contain an inventory of the possessions of the *de cuius* in order to be as specific as possible. Four testaments of clergy mention *coloni* on this account. They are from the Frankish territory (Reims, Le Mans), the Provence (Novalese, Abbo's testament) and Spain (Huesca, Victor of Huesca's testament)[172]).

First the testament of Remigius (437–534), bishop of Reims[173]). In it he bequeathes his *coloni* to the Church of Reims (*Tu ... colonos, quos .... habeo, possidebis … colonas*). He does not mention the land to which these might have been attached. Tennaredus, born of a freeborn (*ingenua*) mother, may use the status of freedom (*statu libertatis utatur*). Apparently his father was a *colonus* and Tennaredus was now released from the colonate[174]). The *colonus* Vitalis is ordered to be free; likewise Cispiciolus, the *colonus*, but this person will belong to Remigius' grandson. Was Cispiciolus now bound? The text does not give a clue[175]).

In the testament of Berthramn, bishop of Le Mans, drawn up on 27 March 616, *coloni* are mentioned in disposition nr. 6[176]). Berthramn bequeaths to the basilica St. Peter and Paul three villas, one of which is the *colonica* Landolenas, with lands, vineyards, *coloni* and slaves (*tam terris, vineis, acolonis*

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[172]) Wickham (n. 14) 186–187 and 281–282 mentions the testament of Berthramn of Le Mans of 616, and other charters. Wickham calls these tenant plots. U. Nonn, Merowingische Testamente, Studien zum Fortleben einer römischen Urkundenform im Frankenreich, Archiv für Diplomatik 18 (1972) 1–129, mentions 10 testaments, including that of Berthramn, which, apart from Berthramn's, seem not to deal with *coloni*.

[173]) A.H.M. Jones/P. Grierson/J.A. Crook, The authenticity of the 'testamentum S. Remigii', Revue Belge de Philologie et d'histoire 35 (1957) 356–373.

[174]) If his father had been a slave, Tennaredus would have been freeborn anyway, and therefore, his father must have been of subjected status, which passed on to his son.

[175]) Vita Remigii episcopi Remensis auctore Hincmaro, ed. B. Krusch, in: MGH Scriptores rerum Merovingicarum III, Hannover 1896, 336–339.

[176]) M. Weidemann, Das Testament des Bishofs Berthramn von Le Mans vom 27. März 616, Mainz 1986, 13.

[sic] et servis)[177]). There are more *colonicae* mentioned. Some of them were attached to a villa, the majority not[178]). Weidemann supposes that the *colonicae* were special economic units, related to villas and placed at the border of the cultivated land ("Ausbausiedlung"). They were exploited by *coloni*, unfree people but not slaves[179]).

Another testament is that of Abbo, drawn up in 739 AD, which concerns the many belongings of a rich man in the Provence[180]). The testament shows traces of Roman law. Abbo left all his possessions to the church of the monastery of Novalesa. He mentions *mancipia*, slaves attached to particular possessions. In section 6 he leaves a piece of land, already given (cf. section 20 where the *libertus noster* Sigualdus has land in *benefitium*, benefice) to his *libertus* Theudaldus and his children, stating that they have to keep the heir-church in regard (*ad heredem meam aspicere).* In section 11 he grants the church an estate in Maurienne with (*una cum*) *ingenui* from Villambert, a *libertus noster* from Aussois, and an *ingenua nostra* from Bramans (all places in the Haute-Savoie). How are we to interpret this? It may be a mere description and the mentioned persons tenants, as in section 12 the shepherd Blancalus merely indicates the place. The *ingenui* may have been persons still subjected to some services (the woman freed by Abbo himself), and the *libertus* (also freed by Abbo) subjected to *obsequium*. In the sections 13, 15, 16, 17, 18, 21 Abbo refers without distinction to *mancipia*, *liberti*, *coloni*, *inquilini* and *servi*. This may have been merely a formality to cover all actual forms of dependency. In section 14 Abbo gives the church what he gave to two freedwomen, together with these two persons (*ipsas libertas meas cum ipsas res*). It seems he merely gave it to the women as a benefice and now disposed of these plots of land; less likely it was a case as in Formula Andecav. 23, where the *peculiare* was reserved. The women might have been obliged to *obsequium* to the church if such a reserve had been made in their enfranchisement. In section 23 the *liberi nostri* in the valley of the Guisanne must serve the church (*aspiciant*) and pay a pension to it (*inpensionem faciant*). Perhaps this is stated because they had already to pay: in the valley dwelled the tax collector (*capitularius*) Vitalis. In this way, the testament continues.

Geary, the editor, interprets these references only sometimes in a legal sense[181]). He understands it thus that Abbo mentions the land with the means

[177]) The edition has *acolonis* but we should read *ac colonis*.
[178]) Weidemann (n. 176) 107–108.
[179]) Weidemann ibid. 109; for *colonicae*, see note 689.
[180]) For the edition and translation see Geary (n. 163) 38–49.
[181]) Geary (n. 163) 90–97.

to exploit these, viz. the human labour force, whatever their legal status. That is certainly right. For Abbo it differed little whether a slave or a freedman tilled the land. For the tiller it did, of course, a lot. A slave was property and *instrumentum* to the land. A freedman had to enter *obsequium*, but was not tied to a piece of land, unless it had been given to him *in precario* or in lease; in this case, there was a certain bond. The text shows that by that time it is very difficult to distinguish sharply defined legal categories. In this respect, there is no trace of the Lex Romana Burgundionum or the lex Burgundionum. It confirms the conclusions of the previous section[182]).

Another testament referring to *coloni* is that of Victor of Huesca. It consists of a donation of the year 551 and a testament. Vincent, bishop of Huesca, who died in 576, made a bequest of land with on it, i.a., *coloni vel servi* with their *peculia*, as appurtenance (fol. 1,35)[183]). It seems they were tied to the land and treated as slaves, but the text does not give further details. Still, it is in line with what the texts in Abbo's testament and the Letters of Gregory the Great say, viz. that they are part of the land. García Moreno has concluded that no *coloni* in the ordinary sense are found. The only mention is in a notary form in a collection from Córdoba, used even after the Moorish invasion of 711, which led to the demise of the Visigothic kingdom following the battle of Guadalete in 711, when the forces of the Umayyad Caliphate defeated king Roderic. It is a request to have land *in precario* and to pay rent *ut colonis est consuetudo*. García Moreno opines that this cannot refer to *coloni originales*[184]). Schipp, on the other hand, mentions canon 3 of the second Synod of Sevilla of 619. There an ecclesiastical decree is cited that a cleric must remain

[182]) J. Gaudemet, Survivances romaines dans le droit de la monarchie franque du V^{ème} au X^{ème} siècle, TR 23 (1955) 149–206; P. Frezza, Giurisprudenza e prassi notarile nelle carte italiane dell'alto medioevo e negli scritti di giuristi italiani, SDHI 42 (1976) 197–245; P. Frezza, L'influsso del diritto romano giustinianeo nelle formule e nella prassi in Italia (= Ius Romanum medii aevi 1.2 c ee), Mediolani 1974; Nonn (n. 172).

[183]) See S. Corcoran, The donation and will of Vincent of Huesca: Latin text and English translation, Antiquité Tardive 11 (2004) 215–222; on the testament, with an edition and translation: P.C. Diáz, El testamento de Vicente: proprietarios y dependientes en la Hispania de s. VI, in: M.J. Hidalgo et al. (eds.), Romanización y Reconquista en la Peninsula Ibérica: nuevas perspectivas, Salamanca 1998, 257–270; U. Roth, Slavery and the Church in Visigothic Spain: the donation and will of Vincent of Huesca, Antiquité Tardive 24 (2016) 433–452.

[184]) L.A. García Moreno, From coloni to servi, A history of the peasantry in Visigothic Spain, Klio 83 (2001) 198–212, here 204–206. It concerns nr. 36 in J. Gil, Miscellanea Wisigothica, Sevilla 1972, 104. García thinks the phrase was added to distinguish this from the payment in kind, the *xenia*. But it is more likely that it was

in the place he has been assigned to, and as argument a secular law is cited which prescribes that *coloni* must remain on their land. Therefore he rejects rightly García Moreno's conclusion[185]).

A charter of king Clovis (ca. a. 499), a donation to the monastery of St. Petrus Vivus Senonensis, mentions a number of *villae*, each with several *coloni*, often with slaves (*servi*)[186]). In the charter of Childebert I (a. 528), granting land to the monastery of Anisola, the *colonica Curtleutachario* is mentioned as indicating the border[187]). Another donation to the monastery St. Peter Vivus Senonensis (ca. a. 570), by Theodechildis, comprises a series of *villae* with, amongst others, *colonicae*[188]). A donation (a. 581) also has a named *colonita*[189]). The donation by Theodetrudis (a. 627) comprised two *villae* with the annexe *colonicae*[190]).

The Council of Orléans decided in 538 that neither slaves nor *coloni* were to be admitted to ecclesiastical honours unless they were absolved by testament or by *tabulae*, scil. from their bond[191]). Since it had been forbidden in 441 to recall *coloni* who had been freed in the church, manumission would have been sufficient for admittance, too[192]).

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to make this a *precarium* with rent without turning it into a *locatio conductio*. The only other mention of *colonus* and *inquilinus* is in Isidore's Etymologiae.

[185]) Schipp, Weströmischer Kolonat (n. 6) 395 note 612; Sacrorum conciliorum nova et amplissima collectio, in qua praeter ea quae Phil. Labbeus/Gabr. Cossartius S.J. […] Johannes Dominicus Mansi […], tom. 10, Florentiae 1764, c.558: S*cribitur enim in lege mundiali de colonis agrorum ut ubi esse iam quisque coepit, ibi perdur*et. *Non aliter et de clericis qui in agro ecclesiae operantur, canonum decreto praecipitur; nisi ut ibi permneant ubi coeperunt.* The edition Concilios visigóticos e hispano-romanos, edd. J. Vives/T.M. Martínez/G. Martínez Díez, Barcelona 1963, 163–185 I could not consult.

[186]) Diplomata, chartae, epistolae, leges aliaque instrumenta ad res Gallo-Francicas spectantia … ed. J.- M. Pardessus, Bd. 1: Instrumenta ab anno 417 ad annum 627, Paris 1843, nr. LXV, 38ss.

[187]) Pardessus ibid. nr. CXI, 75ss.

[188]) Ibid. nr. CLXXVII, 131ss.

[189]) Ibid. nr. CLXXXIX, 148.

[190]) Ibid. nr. CCXLI, 227.

[191]) C. de Clercq, Concilia Galliae a. 511– 695, Turnhout 1963, Conc. Aurelianense a. 538, c.29 (26): *Ut nullus servilibus colonariisque conditionibus obligatus iuxta statuta sedis apostolicae ad honores ecclesiastecus admittatur, nisi prius aut testamento aut per tabolas eum legeteme constetirit absolutum. Quod si quis episcoporum eius, qui ordenatur, conditionem sciens transgredi per ordenationem inhebitam fortasse voluerit, anni spacio missas facere non praesumat.*

[192]) C. Munier, Concilia Galliae a. 314– 506, Turnhout 1963, Conc. Arausicanum a. 441, c.6 (7): *In ecclesia manumissos, vel per testamentum ecclesiae commendatos*

VIII. The collegiati

Above, several times, reference was made to the *collegiati* (also *corporati*). Already CTh 11,16,3 (a. 324) allowed towns the *adscriptio* of those needed for *munera sordida*. They appear to have continued as a legal category of subjected people, necessary for the services a town needs[193]). Thus Matthews sees them as men deployed against fire and other city hazards, but the fact that their service was imposed and hereditary and their status on the level of *coloni* argues for services of a menial nature, like the upkeep of public spaces. There is no specific information on the duties of the *collegiati* but they were regarded as *sordida*, despicable in the social sense, because they were dirty, like burning lime (CTh 6,23,3): in short, where one sweats, not perspires. We should think of them as taking away garbage, maintaining and cleaning streets and cesspits, work done by the socially lower echelon: *munera sordida*[194]). Brev. 14,1,1 (CTh 14,7,1) was the legal basis to recall them to their towns, to which they were tied by *origo*. It also states that their children are divided according to the marriage: with a *coniugium inaequale*, they follow their mother, otherwise, in case of a *iustum coniugium*, their father (would that apply to a marriage between *collegiati*?). The *interpretatio* to Brev. 14,1,1 (CTh 14,7,1) summarises this. Brev. Nov.Val. 12,3 (= Nov.Val. 35,3) excluded for the *corporati* of Rome and other towns a variety of offices, secular and clerical, to prevent their escape from the *vinculum debitae condicionis*. The *interpretatio* defines the duty as *publicum servitium* and they belong to a *corpus publicum* comparable to the *corpus publicum* of the *curia*. But their status was so low, that natural sons of curials would, if not legitimised, stain the prestige of the council (Brev. Nov.Theod. 11,1 = Nov.Theod.

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si quis in servitutem vel obsequium vel ad coloniariam conditionem imprimere tentaverit, animadversione ecclesiastica coercebitur; similarly ibid. Conc. Arelatense secundum a. 442–506, c.33 (32) on the claim of *coloni*.

[193]) See on towns under the Ostrogoths and later S. Cosentino, Istituzioni curiali e amministrazione della città nell'Italia ostrogota e bizantina, Antiquité Tardive 26 (2018) 241–254.

[194]) J. Matthews, The Notitia Urbis Constantinopolitanae, in L. Grig/G. Kelly (edd.), Two Romes: Rome and Constantinople in Late Antiquity, Oxford 2012, 113. The relatively high number of them in the districts where people lived most densely may not reflect the higher fire risk, as Matthews ibid. 114 assumes, but the higher quantity of dirt. In CTh 6,23,4, burning chalk is a *munus sordidum*; in CTh 11,16,15, making flour or bread or working in a bakery is *sordidum*. CTh 11,16,18 gives a list of sordid duties, including those cited before. CTh 15,3,6 mentions the maintenance of roads as *sordidum*. The comparison with the Indian caste of the Dalits is not amiss since the *collegiati* were hereditarily bound to their *condicio*.

22,1). In Nov. Maiorian. 7,2 Maiorian orders that children of curials and slave women will not be slaves but *collegiati* in their father's town. He so confirms the previous laws[195]) on the *collegiati* but adds that they have to work (*operae*) following the arrangement the decurions made, and they are not permitted to reside outside the territory of their own municipality (Brev. Nov. Maiorian. 1,3 = Nov.Maiorian. 7,3 and *interpretatio*, ordering the transfer of fugitives to their towns). The repeated mention of them fleeing to the land, and such drastic remedies as marrying slaves in order to save their children this fate, testify to a very harsh existence. Brev. Nov.Maiorian. 1,7 (= Nov.Maiorian. 7,7) and the *interpretatio* repeat the prohibition to escape their fate by entering the Church. The Novel also mentions in c.8 that some people sell fugitive *obnoxii corporati* (and curials), whom they have harassed, for which crime the emperor sets the death penalty.

ETh c.69 states that whoever possessed, i.a., a *collegiatus* for 30 years, who never contributed to his town, acquired him, most likely as *colonus*. Further, an *ingenuus* who has corrupted a virgin of subjected status will be condemned to flogging and sent off to the *collegium* of the nearest town (ETh c.64). Thus his status is levelled, more or on level of that of his victim, as accompanying punishment. LRB c.46 repeats the essence of Nov.Sev. 2, namely that in marriages or unions between *corporati* of certain public bodies and slaves or *coloni* of landowners, the children go to the landowners. The *corpus* cannot claim them.

IX. Conclusion

The documents examined above present a differentiated picture, dependent on their origin and moment of creation. Yet in several aspects they are very alike. It is clear that the old distinction between freeborn, freed and slaves, or between *honestiores* and *humiliores*, no longer applied in sixth and seventh-century Italy, Spain and Francia. The persons we encounter are slaves (*servi*, *mancipia*), *coloni*, *collegiati*, and *ingenui*. The *ingenui* comprise Romans, Franks, Burgundians and other free nations. Slaves may be attributed to any of these nations.

The *coloni* and *collegiati* do not quite fit in this dichotomy. They are not slaves, yet attached to a part of land or a city and consequently not free to wander away. Are they Romans? The answer to this lies in the origin of the colonate. In all texts, *coloni* are determined by either their father's or

[195]) In Nov.Maiorian. 7,3, the *auctoritas praecedentium legum*, while the *interpretatio* in Meier (n. 7) 173,123–124 says what the *lex in Theodosiani corpore scripta declarat*; according to Pharr (n. 116) a.h.l.: Nov.Val. 20, CTh 14,4,8, recall.

mother's status. One parent sufficed (LRB c.46; ETh c.65; Gregorius I, Reg. epp. 9,128; form. Andecavensis 10; form. Senonensis rec. 6). This is in line with CTh 5,18,1, Nov.Val. 27, 31 and 35, texts which were included in the Breviarium (Lex Romana Visigothorum) and thus laid down the law for the Visigothic lands, and which constitutions remained also valid in Italy and Burgundy. Read in combination as was done, separated from the poll tax, they established the personal status of the *coloni* for the descendants of the previous colonate. A limitation of prescription of twenty years would shield a *colona* from recall in Italy (ETh c.68), in line with CTh 5,18,1pr and also included in the Breviarium. For a *colonus* and *colona*, there was a limitation of thirty years in Gaul and probably Burgundy (LRB c.31,1; *form.* Andecavensis 10; form. Senonensis rec.6), but apparently not for a *colonus* in Italy. The harbourer of a fugitive *colonus* had to compensate the *tributa* in the Visigothic lands (*interpretatio* to CTh 5,17,1), but in Burgundy the earnings and in Italy the lost earnings (LRB c.6,4; ETh c.84), in line with CTh 5,18,1,2. If we interpret *tributa* as the taxes on a *colonica* which the *colonus* had to render through his work, then the *interpretatio* to CTh 5,17,1 could also refer to lost earnings.

Thus regarding their origin and status the *coloni* of the sixth and later centuries in the former Prefectures of Italy and Gaul were descendants of Roman people, farmers and farmhands, whose status had lost the fiscal lien and become, based on the four cited legal texts and the equalisation of their subjection with that of the *in mancipio esse* of the early Principate, a personal status, determined now by descent. They were free Romans; they were tied to the estate of their origin and had to serve, that is, to work. They could be released from their status of subjection by manumission, at least in Gaul (form. Andecavenses 20, 23, which are not necessarily restricted to slaves). In Burgundy LRB cc.3,1 and 3,2 regulated manumission in general of Roman slaves and Romans, LB c.40 of slaves. The Edictum is silent on this, but considering the canons a manumission *in ecclesia* should have been possible[196]). In Gaul the freed gained *ingenuitas* and civil rights as if freeborn Roman citizens. This could refer to *coloni* but also to slaves[197]). Freedmanship is absent. The distinction in the formularies is between *ingenuitas* and what I call with

[196]) See for the canons of Gaul Sirks, Colonate (n. 2) sec. 42. We may assume the church in Italy followed the same rules.

[197]) Slaves could be released by an *ingenuitate*, the release of those in *obnoxiatione* by a *vacuaturia*; and probably *coloni* still by manumission. In Abbo's testament we have *colonicae* and farms, either given in benefice to freedmen or slaves. Those differences should still be examined.

the previously used term *condicio deterior*, or, between not being subjected to the power of another and being subjected to a power which may order the subjected person to work anywhere at any time. Petot speaks of a 'hiérarchie de dépendence' which colours the later Middle Ages and that is probably a good point of departure for further research into the social structure[198]). The basis of dependency changed. No longer did the difference in social and legal status define dependency and subjection, but subjection itself, expressed as being *alieni iuris,* equalled dependency and defined status. As to the *coloni*, the combination with the *colonicae* may have been a model for the later servage, villeinage and Hörigkeit.

[198]) P. Petot, L'hérédité de la condition servile, Mélanges Ph. Meylan, Vol. II, Lausanne 1963, 15–19. He mentions that in the Middle Ages the status was determined by either the father or the mother, which is the same as we saw established for the *coloni originales*.