Contextualizing *Colonatus*: The *Origo* of the Late Roman Empire*

CAM GREY

In the period following the fiscal reforms of the Tetrarchy, legal sources attest a category of tenant farmers registered in the census rolls in connection with specific estates, and carrying a responsibility for the taxes due on that land. These tenant farmers are denoted by the general term *colonus*, and their responsibility to the tax rolls is often signalled by the addition of an adjective or adjectival noun such as *originalis*, *originarius*, or *adscripticius*. The legislation also attests the abstract noun *colonatus*, which occurs in a variety of contexts that appear to be explicitly connected to agricultural activity, in opposition to urban-based functions. Since at least the late nineteenth century, scholars have linked the *coloni* and *colonatus* of the legal sources together within an interpretative framework that envisages some kind of relationship of dependence between formerly-free peasant proprietors and their landlords. That relationship is labelled in contemporary scholarship the 'colonate of the Late Roman Empire'.[1] This paper takes as its starting point the debate over the utility of this interpretation for the study of registered tenancy and its relationship to legal, fiscal, and socio-economic structures of the late Roman period. My focus is upon the assumptions of ancient authors themselves when they spoke of the responsibilities and roles of registered *coloni*, or described the phenomenon of *colonatus*. I argue that ancient and modern conceptions of registered tenancy differ in significant ways, and that analyses of this institution — if it was indeed an institution — should privilege the former rather than the latter. Further, I suggest that registered tenancy was merely one element in a much broader set of fiscal practices of the Late Roman Empire, and it is those fiscal practices that should properly be the subject of our attention.

To this end, I examine the usage by late Roman writers of the terms *colonatus* and *colonus*, as well as the label *inquilinus*, which appears to denote a (registered) tenant who does not own his own residence.[2] I also explore the various adjectives used to identify the relationship between these *coloni* and the tax rolls. I offer three propositions. First, the *colonatus* of the legislation is not to be interpreted as a legal shorthand for the 'colonate' of modern historiographical debate. It is true that in some circumstances the term carries with it resonances of control, but that control does not necessarily take the form assumed in the modern debate. Rather, in both legislation and literary texts, *colonatus* served primarily as an abstract term denoting rural activity. Second, the *coloni* of the legislation did not over the course of the fourth and fifth centuries come to constitute a discrete group of individuals subjected to a definable, articulated set of restrictions. Nor do the various adjectives used to modify *colonus* in the legislation reveal a system of registered tenancy comprising a series of distinct grades of dependent tenant. Rather, the lawyers of the period limited themselves to defining the link between landowners, tenants, and the land

* This paper has benefited from the comments and critiques of friends and colleagues, although none of them should be held responsible for the views expressed here. In particular, Peter Garnsey and Ed Watts read earlier drafts, and offered valuable observations. Preliminary versions were read in Cambridge and Reading, and I am grateful for feedback received during those sessions. I wish also to thank the Editor and the anonymous readers for *JRS*, whose responses greatly improved the manuscript.

[1] The inverted commas were introduced by J.-M. Carrié, 'Le "colonat du Bas-Empire": un mythe historiographique?', *Opus* I (1982), 351–71, to illustrate his argument that the concept is a historiographical construct. Carrié's position, and the responses it has elicited, are discussed in Section I below.

[2] Augustine, *Enarrationes in Psalmos* 118.8.19.1, and Section IV below.

JRS 97 (2007), pp. 155–175.

for which they were mutually responsible. Finally, it is this link between individuals and land which is the key to the tax system of the Late Roman Empire, and to our interpretation of the problems it presented for landowners, tenants, and tax-collectors. The link was achieved using the *origo*, an administrative concept whereby an area of land could be invested with a proportion of a collectivity's total tax burden, or laden with specific services or duties. Individuals could then be listed in the tax rolls as responsible for that sum of money or bundle of services. Through the concept of the *origo*, then, legislators sought to attach liability for taxation and other *munera* to specific plots of land, and by extension to the persons connected to those plots of land. The effects of this impulse are most clearly seen in circumstances involving tenant farmers, for registration was at odds with existing agricultural strategies, which involved rotation of fields, short- and long-term fallowing, and the sowing of a variety of different crops.[3] But the importance of the *origo* can be seen in other situations too. It is the *origo*, rather than the 'colonate', that should properly be regarded as the defining phenomenon of the tax system of the Late Roman Empire. As a preliminary to those arguments, I offer a brief survey of the history of scholarship concerning the 'colonate', and outline the current state of the debate. This will provide a point of departure for the present study.

I THE 'COLONATE OF THE LATE ROMAN EMPIRE'

The historiographical entity known as the late Roman 'colonate' has been traced by Clausing back to 1577, when Cujacius published his commentary on the *Digest* of Justinian. The trajectories of scholarship concerning this phenomenon in the ensuing centuries have been amply sketched in recent scholarship.[4] For our current purposes, it suffices to outline briefly the terms of the contemporary debate and the foundations upon which it rests, and to emphasize points upon which there appears to be general agreement. By the middle of the twentieth century, there existed a consensus of sorts concerning the 'colonate of the Late Roman Empire'.[5] The institution was understood to be a public recognition of longstanding relationships of dependence between landowners and their tenants. These relationships emerged from the progressive degradation in the status of free peasant proprietors through debt and the settlement of slaves and barbarians on land *quasi coloni*. They entailed limitations upon the ability of registered tenants to abandon or leave the estates upon which they were registered, prescribing penalties ranging from binding in chains to corporal punishment.[6] *Coloni* were also denied the right to dispose of their property without the permission of their landlords.[7] This public recognition was necessitated by the fiscal reforms of the Tetrarchy, but it led to a personal status of dependence that occupied a middle ground between freedom and slavery. The abolition of the

[3] Further discussion in C. Grey, 'Revisiting the "problem" of *agri deserti* in the late Roman Empire', *JRA* 20 (2007).

[4] The intention here is not to outline the debate in its entirety, but to sketch its broad trajectories. Detailed surveys of the historiography may be found in R. Clausing, *The Roman Colonate: The Theories of its Origin* (1925; repub. 1965); Carrié, op. cit. (n. 1); J.-M. Carrié, 'Un roman des origines: les généalogies du "colonat du Bas-Empire"', *Opus* 2 (1983), 205–51; A. Marcone, *Il colonato tardoantico nella storiografia moderna (da Fustel de Coulanges ai nostri giorni)* (1988); G. Giliberti, *Servi della terra: ricerche per una storia del colonato* (1999). W. Scheidel, 'Slaves of the soil: review article', *JRA* 13 (2000), 727–32 provides a useful and succinct summary of the current state of the question.

[5] M. I. Finley, *Ancient Slavery and Modern Ideology* (1980), 123–49; also C. Saumagne, 'Du rôle de l'*origo* et du *census* dans la formation du colonat romain', *Byzantion* 12 (1937), 487–581; A. Segrè, 'The Byzantine colonate', *Traditio* 5 (1947), 103–33; M. Pallasse, 'Les <Tablettes Albertini> intéressant-elles le colonat romain du Bas-Empire?', *RD* (4th ser.) 33 (1955), 267–81.

[6] e.g. *CTh* 5.17.1 (A.D. 332); *CTh* 11.24.2 (A.D. 360, Egypt).

[7] *Brev.* 5.11.1 = *CTh* 5.19.1 (A.D. 365, East); cf. Saumagne, op. cit. (n. 5), 508; A. J. B. Sirks, 'Reconsidering the Roman colonate', *ZRG* 123 (1993), 348.

capitatio, or head tax, removed the need to bind *coloni* to their fields for fiscal purposes.[8] Instead, *coloni* were bound as personal dependants, simply because they were *coloni*.[9] In addition, the historiographical concept of the 'colonate' was explicitly linked with the term *colonatus*, which was defined as 'proprie colonorum condicio misera', 'the (wretched) condition of *coloni*'.[10]

This consensus endured until the early 1980s, when it came under sustained attack from Jean-Michel Carrié. In two articles, published in 1982 and 1983, Carrié offered three fundamental propositions. First, he argued that a historiographical concept of the 'colonate' had emerged in France in the seventeenth and eighteenth centuries, within the context of contemporary ideological and political debates. This concept had become concretized, and mistaken in later scholarship for the phenomenon of the 'colonate' in the late Roman sources. The substitution of the concept for the actual institution was misleading, and scholars had lost sight of the evidence of the late Roman period.[11] Carrié's second contribution was to criticize the assumption that the 'late Roman colonate' was or became a personal condition of quasi-servitude. Carrié observed that a landowner never acquired rights over a *colonus* comparable to the *ius in rem* that he would have over a slave. Although he was attached to an estate, the *colonus* was never considered *instrumentum* of the farm. The *ius alienum* mentioned in an edict of Constantine was founded on the land — the *origo* — not the proprietor of that land.[12] Carrié argued that legislation abolishing the *capitatio* did not signal a new, non-fiscal justification for the binding of *coloni*. Rather, the binding of *coloni* to the soil continued to be essential to the tax system. In the provinces where the *capitatio* upon *coloni* was abolished, land registered in the tax lists continued to be liable for the *annona*, or military levy collected primarily in kind, and this continued to be demanded from the landowners. These laws were aimed simply at guaranteeing a workforce to cultivate the land, thus ensuring that landowners continued to be able to pay the taxes due on that land to the State.[13]

Finally, Carrié restated the conclusion that the origins of the 'colonate' were not to be sought in private law arrangements of clientship, tenancy, or slavery under the High Empire. Rather, the institution was a normative measure aimed at satisfying the fiscal needs of the Roman state and could be directly connected to the fiscal reforms of the Tetrarchy.[14] The 'colonate' should be detached from any private arrangements that existed between those landowners and the tenants who were registered in the tax rolls in connection with their estates. Indeed, it did not necessarily benefit landowners at all. This contention could be illustrated by measures denying landowners the right to expel registered *coloni* from estates, limiting their right to move registered *coloni* between

[8] *CJ* 11.53.1 (A.D. 371, Illyricum); 11.52.1 (A.D. 393, Thrace). There is no MS date on this text, and Seeck dated it to A.D. 396. Given that Theodosius is named in the title, although he died in A.D. 395, the text has been redated to 393 and associated with *CTh* 13.11.4 by *PLRE* I, 799.

[9] *CJ* 11.53.1: 'non tributario nexu, sed nomine et titulo colonorum'; 'not by the bonds of taxation, but by the name and title of *coloni*.' A. H. M. Jones, 'The Roman colonate', *P&P* 13 (1958), 1–13, at 3 (reprinted in A. H. M. Jones, *The Roman Economy: Studies in Ancient Economic and Administrative History* (ed. P. A. Brunt) (1974), 293–307); W. Goffart, *Caput and Colonate: Towards a History of Late Roman Taxation* (1974), 86–7.

[10] *TLL* III.1698; A. Souter, *A Glossary of Later Latin to 600 A. D.* (1949), 60; cf. A. J. B. Sirks, 'Did the late Roman government try to tie people to their profession or status?', *Tyche* 8 (1993), 168 n. 61.

[11] Carrié, op. cit. (n. 1), 352; Carrié, op. cit. (n. 4), 241.

[12] Carrié, op. cit. (n. 4), 223–4, 234. The text in question, *Brev.* 5.19.1 = *CTh* 5.17.1 (A.D. 332, *ad provinciales*), is discussed further in Section III below.

[13] Carrié, op. cit. (n. 4), 220–5, drawing on Goffart, op. cit. (n. 9), 67, 70–1, 78, with reference to *CJ* 11.53.1 (A.D. 371, Illyricum); *CJ* 11.52.1 (A.D. 393, Thrace). This interpretation has been followed by C. Lepelley, 'Trois documents méconnus sur l'histoire sociale et religieuse de l'Afrique Romaine tardive, retrouvés parmi les *spuria* de Sulpice Sévère', *AntAfr* 25 (1989), 246 at n. 37, 250–1. Note also J.-M. Carrié, '"Colonato del Basso Impero": la resistenza del mito', in E. Lo Cascio (ed.), *Terre, proprietari e contadini dell'Impero romano. Dall'affitto agrario al colonato tardoantico (Incontro studio di Capri, 16–18 ottobre 1995)* (1997), 101–3.

[14] Carrié, op. cit. (n. 4), 212, 221; this builds on Goffart, op. cit. (n. 9), 42 with n. 4*, 68 with n. 5*. Goffart traced the argument for the public law origins of the 'colonate' to H. J. Scheltema, *An den Würzeln der mittelalterlichen Gesellschaft, 2, Das oströmische Reich* (1958): Goffart, op. cit. (n. 9), 89 n. 69.

estates, and directing that land be sold complete with its registered *coloni*.[15] For Carrié, then, the 'colonate' of the historiography and the 'colonate' of the sources were different. The 'colonate' of the sources was an institution that was real only in the context of legislation concerned with defining the position of certain tenants *vis-à-vis* the tax system. It did not satisfy the needs of aristocratic landowners, nor did it create a class of dependent tenants bound to their estates. Thus there was no evolutionary link between the tenancy arrangements of *locatio-conductio* that had pertained in the High Empire and this institution, for the 'colonate' was not a relationship of tenancy at all. Limitations upon the freedom of *coloni*, prohibitions against their selling land, and admonitions against wrongful flight were to be interpreted within the context of the liability of those *coloni* for taxation.[16] They did not reflect their socio-economic condition.

It is fair to say that Carrié's critique has not been universally accepted. Carrié himself has described his reception as analogous to that accorded a rabid dog.[17] Nevertheless, his theories have stimulated a re-examination of the 'colonate of the Late Roman Empire'. In a recent survey of the literature, Scheidel observed that 'the historiography of the Roman "colonate" is now more fragmented than ever'.[18] The 'colonate' of the mid-twentieth century has disappeared, and in its place are a multiplicity of 'colonates'. In the wake of Carrié's arguments, three interlinked dichotomies have dominated the scholarly literature. Scholars once again disagree over whether the 'colonate' was a novelty of the late Roman period, or a phenomenon with its origins deep in the Principate or before. They are also divided over whether it is best interpreted as a public law recognition of private arrangements of tenancy or dependence, or an administrative imposition upon those alliances. These debates have their origins in the earliest scholarship on the subject.[19] Additionally, there has emerged a debate over whether the institution was a real personal status,[20] or merely an ideal administrative concept.[21]

The fragmented state of the scholarship can be represented as different combinations of these three dichotomies, each of which gives different weight to specific aspects of the phenomenon. In some analyses, the 'colonate' continues to be interpreted as originating in long-established private relationships of dependence and resulting in a public juridical status that fell between slavery and freedom.[22] Other scholars have embraced the view that it was a new administrative measure, invented by the state, predicated upon a mutual obligation to the land and imposing restrictions only insofar as tax liability for that land was concerned.[23] Most interpretations seem to fall somewhere between these two

[15] *CJ* 11.63.3 (A.D. 383, East); *CTh* 13.10.3 (A.D. 357, to Dulcitius *consularis Aemiliae*); *Nov. Val.* 35.1.18 (A.D. 452, Italy and Africa). Further discussion in Section III below.

[16] *Brev.* 5.11.1 = *CTh* 5.19.1 (A.D. 365, East); *CTh* 4.23.1 = *CJ* 11.48.14 (A.D. 400, Gaul).

[17] Carrié, op. cit. (n. 13), 84.

[18] Scheidel, op. cit. (n. 4), 732.

[19] For fuller discussions and bibliographic references, see the works cited in n. 4 above.

[20] P. Rosafio, 'Dalla locazione al colonato: per un tentativo di ricostruzione', *AION* 13 (1991), 231–81; idem, *Studi sul Colonato* (2002); F. De Martino, 'Il colonato fra economia e diritto', in A. Momigliano and A. Schiavone (eds), *Storia di Roma* III.1 (1993), 789–822; Sirks, op. cit. (n. 7); M. Mircovic, *The Later Roman Colonate and Freedom*, TAPhS vol. 87, pt 2, (1997); Giliberti, op. cit. (n. 4); L. A. Garcia Moreno, 'From *coloni* to *servi*. A history of the peasantry in Visigothic Spain', *Klio* 83 (2001), 198–212.

[21] D. Eibach, *Untersuchungen zum spätantiken Kolonat in der kaiserlichen Gesetzgebung unter besonderer Berücksichtigung der Terminologie* (1980); Carrié, op. cit. (n. 1); Carrié, op. cit. (n. 4); D. W. Rathbone, 'The ancient economy and Graeco-Roman Egypt', in L. Ciscuolo and G. Geraci (eds), *Egitto e storia antica dall'Ellenismo all'età Araba: Bilancio di un confronto (Atti del Colloquio Internazionale Bologna, 31 agosto–2 settembre 1987)* (1989), 159–76; Carrié, op. cit. (n. 13); D. Vera, 'Padroni, contadini, contratti: *realia* del colonato tardoantico', in Lo Cascio, op. cit. (n. 13), 185–224; Scheidel, op. cit. (n. 4).

[22] I. F. Fikhman, 'Les cautionnements pour les *coloni adscripticii*', *Proceedings of the XVIth International Congress of Papyrology* (1981), 469–77; A. Marcone, 'Il colonato del tardo impero: un mito storiografico?', *Athenaeum* 63 (1985), 513–20; Garcia Moreno, op. cit. (n. 20).

[23] Carrié, op. cit. (n. 1); Carrié, op. cit. (n. 4); Rathbone, op. cit. (n. 21); Carrié, op. cit. (n. 13); Vera, op. cit. (n. 21).

extremes. Here, I outline in broad terms a number of 'camps', while acknowledging that the separation of interpretations is by no means hermetic.

In one reconstruction, the 'colonate' is taken as the public recognition of a new, private arrangement between landlord and tenant as regards taxation, but this public recognition is not interpreted as amounting to the imposition of a new kind of status. Rather, restrictions are envisaged as having been imposed with the intention of ensuring that landlords continued to be able to pay taxes.[24] Elsewhere, it has been argued that the 'colonate' emerged out of tenancy arrangements on imperial estates dating back to the time of Severus. In this account, these arrangements were applied to private tenants in the wake of the fiscal reforms of the Tetrarchy. The result was the creation of a new type of tenancy, which placed tenants in an intermediate position between freedom and slavery.[25] There has also emerged an argument that the 'colonate' was a real status, based on the private power of aristocratic landowners, and that it appeared in the wake of the inclusion of private individuals within the tax system of the late Roman period. It amounted not to a kind of tenancy relationship but to one of control over the labour of the *colonus*, who was a landless labourer.[26] However, Carrié's critique of the existing *communis opinio* was aimed less at the minutiae of the phenomenon of the 'colonate' and more at the intellectual framework within which interpretations of the phenomenon took shape. Consequently, it seems fair to endorse his proposition that the historiographical 'colonate' had come to dominate discussions of the legal evidence for registered tenancy, and to locate our analysis of the latter phenomenon in the fiscal needs of the state rather than existing private arrangements between landlords and tenants. I return to and nuance his argument that there never emerged a personal condition of quasi-servitude in Section III below.

It is difficult to pick a path between these overlapping, complementary positions. Indeed, given the panoply of options, it seems reasonable to suggest that no single interpretative pattern is sufficient to encompass the socio-economic and legal phenomena that emerged following the fiscal reforms begun under the Tetrarchy. Rather, these historiographical constructions of the 'colonate' provide a series of analytical frameworks for interpreting the legal texts, and for ordering these disparate fragments into recognizable, internally-consistent systems. However, within this multitude of responses to Carrié, a limited consensus has emerged on some issues. It is acknowledged, for example, that the 'colonate' was not a generalized condition of rural dependency.[27] It is also recognized that restrictions upon the economic behaviour of registered *coloni* and their landlords emerged piecemeal over the course of the fourth century, either as responses to specific problems in the tax system, or as prescriptions limiting imagined or hypothetical instances of abuse.[28] It is now generally agreed that the catalyst for the creation of the concept of registered tenancy was the new tax system of the Late Roman Empire.[29] These propositions seem relatively uncontroversial, and I assume their general validity in my discussion of registered tenancy in Section III below.

Also common to all is the assumption that there was, or emerged over the course of the fourth century, a unified legal conceptualization of this system of registered tenancy. It is

[24] Sirks, op. cit. (n. 7); A. J. B. Sirks, 'Continuità nel colonato?', in Lo Cascio, op. cit. (n. 13), 163–84; also Giliberti, op. cit. (n. 4), 81; P. A. V. Sarris, 'The origins of the manorial economy: new insights from Late Antiquity', *EHR* 119 (2004), 299–300.

[25] Rosafio, op. cit. (n. 20, 1991); idem, 'Coloni e clienti: analogie e differenze', in Lo Cascio, op. cit. (n. 13), 247; idem, op. cit. (n. 20, 2002), 127–58; also Giliberti, op. cit. (n. 4), 82–4.

[26] J. Banaji, 'Lavoratori liberi e residenza coatta: il colonato romano in prospettiva storica', in Lo Cascio, op. cit. (n. 13), 262; idem, *Agrarian Change in Late Antiquity: Gold, Labour, and Aristocratic Dominance* (2001), 206–12; J. Durliat, *Les rentiers de l'impôt. Recherches sur les finances municipales dans la 'Pars Orientis' au IVe siècle* (1993), 72.

[27] Vera, op. cit. (n. 21), 199, 212; cf., also, Jones, op. cit. (n. 9), 4; Goffart, op. cit. (n. 9), 75.

[28] G. Giliberti, 'Consortium vicanorum', *Ostraka* 1 (1992), 198–9; Carrié, op. cit. (n. 13), 98; cf. Jones, op. cit. (n. 9), 6.

[29] Sirks, op. cit. (n. 7), 335: 'in every explanation of the colonate a connection is made with the tax'. Rosafio suspends judgement on whether custom or law is driving this process: Rosafio, op. cit. (n. 20, 2002), 147.

argued or assumed that the evolution of this legal concept can be observed in the evolution in the meaning of the late Latin abstract term *colonatus*.[30] However, this assumption is more difficult to sustain. It is not at all clear that the evidence of the fourth and fifth centuries supports such a conclusion. Indeed, the geographical and temporal distribution of the texts seems to militate against this interpretation. With the exception of a small number of general edicts issued by the emperor Constantine, legislation dealing with registered *coloni* tends to be directed quite specifically to an individual magistrate, and issued in response to a particular inquiry, request, or problem.[31] These isolated, context-specific directives were only later collected and edited to produce the two great codifications of law undertaken under Theodosius II and Justinian, which constitute the bulk of the evidence available to modern scholars.[32] The impression of homogeneity and directed policy that those codifications perpetuate is, to a certain extent, an illusion.

The legislation represents not only piecemeal responses to specific problems with the tax system. It reveals also a series of interactions between a novel, generalized, empire-wide fiscal systematization and the multitude of specific, provincial tax systems onto which this new schema was grafted. It has long been recognized that the aims of the fiscal reorganization of the Tetrarchy and later were, simply, a greater efficiency in the assessment and collection of taxes. That efficiency was to be achieved by adopting a single, empire-wide vocabulary, and a broad set of fiscal principles that were relatively limited in their scope. What the legal sources reveal is the points at which that broad set of principles came into contact with existing practices for assessing and collecting taxes. Thus, there exist schedules for translating between the abstract language of the *iugum* and the *caput* on the one hand, and measures that continued to be employed in the provinces, on the other.[33] Similarly, the legal texts which describe and define the rights and obligations of registered *coloni* were essentially concerned with ensuring that the limited aims of the state

[30] The legal concept of registered tenancy has been labelled the *ius colonatus* by Carrié, op. cit. (n. 4), 243; Carrié, op. cit. (n. 13), 80, 100, 103, 142, and *passim*. Carrié suggests that there is a collection of legal texts that together make up this *ius colonatus*, and that this should be distinguished from the reality of tenancy. See also Rosafio, op. cit. (n. 20, 2002), 137–58, locating the origins of this *ius colonatus* in tenancy of imperial estates. I argue in Section II below that even in the legal sources there is not a single unified legal conceptualization of the phenomenon.

[31] Although note also *CJ* 11.51.1 (A.D. 393S, Palestine), which attempts to use existing fiscal principles from other provinces as a model for taxing registered *coloni* in Palestine.

[32] Of the two, the circumstances surrounding the creation of the *Codex Theodosianus* have received most attention. See, most recently, J. F. Matthews, *Laying Down the Law: A Study of the Theodosian Code* (2000), who offers a detailed account of the process of codification and the implications of this for our interpretation of the texts; also T. Honoré, 'The making of the Theodosian Code', *ZRG* 103 (1986), 133–222 and J. Harries and I. Wood (eds), *The Theodosian Code: Studies in the Imperial Law of Late Antiquity* (1993). For the project under Justinian, T. Honoré, *Tribonian* (1978) remains fundamental. Note also the comments on the purpose of codification by W. Turpin, 'The purpose of the Roman law codes', *ZRG* 117 (1987), 620–30, and Honoré's observation that the crucial difference between the two lies in the fact that where 'the Theodosian commissioners ... had no power to eliminate discrepancies between authentic texts ... Justinian on the other hand insisted that his commissioners harmonize the law': T. Honoré, *Law in the Crisis of Empire: The Theodosian Dynasty and its Quaestors* (1998), 153 with nn. 317–18. The implications of this distinction deserve further study, for they impact upon the extent to which the texts preserved in the Justinianic corpus can be used as evidence for the period to which they are dated. Whitby's remarks concerning the effects of codification upon our interpretation of military legislation in the period are also relevant: M. Whitby, 'Recruitment in Roman armies, Justinian to Heraclius (ca, 565–615)', in A. Cameron (ed.), *The Byzantine and Early Islamic Near East III: States, Resources, Armies* (1995), 77; idem, 'Emperors and armies, AD 235–395', in S. Swain and M. Edwards (eds), *Approaching Late Antiquity* (2004), 169–70.

[33] The *iugum* was a concrete unit for measuring total taxable non-animate assets of an individual or collectivity, while the *caput* denoted a proportion of the total tax burden assessed on a community. The terms are not novelties of the period, but acquire new specific meanings: Goffart, op. cit. (n. 9), 47, 139; J.-M. Carrié, 'Diocletien et la fiscalité', *AntTard* 2 (1994), 43, 45, 46 nn. 62–3, 48, 53. Further discussion in Grey, op. cit. (n. 3). Schedules of translation: *Syro-Roman Lawbook* (*Leges Saeculares* 121 = *FIRA*^{2} II, 795–6) and an inscription from Thera (*IG* XII.3.343), with the discussions of A. H. M. Jones, 'Census records of the Later Roman Empire', *JRS* 43 (1953), 49–64 (reprinted in Jones, op. cit. (n. 9, 1974), 228–56); J.-M. Carrié, 'Le riforme economiche da Aureliano a Costantino', in A. Momigliano and A. Schiavone (eds), *Storia di Roma*, III.1 (1993a), 298; idem, 'Observations sur

— namely, to ensure that taxes were paid, and those responsible for them were held accountable — could be met within the multiplicity of existing provincial practices. I return to these arguments below in Section IV, where I outline the limited aims of the fiscal legislation, and the context in which they should be interpreted. In this project, I draw upon the work of recent scholars who have sought to build on Carrié's interpretation and detach the *realia* of tenancy in the late Roman period from the concerns that occupied the promulgators of the legal sources.[34] First, however, I explore the contexts in which the term *colonatus* appears in the legal sources, in pursuit of a clearer understanding of the ways in which lawyers and writers of the period employed the concept.

II THE *COLONATUS* OF THE LATE ROMAN EMPIRE

The term *colonatus* seems to be a neologism of the late Roman period, albeit one with a relatively limited currency. It does not appear in the *Digest*, and only rarely in the extant sources of the fourth and fifth centuries. In the legal sources that survive from the period it appears five times. Additionally, it appears in a passage of Victor of Vita's *Historia persecutionis Africanae Provinciae*.[35] This is a very small sample, which renders any conclusions drawn from these texts suggestive rather than compelling. In any event, it is clear that in each attestation *colonatus* carries resonances of tenancy in an agricultural context.[36] It is less clear, however, whether the term as it is employed in the legal sources carried conscious or unconscious resonances of a specific, legal meaning, whether that specific, legal meaning emerged or evolved over the course of the fourth and fifth centuries, and if that evolution was towards the 'colonate' (or 'colonates') of current historiography. If such links could be established, they would provide some support for the contention that a coherent policy *vis-à-vis* registered tenancy can be discerned in the fiscal legislation of the period. If, on the other hand, such links are lacking, further questions may be asked about the validity of that interpretative framework.

The earliest preserved attestation of the term occurs in a rescript to Rufinus, *comes Orientis*, which deals with the problem of *curiales* evading their municipal *munera*. At issue is the recourse by some individuals to a *ius colonatus rei privatae*, that is, a law governing tenancy on imperial estates, in order to evade nominations to the *curia*.[37] In

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la fiscalité du IVe siècle pour servir à l'histoire monétaire', in *L'<inflazione> nel quarto secolo d.C.: Atti dell'incontro di studio, Roma 23–25 giugno 1988*, Istituto Italiano di Numismatica, studi e materiali 3 (1993b), 127, 143–6; Carrié, op. cit. (this note, 1994), 46 with n. 63, 48–9. For the new tax system of the Late Roman Empire, A. Déléage, *La Capitation du Bas-Empire* (1945) remains fundamental; also Carrié, op. cit. (this note, 1994), *passim*. For fuller discussion of the relatively limited aims of this system, its structure, and the mechanisms through which it interacted with local tax practices and hierarchies, see C. Grey, *Peasants, Patronage and Taxation c. 280– c. 480*, unpub. Ph. D. dissertation University of Cambridge (2002), 136–70, with further bibliography.

[34] In most detail, Vera, op. cit. (n. 21); idem, 'Le forme del lavoro rurale: aspetti della trasformazione dell'Europa romana fra tarda antichità e alto medioevo', in *Morfologie sociali e culturali in Europa fra tarda antiquità e alto medioevo*, Settimane di studio del Centro italiano di studi sull'alto medioevo 45 (1998), 293–342, with further references.

[35] The term also appears in the MS of Augustine, *Ep.* 24*, but the reading has been contested by Gabillon, and emended to *colonus*: A. Gabillon, 'Quelques corrections au texte des nouvelles Lettres', in *Les lettres de Saint Augustin découvertes par Johannes Divjack: Communications présentées au colloque des 20 et 21 Septembre 1982* (1983), 41, followed by C. Lepelley, 'Liberté, colonat et esclavage d'après la Lettre 24*: la jurisdiction épiscopale <de liberali causa>', in ibid., 334 n. 29. For later examples of the term, particularly in the legislation of Justinian, see K.-P. Johne, '*Colonus, colonia, colonatus*', *Philologus* 132 (1988), 308–21.

[36] *Pace* Johne, op. cit. (n. 35), 320–1, the term should be interpreted alongside common abstracts such as *magistratus, consulatus*, or *decurionatus* rather than similar late Roman neologisms like *clarissimatus, perfectissimatus*, or *egregiatus*. That is, it denoted a function, not a status.

[37] *CTh* 12.1.33 (A.D. 342, to Rufinus, *Comes Orientis*): 'multos declinantes obsequia machinari, ut privilegia rei privatae nostrae colonatus iure sectante curialium nominationes declinent.'

response, the law falls back upon a minimum property qualification, directing that if an individual possesses 25 *iugera* or more as well as renting imperial estates, 'every attempt at evasion based on privileges or *origo* or any other immunity shall be denied, and he may be claimed by the curial association'.[38] The attempts to obtain immunity from service in the *curia* highlighted in this rescript are redolent of a law of Constantine concerning *coloni originales rei privatae*, which itself has been connected with a proposition offered by the Severan jurist Callistratus to the effect that *coloni Caesaris* should be exempt from all other *munera*.[39] The term *colonatus* is here used in a highly specific context, to describe a particular type of tenancy and delimit it from other roles and responsibilities in a municipality. Equally, though, the *coloni* of this text can be placed within a broader set of fiscal and administrative principles. The rescript attempts to stop individuals claiming immunity from curial service based on their cultivation of estates from the *res privata*. The terms in which those claims are described reveal that such estates were considered a unique type of *origo*, and signal the importance of the principle of the *origo* in determining an individual's liability for taxation and other *munera* in the period following the fiscal reforms of the Tetrarchy. I return to this subject in Section IV below. It suffices to note here that the *origo* was a concept with a broad application within the fiscal system of the Late Roman Empire. In the law under discussion here, for example, the *origo* is not a portion of the land within a municipality, but rather an independent and separate area of land, which carried with it certain privileges and exemptions for an individual identified as connected to it.

The second attestation of the term *colonatus* is in a rescript of the emperors Gratian, Valentinian and Theodosius to Severus, the Prefect of the City of Rome, where it is envisaged as a vertical alliance that places a personal responsibility upon a landowner for the actions of his tenant. The focus of attention in this rescript is beggars in the city, who are taken to represent a dangerous and uncontrolled element in society. The emperors direct that all such individuals be subjected to an examination. Any found to be freeborn and able-bodied — and therefore begging illegitimately — are to be given over to their *proditor* in an arrangement described as *colonatus perpetuus*.[40] The language in which this tenancy arrangement is described has resonances of the *opus publicum in perpetuum*, a punishment imposed upon criminals of particularly humble status and upon slaves, and this in turn signals the persistence of the view that mendicancy was quasi-criminal behaviour. It is difficult to envisage this policy being effectively policed and enforced, and there is no further evidence beyond this text that reveals the circumstances in which the rescript was promulgated. At an ideological level, however, the text reveals a continuing aristocratic preoccupation with the worrying phenomenon of the urban mob. It also assumes a symbiotic relationship between the private arrangements of individuals and the public welfare. Like the *opus publicum in perpetuum*, the *colonatus perpetuus* seems to be regarded as in the interests of the municipal community. Significantly, however, it is a privately-contracted arrangement rather than a publicly-enforced imposition. Thus, the *colonatus* of this text, too, is quite specific. The rescript appears to envisage an interweaving of the impersonal contract of tenancy with the more personal bonds of patronage to create a mutually binding relationship. The object of that relationship was to ensure that individuals who would ordinarily not be considered part of the community could be controlled and the threat of violence or upheaval that they represented neutralized.[41]

[38] *CTh* 12.1.33 (A.D. 342, to Rufinus, *Comes Orientis*): 'omni privilegiorum vel originis vel cuiuslibet excusationis alterius frustratione submota curiali consortio vindicetur.'

[39] *CJ* 11.68.1 (A.D. 325S, a general edict addressed to Constantius *PPO*); *Digest* 50.6.6.11 (Callistratus); P. Rosafio, 'Coloni imperiali e coloni privati nella legislazione del quarto secolo', *Atti Academia Romanistica Constantiniana* 10 (1995), 457.

[40] *CTh* 14.18.1 = *CJ* 11.26.1 (A.D. 382, Rome): 'eorum, vero, quos natalium sola libertas prosequatur, colonatu perpetuo fulciatur.'

[41] Fuller discussion in C. Grey and A. Parkin, 'Controlling the urban mob: the *colonatus perpetuus* of *CTh* 14.18.1', *Phoenix* 57 (2003), 284–99.

Where public and private, urban and rural are envisaged as operating in symbiosis in the law concerning beggars, the two spheres are kept separate in an early fifth-century rescript aimed at maintaining the civic institutions of the municipalities of Gaul. This text focuses upon the relationship between city and country, and the responsibilities of urban and rural populations to their municipalities. It interprets *colonatus* as a privately-contracted arrangement undertaken in a rural context, and distinguishes this from activities undertaken for the benefit of the municipal community, such as service on the *curia* or membership of a *collegium*.[42] The attitude of this law towards the relationship between urban and rural professions builds on an earlier law, which makes a clear statement that urban *munera* should be fulfilled by urban dwellers, and rural dwellers should be left to pursue agriculture.[43] This separation is envisaged to be in the interests of the municipality as a whole. But, in reality, urban and rural activity could not be separated so easily, as individuals moved backwards and forwards with relative regularity between cities and their surrounding countrysides. This ease of movement is recognized in the law of A.D. 400, which begins with a comment upon the withdrawal by members of urban *collegia* to isolated areas in the countryside.[44] In response, the law attempts to bolster urban institutions, by acknowledging and legitimizing service by rural dwellers in urban professions. It does so by falling back upon another distinction: that between public and private interest. The fulfilment of urban *munera* is identified as in the public interest. By contrast, tenancy (*colonatus*) or resident tenancy (*inquilinatus*) — even on imperial estates — is held to be a private matter. The claim that a landowner has over tenants is secondary to the interests of the municipality, and ceases altogether after a period of thirty years. The *colonatus* of this law has little in common with the *ius colonatus rei privatae* of *CTh* 12.1.33, for it is situated explicitly in the realm of private law. It appears also to contradict the understanding of *colonatus*, as a private arrangement that might benefit the community as a whole, which underpins the law on beggars.

A similar set of problems in defining the relative weight to be placed on private and public relationships attends the *ius colonatus* of an early fifth-century law. This edict attempts to define and delimit the terms on which a group of Sciri, captured in the wake of a victory over the Hunnic leader Uldin and described as prisoners-of-war (*dediticii*), should be settled on the land.[45] The text provides the only detailed account of the settlement of *dediticii* as rural cultivators in the late Roman period. It provides tantalizing glimpses of the provisions that such settlements might entail, and the arrangements that could be made for ensuring a steady supply of military recruits from such cultivators and their landlords. Some scholars have interpreted this text as marking the emergence of an articulated, internally consistent set of regulations surrounding registered tenancy.[46] But caution is necessary, for the text responds as much to military and foreign policy concerns as to any generalized understanding of a *ius colonatus*. It is clear that the practice of registration is alluded to in restrictions upon other landowners luring these cultivators away from their responsibilities. But here, too, the focus is not simply upon registered

[42] *CTh* 12.19.2 = *CJ* 11.66.6 (A.D. 400, Gaul): 'Eum igitur, qui curiae vel collegio vel burgis ceterisque corporibus intra eandem provinciam per XXX annos, in alia XL sine interpellatione servierit, neque res dominica neque actio privata contingat, si colonatus quis aut inquilinatus quaestionem movere temptaverit.' The original text appears to have been divided over four entries in the *Codex Theodosianus*: *CTh* 12.19.1–3; 4.23.1.

[43] *CTh* 11.10.1 (A.D. 369, Gaul).

[44] *CTh* 12.19.1 (A.D. 400, Gaul): 'Destitutae ministeriis civitates splendorem, quo pridem nituerant, amiserunt: plurimi siquidem collegiati cultum urbium deserentes agrestem vitam secuti in secreta sese et devia contulerunt.'

[45] *CTh* 5.6.3 (A.D. 409, East): 'Ideoque damus omnibus copiam ex praedicto ge[*ner*]e hominum agros proprios frequentandi, ita ut omnes [*scia*]nt susceptos non alio iure quam colonatus.'

[46] J. H. W. G. Liebeschuetz, *Barbarians and Bishops: Army, Church, and State in the Age of Arcadius and Chrysostom* (1990), 127–8; Mircovic, op. cit. (n. 20), 98–9, but note the caution of H. Elton, *Warfare in Roman Europe AD 350–425* (1996), 129–31; P. J. Heather, *Goths and Romans*, 332–489 (1991), 123–4; G. Wirth, 'Rome and its Germanic partners in the fourth century', in W. Pohl (ed.), *Kingdoms of the Empire: The Integration of Barbarians in Late Antiquity* (1997), 35–6 with nn. 100–1.

tenancy. Indeed, the law can be placed within the context of other fiscal legislation of the period. Mention is made of the opportunity for a tax equalization (*peraequatio*) in connection with the acquisition of these cultivators, although the text is fragmentary at this point and the significance of this concession is unclear. In the same section, a *ius census* is also mentioned, which may with caution be linked with the principle of the *origo*. Alongside fiscal concerns, matters of security and military recruitment loom large in the text. The office of the Praetorian Prefect was directed to supervise relations between these tenants and their new landlords, and specific limitations were placed upon the regions in which these individuals might be located. This text stands at the intersection between a number of different impulses and objectives in legislation of the period. While the circumstances are by no means identical, the relationship envisaged in this text between privately-contracted arrangements and institutions deemed to be public or state matters may be compared with the rescript concerning beggars in the city of Rome, where a private contract is created in order to satisfy the needs of the community. Equally, the *ius colonatus* envisaged here has resonances of the *ius colonatus rei privatae* in the rescript of A.D. 342, since the aim of mentioning the phenomenon appears to be to delimit and restrict the claims that can be made on the individuals settled under its terms.[47]

A rescript of Valentinian III pays little attention to the idea of *colonatus* as providing any sort of privilege, or to the concept of the mutuality of urban and rural pastimes. Rather, it leans towards the understanding of *colonatus* as separable from professions deemed to be serving the interests of the community or state found in the legislation concerning urban institutions in Gaul. The law restates in forceful terms the principle that thirty years of service in the imperial bureaucracy renders an individual immune from any other claims, observing that 'men who have earned honourable discharges from service in the palace are being dragged to the bonds of the most contemptible tenancies (*colonatus*)'.[48] It is difficult to countenance the image of ex-imperial officials being dragged off to become rural tenants upon their return to their municipalities, and it is likely that *colonatus* here should be understood as a rhetorical flourish. At any rate, Valentinian's point is that those who have served in the imperial bureaucracy should be accorded honour and status in their municipalities. The point of comparison he gives is of some interest, for it reveals a continuing aristocratic prejudice against labour on fields owned by another. But there is little in the text to suggest that *colonatus* is envisaged as a personal status of dependence.

Status considerations do appear in a passage from Victor of Vita, who, in a somewhat hysterical account of the fate of bishops under the Vandal persecution in A.D. 484, describes a trick by the Vandal king that sent some to the fields under what he describes as a *ius colonatus*.[49] Victor's intention here is clearly to contrast the former dignity of these bishops with their current straits. Nevertheless, if his testimony can be relied upon, the *ius colonatus* of his text has resonances of the *iura colonatus* of the legislation preserved in the *Codex Theodosianus*. In the circumstances, it seems most likely that Victor is referring to tenancy on estates formerly identified as imperial, and now the property of the Vandal king. It is further possible that the *ius* in question may be compared with that of the *res privata* alluded to in *CTh* 12.1.33. By contrast with the image there of *curiales* seeking out such tenancies as a means of evading other *munera*, *colonatus* for Victor is clearly both a condition unworthy of the high standing of these bishops and a punishment: they are in

[47] Further discussion in C. Grey, 'The *ius colonatus* as a model for the settlement of barbarian prisoners-of-war in the late Roman Empire?', in R. Mathisen and D. Shanzer (eds), *Romans, Barbarians, and the Transformation of the Roman World* (forthcoming).

[48] *Nov. Val.* 27.1.1 (A.D. 449, to Firminus, *PPO Italiae et Africae*): 'emeritos aulicis honoribus viros trahi ad laqueos vilissimi colonatus.' The precedent given for this provision of an extinctive period of thirty years is a law of Theodosius II (*CTh* 4.14.1 (A.D. 424, East)). It may be linked also to the law of A.D. 400 discussed above (*CTh* 12.19.2).

[49] *Historia persecutionis Africanae Provinciae* 3.20.

addition forbidden from singing psalms, praying or reading, baptizing or ordaining individuals, and settling disputes.

It is difficult to discern a uniform set of assumptions underpinning the use of *colonatus* in the fourth- and fifth-century sources. Some overlapping groups of conceptualizations can, however, be discerned. In some circumstances, *colonatus* appears to denote private arrangements that have some kind of connection with or value for the municipality as a whole and, by extension, the Roman state. This connection seems to be instrumental in the attempt to impose a *colonatus perpetuus* upon urban beggars, and it is implicit in the provisions surrounding the settlement of the Sciri. *Colonatus* might also denote tenancies with unique characteristics, and serve as a marker of difference. The *ius colonatus rei privatae* is one such unique tenancy, as are the arrangements envisaged for the Sciri. Equally, the term might be used to emphasize the gulf between city and country, honourable and humble professions, as evidenced by the attempts to bolster urban institutions in Gaul, Valentinian's rhetorical flourish, and Victor's account of the pernicious actions of the Vandal king. These meanings did share one fundamental characteristic. Whatever else it was, whether a privilege, a punishment, a private or public institution, *colonatus* was agricultural activity, the economic and fiscal foundation of the Empire. The *colonatus* of the fourth- and fifth-century legal texts should not be interpreted as representing a new type of registered tenancy that carried with it fiscal responsibility. Rather, it was a means for demarcating and describing a particular role in late Roman society, and distinguishing that role from other, equally clearly demarcated roles.

This is not to say that the laws of the fourth and fifth century did not contain an internal logic, and did not revolve around a specific set of ideas designed to facilitate the taxation of individuals. Rather, it is to suggest that the attention of the legislators of the period was not restricted to the sphere of registered tenancy. The changes wrought upon the tax system at the state level were motivated by the impulse to create a simple, direct means of including the multiplicity of charges, exactions, and liturgies pertaining in the provinces of the Mediterranean world under one conceptual umbrella. In the principle of the *origo*, we observe a tool that could be applied throughout the municipalities of the Empire, and used in ascribing responsibility for proportions of those municipalities' tax burdens to identifiable individuals. I return to this proposition below. First, however, I explore the terms in which registered tenants are described in the legal sources, and the tension between private arrangements and public institutions that emerges in those sources.

III THE REGISTERED *COLONI* OF THE LATE ROMAN EMPIRE

The fundamental characteristic uniting and defining registered *coloni* in fourth- and fifth-century legislation is the visibility in public law which their tenancy agreement with their landlord had acquired through their formal registration in the municipal tax rolls. Registration was achieved by inscribing the name of the tenant, in connection with a particular estate or field, in the tax declaration that the landlord lodged in the municipal tax office. The document in which the tenant's name was inscribed is described variously as a *professio* or a *iugatio* in the sources of the period.[50] A high level of detail was expected of these documents, and harsh penalties were ascribed for failure to declare all of one's assets.[51] Once registered, the tenant acquired a fiscal identity, one which was defined by the

[50] See, for example, *CTh* 11.28.13 (A.D. 422, Africa); *CTh* 5.11.8 (A.D. 365, Italy); *CJ* 11.17.4 = *CTh* 15.1.49 (A.D. 408, Illyricum). For dating, *PLRE* II, 545, following Seeck: the MS date of *CTh* 15.1.49 is A.D. 412. Cf. *CTh* 11.12.1 (A.D. 340, Gaul); with A. H. M. Jones, '*Capitatio* and *Iugatio*', *JRS* 47 (1957), 88–94 (reprinted in Jones, op. cit. (n. 9, 1974), 280–92); *CTh* 7.13.7 (A.D. 375, East); Goffart, op. cit. (n. 9), 35 with n. 13; Sirks, op. cit. (n. 10), 164.

[51] *Dig.* 50.15.4; 5.1.55; 43.7.26; 47.15.7; 48.18.1.20; Déléage, op. cit. (n. 33), 159; A. H. M. Jones, 'Taxation in Antiquity', in Jones, op. cit. (n. 9, 1974), 164 and n. 77.

entry of his name onto the tax rolls. By means of that action, he could be identified as part of a chain of responsibility for the taxes of the land. Over the course of the fourth and fifth centuries, there emerged provisions aimed at ensuring that registered tenants continued to fulfill their responsibilities to the Fisc, or imperial treasury, and defining the foundations upon which those responsibilities rested.

The earliest preserved law prescribing legal limitations upon the freedom of movement of registered tenant farmers concerns *coloni* found to have obligations elsewhere from the estate upon which they are discovered (*iuris alieni*). The law directs that 'those *coloni* who meditate flight shall be bound in chain in the same manner as if they were slaves, so that they shall be forced to fulfill the contract befitting a free man by means of a slave's penalty'.[52] This threat reveals a deep and enduring ambiguity in the conceptualization of the legal position of registered *coloni* in the legal sources. On the one hand, it assumes an enduring separation between slavery and registered tenancy, and this separation continues to be emphasized in later legislation.[53] On the other, it illustrates a broader tendency in the legislation to express limitations upon the freedom of movement and economic independence of registered *coloni* using the vocabulary of slavery as a convenient, but imperfect, template.

Employing the language of slavery raised problems as well as providing a partial solution. Most significantly, it created a tension between the roles of the *patronus*, the *dominus*-as-landowner and the *dominus*-as-slaveowner in relation to these registered *coloni*. A law of Valentinian and Valens directs that *coloni* may not alienate even their own property 'without the advice and knowledge of their patrons'.[54] The *patroni* of this text should also be taken as *domini*, since they own the land cultivated by the tenant. It is plausible to suggest that the text under discussion here is a response to confusion over ownership, arising from the registration of *coloni* alongside landowners in the census rolls. It is not surprising that *coloni* registered in this way were forbidden to alienate land they did not own or were not paying taxes for. Moreover, restrictions on tenants alienating their own land may be interpreted as tacit recognition that a *patronus* or *dominus* might take responsibility for paying the taxes owed by his tenant on the tenant's own land.[55] A law of the same emperors, which attempts to extend existing practices in other provinces to the province of Palestine, directs that 'no *colonus* should rejoice in his own right as if he were unattached and free'.[56] It goes on to describe the *colonus* as having given himself over (*suscipio*) to the *dominus*, whose position and rights over the labour of the *colonus* are further defined as resting upon his role as the *possessor* of the land worked by the latter. The mixture of a personal relationship of patronage and a more formal arrangement mediated by the land is evident here.

Two laws of the later fourth century return to these tensions, and attempt to define the role of the landowner more closely. A law concerning registered *coloni* in Thrace notes that 'although they appear to be free in status, they must be treated as slaves of the land

[52] *Brev.* 5.9.1 = *CTh* 5.17.1 (A.D. 332, *ad provinciales*): 'Ipsos etiam colonos, qui fugam meditantur, in servilem condicionem ferro ligari conveniet, ut officia, quae liberis congruunt, merito servilis condemnationis conpellantur inplere'. Cf. Carrié, op. cit. (n. 4), 223–4, 234, for the *ius alienum* as indicating an obligation to another estate, rather than another person.

[53] *Interp.* to *Brev* 5.9.1 = *CTh* 5.17.1; *CJ* 11.52.1; *CJ* 11.52.1 (A.D. 393, Thrace). Cf. also Augustine, *Ep.* 24*.

[54] *Brev.* 5.11.1 = *CTh* 5.19.1 (A.D. 365, East): 'inconsultis atque ignorantibus patronis in alteros transferre non liceat.' Goffart, op. cit. (n. 9), 77 n. 34 observes that this simply extends the terms of *CJ* 4.65.5 (A.D. 223).

[55] *CTh* 11.7.2 (A.D. 319, Britain); *CTh* 11.1.14 = *CJ* 11.48.4 (A.D. 371S, East). For dating, see *PLRE* 1, 607, following Seeck. Cf. *CJ* 1.3.16 (A.D. 409, East); *P. Ross. Georg.* III.8.11–12.

[56] *CJ* 11.51.1 (A.D. 393S, Palestine): 'nullus omnino colonorum suo iure velut vagus ac liber exsultet'. Again, resonances of the vocabulary used in connection with slaves are clear. The text also reveals the limited application of measures designed to limit the movement of registered *coloni*, though it offers no clues as to the particulars of those measures or the provinces in which they are in force.

on which they were born'.[57] The law goes on to define the grounds upon which a landlord's responsibility for the tax payments of his registered *coloni* rests by distinguishing between the *potestas* of a *dominus* and the *sollicitudo* of a *patronus*. In seeking to separate these two functions, the law creates an ambiguity in its description of the position of the *dominus*. Since the claim upon the *coloni* here resides in the land, one might expect the role of the *dominus* to be connected to his role as their landlord. However, by referring to his *potestas* over his *coloni*, the law deliberately invokes and exploits the image of a *dominus* as a slaveowner.

A slightly later law directed to Nebridius, *comes Asiae*, expresses this principle, and the terms upon which it rested. The text begins by distinguishing between two types of *coloni*, according to their relationship to the tax rolls. Of those whom it identifies as being in a position of obligation to the tax rolls, it comments that this obligation amounts almost to a kind of servitude (*quaedam servitus*).[58] The law goes on to use this limitation as a basis for denying these individuals the right to institute suits against their *domini* or to alienate property, using as a framework established prohibitions against slaves undertaking these actions. The *quaedam servitus* of these registered *coloni* is explicitly located in the obligation that they have for the taxation assessed on the land. The interest of the *dominus* in ensuring that they do not alienate property is valid only insofar as it rests upon his ownership of the land upon which they are registered.[59]

The language of these texts vacillates between a relationship of personal dependence, and an arrangement predicated upon the responsibility of both parties through the land to the Fisc. This tension continued into the later fifth century and beyond. The law of A.D. 365 limiting the alienation by *coloni* of their property was placed under the title 'Ne colonus inscio domino suum alienet peculium vel litem inferat civilem' when the legislation of the period was collated and codified under the emperor Theodosius II in the second quarter of the fifth century. This appears to take the extension of the power of the *dominus* one step further. The restrictions here are comparable with those of the law directed to Nebridius, but the *patronus* of the original Constantinian text has disappeared, and been replaced by a *dominus* who appears to exercise his authority over both the land and person of the *colonus*. This impression is strengthened by the late fifth- or early sixth-century *Interpretatio* to the text, which observes that '*Coloni* are held under obligation to their *domini* in all things, to the extent that they may not presume to alienate any of their land or their *peculium* without the knowledge of their *domini*'.[60] At first blush, these descriptions of the personal possessions of *coloni* as *peculium* appear to amount to an explicit equation of *coloni* with slaves. However, the legal sources of the period attest an expansion in the use of the term *peculium* in circumstances that fell well beyond the strict legal meaning of a sum entrusted to an individual *in potestate*, but still belonging to his *dominus* or *paterfamilias*.[61] Moreover, when *peculium* is used in its strict legal sense, *coloni* are excluded. This is evidenced by an edict of A.D. 422, dealing with the liability of

[57] *CJ* 11.52.1 (A.D. 393, Thrace): 'Et licet condicione videantur ingenui, servi tamen terrae ipsius cui nati sunt aestimentur'. Cf. the mixture of free, freed, and slave status in *CJ* 1.12.6.9 (A.D. 466, East or Illyricum), which refers to 'servus aut colonus vel adscripticius, familiaris sive libertus et huiusmodi aliqua persona domestica vel condicioni subdita'. The recipient of this law, Erythrius, was *PPO* of either the East or Illyricum at this time: *PLRE* II, 410.

[58] *CJ* 11.50.2 (A.D. 396, Asia): 'Coloni censibus dumtaxat adscripti, sicuti ab his liberi sunt, quibus eos tributa subiectos non faciunt, ita his, quibus annuis functionibus et debito condicionis obnoxii sunt, paene est ut quadam servitute dediti videantur.'

[59] *CJ* 11.50.2.3 (A.D. 396, Asia). Cf. Goffart, op. cit. (n. 9), 74 with n. 25.

[60] *Brev.* 5.11 *tit.* = *CTh* 5.19 *tit*; *Interp.*: 'In tantum dominis coloni in omnibus tenentur obnoxii, ut nescientibus dominis nihil colonus neque de terra neque de peculio suo alienare praesumat.'

[61] See the discussion of A. J. B. Sirks, 'The farmer, the landlord and the law in the fifth century', in R. Mathisen (ed.), *Law, Society, and Authority in Late Antiquity* (2001), 262–5 with nn. 22–31; also Vera, op. cit. (n. 21), 216, who argues that *peculium* is in fact the *instrumenta* supplied by a landowner to a sharecropper. This is possible, though it may be placing too heavy a burden upon the text. *Peculium* is also used metaphorically in *CTh* 16.5.54 (A.D. 414, Africa).

a landowner for debts incurred by the personnel on his estate. The edict survives as a series of excerpts in the Theodosian and Justinianic Codes.[62] *Coloni* are included among a list of estate personnel for whom a creditor had the right to an *actio quod iussu* against the *dominus*,[63] but they are not part of a list of individuals against whom the creditor has an *utilis actio* for their *peculium*.[64] It seems reasonable to suggest, then, that *coloni* did not receive a *peculium* from their landlord. The equation with slaves in this context was incomplete and analogous only.

It has been argued on the basis of laws limiting the economic freedom of a *colonus* to dispose of his own possessions, that landlords assumed a form of *potestas* over their *coloni*.[65] However, caution is necessary. Such an interpretation represents a return to the argument that *coloni* found themselves in a position half way between freedom and slavery. It is difficult to countenance landlords enjoying a *potestas* over registered *coloni* that was, in some senses, stricter than that over a *servus* who was able to administer his own *peculium* independently. Further, the authority granted to a *dominus* over his *colonus* by these laws was not conceived as a private law right. Rather, the right of the landlord pertained in public law and was connected with his ownership of the land.[66] His rights to limit the behaviour of his tenants were effectively limited to situations that might affect the tax-paying capabilities of the land. Finally, landlords themselves experienced limitations upon their economic decision-making *vis-à-vis* registered *coloni*. They were forbidden to expel or replace *coloni* registered on the tax rolls.[67] In the event that a landowner sold or gave away parcels of his land, any sitting tenants were transmitted with the land to the new landowner.[68] The most explicit expression of these limitations may be found in a novel of Valentinian III, which once again emphasizes the primacy of the principle of the *origo*. This law provides the key to the relationship between *colonus*, *dominus*, and the land. It concedes that a landlord could transfer tenants between estates, but asserts that any later claim to those tenants was vested in the land, not the landowner when it notes that 'if by sale or gift or any other manner whatever the two properties should come to different owners, it shall not be permitted for such transferred persons to be recalled by the claim and title of *origo*'.[69] This echoes a law of A.D. 419, which directs that the children of a

[62] S.-A. Fusco, <*Pecuniam Commodare*>: *Aspetti economici e sociali della disciplina giuridica dei rapporti di credito nel V secolo d. C.* (1980) has posited the following order: (i) *CTh* 8.8.10; (ii) *CTh* 2.31.1; (iii) *CTh* 2.30.2; (iv) *CTh* 2.32.1; (v) *CTh* 2.13.1; (vi) *CTh* 2.28.1, although he offers no comprehensive argument. It is, perhaps, better to stick with the conclusion of G. and M. Sautel that it is 'inutile d'insister sur la liaison existant entre tous ces fragments': G. and M. Sautel, 'Notes sur l'action *quod iussu* et ses destinées post-classiques', in *Droits de l'antiquité et sociologie juridique: Mélanges Henri Levy-Bruhl*, Publications de l'Institut de droit romain de l'Université de Paris 17 (1959), 266 n. 2. At any rate, the general thrust of the edict can be recovered from the surviving fragments.

[63] *CTh* 2.31.1 = *CJ* 4.26.13 *mut.* (A.D. 422, West).

[64] *CTh* 2.32.1 = *CJ* 4.26.13 (A.D. 422, West).

[65] Carrié, op. cit. (n. 4), 222–4; Carrié, op. cit. (n. 13), 92; Sirks, op. cit. (n. 7), 335; Sirks, op. cit. (n. 61), 262 with n. 21. Sirks cites *Ed. Theod.* 109 (sixth century) in support, but it is not clear that that law is valid for the period under discussion here.

[66] *CTh* 4.23.1 = *CJ* 11.48.14 (A.D. 400, Gaul). Note also *CJ* 11.48.21 (A.D. 530), a law of Justinian, which asks, 'quae etenim differentia inter servos et adscripticios intellegetur, cum uterque in domini sui positus est potestate, et possit servum cum peculio manumittere et adscripticium cum terra suo dominio expellere?' By asking this rhetorical question, and offering the answer that he does, Justinian reveals ambiguity here, too, in the foundations of the *dominus*' power and position.

[67] *CJ* 11.48.7 (A.D. 371, Gaul). The MS gives the addressee as Maximus, but it is most likely that this individual is Maximinus 7, who was *PPO Galliae* at the time: *PLRE* I, 577–8; also *CJ* 11.63.3 (A.D. 383, East). Vera, op. cit. (n. 21), 216.

[68] *CTh* 13.10.3 (A.D. 357, to Dulcitius *consularis Aemiliae*); cf. the disjunction between private and public interest in *CTh* 12.19.2 (A.D. 400, Gaul) discussed in Section II above.

[69] *Nov. Val.* 35.1.18 (A.D. 452, Italy and Africa): 'sive venditione seu donatione seu quolibet alio modo ad diversos dominos res utraque pervenerit, translatos originis iure et titulo revocari non liceat.'

deceased *colonus* who had left his *origo* could be reclaimed 'agrorum iure'.[70] The impulse for these limitations may be located in the demands of the tax system. A landowner's responsibility for the tax burden of his land could be guaranteed by the assets that he declared on his *iugatio*. However, a tenant might not possess such assets. Consequently, his responsibility for the tax burden of the land upon which he was registered was to be guaranteed by his person. It is in these terms that we may understand the description of *coloni* as *servi terrae*, and in these terms, too, that the concern in the legislation for ensuring that they remain on the estates upon which they have been registered may be interpreted.

It seems reasonable to conclude, then, that registered tenancy was not a personal status, and registration did not result in the reduction of formerly free tenants to a position of slavery or quasi-slavery.[71] However, repeated assertions of the free status of these individuals suggest that their position as free men was in some contexts difficult to discern.[72] In the legislation of the period we may observe two processes at work, existing in a state of tension. On the one hand, slavery and freedom remained analytically distinct in the legislation of the period. On the other hand, the vocabulary of slavery served as an imperfect framework for attempts to define the terms in which their responsibility to the land, and the mutual responsibilities between them and the owners of that land could be described and enforced. The impression is strengthened by evidence for *coloni* owning land themselves, and consequently being registered in the census as landowners in addition to or instead of as tenants on the estates of other landowners. An eastern law differentiates between those *coloni* 'qui in locis isdem censitos[73] esse constabit' and those 'qui in suis conscribti locis proprio nomine libris censualibus detinentur'.[74] As has long been recognized, too, acknowledgements of the limited distribution of registration as a tool for identifying links between tenants and the land they farmed are scattered throughout the legal sources. The law of Valentinian and Valens, seeking to apply existing practices to the province of Palestine, has already been noted. Another law of the same emperors, recommending that marines be recruited from among the *incensiti*, reveals that some proportion of the population, at least, was not registered on the census at all.[75] And a late fourth-century law from Gaul restricts the scope of its enforcement to 'those regions ... in which are observed this method of retaining the plebeians, and registering them'.[76]

This diversity and uneven distribution is not surprising. The impulse driving the tax reforms of the period has been described as 'macro-fiscalité', that is, the desire to create an overarching system of assessment, which was grafted onto existing practices in the

[70] *Brev.* 5.10.1.2 = *CTh* 5.18.1.2 (A.D. 419, Italy). This text adds further support to the argument that the *ius alienum* of Constantine's general edict of A.D. 324 (*Brev.* 5.9.1 = *CTh* 5.17.1) was founded on the land, not the proprietor of that land. See Carrié, op. cit. (n. 4), 220, 222–4; Lepelley, op. cit. (n. 13), 246 at n. 37, 250–1.

[71] G. Giliberti, *Servus quasi colonus: forme non tradizionali di organizzazione del lavoro nella società romana* (1981), 14–15; Lepelley, op. cit. (n. 35), 335; C. R. Whittaker, 'Circe's pigs: from slavery to serfdom in the later Roman world', *Slavery and Abolition* 8.1 (1987), 88–122, at 109 (republished in M. I. Finley and W. Scheidel (eds), *Classical Slavery* (2nd edn, 1999)); D. Vera, 'Schiavitù rurale e colonato nell'Italia imperiale', *Scienze dell'Antichità: Storia Archeologia Antropologia* 6–7 (1992–93), 317; Sirks, op. cit. (n. 7), 332, 350–1; Carrié, op. cit. (n. 13), 94; Scheidel, op. cit. (n. 4), 731.

[72] Carrié, op. cit. (n. 4), 252; Carrié, op. cit. (n. 13), 87–8, 95. Note, for example, Augustine's confusion over the relative rights of landowner, purchaser, and parent in the event of a *colonus* selling a child into slavery: Augustine, *Ep.* 24*. See, recently, the discussion of V. Vuolanto, 'Selling a freeborn child: rhetoric and social realities in the Late Roman world', *Ancient Society* 33 (2003), 169–207; also C. Grey, 'Slavery in the Late Roman World', in K. Bradley and P. Cartledge (eds), *The Cambridge World History of Slavery: The Ancient Mediterranean World* (forthcoming).

[73] *CTh* gives *censo*. I follow the *lectio difficilior*.

[74] *CTh* 11.1.14 = *CJ* 11.48.4 (A.D. 371S, East). *Pace* Sirks, op. cit. (n. 7), 333, there is no reason to believe that all *coloni* lived on the land they rented, as *CTh* 11.1.14 = *CJ* 11.48.4 and Palladius *Op. Ag.* 1.6.6 make clear.

[75] *CTh* 10.23.1 (A.D. 369–370, East).

[76] *CTh* 11.1.26 (A.D. 399, Gaul): 'earum scilicet provinciarum ... in quibus haec retinendae plebis ratio adscriptioque servatur.' This text is discussed further in Section IV below.

provinces.[77] As a consequence, we might expect different problems of communication between the two levels to emerge in different regions. It is those problems, and attempts to provide solutions to them, that constitute the bulk of our evidence for registered tenancy in the period. Scholars have sought to extract generalized patterns from that evidence, but this seems optimistic given the nature of the texts. The 'colonates' that have emerged in the historiographical debate draw their essential characteristics and origins from attempts to prioritize and hierarchize the evidence, and to privilege certain texts over others. This approach seems to be unhelpful, and to obscure the variety that undeniably existed in the various provinces of the Mediterranean world. Uniformity there was, but it was not to be found in taxation practices of the municipalities. Rather, it is to be located in the principle of registration, and the attempt to direct and introduce accountability into the tax-paying practices of those municipalities that such registration represents. I turn now to outlining the principle of registration upon an *origo*, and the light it sheds upon the new tax system of the late Roman period.

IV THE *ORIGINES* OF THE LATE ROMAN EMPIRE

Not every *colonus* was a registered tenant with fiscal responsibilities through his landlord to the state.[78] In order to signal links between the tenant and the tax rolls, the term *colonus* is qualified in some legislation by adjectival nouns such as *originarius*, *originalis*, and *adscripticius*. *Coloni* are also paired in other laws with *inquilini*. It has been suggested that these terms reveal various grades of *coloni* in the period, governed by a series of overlapping but distinguishable sets of restrictions.[79] I argue here that the assumptions underlying this construction have imposed a false systematization upon the evidence. These terms do not reflect discrete, recognizable conditions of dependence or fiscal responsibility. Rather, they reveal the interest of the state in determining the relationship between tenants, landowners, and the land through the medium of registration and the principle of the *origo*.

It has been plausibly suggested that the terms *originarius* and *originalis* are basically synonymous.[80] It is also accepted that these terms are linked in some way to the *origo* of the general edict of Constantine, and that the *origo* therefore lay at the heart of the 'colonate'.[81] But the nature of the *origo* itself is disputed. The term was not a novelty of the late Roman period, and it continued to denote links to a particular municipality in the period following the fiscal reforms of the Tetrarchy. It was also possible in this period to be registered upon an *origo* in the countryside surrounding that municipality.[82] In a fifth-

[77] Carrié, op. cit. (n. 33, 1993b), 139. Note the dispute over whether taxes should be considered part of *munera*, or *munera* part of taxes in the period. Goffart, op. cit. (n. 9), 22–30 and 70 holds the latter view; Sirks, op. cit. (n. 10), 164 with n. 19, holds the former. Carrié's construction solves this problem by introducing a higher order into which both were incorporated.

[78] Goffart, op. cit. (n. 9), 81 with n. 46; Eibach, op. cit. (n. 21), 130–1; Carrié, op. cit. (n. 4), 226; Sirks, op. cit. (n. 10), 168 n. 59; Sirks, op. cit. (n. 7), 334, Carrié, op. cit. (n. 13), 133; 139; Giliberti, op. cit. (n. 4), 86–7.

[79] See recently Mircovic, op. cit. (n. 20), *passim*; A. Marcone, 'Late Roman social relations', *CAH* 13 (1998), 370.

[80] Jones, op. cit. (n. 9), 7–8; A. H. M. Jones, *The Later Roman Empire*, 3 vols (1964), 799; cf. Goffart, op. cit. (n. 9), 70–1, 79; *contra* Eibach, op. cit. (n. 21), 205–18; A. V. Koptev, 'The raptor and the disgraced girl in Sidonius Apollinaris' *Epistula* V. 19', *Ancient Society* 34 (2004), 287.

[81] *Brev.* 5.9.1 = *CTh* 5.17.1. Saumagne, op. cit. (n. 5), *passim*; Sirks, op. cit. (n. 7); Carrié, op. cit. (n. 13), 128, 141. Nörr's discussions of the *origo* remain valuable: D. Nörr, 'Origo. Studien zur Orts-, Stadt- und Reichszugehörigkeit in der Antike', *RHD* 31 (1963), 525–600; idem, 'Origo', *RE Suppl.* 10 (1965), 433–73.

[82] Civic *origo: Brev.* 12.1.2 = *CTh* 12.1.12 = *CJ* 10.39.5 (A.D. 325, East); cf. *CTh* 7.21.3 (A.D. 396, Rome); see further Jones, op. cit. (n. 80), 68–9. Rural *origo*: *Brev.* 5.9.1 = *CTh* 5.17.1 directs that *coloni iuris alieni* should be returned to their *origo*. Also *CJ* 10.39.3 (Philippus), which directs that sons should take the *origo* of their father, not the *civitas* of their mother. Note Carrié, op. cit. (n. 4), 218: '*L'adscriptio census* exigée par Dioclétien pour tous les contribuables de l'Empire, et qui les fixe également dans une domiciliation fiscale définitive, reconnaît trois *origines* possibles, trois ressorts d'*adscriptio*: ville, village, domaine.'

century law, for example, the term denotes an area of land in which a tenant, landowner, labourer or slave was registered through a tax declaration.[83] Over the course of the fourth century, it appears that there emerged a *ius* based on the *origo*. The first explicit attestation of the concept is found in the law for Thrace mentioned above, which envisages the principle as a means of ensuring that registered *coloni* could continue to be held responsible to the tax rolls now that the land tax was the sole means of taxation in the province.[84] A law of A.D. 400 establishes the correct order in which various legal claims, including that of the *origo*, should be settled in cases involving fugitive registered *coloni*.[85] Some scholars have argued that it was by means of the *ius originarium* that tenants were bound to the land. *Coloni originales* or *originarii* are envisaged as a particular type of tenant bound by a hereditary link to a specific estate, their *origo*.[86] *Ius originarium* has been taken to mean that 'a *colonus* is attached to the land since the rules of the *origo* make him subject to this obligation'.[87] It has been linked to the *ius agrorum* adduced in a law recalling the children of a deceased *colonus originalis vel inquilinus* to the *origo* of their father.[88] A law of A.D. 365 has been interpreted as cementing this hereditary link between *colonus* and *origo* by directing that fugitive *coloni* be returned 'to their ancient hearths, where they are registered, and were raised and born'.[89]

However, the texts upon which this interpretation is based are scattered and inconsistent, and caution is again necessary, lest the uniformity of this *ius originarium* be overemphasized or its ambit misinterpreted. The *origo* was not focused specifically upon registered *coloni*, as a means of ensuring that propertyless taxpayers could be held responsible for taxation. Rather, it was a broad principle, which extended beyond tenants to touch individuals involved in other activities as well. Specific regions in a municipality and its hinterland could be identified as carrying a particular *munus*, *annona*, or portion of the tax burden. Individuals attached through a census declaration to that region could by the principle of the *origo* be held responsible for those burdens.[90] For example, slaves on imperial estates could be described as *originarii*, and the *origo* also appears as a principle for recalling *curiales* and functionaries in the imperial bureaucracy to their responsibilities.[91] Registered *coloni* are particularly visible in the sources, because the inflexibility of registration on a specific area of land caused problems when imposed upon the flexible strategies of crop rotation and short-term tenancy that continued to be the norm among small and large farmers alike in the Mediterranean world.[92] But similar

[83] *CTh* 5.16.34 = *CJ* 11.68.6 (A.D. 425, to Valerius, *CRP*); Carrié, op. cit. (n. 4), 227; Carrié, op. cit. (n. 13), 138.
[84] *CJ* 11.52.1 (A.D. 393, Thrace).
[85] *CTh* 4.23.1 = *CJ* 11.48.14 (A.D. 400, Gaul).
[86] Goffart, op. cit. (n. 9), 71 n. 14, 77 n. 39.
[87] Sirks, op. cit. (n. 7), 344 n. 43.
[88] *Brev.* 5.10.1.2 = *CTh* 5.18.1.2 (A.D. 419, Italy). These various *iura* are linked together by Goffart, op. cit. (n. 9), 71–2, 81, 84–5, 87; Banaji, op. cit. (n. 26, 2001), 211–12; Rosafio, op. cit. (n. 20, 2002), 12, 177–214; Koptev, op. cit. (n. 80), 287–8.
[89] *CJ* 11.48.6 (A.D. 365, Gaul): 'ad antiquos penates, ubi censiti atque educati natique sunt.' Goffart, op. cit. (n. 9), 77 n. 34, 83 n. 51, conjectures that this might be a highly significant moment in the binding of *coloni*, but that the significance is only obvious in the light of *CJ* 11.48.7 and *CJ* 11.53.1 (A.D. 371). This suggestion assumes that these laws were driven by a systematic, united policy.
[90] Note legislation directing that new owners of land ensure that their name is entered into the tax rolls in connection with that land, and papyri containing such a request: *FV* 35.3–4; 249.5–8; *CTh* 11.3.5 (A.D. 391, East); *P. Oxy.* 3583 (A.D. 444); *P. Ness.* III.24 (A.D. 569).
[91] *CTh* 4.12.3 (A.D. 320, *ad populum*), with the comments of Rosafio, op. cit. (n. 20, 2002), 154; *CTh* 6.27.16 (A.D. 413, East); *CTh* 6.30.17 (A.D. 399, to Longinianus, *CSL*); *CTh* 6.35.14 (A.D. 423, East).
[92] The potential for conflict between agrarian practices and fiscal concerns has long been recognized, but might profit from more detailed study. Whittaker's comments on the problem of *agri deserti* remain fundamental: C. R. Whittaker, '*Agri deserti*', in M. I. Finley (ed.), *Studies in Roman Property* (1976), 137–65; idem, 'Inflation and the economy in the fourth century A. D.', in C. E. King (ed.), *Imperial Revenue, Expenditure and Monetary Policy in the Fourth Century A. D.*, BAR Int. Ser. 76 (1980), 1–22. Note also the preliminary comments in Grey, op. cit. (n. 3), *passim*.

problems of enforcement and limitations upon movement may be observed with reference to individuals who were expected to fulfill other economic roles and liturgies.[93]

The most common *munus* was simply a proportion of the municipality's tax burden. In a law of A.D. 371 directed to Illyricum the tenants' responsibility for the estate's taxes is explicitly predicated upon their registration on the land as *originales*.[94] Other land might carry different *munera*. The responsibility for recruits (*prototypia*) or recruit taxes (*protostasia*; *temo*), for example, was imposed in the late Roman period upon a *capitulum*, a geographically contiguous area of land.[95] Still other estates carried responsibility for the *functio navicularii*, a *munus patrimonii* which travelled with the estate upon alienation.[96] Individuals could also be registered as responsible to more than one collectivity. For example, in a mid-fourth-century law, *conductores* and *coloni* on imperial estates were commanded to acknowledge also the share of the municipality's tax burden that was attached to the land they farmed.[97]

Registration through a landowner's tax declaration on a particular *origo* made tenants visible in the municipal or imperial tax rolls, so that they could be held responsible for the *munera* of that land.[98] On the other hand, registration might also carry certain privileges. Since they were identified as taxpayers, registered tenants were protected in law from the raising of their rents.[99] They were also protected from arbitrary eviction. A law of A.D. 371, for example, notes the prohibition on landowners from separating *originarii* from land upon which they are registered, and extends this provision to agricultural slaves registered in the census.[100] Specific *origines* carried particular privileges, too, such as the *ius colonatus rei privatae* discussed in Section II above.[101] The terms *originalis* or *originarius* did not amount to a discrete condition or status within the 'colonate'. Rather, they designated that an individual was registered on the census lists as attached to a particular *origo*, and thus subject to the responsibilities and privileges of that *origo*.

Registration on the tax lists also lies at the heart of the term *adscripticius*. Essentially, a *colonus adscripticius* was a *colonus censibus adscriptus*, a tenant attached to the census.[102] The term is first definitely attested around the middle of the fifth century, although

[93] A. H. M. Jones, 'The caste system in the Later Roman Empire', *Eirene* 8 (1970), 79–96 (reprinted in Jones, op. cit. (n. 9, 1974), 396–418) remains an invaluable collection of texts and sources, though his interpretation of a 'caste system' should be rejected. Note also Sirks, op. cit. (n. 10); Rosafio, op. cit. (n. 20, 2002), 145.

[94] *CTh* 11.1.14 = *CJ* 11.48.4 (A.D. 371S, East).

[95] *CJ* 10.42.8 (A.D. 293–305).

[96] *CTh* 13.5.3 (A.D. 315, Africa); A. H. M. Jones, 'The economic life of the towns of the Roman Empire', *Receuils de la Société Jean Bodin* VII (1955), 161–92, at 188–90 (reprinted in Jones, op. cit. (n. 9, 1974), 35–60); A. J. B. Sirks, 'Sulpicius Severus' letter to Salvius', *BIDR* 85 (1982), 143–70, at 153–5; idem, op. cit. (n. 10), 167–8.

[97] *CTh* 11.7.6 = *CJ* 10.19.4 (A.D. 349, West); the function of Eustathius, the recipient of this law, is problematic. He may have been *agens vices PPO Italiae* at the time: *PLRE* I, 311. The incorporation of this law under the rubric *De Exactionibus* reveals that, in the understanding of the compilers of the Theodosian Code, the *annona* was part of the regular tax system.

[98] Saumagne, op. cit. (n. 5), 510–12; Goffart, op. cit. (n. 9), 67; Sirks, op. cit. (n. 10), 165. Mircovic, op. cit. (n. 20), 106. See, for example, *CJ* 11.48.11 (Arcadius and Honorius, *ad populum*).

[99] *CJ* 11.50.1 (A.D. 325, East); *CJ* 11.50.2 (A.D. 396S, East); Vera observes that this legislation, too, is concerned with behaviour that affects the transition of revenues to the Fisc: Vera, op. cit. (n. 21), 206 with n. 69.

[100] *CJ* 11.48.7 (A.D. 371, Gaul).

[101] Note also a law of A.D. 320 which identifies imperial estates as a particular *origo*, and singles out individuals attached to such an estate for special treatment: *CTh* 4.12.3 (A.D. 320, *ad populum*). The law ascribes the children of freeborn mothers and fiscal slaves the status of *Latini*, and directs that they be subject to the *ius patronatus* imposed upon freedmen.

[102] cf. *CJ* 11.50.2 (A.D. 396, Asia). The argument over whether *adscripticius* and *censibus adscriptus* are synonyms is of long standing. O. Seeck, *Geschichte des Untergangs der antiken Welt*, vol. 2 (1901), 264–6, 491 affirmed that they were, and in this has been followed by Mircovic, op. cit. (n. 20), 65. Eibach, op. cit. (n. 21), 134–8 and Sirks, op. cit. (n. 7), 333, 335 deny the link. But the argument is based on the assumption that *adscripticius* denotes a particular status or condition, in which case it is not synonymous with *censibus adscriptus*. I argue that *adscripticius* was not a status, and was synonymous with *censibus adscriptus*, at least in the period under discussion here; cf. Carrié, op. cit. (n. 4), 217–18 with n. 58, 227; Carrié, op. cit. (n. 13), 96.

there are interpolations in earlier laws preserved in the Justinianic Code.[103] Some scholars have assumed that *adscripticii* were indebted, landless tenants who gradually sank into the *potestas* of their landlords.[104] The 'adscripticiate' has been described as the 'harsh form [of the colonate], with many restrictions', and opposed to the '"free" colonate', which was much milder.[105] This distinction between *adscripticii* and 'free' *coloni* rests upon a late fifth- or early sixth-century decree of Anastasius promulgated in Greek. The text distinguishes between *georgoi enapographoi*, whose *peculia* belong to their landowners, and 'free' *georgoi* who are nonetheless bound to cultivate the land and pay taxes.[106] Certain problems attend this interpretation. Nowhere in this text, or in any other source, is the position of *adscripticii* recognized to be as it has been constructed by some modern scholars.[107] Debt is nowhere mentioned and there is no discussion of whether *adscripticii* did or did not, or could or could not own land — certainly, they are not explicitly prohibited from doing so. As with the terms *originarius* and *originalis*, *adscriptio* appears in connection with other groups of rural labourers, too. Slaves, for example, might be attached to the census as *mancipia censibus ascripta*, after which they were part of the tax-paying capability of that land.[108] In addition, the act of *adscriptio* carried with it the same protection from arbitrary expulsion that characterized the condition of being *originarius*.[109] *Coloni censibus adscripti* or *adscripticii* are treated in the legislation in much the same way as *coloni originales* or *originarii*. It seems most likely that *adscripticius* and *originarius/originalis* were loosely synonymous ways of signalling the same phenomenon, namely entry in the tax lists in connection with a particular area of land.[110]

The legislation of the late Roman period speaks of *inquilini*, too — individuals 'frequently coupled with the *coloni* but distinguished from them'.[111] Under the Principate, *inquilini* were tenants who rented a dwelling as well as agricultural land.[112] It seems that

[103] The term is not in use before the end of the fourth century: Eibach, op. cit. (n. 21), 142, 204, followed by Mircovic, op. cit. (n. 20), 108. For lists of texts, R. Mayr, *Vocabularium Codicis Iustiniani I: pars latina* (1965), 446. For third- and fourth-century interpolations in the Justinianic Code, Jones, op. cit. (n. 9), 3 n. 21; Eibach, op. cit. (n. 21), 104, 204; cf. Goffart, op. cit. (n. 9), 77 n. 34.

[104] Sirks, op. cit. (n. 7), 335 with n. 12, 352; Durliat, op. cit. (n. 26), 53–4; Mircovic, op. cit. (n. 20), 66–8, 108–9.

[105] Sirks, op. cit. (n. 7), 333, avers that this is part of the accepted orthodoxy of current scholarship; see his list, nn. 1 and 2. However, note Carrié's detailed critique of Sirks's distinction between *coloni adscripticii* and *coloni liberi*: Carrié, op. cit. (n. 13), 113. Mircovic explains the difference between *adscripticii* and 'free' *coloni* (Mircovic, op. cit. (n. 20), 65 n. 1): 'The basic meaning of the word *adscripticius* is to denote someone who was *added* to somebody else's tax declaration, in contrast to the word *inscriptus*, denoting someone who existed in the tax-rolls under his own name and with his own land and property.' I can find no evidence in the legislation for the term *inscriptus* as referring to an individual inscribed under his own name in the tax lists. In addition, where the term *inscripticius* appears, it seems to be a synonym for *adscripticius* (cf. *Nov. Just.* 123.4 and *TLL* VII.1, 1849).

[106] *CJ* 11.48.19. For the equivalence of *enapographos* and *adscripticius*, see Sirks, op. cit. (n. 7), 335 with n. 13; Mircovic, op. cit. (n. 20), 72, 83; Sarris, op. cit. (n. 24), 299. Note the contrasting interpretations of this text by Sirks, op. cit. (n. 7), 354–8 and Carrié, op. cit. (n. 4), 221–4.

[107] Note Mircovic's discussion of *CTh* 11.1.14 = *CJ* 11.48.4, where she observes that one would expect the *coloni* to be described not as *originales* but as *adscripticii*: Mircovic, op. cit. (n. 20), 68. See also Giliberti, op. cit. (n. 71), 14, giving a list of the various *condiciones* of *coloni*.

[108] *CTh* 11.3.2 (A.D. 327, Macedonia); *CTh* 11.1.12 (A.D. 365, Italy); *CJ* 11.48.7 (Valentinian, Valens and Gratian). Giliberti, op. cit. (n. 71), 15 and *passim*; Whittaker, op. cit. (n. 71), 103; D. Vera, 'Del servus al servus quasi colonus, un altra transicio?', *L'Avenç* 131 (1989), 32–7, at 35.

[109] *CTh* 11.1.26 (A.D. 399, Gaul).

[110] Jones, op. cit. (n. 80), 799; Carrié, op. cit. (n. 4), 219. Sirks, op. cit. (n. 7), 350, agrees, but situates the genesis of the condition in private relationships, not the late Roman administration.

[111] Jones, op. cit. (n. 9), 3 with nn. 21 and 23, providing a list of references. The most detailed account of the term *inquilinus* is P. Rosafio, '*Inquilinus*', *Opus* 3 (1984), 121–31. Also Koptev, op. cit. (n. 80), 284–7. Clausing, op. cit. (n. 4), 17 n. 3, 196 believed *inquilini* were essentially the same as *coloni*, but that they rented a domicile in addition to land. Eibach, op. cit. (n. 21), 243, concludes that the similarities or differences between *coloni* and *inquilini* cannot be determined. Sirks, op. cit. (n. 7), 369, suggests that these statuses were very similar, and Mircovic, op. cit. (n. 20), 102, 106 argues that *inquilini* became *coloni adscripticii*.

[112] *Dig.* 19.2.25.1; 41.2.37; 43.32.1.1.

this definition was still in use in the fourth century, as Augustine reveals when he observes that 'Inquilini non habentes propriam domum, habitant in aliena'.[113] Like *coloni* and slaves, these resident tenants might be registered through the landowner's tax declaration as attached to a particular *origo*. This seems to be Sidonius' understanding of *inquilinus*, too, as he reveals in a late fifth-century letter to his friend Pudens.[114] The letter refers to the elopement of the son of Pudens' *nutrix* with the daughter of Sidonius'. In response to Pudens' request that the offence go unpunished, Sidonius agrees on condition that Pudens make an alteration to the terms in which the young man in question is registered on the tax rolls. Sidonius describes this individual variously as in a condition of *originalis inquilinatus*, a *tributarius*, and possessing a *persona colonaria*. Sidonius' language is slippery and inexact, and motivated as much by rhetorical and literary conventions as by a desire for legal exactness. But, at the very least, he recognizes the link between registration, the *origo*, and taxation.[115]

Late Roman legislators employed a variety of terms to describe rural tenant farmers registered on estates owned by their landlords. But these terms did not carry the connotations of dependence and degraded status that some accounts of the 'colonate' have assumed. The diverse terminology of the laws reflects the piecemeal nature of the promulgation of these texts. What is clear, however, is the fundamental importance of the process of registration. This act was signalled using two interlinked sets of terms. Tenants and other members of a municipality's population could be described as registered in the tax lists (*censibus adscripti*) or registered in connection with a specific *origo* (*originarii*, *originales*). The legislation also reveals the limited aspirations of the state in connection with these *coloni*. Nowhere in the laws is their social condition discussed. Nowhere is there a programmatic statement made about the responsibilities of those tenants beyond their fiscal obligations. Limitations there were, but even the most explicit and detailed collection of those limitations, in the terms dictated for the settlement of the Sciri, reveals a complex interplay between local circumstances and the tax system.

The reforms to the tax system begun under the Tetrarchy incorporated under the rubric of taxation a multiplicity of *munera* hitherto exacted or performed piecemeal. The impulse for these reforms was the creation of a unified, exhaustive system of assessment. In this new tax system, the *origo* was a tool for creating sub-urban tax collectivities.[116] The members of those collectivities could then be assigned responsibility for a specific *munus* or charge, and held to that responsibility through their registration in the census or tax register. The object of registration was limited to ensuring that the public *munera* owed by a municipality, a village, or an estate on its land were acknowledged by its members. This was achieved by defining a hierarchy of responsibility for those *munera*. Thus, registration was aimed at the collectivity, rather than at the individual. It was clearly in the interests of both the state and the collectivity that relationships between individuals and land be clearly established, publicly acknowledged and documented.[117] Liturgies as diverse as the

[113] *Enarrationes in Psalmos* CXVIII.8.19.1: '*Inquilini*, who do not have their own home, live in one belonging to another'. Jones, op. cit. (n. 80), 796, 799; Goffart, op. cit. (n. 9), 42 with n. 4*; *contra* Rosafio, op. cit. (n. 111), 126; Mircovic, op. cit. (n. 20), 104, who argue that *inquilini* were labourers on another's land, and not permanent residents of that land, that is, they were not *originarii* but *alieni* or *advenae*. Giliberti, op. cit. (n. 71), 134, assumes that *inquilini* are *servi quasi coloni*, but this is unlikely: cf. Sirks, op. cit. (n. 10), 165 and Sidonius *Ep.* 5.19.

[114] *CTh* 5.18.1 (A.D. 419, Italy); *Nov. Val.* 35 (A.D. 452, West); Sidonius, *Ep.* 5.19.

[115] See now Koptev's recent discussion of this text, concentrating in particular upon its connection with legal principles of the period: Koptev, op. cit. (n. 80), *passim*. For an alternative perspective, C. Grey, 'Two young lovers: an abduction marriage and its consequences in fifth-century Gaul', *CQ* (forthcoming).

[116] *CTh* 7.21.3 (A.D. 396, Rome); *CTh* 5.16.34 = *CJ* 11.68.6 (A.D. 425, to Valerius, *CRP*); Carrié, op. cit. (n. 4), 217–18, 227; Carrié, op. cit. (n. 13), 138. Theoretically, an individual could change his *origo*, though how he might do so is unclear: Sidonius, *Ep.* 5.19; *CJ* 11.48.22 (A.D. 531, East); Carrié, op. cit. (n. 4), 222–3 with n. 78. Koptev's proposed solution to this question remains speculative: Koptev, op. cit. (n. 80), 296–303.

[117] Vera, op. cit. (n. 21), 206–7.

annona, recruits, the supply of ships, the production of bread, the supply of pork to Rome, and service on the municipal *curia* were predicated upon registration through the census on a particular *origo*.

V CONCLUSIONS

The evidence for registered tenancy in the legal sources amounts to a series of context-specific, narrowly-focused snapshots, which appear comprehensive as a result of the projects of codification carried out first under Theodosius and later under Justinian. These compilations have produced legal texts that only distantly resemble the imperial edicts and rescripts collected in them as originally published. They were constructed in response to specific intellectual and political circumstances, and are late antique documents as much as they are legal texts.[118] In creating the historiographical concept of the 'colonate', historians have been mesmerized by the illusion of cohesion and cohesiveness that these documents sought to create. However, the individual laws that together constitute these codifications illuminate the influence of local circumstances upon centrally-imposed tax practices as much as they reveal the form that those tax practices took, and the motivations by which they were impelled. The diverse meanings of *colonatus* in the legal sources suggest that Roman lawyers continued to recognize a multiplicity of possible tenancy arrangements. There did not emerge in the fourth and fifth centuries an articulated, internally consistent system of registered tenancy.

The sources highlight particular events or phenomena. They reveal a coincidence of registration in the tax rolls with the imposition of limitations upon the economic freedoms of certain tenants. They indicate also attempts to conceptualize those limitations using as a framework the legal restrictions placed upon slaves. Equally importantly, however, they betray contradictions, disagreements, and differential trajectories of development over both time and space. Scholars have sought to combine these disparate pieces of information into coherent systems. But in doing so, they have concentrated upon the specific events and phenomena stressed in the sources, and made assumptions about the relative importance of particular texts that are difficult to sustain. The historiographical debate has become narrowly focused on a limited set of questions. What and when were the origins of the 'colonate'? When, where, and in what circumstances did it become a personal status? When did a coherent legal understanding of the phenomenon emerge? It has not been the intention of this paper to attempt to answer these questions. Given the nature of the evidence, they are unanswerable. Rather, it has been to move beyond attempts to generalize from the specific, and to concentrate instead upon the broader fiscal context within which registered tenancy, in all its multifarious forms, existed. It is true that the emergence of registered tenants in the legal sources of the late Roman world can be attributed to changes to the fiscal system. But those changes were neither directed towards nor limited to creating the 'colonate of the Late Roman Empire'. Consequently, to seek for a single theory of this phenomenon is to pursue a chimera. Rather, scholars should turn their attention to explicating the broader aims and practices of the tax system of the Later Roman Empire in general, and the implications of the extensive employment of the principle of registration upon an *origo* in particular.

University of Pennsylvania
cgrey@sas.upenn.edu

[118] For general treatments of the intellectual climate of the period, see, recently, A. Cameron, 'Remaking the past', in G. W. Bowersock, P. Brown and O. Grabar (eds), *Late Antiquity: A Guide to the Postclassical World* (1999), 1–20. Compilation and codification was not limited to legal texts, as Oribasius' *Medical Compilations* and Palladius' *Opus Agriculturae* reveal.