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# The Colonnade in Justinian's Reign

A. J. B. SIRKS

Every study of the colonnade of the Later Roman Empire is confronted with the legal sources in Theodosius' and Justinian's Codes. Since these consist of fragments of imperial constitutions, usually entered into the Code with addressee, date and issuing emperor, it is very tempting to consider them as fragments *per se*, as unrelated historical facts which are often but feeble images of the original. They have been put, it is true, into titles which are said to deal each with a particular subject, but does this make the individual fragments relate to each other?

Such a view of these Codes would be comparable to reading a sentence in a language the grammar of which one does not know: there may be individual words which one might understand but coherence is lacking. And there are certainly collections of legal rules which do indeed lack coherence, which are nothing but a disorderly mess. Yet even for a law collection as early as Hammurabi's Code it has been argued that it is to some extent structured and that caution is necessary.<sup>1</sup> That is certainly the case with the Roman law codes. The order of the praetorian edict may have been a historical growth only; it nevertheless served for centuries as a structure for commentaries, and the Gregorian and Hermogenian Codes, as well as the two above-mentioned Codes, in part followed its structure. But with each code also an effort was made to organize the material systematically. Moreover, two other structures were used in legal writings: that of Sabinus' treatment of the civil law, and the institutional system, of which Gaius' gained great popularity. The commentaries on the edict and Sabinus' treatise, as well as the institutional works, are evidence of the fact that Roman law was an intellectual system. And as in the case of the sentence in a foreign language the remedy presents itself (the grammar), so here it is better to take the codification seriously and to consider it from the legal point of view, that is, as Justinian himself said for the Digest, 'sit una concordia una consequentia adversario nemine constituto' (*CJ* 1.17.1.8), rather than discarding the codification as such.<sup>2</sup>

## I JUSTINIAN'S CODE

Those two codifications<sup>3</sup> were built around a structure. For Justinian's Code, the structure of Theodosius' Code<sup>4</sup> first served as an example, but it was completely overhauled for the second edition of A.D. 534. The compilers put the texts they considered relevant at the place in the structure they considered appropriate. This had important consequences.

<sup>1</sup> See R. Westbrook, 'The nature and origin of the XII Tables', *ZSS-rA* 105 (1988), 74ff., who strongly argues that various sanctions in Hammurabi's Code must be read as theoretical discourses. But a lot of European medieval town statutes are indeed mere compilations of enforceable social rules without much or any coherence.

<sup>2</sup> This was certainly not meant as a mere aspiration. Between A.D. 529 and 534 Justinian took the so-called 'Quinquaginta Decisiones' to resolve long-standing questions. In the *Digest* there are indeed still differences of opinion, but these served to deepen legal discussion and doctrine; the Code was primarily meant for practice. As regards the similarities and contrarities mentioned in c. Cordi 3, see A. J. B. Sirks, 'From the Theodosian to the Justinian Code', in *Atti dell'Accademia Romanistica Costantiniana* 6 (1983 [1986]), 299–300, and idem, 'The Summaria Antiqua Codicis Theodosiani in the ms. Vat. reg. Lat. 886', *ZSS-rA* 113 (1996), 257–9, 267.

<sup>3</sup> I use the word codification in the wide sense of a compilation of rules, brought into a more or less systematic structure, and not in the far more restricted modern sense of a code.

<sup>4</sup> On the Theodosian Code, see J. Matthews, *Laying Down the Law* (2000); F. Millar, *A Greek Roman Empire: Power and Belief under Theodosius II (408–450)* (2006); A. J. B. Sirks, *The Theodosian Code. A Study* (2007).

First of all, the fact that at a certain moment in time all data considered particular to a subject are collected is already a statement about what people at that moment considered relevant to that subject. These data may vary in age, and they may certainly also be judged upon their value at their date of issue, but they have an independent and perhaps different value for the moment they were collected and selected. Within that latter context they may *and* should be considered. It depends on the design of the codification what value may be attached to this context. Justinian was very explicit about his Code: all constitutions collected in the Gregorian, Hermogenian and Theodosian Codes, and all constitutions issued after A.D. 438 (the Post-Theodosian Novels), should be collected in one code, but not simply as they were found. They had to be examined; what was superfluous should be removed, as should whatever was similar or contradictory or had become obsolete, and likewise for the introductions to the Novels. Texts could be combined and shortened. The constitutions should be put under an appropriate title and there should be no doubt about their general validity.<sup>5</sup> It follows from this that the texts of Justinian's Code present in the first place rules of general validity and that in any case within a title rules on the same subject (indicated by the title's rubric) have been gathered together. This is not to say that such a title contains all the rules on that subject, because it contains them only in so far as there had been constitutions issued about it. Many texts refer to an actual case. It could happen that when a case was put before the emperor to decide, he, or later jurists, discerned in the decision the application of a new general rule or the adjustment of an existing one. In that case a constitution (an edict or edictal letter) to this purport was issued, or the text (e.g., a rescript) was interpreted in this way. In view of the nature of Roman legislation, we may expect that problems were dealt with in a general way when they arose and required a general remedy, that perhaps some potential problems were included too, but not that the administration tried in a perfectionist way to think up all theoretical problems in advance and deal with them in a general way in the constitution. Such approaches date from the days of the Natural Law scholars. But it is possible, and in the private law indeed very often the case, that other rules are contained in the writings of jurists, in this case collected in Justinian's *Digest*. Furthermore, Justinian's *Institutes* also gained the force of law. Thus to find the law on a specific subject as valid in the years A.D. 530–534, one has to check all these three works, as Justinian himself indicates (*CJ* I.17.1.11, 2.11).<sup>6</sup>

It is still possible that there are some points which were governed by customary, unwritten or unrecorded law, but normally we may in this way expect to find all the law as it was valid at that moment and only then — no obsolete rules. That was Justinian's intention and that was indeed accomplished. Of course, this must be accompanied by a knowledge of the intellectual structure of the law (the dogmatics of law) as prevalent at that time — after all, Justinian's entire codification had to serve legal education — or else words and concepts might be misunderstood. Only then does one get a picture of the law at that particular point or period in time. What the original reason for issuing a constitution was no longer mattered in the codification process: the texts do not present unrelated fragments of previously issued constitutions but have become (if they were not already) pieces of a system. That picture can and should of course be put into the context of the society and culture of the moment.<sup>7</sup>

<sup>5</sup> c. Haec 2; c. Cordi 3.

<sup>6</sup> For an example of this method see Sirks, *op. cit.* (n. 4), Nr. 34.

<sup>7</sup> The texts in codifications can also be treated as historical sources and used as they were issued in their own time, conveniently collected in chronological order in the codifications. Within that context it is sensible to try to join fragments of the same original constitution. Thus it is quite usual to see a treatise on the colonate start with the earliest known text on this, *CTh* 5.17.1, to be followed by others in chronological order. One has to realize, however, that they were originally only issued or interpreted as general rules for legal use and for that reason later on selected and collected in the codifications or other collections. Consequently one has to be aware of the context within which these texts are transmitted and 'deduct' the potential layers and changes of the codification process(es). With Theodosius' Code the debate is still on-going, whether the texts preserved include obsolete ones or not; see Sirks, *op. cit.* (n. 4), Nr. 44 ff. for a survey.

I shall follow this approach in the ensuing research into the *agricolae censiti vel coloni*, parting from the texts in the central title on these and connecting these wherever appropriate with texts from other parts of the Code, and by this I hope to present a concise survey of the colonate as a legal institution under Justinian. I shall restrict myself to texts relevant for the present argument,<sup>8</sup> using the word ‘colonate’ for what in the sources is called the *condicio adscripticia* (the adscripticiate with the *adscripticii*) and the *condicio* of the *coloni liberi* (the ‘free’ colonate). I use the word *colonus* in its original meaning of *cultor*, cultivator or farmer. It will depend on the context whether this farmer was the owner of his plot of land, a tenant or a farm labourer; also it depends on the context whether he was subjected to a particular (public law) *condicio* or not.

Regarding the colonate, I briefly summarize the present discussion, without intending to enter here extensively into the debate on the colonate as institution. In the course of the fourth century we see constitutions issued with the purpose of tying agricultural workers (*coloni*) to the land in order to facilitate the raising of land and poll tax. Some authors assume this happened in the course of a reform of the taxation system under Diocletian. The status of these workers gradually declined and under Justinian a category of *coloni* (the *adscripticii*) is even compared to slaves. Although it must have been considerable, there is no information about their actual number. There is certainly evidence of free labour also in this time. The discussion on the *coloni* has been dominated by two views. One sees the colonate, within the context of agricultural exploitation, as the successor to the tenancy of the Late Republic (when *colonus* was used for a tenant) and as the precursor of the tied serf of the Middle Ages. In this view it proves the Marxist’s theory of a transition from slave society to feudal society. In the other view the colonate is but one illustration of the decline of the Roman Empire by its social petrification and bureaucracy. Some authors also discern in the context of this the emergence of the great domains as semi-public institutions.<sup>9</sup>

## II THE PLACE OF THE TITLES ON THE *COLONI* WITHIN BOOK 11

The titles on these *coloni* are placed in the 11th book of Justinian’s Code (*CJ*), which in general deals with public law. Placed after titles on groups of persons obliged to perform certain services of public interest (*CJ* 11.2–18), titles on the organization of the three main cities of the Empire (*CJ* 11.19–28), and titles on the organization of towns (*CJ* 11.29–47), *CJ* 11.48–53 are about *agricolae censiti vel coloni*, the *capitatio*, *coloni censiti* and *coloni*

<sup>8</sup> I have dealt with the colonate in, particularly, A. J. B. Sirks, ‘Reconsidering the Roman colonate’, *ZSS-rA* 110 (1993), 331–69, but it appears from C. Grey, ‘Contextualizing *colonus*: the *origo* of the Late Roman Empire’, *JRS* 97 (2007), 155–75, a stimulating contribution, that it is necessary to deal with the question in a methodologically different way; where necessary I shall re-examine my position. More research will have to be done on, for example, the autopraxis and the estate management. There were also *coloni* on the imperial estates, but from the rules on them (in *CJ* 11.63–4 and 68–9) it would appear that their situation was basically identical.

<sup>9</sup> A summary of the *status quaestionis* with B. Ward-Perkins in *Cambridge Ancient History* (*CAH*), Vol. XIV (2000), 343–4. P. Heather in *ibid.*, 465, refers to them as formerly free tenants who did not own the land they worked, but also points out the rise of the landlord class. For more detail on the colonate, also referring to the continued existence of free labour, see C. Whittaker and P. Garnsey in *Cambridge Ancient History* (*CAH*), Vol. XIII (1998), 287–94. Some of the many works on this question: A. H. M. Jones, ‘The Roman colonate’, in A. H. M. Jones, *The Roman Economy*, ed. P. A. Brunt (1974), 293–307; A. Marcone, ‘Il lavoro nelle campagne’, in *Storia di Roma*, Vol. 3.1 (1993), 823–43; G. Giliberti, ‘Il colonato tardo-antico’, in *Storia della società italiana*, Vol. 4, *Restaurazione e destrutturazione nella tarda antichità* (1998), 24–30; A. Demandt, *Die Spätantike* (2007), 398–401. Against the concept as such and other aspects sound arguments have been raised since 1981 by Carrié: see J.-M. Carrié, ‘“Colonato del Basso Impero”: la resistenza del mito’, in E. Lo Cascio (ed.), *Terre, proprietari e contadini dell’impero romano* (1997), 75–150 (resuming his thesis with responses to criticism); by Sirks, *op. cit.* (n. 8), 358–61; and other authors (see *CAH* as cited above); further scepticism with P. Sarris, *Economy and Society in the Age of Justinian* (2006), 150–4, and n. 85 regarding the idea of the great domains as semi-public institutions. See for further literature Sirks, *op. cit.* (n. 8), 331 n. 1 and the Bibliography in Lo Cascio, *op. cit.*

of particular provinces. After that follow *CJ* 11.54–57 on *rusticani* and their villages, *CJ* 11.58–9 on correction of the taxation rate and distribution of deserted lands (*peraequatio, impositio agrorum desertorum*), *CJ* 11.60–1 on border- and pasture-lands, *CJ* 11.62–5 on patrimonial and other lands, *CJ* 11.66 on lands of the *res privata*, *CJ* 11.67–8 on lands of the *res dominica*, and *CJ* 11.69 on lands of the treasury. In these last four titles there is also mention of *coloni* on these lands.<sup>10</sup> Book 11 finishes with some titles on the lease of public and imperial lands (*CJ* 11.70–4) and some titles on particular subjects (*CJ* 11.75–8).

This survey already makes clear that, notwithstanding that there may have been a connection with taxes, for the Justinianic compilers the main feature of the colonate was services to be rendered, within the context of agricultural exploitation. If the compilers had considered a connection with taxes as the main characteristic, they would presumably have placed those titles in Book 10, where in *CJ* 10.1–30 the taxes are dealt with.

Regarding the *agricolae censiti* — the rubric implies that there are normal *agricolae* (farmers) as well and that we are dealing here with a particular group of farmers, called *coloni*, who have been censused — the sequence of the titles is systematic. It starts with a general title (*CJ* 11.48), then *CJ* 11.49 with a single constitution on the abolition of the *capitatio humana* for the urban *plebs* in the East, *CJ* 11.50 with the subject of litigation by *coloni censiti* against their masters (this is the consequence of the rules as collected in *CJ* 11.48), and finally three titles each with a single constitution, on the *coloni* in Palestine, Thrace, and Illyricum (which concern the *agricolae censiti* of certain provinces). The placement of *CJ* 11.49 in the middle of the constitutions on *coloni* is a sign that this tax was relevant to the group of *agricolae censiti*, a connection confirmed by *CJ* 11.48.10 in which the rates of the *capitatio humana* are rendered. Though the rubric of *CJ* 11.48 speaks of *agricolae censiti vel coloni*, we meet in its texts various designations besides *colonus*: *coloni originales* (c. 4), *rustici* (c. 5), *adscripticii (coloni)* (c. 6, 21, 22, 23, 24), *originarii* (c. 7, 11, 16), *tributarii* (c. 12), *adscripticiae condicionis* (c. 22, 23, 24), *censibus adscripti* (c. 18 and *CJ* 11.50.2), *colonariae condicionis* (c. 23), and the Greek ἐναπόγραφος (c. 19).<sup>11</sup> There were also *coloni censiti* who were considered ‘free’ and different from the *coloni adscripticii* (c. 19). We shall use, in accordance with the title’s rubric, the term *colonus* for both kinds of *coloni censiti*.

Apart from these titles, there are a number of other texts in the Code or Novels in which *coloni* or *adscripticii* (ἐναπόγραφοι) are mentioned.<sup>12</sup> In some cases this concerns *coloni* in the sense of independent tenants. They figure in *CJ* 4.44.65 and other places and if and in as far as *coloni adscripticii* or *liberi* were tenants, those texts also apply to these.<sup>13</sup> In some

<sup>10</sup> I leave these *coloni* out here: it is likely that their position did not substantially differ from the two (other) kinds of *coloni*.

<sup>11</sup> But this text (see below, n. 40) is a restitution from the Basilica and the word may be a later hellenism, or the *antecessor* used in his Greek summary or translation of the current Greek equivalent, in both of which cases the original text most likely had *adscripticius*.

<sup>12</sup> Apart from *CJ* 11.48–69: *colonus* and *colonarius* in *CJ* 1.2.14, 1.3.36, 1.4.24, 1.12.6.9, 2.7.22, 2.7.24, 3.26.7, 3.26.8, 3.26.11, 3.38.11, 4.10.3, 4.10.11, 4.21.19, 4.26.13, 4.65.5, 4.65.9, 4.65.27, 4.65.35, 5.34.13, 5.62.8, 6.4.2, 7.30.1, 7.32.5, 7.32.12, 7.38.1, 7.38.2, 8.5.1, 8.15.8, 8.51.3, 9.24.1.5, 9.27.4, 9.27.5, 9.49.7.1, 10.7.1.3, 11.8.7, 11.26.1, 11.75.1, 12.10.2, 12.19.12, 12.21.8, 12.33.3; *adscripticius* in *CJ* 1.3.20, 1.3.36, 1.4.24, 1.12.6.9, 2.4.43, 3.38.11, 7.24.1.1, 8.51.1, 8.51.3, 12.19.12, 12.54.3; κολωνός in *Nov.* 123.35, 162.2 pr, 3, 4, 5, 162.2.1; ἐναπόγραφος in *Nov.* 22.17 pr, 54 pr–1, 123.4, 123.17.1, 123.35, 128.14.3, 156.1, 162.2–3.

<sup>13</sup> *CJ* 4.10.3, 11; 4.21.19 pr.; 4.65.5, 9, 27, 35 pr (here the *conductores* have taken it upon themselves to find farmers to till the rented lands as subtenants, which may therefore concern free tenants, but perhaps also *coloni adscripticii* or *liberi*); *CJ* 5.62.8 (where *coloni* is explained by the interpolation ‘id est conductores’; otherwise confusion might be created with *CJ* 5.34.13 where the *coloni patrimoniales* enjoy immunity from the guardianship); *CJ* 7.30.1 (where *colono vel* may be interpolated); *CJ* 9.24.1.5 (assistance with counterfeiting); *CJ* 11.58.3 (the owner resists a fiscal re-evaluation of his lands by retracting his procurator or by dismissing his *colonus*: it would not help to dismiss an *adscripticius*, so it must concern a tenant; further, if it concerned tied farmers, the text would rather have read *colonos*); *CJ* 11.61.3.1 (which concerns tenants (*conductores*) of provincial and *res privata* meadows, since meadows are not cultivated); *CJ* 11.62.5 (which concerns a reassignment of lands, deserted by previous *coloni* or *emphyteuticarii*).

cases the adscripticiate has been interpolated, which shows how texts were adapted for contemporary use.<sup>14</sup> Furthermore we meet *πάροικοι*, meaning according to Zepos *coloni*, tied to land; but it is possible that we are dealing here with *inquilini* or *casarii* (who could also be tied to an estate).<sup>15</sup>

### III THE TEXTS ON THE COLONATE

Within *CJ* 11.48 four texts date from the years A.D. 529–534, all issued by Justinian: *CJ* 11.48.20–4. Consequently we may assume that they are coherent and accurately represent the situation of A.D. 534 in contemporary idiom. They deal with the following questions: when can the owner of an estate (*dominus terrae*) claim somebody as his *colonus* or *adscripticius*? And connected to this: when is somebody considered a *colonus* or *adscripticius*? What can an estate owner claim from his *colonus* or *adscripticius*? Does the status of *colonus* or *adscripticius* pass on to offspring? And there are collateral problems imaginable. If *coloni* are attached to an estate, what if the estate is divided? If somebody has two estates, may he transfer *coloni* from one to the other? What if a *colonus* runs away and enters the adscripticiate with another estate owner, or works as an independent tenant or day-labourer? Or runs to a town, or seeks immunity in the imperial services or the Church? What about the payment of the tax in case of flight? What if a *colonus* or *colona* (we have to think of the daughter of a *colonus*) marries the *colona* or *colonus* of another? Can *coloni* litigate against their estate owners?

I take these four texts as the point of departure, but will refer to other texts of the Code and Justinian's Novels where appropriate in order to consolidate the examination, and then deal with the remaining texts on *coloni*. The other texts in *CJ* 11.48 relating to *coloni* were all issued before Justinian. Theoretically it is possible that their original meaning and setting differed from their meaning and setting in Justinian's times. Because Justinian ordered his compilers to leave out the obsolete and allowed them to change and interpolate the texts, we may, as far as their application in A.D. 534 is concerned, leave any potentially different original meaning aside and interpret them in accordance with what we know from *CJ* 11.48.20–4 and other Justinianic texts.

### IV THE CONDICIO ADSCRIPTICIA AND THE ORIGO

An estate owner could claim somebody was his *colonus adscripticius*, scil. with the intention that this person would render him services (see below, Section IX), if he provided proof of the latter's status, namely by at least two documents. This could be, for example a *conductio* or *conductionale instrumentum* (a labour contract)<sup>16</sup> and a copy of the *publici*

<sup>14</sup> e.g., *CJ* 7.30.1.

<sup>15</sup> *CJ* 1.2.24, *Nov.* 7 pr., *Nov.* 120. See P. J. Zepos, 'Servi e paroeci nel diritto bizantino e postbizantino', *RAL* 35 (1980), 421, 424; Zepos (427) assumes the *πάροικοι* absorbed later on the *coloni* and *adscripticii*. But of such a third category of farmers nothing is known in any other way, and also *inquilini* had an obligation to remain on the land. *CJ* 9.49.7.1 has *casarii* next to *coloni*. I therefore doubt Sarris' interpretation of Apphous as '*adscripticius* avant la lettre' (Sarris, op. cit. (n. 9), 151–2).

<sup>16</sup> *Conductio* may refer to a lease, in which case the landlord is the *locator* and the tenant is the *conductor*, or to a contract in which somebody (the *conductor*) hires another person (the *locator*). Although the first meaning is more common, cf., e.g., *CJ* 4.65.9, in this case — in view of the duties of the *adscripticii*, namely to cultivate fields — it is not the right one. If they were tenants their duties would have been circumscribed differently, e.g. to do what tenants have to do; and *CJ* 11.48.19 speaks of *μισθωτοῖ*, hirelings (see n. 40). Until now we possess only one tenancy contract by an *adscripticius* (*P.Oxy.* LXVII.4615 (A.D. 505)), but he probably was already *adscripticius* by birth through his *origo*.

*census adscriptio*, the enrolment into the public tax register of the land,<sup>17</sup> evidently the enrolment of himself or his father or further ascendant, or a document to which a later, voluntarily-made acknowledgement of his status by the *colonus* was added (as in the case of an *adscripticius* by birth); just a contract, for example, was not enough.<sup>18</sup> The census will have been the estate owner's census, scil. that of the estate to which the *adscripticius* was said to be attached, cf. *CJ* 11.7.7.<sup>19</sup> How precisely the *adscripticius* was registered we do not know; perhaps it was done after the example of the slaves on an estate, under a special *titulus*, since the *coloni* are mentioned after these in the exposition of the census declaration (*Dig.* 50.14.4.5 and 8) and their flight from the estate is compared to the flight of slaves (*CJ* 11.48.23 pr.; see also below, Section x).<sup>20</sup> These requirements should prevent free persons from being groundlessly drawn into the adscripticiate (*CJ* 11.48.22 pr.–2). If during such a claim procedure a settlement was reached, it could not be annulled (*CJ* 2.4.43). The reference to a contract implies that by Justinian's time the status of *adscripticius* was not derived from one's father in every case, but that it could still have been entered *ex novo*. It also implies that the adscripticiate was not the logical consequence of a mere labour or other contract. The origin of all cases of the adscripticiate<sup>21</sup> (and thus often of the 'free' colonate, see below, Section v) must consequently have been a separate agreement whose conditions could not be changed later on (*CJ* 11.48.23.3). There is one papyrus with reference to such an agreement (it at least suggests it; see n. 17).

Children of *coloni* scil. *adscripticii* could be claimed as well. If they raised the exception of limitation of thirty or forty years against the claim, it would be of no avail (*CJ* 11.48.22.3–5). This general limitation of prescription applied both in private and public law (e.g., *CJ* 7.39.41), with the exception in public law regarding the summons of people for public duties on basis of their birth status.<sup>22</sup> As for the children of an *adscripticius*, the basis of the summons was not a contract, but their *origo* (on the basis of their birth; see below). They might have been away from the estate for a long time and could have pursued occupations other than farming, as *CJ* 11.48.22.3 says. Their obligations would have been those connected to the *condicio adscripticia* (or, as it is said in the papyri, the *τύχη ἐναπόγραφης*; see Section ix). We see indeed in the papyri *adscripticii* with various occupations; when they are named *ἐναπόγραφοι γεωργοί*, it merely denotes their status, while *γεωργός* does not necessarily mean they are farmers.<sup>23</sup> Likewise we see that they own assets which they pledge.<sup>24</sup>

<sup>17</sup> Of the land: since the references are always to being tied to a piece of land, it must have been the registration of the land, which had to be done in the town in whose territory the land lay. It therefore cannot have been the tax registration of an individual. In *P.Oxy.* XXVII.2479 (6th century), Pieous asks to be accepted again, with his children. Such an enrolment would not have had the same personal law consequences as the census had under the Republic.

<sup>18</sup> Carrié, *op. cit.* (n. 9), 946 sees in *P.Ross.Georg.* III.8 (4th century) such a document. The reading of the text is, however, very difficult, see P. van Minnen, 'Patronage in fourth-century Egypt. A note on *P.Ross.Georg.* III.8', *JJP* 27 (1997), 67–73, and conclusions are actually not possible.

<sup>19</sup> This text deals with fled *metallarii*, state miners, whose *condicio* was similar to that of the *adscripticii* and who were harboured by private persons who enrolled them on their census.

<sup>20</sup> See Sirks, *op. cit.* (n. 8), 348–51, 366.

<sup>21</sup> *CJ* 11.26.1 imposes the colonate (*colonatus perpetuus*) on able-bodied beggars of Constantinople; we assume it concerned the 'free' colonate since that *condicio* was also imposed in other cases, but this should be further examined.

<sup>22</sup> Rejected, e.g., in *CJ* 7.39.5 for curials and their children when summoned for municipal duties. The other exceptions are unimportant here.

<sup>23</sup> It is therefore correct that in the latest editions of the *P.Oxy.* the designation *ἐναπόγραφος* is moved from the general list of words; it should be under statuses or liturgies.

<sup>24</sup> Apart from the mention in legal texts of their *peculium* and the prohibition on selling without consent — for which see Section xii — a striking example of this is *P.Oxy.* LXX.4794, where Ieremias, former headman and *ἐναπόγραφος γεωργός*, gives surety and pledges all his belongings present and for the future, in particular and in general, by way of security and by right of mortgage. Another text in which *adscripticii* pledge for the contract of tax collection: *P.Oxy.* LXII.4350 (A.D. 576). For this see below, Section xii.

This birth status, the *origo*, derived from the time that the Mediterranean world was a patchwork of independent and autonomous cities, which could summon their citizens for public tasks. According to rules of international private law (*ius gentium*), it determined one's home town (*patria*) and consequently one's public and private law system. It was retained in the Roman Empire, not so much for citizenship as such (almost everybody being after A.D. 212 also a Roman citizen), but for the public tasks now called *munera* and *honores*. The *origo* passed on in the same way as it had done previously: in legitimate marriages from father onto his children (CJ 8.47.7), otherwise from mother onto her children.<sup>25</sup> Likewise freedmen took their manumitter's *origo* (cf. CJ 7.14.1).<sup>26</sup> A wife kept her own *origo* or else the application of the SC Claudianum (see below) would have been unnecessary.<sup>27</sup>

The situation is, however, more complicated. The *origo* was established on the basis of one's descent. Theoretically every citizen of a town could be summoned for all public obligations connected with the *origo*, but in practice this was not the case. For example, with decurions only those who had a decurion as father or sometimes grandfather were eligible, and in addition they had to dispose of a certain amount of wealth in order to perform their duties. Only if not enough new candidates were found in this way were *homines novi* chosen (whose *existimatio*, reputation, had to be good also). This eligibility might further entail restrictions as regards, for example, other functions. It is this ensemble of *origo*, liability, eligibility, duties and restrictions which defined the *condicio curialis*.<sup>28</sup> It might seem as if the *condicio* was 'inherited' but that is not the case. Birth was the criterion for the *origo* and the *origo* was one of the criteria for the imposition of the *condicio* (in this case by the home town). It was an important criterion since it defined the town which might claim and as such it was fundamental to the system, but it did not have to be the only criterion. *Condicio* may point to the liability as such, but also to the status in its totality.

It is the same with the *condicio adscripticia*. Here also the descent defined the *origo*, which again is the essential criterion for imposition of the *condicio*. Further requirements were apparently not set, but duties and restrictions were present.<sup>29</sup> Yet was the *origo* a town? In view of it being the *dominus terrae* summoning the *adscripticius*, and in view of the fact, as we saw above, that the *adscripticiate* was to be proved by the *adscriptio census publici*, the *colonus'* *origo* must have been the estate in question, namely the *terra* of the *dominus terrae*. This means that in these cases the town as *origo* had been substituted by

<sup>25</sup> M. Kaser, *Das römische Privatrecht, I. Teil* (1975), 279. After A.D. 212 Rome became *communis patria*, which implies that it was the *patria* next to one's own *patria*. But a change in domicile could imply additional eligibility for *munera* of one's residence, cf. *Dig.* 50.1.20. See on this further A. J. B. Sirks, 'Did the Late Roman government try to tie people to their status or profession?', *Tyche* 8 (1993), 165–6, where the significance of the *origo* for public duties is set out, next to other criteria important in this respect, and idem, op. cit. (n. 8), 347, where the link is made as well. Also A. J. B. Sirks, 'Der Zweck des Senatus Consultum Claudianum von 52 n.Chr.', *ZSS Rom. Abt.* 122 (2005), 138, where it is set out how this *senatusconsultum* effected a deviation from the international private law rule on status as regarded unions between free women and slaves. The inequity Gai. 1.84 refers to in this context is the case that the owner of the slave agrees not to enslave the woman, but that in that case, due to the *senatusconsultum*, she will bear slaves. Hadrian corrected this: in such a case she would bear free children. Unfortunately, this has not been taken into account by Grey, op. cit. (n. 8), 156 and 170–1. Ch. Saumagne, 'Du rôle de l'*origo* et du "census" dans la formation du colonat', *Byzantion* 12 (1937), 506 sees the land as the *dominus* and the *colonus* as its *servus*. Legally this is nonsense, as is Saumagne's assertion that the land is the subject of a right to the *colonus*. D. Vera, 'Schiaivitu rurale e colonato nell'Italia imperiale', *Scienze dell'Antichità* 6–7 (1992–1993), 317 states that the *colonus* was not tied to the estate owner, but to the taxation, and that the *origo* was a fiscal category. But he does not specify what such a tie to the taxation meant.

<sup>26</sup> This explains the application of the colonate in Illyricum (CJ 53.1.3) to freedmen of *coloni*.

<sup>27</sup> See below for the SC. Further CJ 10.32.36, where the request to be transferred to the maternal *origo* is rejected, which implies that the mother of the applicant kept it; CJ 10.32.11. In Sirks, op. cit. (n. 8), 367 it was mistakenly assumed that a wife took the *origo* of her husband: she took his domicile.

<sup>28</sup> See on this in general Sirks, op. cit. (n. 25, 1993).

<sup>29</sup> Perhaps the objections mentioned in CJ 11.48.22.3 were actual objections that for lack of experience in agricultural labour the *condicio* should not be imposed on the children, but this argument did not play a role.

an estate (*terra, possessio*). Thus the estate owner could summon a *colonus* to perform his duties in the same way as a town could summon its citizens and curials to perform public duties (e.g., *CJ* 10.32.2, 5); what duties the *origo* of the *coloni adscripticii* and other *coloni* implied we shall discuss below in Section IX. Moreover, the use of the census as *origo* made it possible for the person of the estate owner to change, e.g. by sale, with the *colonus* being obliged to the new owner. If the adscripticiate was entered by agreement, its formalization by the *adscriptio* released it from the constraints of the law of obligations which would not recognize a change in a contractual relationship. Thus it could be said that the *coloni* were alienable together with the estate (*CJ* 11.48.2 pr., 21.1) and in this sense they resembled slaves who were attached as *instrumentum* to a plot of land.

A town as *origo* must be distinguished from a town as centrepoint in the taxation system. On the basis of the census declarations the expenses of the state were proportionally apportioned to provinces, again to towns, and, in the end, to the individual landholdings, and subsequently levied accordingly.<sup>30</sup> If somebody owned land in more than one town's territory, he would have to declare each estate in the town where it lay (*Dig.* 50.15.4.2), and pay the tax likewise in more than one place; his *origo* had nothing to do with this.<sup>31</sup> It is therefore wrong to assume that the enrolment in a census declaration of an estate made a *colonus originarius* responsible for the taxes imposed on this land: the owner was responsible and did not become *originarius* by this.<sup>32</sup>

There was nevertheless a difference: an estate did not equal a town, notwithstanding the use of *origo* for both. Normally we would expect that in the case of a marriage between a man, subjected to the adscripticiate, and a woman, not subjected to this or another *condicio* but citizen of a town, the children would follow the *origo* of the father. (Such unsubjected persons are usually called *ingenui*, i.e., free of obligations; likewise in the law of persons *ingenui* were not subjected to obligations as were *liberti* regarding their manumissions.) But we know that the SC Claudianum was applied to these unions when the husband was an *adscripticius* and the woman was not. Originally the *senatusconsultum* made the children born out of a union between a slave and a free woman slave instead of their being freeborn. By this it reversed the above-mentioned *ius gentium* rule on the civil status. Here the application made children of such a marriage follow the status of their father instead of that of their mother and they became *adscripticii* resp. *adscripticiae* (the latter have been attested).<sup>33</sup> This means that the *origines* of father and mother were not

<sup>30</sup> See on this J.-M. Carrié, 'Dioclétien et la fiscalité', *Antiquité Tardive* 2 (1994), 33–64.

<sup>31</sup> See Giliberti, op. cit. (n. 8), 31–2; Giliberti is incomplete when he states in his otherwise instructive survey that Diocletian's reforms 'richiedava per tutti i contribuenti l'individuazione di una residenza fiscale obbligatoria e definitiva (*origo*). Ogni individuo sottoposto a imposizione era registrato (*adscriptus*) nell'unità amministrativa cui lo legava la sua *origo*: città, villaggio, latifondo'. *CJ* 11.48.4.1 (= *CTh* 11.1.14.1) proves precisely for the *adscripticii* that one could have one's *origo* in A, but have to pay one's land tax in B. Grey has likewise not seen this point (see n. 32). Further *CTh* 11.3.5: if somebody acquires part of a property, he has at once to register his name in the *paginae censuales*, scil. where the land lay. The acquisition is not restricted to one's own *origo*. If the taxes on the sometimes widely spread possessions of a magnate were all levied in his *origo*, it would have meant an unnecessary complication of the system of distributing the taxable sum over the Empire and implied a complicated and unattested system of administration.

<sup>32</sup> Grey, op. cit. (n. 8), 171–2 states this, then mentions slaves who are *originarii* (but slaves never paid taxes or performed *munera*!), then mentions registered *coloni* and finally connects these with the *munera* on the land as taxpayers. Yet his argument is inconsistent. The owner of an estate did not become *originarius* of the estate by his census declaration. A *colonus*, as any other person, was, with or without an estate, liable for the poll tax. But he was not, unless he was the landowner himself, liable for, e.g., the *munus viae sternendae* as his estate owner could be if the land was next to a road, or for the *munus angariae*. The obligations he was liable for were, on the other hand, not *munera* of the estate as such: no owner of an estate was obliged to cultivate the land (but he would still have to pay the land tax). The passage, on which Grey builds his view of *origo*, does not well support his conclusions.

<sup>33</sup> *Adscripticiae* in *P. Wash. Univ.* 1.25 (A.D. 530), *P. Oxy.* LXX.4797 (A.D. 593), 4801 (A.D. 617). They call themselves ἐναπόγραφος γεωργός (sic), which would imply this was a status and not an occupation.

considered equal, i.e., the *origo* of an *adscripticius*, the estate, was not equal to that of a town because the application of the *senatusconsultum* implied that without it the *ius gentium* would have applied: the children would not have been subjected to the status of their father. That would mean a loss for the estate owner, and that must therefore have been the reason that the SC Claudianum was applied analogously.<sup>34</sup> It was for this same reason that Justinian, when he abolished the SC Claudianum in A.D. 531–534 (*CJ* 7.24.1; *Nov.* 22.17), at once introduced the rule that the estate owner of the *adscripticius* could forcibly take his *adscripticius* away from a ‘free’ woman. If he did nothing, he had himself to blame for the loss of manpower (*CJ* 11.48.24).<sup>35</sup> In A.D. 539 Justinian changed this arrangement. Now children born out of a marriage between an *adscripticius* and a woman free from the colonate would be ‘free’ *coloni* (see below, Section V), so that they would have to stay on the estate of their father. Otherwise they would have been free to leave. Yet, if such a son, now a ‘free’ *colonus*, acquired a piece of land large enough for him to cultivate and not have time to work elsewhere, he could go, live there and have his *origo* there (*Nov.* 162.2).<sup>36</sup> For an *adscripticia* such a measure was, of course, unnecessary. But the nature of the *origo* posed no problem with marriages between *coloni*<sup>37</sup> of different estates: they were so to speak on the same level and here the paternal *origo* and in this way this *condicio* was decisive for the offspring (*CJ* 11.48.13 pr.).<sup>38</sup>

This application of the *origo* meant that, as stated above, the designation *colonus* (*adscripticius*) no longer necessarily meant that this person was a farmer and we do indeed find a variety of occupations — steward, scribe, guard in the legal texts; functions in the imperial service; in the Church.<sup>39</sup> His duties, however, could involve work on an estate, but it is not impossible that an *adscripticius* with funds could have contracted somebody else to perform this duty for him (cf. *CJ* 1.3.16).

The application of the *senatusconsultum Claudianum* meant no change in the personal law status of the *adscripticii*, but remarkably enough the measure taken after its abolition in A.D. 531/534 did. It implied a potential marriage restriction, which was remedied in A.D. 539 by Justinian’s Novel (*Nov.* 162.2). That Novel restored the personal law status of the *adscripticii*.

<sup>34</sup> In previous publications I was still uncertain about the role of the *origo* in this context and the function of the application of the SC Claudianum, and only recently have I come to this interpretation. I have to withdraw any previous explanation I may have made. J. L. Murga, ‘Una extraña aplicación del senadoconsulto Claudiano en el Código de Teodosio’, *Studi in onore di Cesare Sanfilippo*, Vol. I (1982), 417–42, merely accepts the application without explanation. It is furthermore an argument against the theoretical possibility that the estate owner exercised his rights as representative of the town as *origo* and as such in a public or semi-public function.

<sup>35</sup> The rule of *CJ* 11.48.24.1 was introduced everywhere in the Empire; also in Africa as soon as it was reconquered in A.D. 534, but its introduction there caused a shortage of labourers. Therefore Justinian introduced in A.D. 570 for Africa the same rule as had been introduced in Illyricum by Justinian, namely that children of an *adscripticius* and an *ingenua* would be free, but be subjected to the ‘free’ colonate on the estate of their father, hence be *coloni liberi* (*Nov. Just.* 6, confirmed later by Tiberius: *Nov. Tib.* 13 of A.D. 582). Apparently the possibility of thwarting a union may not have been effective or, more probable, it was considered an inappropriate curtailing of the personal status. The abolition did not profit children born previously (*Nov. Just.* 54.1 of A.D. 537).

<sup>36</sup> See M. Bianchini, ‘Sul regime delle unioni fra libere e *adscripticii* nella legislazione giustiniana’, *Studi in onore di Cesare Sanfilippo*, Vol. V (1984), 61–107. Bianchini does not enter deeply into the question how the *adscripticiate* was precisely imposed and does not make the connection with the *origo*. Further W. Schmitz, ‘Appendix 1 der Justinianischen Novellen—Eine Wende der Politik Justinians gegenüber *adscripticii* und *coloni*’, *Historia* 35 (1986), 381–6.

<sup>37</sup> And *inquilini*, by whom probably dwellers on estates are meant, who had to perform services as well: *CJ* 11.48.13 states that substantially there is no difference between *coloni* and *inquilini*.

<sup>38</sup> There was no *coniugium inaequale* (*Nov. Theod.* 22.1.8) or *coniugium non aequale* (*CTh* 14.7.1).

<sup>39</sup> *P. Oxy.* LXII.4350 (steward, scribe: contracting the collection of a tax); *P. Oxy.* XVI.1979 (guard); *P. Oxy.* VI.996 (steward). For the legal texts: see below, Section X.

## V CHANGE OF STATUS AND THE FREE COLONATE

Although there is no text on the subject, release from the *adscripticiate* must have been possible by a unilateral act of the estate owner, because if an *adscripticius* wanted to become a priest or monk, his estate owner had to approve of this (*CJ* 1.3.36.pr.). Hence the latter's consent was required and apparently sufficient. But if this did not happen, his state might be mitigated, be it only in the long term. *CJ* 11.48.23.1 says that if an *adscripticius* has performed his duties for thirty years, he will be 'free' (the meaning of this we will discuss below), but cannot migrate from the estate. *CJ* 11.48.23.1 attributes this status change to a constitution of Anastasius (A.D. 491–518), reproduced in *CJ* 11.48.19.<sup>40</sup> *CJ* 11.48.19 grants the 'free' colonate to those *adscripticii* who have served thirty years, a period which equals the limitation of prescription of thirty years.<sup>41</sup> Zepos and later Mirković and Carrié interpret this text differently: they assume that free, unindebted *coloni* who had spent thirty years on an estate were made *liberi adscripticii*, viz. on account of *CJ* 11.48.19.<sup>42</sup> Mirković uses the word *adscripticius* for both kinds of *coloni* and she means that such *coloni* became 'free' *coloni*. The other kind of *coloni* (for whom we reserved the name of *adscripticii*) came into existence either because they fell into rental arrears or because they, as *originarii*, were born on the estate and had inherited debt and dependence.<sup>43</sup> In this view all farmers became *coloni censiti* of one or another kind and the colonate would have been a universal phenomenon. But objections can be raised against it. In Justinian's law there is no question of rental arrears as a cause of the colonate. And why did farmers not migrate after, for example, twenty-five years to escape this consequence? It is clear that under Justinian *adscripticiate* and tenancy were not two commutative concepts. To describe *adscripticii* as 'registered tenants' is consequently wrong for Justinian's reign.<sup>44</sup> *CJ* 11.48.23.1 does not speak of free tenants on an estate, but of men 'held in the *condicio coloniaria* for thirty years' ('homines qui per triginta annos coloniaria detenti sunt condicione'). Since Anastasius and Justinian wanted to give them a better *condicio coloniaria*, it could only concern a transition from the *adscripticiate* to the 'free' colonate and so it is understood in the text ('sancimus liberos colonorum esse quidem in perpetuum secundum praefatam legem liberos et nulla deteriore condicione praegravari'). The legal question dealt with in the text is whether such a grant also applied to children who had not (yet) completed thirty years of service: they would not have raised the

<sup>40</sup> *CJ* 11.48.19: [Αὐτοκράτωρ Ἀναστάσιος Α.] Τῶν γεωργῶν οἱ μὲν ἐναπόγραφοὶ εἰσὶν καὶ τὰ τούτων πεκούλια τοῖς δεσπότησις ἀνήκει, οἱ δὲ χρόνῳ τῆς τριακονταετίας μισθωτοὶ γίνονται ἐλευθεροὶ μένοντες μετὰ τῶν πραγμάτων αὐτῶν· καὶ οὗτοι δὲ ἀναγκάζονται καὶ τὴν γῆν γεωργεῖ καὶ τὸ τέλος παρέχειν. τοῦτο δὲ καὶ τῷ δεσπότη καὶ τοῖς γεωργοῖς λυσιτελεῖς. 'Of the farmers some are ἐναπόγραφοι (= *adscripticii*) and the *peculia* of these belong to the masters, others become by thirty years free labourers, although remaining with their assets; and these are forced to till the land and provide the tax. This profits the master as well as the farmers.' (= *Dig.* 55.1.18).

<sup>41</sup> In the later Byzantine work *Αἱ Ῥοπαὶ* 10 it is put under the term of thirty years and it is said that they have performed their obligations and are no (longer) ἐναπόγραφοι.

<sup>42</sup> Zepos, op. cit. (n. 15), 422; M. Mirković, *The Later Roman Colonate* (1997), 65, 69–70. The same error in Whittaker and Garnsey, op. cit. (n. 8), 292.

<sup>43</sup> Mirković, op. cit. (n. 42), 70. There is no reason for them to have inherited debts: they could have renounced the inheritance, with debts and all.

<sup>44</sup> As in, e.g., Grey, op. cit. (n. 8), *passim*, particularly 173, where he cites me in n. 104 for this characterization of *adscripticii* as 'indebted, landless tenants'. Yet I expressed in Sirks, op. cit. (n. 8), 334–5, at n. 9, grave doubts about *adscripticii* as being in general tenants and pleaded for an interpretation as hirelings, which he apparently did not see. That Grey does not find debt mentioned in the sources is only possible if he interprets it as private law debts, but that is precisely the point. The *adscripticiate* is always connected with the taxes and taxes are a debt the *adscripticii* had to pay and which their estate owners guaranteed or took over. As to being landless, the fact that the *adscripticii* were not prohibited from owning land does not necessarily imply that they regularly owned land. *CJ* 11.48.4.1 suggests that it was an exception. Grey further, in the wake of this, states that there were not two different *condiciones*, referring in n. 105 to a critique by Carrié, op. cit. (n. 9), 113, which apparently is convincing to him; but see my comments in n. 45.

question if it had not meant better conditions. This point is not seen by the aforementioned authors, nor by Carrié, who uses *CJ* 11.48.19 to interpret the term *condicio coloniaria* in *CJ* 11.48.23.1.<sup>45</sup>

Perhaps the reason for this benefice was to make flight less attractive, because a fugitive would permanently live under the threat of being recalled as *adscripticius*, whereas now he could be sure that after thirty years he would quit the control and authority (*potestas*) of the estate owner, and his children would be free of this also. If his children were away for thirty years, they would not benefit from a limitation in itself, but if their father became 'free' in this way they would follow his new status as well (*CJ* 11.48.23.1). We must be realistic: not many will have profited from this unless they were enrolled or summoned at an early age. Thirty years was a long time in antiquity.

Apart from this source of what we shall call, in accordance with the texts, the 'free' colonate, which must have caused a distribution of 'free' *coloni* over those provinces where the *adscripticiate* existed, there were some provinces in which the 'free' colonate had been imposed generally on *adscripticii*: Palestine, Thrace, and Illyricum (*CJ* 11.51, 52 and 53).<sup>46</sup> These three constitutions functioned in their Justinianic context as the legal basis for recalling these *coloni*, if they had fled, from their harbours and defined the conditions of the 'free' colonate for each region. Those who admit fugitives are, as seen in *CJ* 11.48, fined (*CJ* 11.52.1.2, 53.1.2). Interesting is the fact that in Illyricum the rules for children of 'free' *coloni* also applied to their freedmen (*CJ* 11.53.1.3).<sup>47</sup> Since *adscripticii* were liable for the taxes on their own plots of land, they could own land, and since they could become 'free' *coloni*, there could have been 'free' *coloni* who owned land. Consequently when in A.D. 535 Justinian forbade money-lenders to take the land from their farmer-debtors,<sup>48</sup> it could concern independent farmers, but also these *coloni*, now 'free', or *adscripticii* with their own land.<sup>49</sup>

A third source of the 'free' colonate was after A.D. 539 the marriages between *adscripticii* and *ingenuae*, which we discussed above, in Section IV.

Nothing is said about the requirements for the claiming of a 'free' *colonus*. This was possible (*CJ* 11.48.23.5). Presumably it happened in the same way as with *adscripticii*.

<sup>45</sup> I cannot enter here into a complete discussion of Carrié, *op. cit.* (n. 9), but his approach suffers greatly from not taking the entire legal dossier into account in a proper way. Thus he does not analyse *CJ* 11.48.22: not on p. 113, nor on p. 99 (on p. 119 he neglects the contractual part of the *adscripticiate* and only mentions the *adscriptio*); neither does he consider *Dig.* 50.15.4 for the census declaration as I did. It becomes understandable then that he reproaches me for speaking of the census as a 'lista' and accuses me of taking over a misunderstood reading of *CTh* 11.1.26 by Goffart (p. 113), when I did not do this at all. Understandable too that he denies any contractual origin of the *adscripticiate* and the difference with the 'free' colonate, adhering to the mentioned interpretation of *CJ* 11.48.19, which I consider absolutely incompatible with *CJ* 11.48.23.1, a text which neither he nor Mirković analyses. He merely mentions this text on p. 122: but instead of accepting the meaning of (*condicio*) *coloniaria* as *adscripticia* on the basis that the Latin text is in any case reliable, he attributes another meaning to *coloniaria*, on the basis of the less reliable Greek text of *CJ* 11.48.19 (which is a Greek summary of the Latin constitution), which saves his interpretation. Apart from that, this is a circular argument (the wrong interpretation of one text is proved by applying it to another text); this seems to me a methodologically rather questionable approach. The legal content of the text is not discussed at all. This is precisely the approach I think it necessary to avoid. I shall deal elsewhere more extensively with Carrié's article.

<sup>46</sup> See n. 51.

<sup>47</sup> Normally freedmen had the *origo* of their manumissors (see above, Section IV) and on the basis of this rule theirs would have been the estate of their manumissors. But could *adscripticii* have slaves and set them free? Not if these would have been part of their *peculium*. It would be different, probably, if they had possessed land with slaves attached to it. With 'free' *coloni* it was different. They were not subjected to the *peculium*. Freedmen would take the *origo* of their manumissor.

<sup>48</sup> Which they must have bought at auctions through straw men, or bought themselves at a low prices, since the *lex commissoria* prohibited creditors from becoming owners of the pledges in case of defaulting.

<sup>49</sup> The *Novels* 32–34 (A.D. 535) forbid this and order the return of the seized lands in the provinces of Thrace, Illyricum and Mysia secunda.

VI SALE OF THE ESTATE AND REALLOCATION OF *COLONI*

Regarding the tie to the estate, it was forbidden, if an estate was transferred, to separate the *coloni* attached to it and tie them to another estate, even if the buyer agreed to this (*CJ* 11.48.2). Likewise *coloni* could not be alienated separately from their estate. An evident trick to circumvent this, namely by selling only a very small part of the estate while transferring with it all *coloni* on the estate, was suppressed by the prescription that in case of a division of the estate, the *coloni* should be distributed proportionally over the parts (*CJ* 11.48.7 pr.–2). The trick presumably consisted of registering at the moment of division all the *coloni* in the census of the small part, which was then sold and transferred with them attached to it. If it nevertheless happened, the owner of the remaining estate now devoid of *coloni* could reclaim them, while the new possessor could not raise limitation of prescription against him (*CJ* 11.48.7.3). The question arises whether the owner of two estates, each of which had *coloni* attached to it, could transfer some *coloni* from one estate to the other if this had a shortage of labour. This is indeed also dealt with in the texts. It is allowed, but if the two estates pass into different hands, the owner of the estate from which *coloni* were taken could claim the offspring of the transferred *coloni* (*CJ* 11.48.13.1). This tallies with the concept behind *CJ* 11.48.2.1, which says that whoever thinks that *coloni* are useful on a parcel of land should keep them there, and it is in accordance with the principle of the *origo*.

## VII TAXES

The registration in the census had as consequence, or as condition, that the estate owners had to acknowledge, either by themselves in person or through their stewards (*procuratores*; which will often have been the case with magnates), the liability for the tax their *coloni originales*, once having been *censiti*, had to pay (*CJ* 11.48.4 pr.). According to *Dig.* 50.14.4.8, the estate owner would be liable for their taxes even if he had not done so.<sup>50</sup> This tax was the *capitatio humana*, as follows from (a) the tariff for this in *CJ* 11.48.10, (b) the positioning of *CJ* 11.49.1 with the exemption of the urban *plebs* in the East and some provinces in Asia Minor in the middle of the titles on *coloni*, and (c) *CJ* 11.52–3.<sup>51</sup> The papyri also indicate this (see below, Section IX at n. 65 and Section XII after n. 85). But if such a

<sup>50</sup> It would mean, *vide CJ* 11.48.4 pr., that he would be liable anyway and that he could not recover the tax from them. The phrase must have been interpolated. P. Rosafo, 'Dalla locazione al colonato', *Annali Dipartimento di Studi del Mondo classico del Mediterraneo antico* 13 (1991), 264 thinks it concerns tenants and the *tributum soli*, since it would be absurd to pay the *capitatio* for an unregistered *colonus*. Yet that is precisely the point: not registered means that the estate owner profited from them, but that he would avoid the tax. It is a situation also counteracted by *CJ* 11.48.8 pr.

<sup>51</sup> The abolition of the *capitatio humana* in Thrace in A.D. 386 would release the *coloni tributariae sortis* of their bonds. This must refer to the *adscripticii*, and it demonstrates that the designation *tributarii* must also refer to these *coloni*. It confirms that it was the guarantee of their estate owners for the *capitatio humana* which made them subjected to him and, parallel to the pledge of a creditor, which ends when the debt is paid or cancelled, their bond must have ended as well (I think the parallel is fully warranted in view of the language of the constitution: it assumed without reserve that the abolition of the tax (a debt to the state) generally ends all cases of the *adscripticiate*, regardless of the individual agreements). In order to prevent a massive migration, these *coloni* (it does not say that it concerned all *coloni* of Thrace) are made into *coloni liberi*. They are retained *originario iure*, which shows that this designation comprises the two kinds of *coloni* (*CJ* 11.52.1). The same was done in Illyricum in A.D. 371 (*CJ* 11.53.1, with reference to the *tributarius nexus*), and in Palestine, where the text underlines the faculty of the estate owner to recall them (*CJ* 11.51.1). Although the text suggests that this colonate was introduced for all *coloni*, the phrasing suggests that it concerned those *adscripticii* who were released: reference is made to estate they once took upon them to till and 'nullus omnino colonorum suo iure velut vagus ac liber exsultet': it cannot be that every farmer rejoiced, but only those who were released. These three constitutions functioned in their Justinianic version as the legal basis for recalling these *coloni*. Those who admit fugitives are, as we saw before in *CJ* 11.48, fined (*CJ* 11.52.1.2, 53.1.2). Since *adscripticii* were liable for the taxes on their own plots of land, they could own land.

*colonus* owned land himself, it had to be registered in his own name in the census and his estate owner was not liable for the payment of the tax on that land (the *tributum*, due by the owner of land): the *colonus* had to acknowledge this duty himself (*CJ* 11.48.4.1).<sup>52</sup> *Nov. Just.* 128.14 of A.D. 545 repeats this, adding that it is different if his estate owner has obliged himself (as surety) for that plot of land of his *colonus*. *CJ* 11.48.4 pr. makes it clear that the estate owner's liability for the poll tax of his *adscripticius* was based on an acceptance of this on his part (*recepta*), by which he would become the only liable debtor as regarded the collectors (but the *adscripticius* remained the person upon whom this liability and its amount was based). Conversely, see *CJ* 1.3.16, the *adscripticius* would have to acknowledge again the *capitatio* when released from the *adscripticiate*. The consequence of this was (a) that the *adscripticius* did not have to worry about state tax collectors, but (b) that if the estate owner had paid, the *adscripticius* now owed him this amount and the estate owner could recover this.<sup>53</sup> This is confirmed by *CJ* 11.48.20.3a and by *P.Oxy.* XXVII.2478 and LXIII.4398, where the ἐναπόγραφοι promise to render the tax to their estate owner.

The fact that the estate owner functioned as guarantor for the taxes of his registered *coloni* explains the disposition of *CJ* 11.48.8 pr., that any harbourer of fugitives who uses them as if they were his own *coloni* without paying them a loan, must pay the taxes due by them: the rationale evidently was that whoever profits from them also must carry the burden. The question, of course, is whether the first estate owner had nevertheless to pay the tax in case of flight. We have to infer that as soon as the *coloni* had fled, he had no longer to do so. This makes sense. The poll tax was levied on persons: if they were gone, there was no longer a subject to levy the tax from and by default of the primary obligation that of the surety would fall away.<sup>54</sup>

It also follows from *CJ* 11.48.4 pr. that *censitus* refers to the registration in the census, thus that a *colonus censitus* is the same as a *colonus originalis* who has been enrolled. It would be the same procedure as with public obligations such as the *munera*, where liable persons are summoned and then have to acknowledge their duties formally. As such the word *originalis* (or *originarius*) may refer, in Justinian's times, to both categories of *coloni* (in that they are obliged on the grounds of their *origo*, which often will have been the case) but here the *adscripticii* are meant because the other category of *coloni* had always to pay the taxes themselves. Immunities, especially given with regard to the *capitatio* and *iugatio* (which could also profit *coloni*), were unacceptable if they had been made without proof (i.e., most likely, through bribery; *CJ* 11.48.9). Their tie to the estate ensured the *coloni* at least of one advantage, namely that they were not liable for the unpaid fiscal debts of other people (*CJ* 11.48.15, repeated in *Nov. Just.* 108.14 of A.D. 545). Normally those with the same *origo* would be subjected to this secondary liability, inherent in the fiscal system. They, however, had as their *origo* only the estate (*CJ* 11.50.1). Their estate owner was liable for this estate and for the other *adscripticii* (this argues against the idea of the estate owner as public tax collector; see below, Section XIII).

<sup>52</sup> Grey, op. cit. (n. 8), 172 n. 94 reads this text as if the *coloni* (for him: tenants) became responsible for the estate's taxes by their registration as *originales*. It is different: the registration as *originales* makes their estate owner liable for the taxes of the *coloni*. But if the *coloni* possessed land themselves, they were responsible — as owners, not as tenants or land labourers — for the taxes on that land regardless of their being *originales*. He cites me on p. 172 n. 98 for his assertion that 'registration though 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' but see n. 32. It does not seem to me that *tenants* would become liable in this way (Sirks, op. cit. (n. 25, 1993), 165). The text he cites in n. 98, *CJ* 11.48.11, does not say anything on this point.

<sup>53</sup> See *P.Oxy.* XXVII.2479 (6th century) with Pieous, who laments that he could not pay his estate owner and that the owner's *procuratores* came and seized all his goods.

<sup>54</sup> See *CJ* 11.48.8 pr.—1 as interpreted below, Section x, for both statements.

VIII EXPLOITATION OF ESTATE LAND, COLONI-TENANTS, OTHER TENANTS  
AND FARM LABOURERS

If litigation were initiated about the identity of the estate owner, the *coloni* of the estate should not be able to use this opportunity to escape their duty to pay their dues, and so Justinian regulated this (*CJ* 11.48.20 pr.–5). He did this not so much out of concern over what was due to the estate owner as over the payment of the taxes (*publicae functiones*). Regarding the first, if the revenues (*reditus*) were paid in gold, the *coloni* had to provide surety for the revenues or else the governor would claim these and deposit the sums at a suitable depository. If the revenues were paid in kind, the governor would sell them and likewise deposit the resulting sum for after the trial.

As to the taxes, Justinian again distinguished two situations. Either the *coloni* used to pay these themselves, or it was custom that they turned over a lump sum (*tota summa*) to the estate owner, who then took the sum due for taxes out of this and paid it to the tax collector, while he kept the rest as income (*sui reditus*). In the first case, even if the tax should have been paid through the estate owner, the existing practice should continue till the end of the law suit. In the other case, however, if the *coloni* had already appointed a surety for what they owed to the estate owner, the same surety also had to pay the owner the sum (scil. when it was time) due as tax, and the latter had to turn this over to the tax collector. If the *coloni* did not give surety, the entire revenues were set aside, or sold and set aside, and the governor would take out the sum due as taxes and give the owner a receipt for this (*CJ* 11.48.23.3–4).

What were these taxes? They are called *publicae* or *tributariae functiones*.<sup>55</sup> It will in any case have concerned the *capitatio humana*, the poll tax, of the *coloni*, since it is this tax which is dealt with in other texts. With *adscripticii* this was regularly paid by their estate owners but it remained *their* tax (see above, Section VII). The first situation mentioned above would then concern 'free' *coloni* (of whom it is said that they pay taxes themselves, i.e., as we see here, in their own person since they were registered independently for this). We do not see any special mention of the land tax. Since the litigation was about the question of whether the purported estate owner was indeed the rightful estate owner, who was liable for the land tax, it must also have been a question as to whether the land tax would be paid. Therefore the text must have dealt with this as well. In the second above-mentioned situation it was usual that the *coloni*, i.e., *adscripticii*, turned over a lump sum out of the revenues of the land they worked on, in money or in kind. Although this could concern share-cropping, it is not likely as we shall see (see below, Section XII). It certainly was not a regular tenancy. The form of exploitation through *coloni* (of both kinds) Justinian dealt with here must apparently have been one in which the estate owner put land in the charge of people for the purpose of cultivation and expected in principle a lump sum to be turned over to him, in the case of *adscripticii* comprising in any case of the tax he had to pay for them. It presumably also included the amount of the land tax due for the plot, but this of course did not make the farmers responsible for the land tax. If this exploitation mode concerned 'free' *coloni*, these people would certainly have liked to deduct their poll tax from the lump sum. In the case of *adscripticii* the estate owner would pay their poll tax. We do not know whether he also left the *coloni* a part of the revenues as recompense but it is possible. It may also be that he credited their accounts in his book-keeping.

Nothing is said in *CJ* 11.48 about tenants and agricultural workers not tied to an estate, but that is not what the title is about and thus not to be expected. They figure in *CJ* 4.44.65

<sup>55</sup> A definitive answer to this question awaits a new treatment of taxes and taxation in Late Antiquity.

and other texts.<sup>56</sup> If *coloni adscripticii* or *liberi* were tenants (we know of one case, *P.Oxy. LXVII.4615*), those texts would also apply to them, because we do not see in *CJ* 11.48.20 that for *adscripticii* and ‘free’ *coloni* a particular regime regarding the contract of tenancy (*locatio conductio*) existed. This constitution only provided a special arrangement for the payment of the rent in a special case.

#### IX OBLIGATIONS IN THE ADSCRIPTICIATE

What were the obligations of an *adscripticius*? He had to perform tasks on the estate (*ruralia obsequia*, *CJ* 1.3.16), till the land, or perform the work of a *colonus*, he had to remain on the estate (*CJ* 11.48.15), he disposed of assets called *peculium*,<sup>57</sup> and he, and his children, stood under the *potestas* of the estate owner (*CJ* 11.48.21.1); he was prohibited from litigating against his estate owner (*CJ* 11.50.2.4, see below for the exception to this rule). Such a prohibition indicates a subordinate social position as between freedman and manumissor.<sup>58</sup> If an *adscripticius* became a priest in his own hamlet (*vicus*) (for which his estate owner had to release him from the adscripticiate, see Section v), his estate owner could require that he acknowledged the liability for the *capitatio*, releasing by that his estate owner from this obligation, and that he would have his estate duties performed by a substitute of his own choice (*CJ* 1.3.16). A ‘free’ *colonus* had as his only obligation to remain on the estate and till the land (*CJ* 11.48.15 and 23.1), which must have implied that he had to continue to till it as tenant or as farm labourer and that he had to pay his taxes, i.e. the *capitatio humana*. From this it follows, as stated, that an *adscripticius* did not have to pay this tax directly, which again implies that his estate owner did so (see above, Section vii). If the person who harboured the *adscripticius* had the use of his labour, this person was liable for these taxes.<sup>59</sup>

Some evidence regarding the duties is further provided by the papyri. In a number of papyri mention is made of *ἐναπόγραφοι γεωργοί*, i.e. *coloni adscripticii*. Fikhman has thoroughly analysed them.<sup>60</sup> These papyri cover the period from A.D. 441 (or, in any case, 469) till A.D. 616,<sup>61</sup> thus roughly the period covered by Justinian’s codification and legislation. Fikhman indeed makes comparisons with laws of Justinian’s reign. He observes that *ἐναπόγραφος* is found not only with farmers (*γεωργός*), but also with other professions or

<sup>56</sup> Some texts: *CJ* 4.10.3, 11; 4.21.19 pr.; 4.65.5, 9, 27, 35 pr (here the *conductores* have taken it upon them to find farmers to till the rented lands, which may concern free tenants, but perhaps also or just *coloni adscripticii* or *liberi*); *CJ* 5.62.8 (where *coloni* is explained by the interpolation ‘id est conductores’; otherwise confusion might be created with *CJ* 5.34.13 where the *coloni patrimoniales* enjoy immunity from the guardianship); *CJ* 7.30.1 (where ‘colono vel’ may be interpolated); *CJ* 9.24.1.5 (assistance with counterfeiting); *CJ* 11.58.3 (the owner resists a fiscal re-evaluation of his lands by retracting his *procurator* or by dismissing his *colonus*: it would not help to dismiss an *adscripticius*, so it must concern a tenant; further, if it concerned tied farmers, the text would more likely have read *colonos*); *CJ* 11.61.3.1 (it concerns tenants (*conductores*) of provincial and *rei privatae* meadows, since meadows are not cultivated); *CJ* 11.62.5 (it concerns a reassignment of lands, deserted by previous *coloni* or *emphyteuticarii*: because *coloni adscripticii* and *liberi* may have owned lands, but not from the crown, it must refer to free tenants (*conductores*)).

<sup>57</sup> *CJ* 11.48.23.3: ‘agros colere, aliquid colonarii operis celebrare, agriculturam peragere’ for the *adscripticii*, ‘terram colere’ for the ‘free’ *coloni*; *adscripticii* have *peculium* (*CJ* 11.48.23.5), ‘free’ *coloni* do not (*CJ* 11.48.19); both groups have a duty to remain on the land and consequently can be recalled (*CJ* 11.48.22 and 23).

<sup>58</sup> Who was restricted in his capacity to sue his enfranchiser: *CJ* 7.6.3. See further on this below, Section xii.

<sup>59</sup> *CJ* 11.48.23.5: ‘functiones sive terrenae sive animales’.

<sup>60</sup> I. F. Fikhman, ‘*Coloni adscripticii* — ἐναπόγραφοι γεωργοί in den Papyri’, in I. F. Fikhman, *Wirtschaft und Gesellschaft im spätantiken Ägypten. Kleine Schriften* (2006), 190–250. This article was originally published in 1984 in Russian, but is now accessible in German in this volume. The article is not only important because of Fikhman’s observations, but also for the Russian articles he refers to and discusses, which enable the reader who is not capable of reading Russian to form an opinion of Russian scholarship. Further Sarris, op. cit. (n. 8), 60–6; B. Palme, *Form und Funktion der byzantinischen Gestellungsbürgschaften* (forthcoming).

<sup>61</sup> Fikhman, op. cit. (n. 60), 194–5.

occupations like guard and gardener.<sup>62</sup> This tallies with our observation that a *colonus* might be tied through his *origo* and not be a farmer. A number of papyri are about guarantees given for a fugitive *ἐναπόγραφος*, usually imprisoned; others are receipts for received parts for irrigation machines.<sup>63</sup> The surety must guarantee that the *ἐναπόγραφος* will answer for all that pertains to his person or rather his status as *ἐναπόγραφος*: ἀποκρινόμενον εἰς ἅπαντα τὰ ὀρώντα τὸ αὐτοῦ πρό[σ]ωπον ἦτοι τὴν τοῦ ἐναπογράφου τύχην,<sup>64</sup> that is, as formulated extensively in *P.Oxy.* I.135, that he will remain continuously on the estate (μηδαμῶς αὐτὸν καταλείψαι τὸ αὐτὸ κτήμα μήτε μὴν μεθ[ε]ρίστασθαι εἰς ἕτερον τύπον) with his children and wife, cattle and utensils, that he will be answerable for all that pertains to his person or his status as *ἐναπόγραφος*, and that he will not go to another place; often also, that he will pay the tax (φόρος) on himself (it must have been the *capitatio*; not a rent: why should a tenant flee if he could terminate the contract within a year?);<sup>65</sup> that in the case of a second flight the surety will deliver him; or else the surety will pay a fine or will do his duties.<sup>66</sup> What pertains to his status must have been the services which his estate owner could require in connection with agriculture: to guard the land (ἀγροφύλαξ), to be fruit grower on the estate orchard (πωμαρίτης, κηπουρός).<sup>67</sup> Perhaps seasonal jobs such as harvesting were required, but we do not know; there are other possibilities. In the papyri concerning the irrigation machines it is usually said that a certain irrigation work is 'in the charge' of the *adscripticius*.<sup>68</sup> In the same way *adscripticii* could have been charged with farming by putting a plot of land in their charge, while in return they would have to render some or all revenues (with which the tax for the land could be paid also); they may also have been paid by credits in the estate book-keeping.<sup>69</sup> Such transfers into 'the charge of' an *adscripticius* who then had to exploit it would agree with *CJ* 11.48.20, which deals with the dues of *coloni*. There is a group in this text which turns over all revenues to the estate owner (see above, Section VII). Could it be in the case of the irrigation works that the estate owner used the *adscripticiate* to charge

<sup>62</sup> Fikhman, op. cit. (n. 60), 194: *P.Lond.* III.778 (ἀγροφύλαξ, guard), *P.Oxy.* XXVII.2478 (πωμαρίτης, fruit-grower).

<sup>63</sup> J.-M. Carrié, 'Figures du "colonat" dans les papyrus d'Égypte: lexique, contextes', in *XVII Congr. intern. di Papirologia* (1984), 945, observes this remarkable restriction. As I shall explain, this might not be so remarkable.

<sup>64</sup> Fikhman, op. cit. (n. 60), 195.

<sup>65</sup> In *P.Oxy.* LXIII.4398: μετὰ καὶ τοῦ φορικοῦ μου φόρου (see Section XII), in *P.Oxy.* I.133 (a loan) μετὰ καὶ τοῦ φορικοῦ ἡμῶν φόρου (translated by the editor as 'tax payable by us'), in *P.Oxy.* XXVII.2478 (a deed of surety) τὸν ὑπερ αὐτοῦ φόρον (translated by the editor as 'the tax due on it', scil. the land). But this tax cannot concern the plot of land in his charge; it must refer to the poll tax and be translated as 'with payment of my tax'. J. Banaji, *Agrarian Change in Late Antiquity. Gold, Labour and Aristocratic Dominance* (2001), 97 considers that in *P.Oxy.* XXVII.2478 this refers to the rent. That does not make sense. Why should a tenant flee, when he could simply terminate the lease? See *CJ* 4.65.34, but the constitution says that this could be excluded in the contract, and that indeed happened, see J. Beaucamp, 'Byzantine Egypt and imperial law', in R. S. Bagnall (ed.), *Egypt and the Byzantine World 300–700* (2007), 283. As in other texts, the orchard must have been put in his charge. Banaji is right in interpreting δημοσίαι in *PSI* I.62 as taxes and not as rent, but it may well be — see *CJ* 11.48.20 — that Petrus was expected to work so hard as to be able to produce, in any case, the volume of tax levied on the plot of land. In *P.Oxy.* LV.3804 (A.D. 566, an account of an estate), there is explicit mention of the poll tax being received (τοῦ κοιν(οῦ) τῶν γεωρ(γῶν) ὑπερ συντελ(είας) κερ(αλής)) but this does not conflict with the above. The *adscripticius* may have been obliged to promise in a general way to perform all payments he had to make, whereas the steward had to make a precise account of what he collected.

<sup>66</sup> Fikhman, op. cit. (n. 60), 202–6. In *P.Oxy.* XVI.1979 (A.D. 614) the surety, an *ἐναπόγραφος* himself, even guarantees that he himself will perform all that is required from the still imprisoned *ἐναπόγραφος*. Apparently the duties were in this case not so burdensome that he could not take somebody else's upon him.

<sup>67</sup> Fikhman, op. cit. (n. 60), 194. See also Sarris, op. cit. (n. 9), 63–5 for the variety of labour and the flexibility of the Apion management of labour.

<sup>68</sup> *P.Oxy.* LXVIII.4697, LXIX.4755, LXX.4781, 4782, 4784, 4788, 4793, 4797 (*adscripticia*), 4698, 4799, 4801 (*adscripticia*).

<sup>69</sup> See now for this system, D. Rathbone, *Economic Rationalism and Rural Society in Third-Century AD Egypt: the Heroninos Archive and the Appianus Estate* (1991); for the system in the 6th century, see *P.Oxy.* LXX.4788, 4797, 4800; cf. also *CJ* 11.48.8.2 and Sirks, op. cit. (n. 8), 362–4.

capable individuals with the management of this important agricultural machinery? Since two managers are women, it is not likely that they would do heavy work, but they could have been good managers. The advantage for the estate owner would be that these subordinates could never quit their job and would thus be more under his control, as would be their assets, like the freedmen of the early Principate. *CJ* 11.68.2 orders the recall of imperial *coloni* who are fit to manage (*ratiocinia gerere*) or to farm. Apparently there was concern to use the talents of *coloni*.

It was the habit of the Apiones to require sureties with all kinds of contracts.<sup>70</sup> Fikhman is right in observing that the surety reflects the duties of the *adscripticius*, but the question is: are these the duties of an *adscripticius* who entered a contract and the census, or of one who was of that status on the grounds of his *origo*? Many sureties we have are for *adscripticii* who are in prison because they fled. We see that in these cases the enumerated duties reflect the legal description of the status: to do what pertains to their status, which included work on the land or to perform other agricultural services (*CJ* 11.48.22.3: 'neque agrum coluit neque aliquid colonarii operis celebravit'). Thus it seems better to assume that the surety reflects the previous or simultaneous acknowledgement (*confessio*, comparable with the *agnoscere* in administrative law of *munera*) by the *adscripticius* of his public obligations. Furthermore, the obligation to keep his goods on the estate fitted the prohibition against alienating from his *peculium* without the consent of the estate owner (*CJ* 11.50.2.3; see Section XII).<sup>71</sup> At the moment of entering the *adscripticiate*, it may have been different. The agreement between estate owner and prospective *adscripticius* must have consisted of several elements. For the farmer these would have been to provide labour, to remain on the estate with all and everything (which resembles the *paramoné* agreement or clause),<sup>72</sup> to pay the poll tax to the estate owner — perhaps these were simply comprised in the phrase: the duties of an *adscripticius*. For the estate owner these would have been to pay the poll tax of the farmer (and his family). There may have been special clauses, or it may have been left to custom (cf. *CJ* 11.48.5, 11.50.1).

Furthermore, *CJ* 11.48.1 does not allow the requirement of extraordinary performances when the *coloni* are harvesting if that could also be done at a more opportune moment, and *CJ* 11.48.5 reminds the estate owners that they may not demand money payments from the farmers but must accept payments in kind, unless this is the custom of the estate (this could happen if a new owner took over). *CJ* 11.50.1 prescribes the procedure by which *coloni* may contest increased claims, as does *CJ* 11.50.2.4 for *adscripticii*.

## X FLIGHT

The obligation to remain on the estate, which lay on every *colonus* who had acknowledged his status, implied that any unauthorized absence amounted to a flight. It comes as no surprise, therefore, that flight was a permanent concern for the estate owners and emperors. *Coloni*, particularly *adscripticii*, would seem, considering the legal texts and papyri, to have been prone to flight, presumably because of the harsh conditions of the farming life. This is to be distinguished from absence as such, which, as long as a person liable for the colonate by *origo* had not been formally summoned by his estate owner to perform his duties, was possible. If a *colonus* had fled, his estate owner could coerce him to return, with the assistance of the provincial administration (*CJ* 11.48.6, on *adscripticii*). Moreover, it was forbidden to harbour fugitive *coloni* (*CJ* 11.48.23.4–5). It might turn out that

<sup>70</sup> Sarris, *op. cit.* (n. 9), 60–1.

<sup>71</sup> *CJ* 11.50.2.3: '... ne quid de peculio sui cuiquam colonorum ignorante domino praedii vendere aut alio modo alienare licet.'

<sup>72</sup> See A. J. B. Sirks, 'Continuità nel colonato?', in E. Lo Cascio (ed.), *Terre, proprietari e contadini dell'impero romano. Dall'affitto agrario al colonato tardoantico* (1997), 183–4; Sarris, *op. cit.* (n. 9), 65.

the *colonus* (to be) had availed himself of a position which provided immunity from obligations, based on the *origo* (like curial duties). The imperial services, the Church and the monasteries offered such positions, and in order not to harm the estate owners, it was forbidden to accept *coloni* without their estate owner's consent (*CJ* 11.48.18, 1.3.36 pr., 2) or at all (*CJ* 12.43.1, 12.54.3). When it nevertheless happened, the immunity was ineffective (*CJ* 11.48.11, mentioning *originarii*, i.e., persons subjected on account of their *origo*). This indicates again the public law side of the colonate.

But as we saw previously, at the basis of all these regulations lay the concern and need for sufficient labour on the land. There were always estate owners in need of hands. Thus it appears that *coloni* who had fled were working on the land of other people. It could be that estate owners knew they dealt with *coloni* and used them to their profit. They would accomplish this by having them till land and turn over its products to them, or by having them perform other labour and not paying them any wages. The text implies that they used their knowledge to blackmail them with their fugitive status. In that case they had to pay the taxes which were otherwise lost (*CJ* 11.48.8 pr.). However, it could also be that the estate owners did not know of the flight and that the *coloni* deceptively offered their services as men, free of the colonate bond (*ingenui* is the term in the sources for those free from such public obligations), as farm labourers or as tenants or share-croppers. In that case the taxes should be claimed directly from the *coloni* themselves since, as the texts state, it concerns a *contractus privatus*. And so, as the constitution says, all fugitives will be recalled together with their *emolumenta tributaria* ('fiscal benefits', i.e., what they had to pay as tax — the *capitatio humana* — and which was a benefit to the state; *CJ* 11.48.8.1). In all cases any debts should be settled before the return (*CJ* 11.48.8.2).<sup>73</sup> If these rules concern 'free' *coloni*, *CJ* 11.48.8.1 would state the obvious, since these people were already directly responsible for their poll tax; but the obvious is indeed sometimes stated. Yet the reference to a *contractus privatus* implies that the text refers to the *adscripticii*. It follows that in case of flight the obligation of the estate owner to pay for his *adscripticii* stopped (as regards future taxes). Thus if *adscripticii* fled and were used by another estate owner who did not pay them a loan, neither from the original estate owner nor from the *adscripticii* (or *coloni*) themselves could the poll tax be reclaimed. Hence the imposition of the liability for this on the *mala fide* estate owner. In the case of the 'private contract' there was no reason why it should not be claimed from the fugitives themselves.

It is obvious that these measures did not make the harbouring and use of *coloni* who had fled less attractive,<sup>74</sup> while it burdened the deprived estate owners with the search and reclamation. Flight was evidently a problem, as the number of sureties proves (see Section IX). A fine of 12 pounds for the fisc and the obligation to render not only the claimed *colonus* but also another farmer and his price (probably the additional value of land by the appendage of an *adscripticius*, such as of a slave as *instrumentum*, to work on it), should have deterred potential harbourers (*CJ* 11.48.12.2).

A *colona* might flee to a town or another place and marry an *ingenuus* (i.e., someone not subjected to the *condicio adscripticia*). If she was found, she could be recalled with her offspring (*CJ* 11.48.16). That her offspring could be claimed as well was due to inequality as regards the *origo* of town and estate (see above, at *CJ* 11.48.24). Otherwise the children would have followed the *origo* of their father and not have been subjected to the *condicio coloniaria*. The case of an *adscripticius* marrying an *ingenua* was already dealt with above.

If an estate owner possessed in good faith *coloni* who were claimed by somebody else (as in the case before), and the *coloni* fled to avoid the outcome of the litigation, it was the

<sup>73</sup> By this is meant the system we know from the Heroninos Archive, that on an estate account books were kept in which entries were made for things bought by the labourers from the estate and for salaries earned. See on this Sirks, *op. cit.* (n. 8), 362–4. The settlement would have made clear the amount of the *peculium* of the *coloni*, see below.

<sup>74</sup> The harbouring estate owner would upon discovery pay the taxes which he had not paid, but he would have saved them otherwise; and in the second case he only had to pay their wages.

estate owner who could claim them back and not the other person; having returned to him, the actual procedure could start (*CJ* 11.48.14, in accordance with the use of possessory interdicts in the private law).

#### XI DUTIES IN THE 'FREE' COLONATE

Those subjected to the 'free' *condicio* had to remain on the estate or land they had as *origo* (in this sense they were *originales* or *originarii* as well) and had to till this (*CJ* 11.48.23.1, 51.1, 52.1.1, 53.1.1), according to the conditions originally set for their ancestors (*CJ* 11.48.23.3). Since they were obliged towards their estate owner to perform the service of agriculture, they were in this respect subjected to his power (*CJ* 11.52.1.1; unless this was only valid in Thrace). They could be recalled in case of absence (*CJ* 11.48.23.4–5, 51.1, 52.1, 53.1). It was forbidden to reduce their status, i.e., to make them *adscripticii* (*CJ* 11.48.23.1). They had to pay the tax, and they could dispose of their possessions (*CJ* 11.48.19, 52 pr.). Under what condition they held the land is unknown (apart from the special case of *Nov. Just.* 162.2), but *CJ* 11.48.20 pr.–2 would suggest a charge. It is not known whether their estate owner could release them.

#### XII THE DIFFERENCE BETWEEN THE TWO *CONDICIONES*: THE *PECULIUM*

*CJ* 11.48.23.1 proves that there were two kinds of colonate in A.D. 534, as does the plural in *CJ* 11.48.23.3.<sup>75</sup> Whereas *adscripticius* is used both as noun and as adjective to *colonus*, there is no such word to distinguish the other *coloni* otherwise than the reference that they are 'free', and we have to interpret *colonus* in its context to see to which category it applies. Likewise we have to do this for *originarii* and *originales*, terms which express the liability for a *condicio* by way of the *origo*. The question is what precisely the difference was between these two *condiciones*, apart from the way of paying the poll tax, since in both cases there is, basically, an obligation to be on a particular piece of land and render agricultural services. Perhaps with the *adscripticii* the estate owner could ask other services as well, whereas we see that for 'free' *coloni* the obligations must have been circumscribed precisely and were not to be changed (*CJ* 11.48.23.2).

*CJ* 11.48.19 defines the differences evidently important for the Byzantines. In the *adscripticiate*, the *colonus* held his *peculium* for the estate owner. In the 'free' colonate, the *colonus* was 'free' and with him his assets (scil. what otherwise would have been a *peculium*; ἐλεύθεροι μένοντες μετὰ τῶν πραγμάτων αὐτῶν). The meaning of τὰ τοῦτων πεκούλια τοῖς δεσπότηαις ἀνήκει in *CJ* 11.48.19 is not clear. Two other texts state that the *adscripticii* could not alienate anything in the *peculium* without the estate owner's consent. These assets could be claimed after an *adscripticius*' death by the estate owner as *peculium*.<sup>76</sup> Mention of this *peculium* is made in the context of the faculty of *coloni* to

<sup>75</sup> Grey denies the existence of two *condiciones coloniariae*, but he does not analyse *CJ* 11.48.23.pr. and 1, he only mentions *CJ* 11.48.19: Grey, op. cit. (n. 8), 173 and 173 n. 104. See, however, my refutation of this in n. 43. But regarding *CJ* 11.48.4, Mirković, op. cit. (n. 42), 69, whom Grey criticizes, is correct in assuming it concerns *adscripticii*. It is evident from these texts that Justinian considered two different statuses: one the *adscripticiate*, a *deterior condicio* (and 'worse' implies that there is another, 'better' status), and another, the 'free' colonate, less or not *deterior*.

<sup>76</sup> *CJ* 11.50.2.3: 'Cum enim saepissime decretum sit, ne quid de peculio suo cuiquam colonorum ignorante domino praedii aut vendere aut alio modo alienare liceret, quemadmodum contra eius personam aequo poterit consistere iure, quem nec propria quidem leges sui iuris habere voluerunt et acquirendi tantum, non etiam transferendi potestate permissa, domino et acquirere et habere voluerunt?'; *CJ* 1.3.20.1 deals with the inheritances of clerics, left to the monastery or church. If somebody has a claim, as the patron has a claim to a part of his freedman's estate, it has to be honoured. In this context the estate of a *censibus adscriptus* is mentioned: '... bona seu peculia, quae aut patrono legibus debentur aut domino possessionis, cui quis eorum fuerat adscriptus ...'

litigate against their estate owners: *CJ* 11.50.2 pr. describes the difference between the two categories of *coloni* in a very elliptic way, but it comes down to this. The *coloni censibus dumtaxat adscripti* ('merely registered in the census'), i.e. the 'free' *coloni*, are not subjected to their estate owners, whereas the other category, that of the *adscripticii*, are obliged (*obnoxii*) because of the yearly taxes and the obligations of their *condicio*, which makes them subjected as if in a certain kind of slavery. For that reason their faculty to sue their estate owners is very limited: then such a thing is unbearable where their masters have the power to alienate them together with the estate they are on (*CJ* 11.50.2.1). The word *obnoxius* can mean 'subjected to another's power', 'liable' or 'obliged'. In the latter sense it is often used in the context of public obligations (*munera*),<sup>77</sup> as here, but the nature of these obligations could have had the effect that the first meaning crept in. Furthermore, the text rhetorically puts the question of how such a *colonus* may alienate anything he has in his *peculium* without his master's knowledge, when the law did not want him to have an independent faculty to do so and allows him only to acquire and possess for his master (*CJ* 11.50.2.3). This strongly recalls a slave who had a *peculium* but without the *libera administratio* over it (which would have allowed him to alienate without prior permission of his owner, see *CJ* 4.26.10). The language is rhetorical, but it is beyond doubt that one or more constitutions had either restricted the *adscripticius'* faculty as owner or confirmed a private law construction with a restriction regarding alienation, and that subsequently this restriction together with the bond to the land had led to the interpretation and confirmation of the position of an *adscripticius* as being in the *potestas* of the estate owner. One has to realize that in private law an estate owner would always have been able to recover debts of his *adscripticii* by seizing and selling their private assets, after having obtained a judgement against them. If these assets included such a *peculium*, it assured him that the assets were there. But the question is, what was the *peculium*, why was this separate measure introduced and what was its purport? Did it extend to all possessions of an *adscripticius* as it would seem? This question cannot be solved here but several arguments can be raised which might make the institution fit better with the law.

We have seen that *adscripticii* were given charge over irrigation works (n. 68). It is possible that the same happened with plots of land which they had to cultivate. The estate owner would have retained ownership. In this situation the *adscripticius* would act as *actor* (representative) for the estate owner: he took care of his plot and turned over a lump sum. If he borrowed money, the creditor could not recover this from the estate owner unless the latter had given an order (*iussum*), in which case he could proceed against the estate owner with the *actio quod iussu*.<sup>78</sup>

The question is reflected in a case in which an *adscripticius* is pledging his possessions. In *P.Oxy.* LXIII.4398 (A.D. 553) the ἐναπόγραφος γεωργός Victor gives his possessions in surety (κινδύν(ω) τῶν ἐμοὶ ὑπαρχ(όντων)) to his estate owner Dioscorus for a loan of wheat for sowing on the estate fields in his charge (ὑπ' ἐμῆ). He promises to return the loan together with the payment of his tax (μετὰ καὶ τοῦ φορικοῦ μου φόρου) in kind of the same quality. With φόρος the tax on the *adscripticius* himself is meant; why should Victor be liable for somebody else's land? If his possessions were *peculium* in the strict sense (i.e., property of Dioscorus, in charge of Victor) he could not do this. Neither is it likely that he could pledge a potential claim to the remainder of *peculium* in the wider sense as discussed above. It is the same in *P.Oxy.* LXVI.4535 (A.D. 600), where the ἐναπόγραφος γεωργός

<sup>77</sup> See Sirks, op. cit. (n. 25, 1993), 164; A. J. B. Sirks, 'Obnoxietas', in *Questions de responsabilité, XLVème Session de la SIHDA* (1993), 325–32.

<sup>78</sup> This would mean that he could recover the amount as comprised in the order. Normally we see the *quod iussu* applied to slaves and sons *in potestate*, but ratification (*ratishabitio*) was possible anyway. By this the represented *dominus* would become liable for the dealings of his procurator. This would work also for a *colonus* who functioned as *actor*. The variation of action *quod iussu* — which restricted the liability of the *dominus* to the range of the *iussum* — would make sense if this was done. See for the *ratishabitio* and *iussum*, A. Kacprzak, 'Ratishabitio nel diritto romano classico' (2002), 91–113.

Elias acknowledges a debt to his estate owner, for which he gives a security on his property, mortgaged to this purpose (κινδ<ύν>φ τῶν ἐμοὶ ὑπαρχόντων [ν ὑ]ποκειμένων εἰς τοῦτο).<sup>79</sup> Another case: in a deed of surety Zacharias guarantees that the *adscripticius* will pay this and the tax of the estate orchard he has to work on (τὸν ὑπὲρ αὐτοῦ φόρον; *P.Oxy.* XXVII.2478 of A.D. 595/596). We should not read this as if he were liable himself for the taxes, but that he will pay (in any case) this amount to the estate owner, since he like Victor cannot have been liable for the taxes of another person.

The cases conform with the practice attested in *CJ* 11.48.20 pr. that *coloni* turn over most or all revenues, out of which the landowner pays all taxes. Here it seems that they could retain part of the revenues. Was this part the reward for their work and consequently their property? Or was it working capital provided to them in this way by the estate owner? Did they dispose, in this way, over a floating work capital, sometimes but-tressed with a loan, to work as small entrepreneurs on their plot? If so, the estate owner could also recoup from it the taxes he paid for the *colonus* if the latter had not turned enough over.<sup>80</sup> *CJ* 4.26.13.4 and *CJ* 11.48.8.2 refer to such financial practices with a periodical settlement of accounts.

Next to that there are clearly assets which do not fall under the control of the estate owner, or else a pledge would make little sense, and Elias is quite assertive in his assurance. This is certainly the case for immoveables and here we must assume that the *adscripticii* were not under any lien; as follows from *CJ* 11.48.4.1 with its registration of *adscripticii* in the census of the territory, where their own plot of land lay. And indeed, nowhere do the texts say that *all* the *adscripticii* had was *peculium*: they only say that the *adscripticii* cannot freely dispose of their *peculium* — which leaves open the possibility that they owned other assets, not part of the *peculium* — and that this was settled by law.

With the ‘free’ *coloni*, the enrolment did not have the same effects. Since they had to pay their poll tax themselves, the need for a guarantee from the estate owner was evidently superfluous. Their obligation was solely based on a public obligation and not on a private contract. If they exploited the land with capital from the estate owner, it must have been organized and settled according to the usual private law rules on loan. The yearly settling of accounts would have made them owner of their saldo.

The situation recalls remarkably the classical Roman law figure of a person *in mancipio*. *Mancipium* was the power (*potestas*) a *pater familias* exercised over a free person other than his wife or children. Such a person could be the son of another who had been mancipiated to him in the course of an emancipation, or a debtor which had been adjudicated to him through *addictio* by the magistrate.<sup>81</sup> They would remain free persons and capable of marriage. The *pater familias* could acquire through them property but not possession (Gai. 2.90), thus what they had would be *peculium*. Under Justinian these two sources of *mancipium* had disappeared and with them the *mancipium* as personal law status,<sup>82</sup> but if the *adscripticiate* had been created in the first half of the third century, it is very possible that it was modelled after the *mancipium*, since this must still have existed at

<sup>79</sup> Both formulations are almost in perfect accordance with what Justinian in *CJ* 8.16.9 wrote as necessary to establish a hypothec: ‘fide et periculo rerum ad me pertinentium’; cf. *P.Oxy.* LXX.4794 (A.D. 580), also a hypothec of all belongings. It may look strange that in a case of *peculium* there could be a debt of the *adscripticius* to his estate owner, but the *peculium* functioned as a separate entity and was usually left with the dependent person after the dependency ended, after a final settlement to establish its net value.

<sup>80</sup> Not unlikely, since a harvest had to supply food for his family, seed for the next year, and pay the taxes. The first two expenditures would have priority. In view of the loans for seed, attested harvests were not always sufficient.

<sup>81</sup> For the first, see Kaser, *op. cit.* (n. 25), 302. For the latter, see M. Kaser and K. Hackl, *Das römische Zivilprozessrecht* (1996), 387–8.

<sup>82</sup> Justinian abolished the *mancipatio* because it had fallen into disuse by his time, emancipation being performed now before the magistrate; and condemnation to pay a debt no longer led to *addictio* in the power of the creditor.

that time.<sup>83</sup> The *mancipium* could be imposed by a public official and consequently by public law, so to assume that the act of inscription into the (public) census register drew the *colonus* into the adscripticiate is defensible since *CJ* 11.50.2.3 refers to such a statute.

Yet there are more aspects to the adscripticiate. It is evident that it was connected with the payment of the poll tax. The estate owner took upon him the duty to pay this and the *adscripticius* was bound because of this yearly tax. It must have been a bond to his estate owner.<sup>84</sup> The colonate served (also) to guarantee the latter the counter-performance of the *colonus*. If the *colonus* had been a tenant, the estate owner as lessor would have had a tacit hypothec on the property of the tenant (*CJ* 8.14.7), which meant that even if the tenant sold his goods, his claims could still be satisfied. There would have been no need for the privileges the adscripticiate gave the estate owner. This (again) is a strong argument against the idea of tenancy as being fundamental to the adscripticiate. *Adscripticii* were then originally either land labourers or farmers who had a plot of land of the estate owner in charge (*in precario*?). It is likely in view of their presumably destitute situation that they would have been dependent for the exploitation of this on the estate owner for loans and leniency in times of adversity; as they did for the poll tax. In this case the private law did not offer the estate owner a form of security. *Mancipium* would have been a solution. Regarding those who could only offer their labour, it secured the authority of the estate owner to summon them and to force them to work without the need to go to court first. Regarding those who had some assets, it secured his claim by these being treated as *peculium*. A further security would be built in by denying the *adscripticii* the *libera administratio* over the *peculium*, which meant that they could not alienate anything in it without the estate owner's permission.<sup>85</sup> Protection of the estate owner's interest in having recovery of the tax paid by him as guarantor must have led to the legalisation of this and consequently the *peculium* would have been an effect of the enrolment in the census as *adscripticius*. An exception existed for the real estate they possessed in as far as they had to pay the tax for this (the *tributum*) themselves and had to register in the census of the territory where the land lay (*CJ* 11.48.4.1). Since their estate owner apparently did not carry any liability here, it is likely that the *peculium* construction did not apply to this land. Here the tax collector could seize the land in case of default.

If somebody was liable to the adscripticiate by *origo*, he would have unrestricted ownership of his assets until he was summoned and had acknowledged this obligation, in the same way as was done with *munera*. His moveable assets must thus have become subjected to the *peculium*.

This is one way to explain the peculiarities of the adscripticiate. The other possibility would be that the *adscripticius* would have transferred his possessions in fiduciary ownership to his estate owner, in order to provide security. He would keep possession or receive his property back *in precario*. The practice of transferring was not uncommon with socially vulnerable people, since as property of a powerful person their (few) assets could not easily be seized by the authorities. This practice of transferring assets was

<sup>83</sup> It is said that we do not have a constitution introducing the colonate or adscripticiate. This is true and it would indicate an introduction under Diocletian. If it was done after A.D. 311, there would have been a general constitution issued, which would have figured in the Theodosian Code and after that in Justinian's Code, and probably also in the Breviary of Alaric. It does not. On the other hand, we possess from Diocletian's reign up till A.D. 295 only, or almost only, rescripts, and such an introduction is not likely to have been done by way of this expedient. Yet it is still possible, and a constitution of Diocletian for the period A.D. 285–305 is possible too.

<sup>84</sup> Regarding the fisc, everybody would have been bound and it would not have merited a separate mention.

<sup>85</sup> It was possible to grant the *libera administratio* to a slave: he could then alienate things out of it without the prior permission of his owner, who was also the owner of the assets in the slave's *peculium*. Although in the Later Roman Empire *fili familias* got a *libera administratio*, Justinian went back to the old system (M. Kaser, *Das römische Privatrecht II* (1971), 215).

condemned.<sup>86</sup> To call untechnically such goods *peculium* would fit the situation of social dependence. We would, however, have to assume that it would have been recognized later on in practice, which is unlikely. The first hypothesis gives a better explanation, although there remain questions, such as: how would the registration in the census have taken place? Did it indeed automatically entail the restrictions in litigation, imposed upon the *adscripticius*?<sup>87</sup>

### XIII SOME CLOSING OBSERVATIONS

We have concentrated our investigation on Justinianic legal and documentary texts and seen that it is possible to get a coherent view on the *coloni censiti*.

First, there were two *condiciones* regarding *coloni censiti*, the persons registered in somebody's census as *coloni*: the *condicio coloniaria* or *adscripticia*, and the *condicio* which we called the 'free' colonate. The *condicio adscripticia* was based on an *origo* established on an estate, itself based on descent from a father or unwed mother who had already been subjected to this *condicio*, or on an enrolment into the census of the estate owner following an agreement to this effect. The other *condicio* was also based on an *origo* established on an estate, and this again on the descent from a father or unwed mother who had already been subjected to this *condicio*, or on the imposition of it.

The consequences of each *condicio* differed considerably in private law. In the domain of personal law, the *condicio adscripticia* led in A.D. 531/534–539 for the *adscripticius* to restriction on marriage with a woman not subjected to this *condicio*. In the domain of property law, it implied a grave restriction regarding his assets (his moveables and probably for most of the *adscripticii* their only capital). It was called *peculium* and considered as if *peculium* without *libera administratio*, which implied the prohibition against alienating anything without the permission of the estate owner, including the faculty to dispose by testament of his *peculium*. If an *adscripticius* possessed real estate, this property was not affected by it. Regarding procedural law, in this *condicio* the possibility for the *colonus* to sue the estate owner was reduced to the position of a freedman against his manumissor, i.e. it was almost nil. It was these restrictions which made him considered as if *in potestate* and a subjected person, if this was not already a feature of his *condicio*. The other *condicio* did not have these consequences and those subjected to it were called, with justice, 'free'.

In public law, the consequences of both *condiciones* were originally the same: both kinds of *coloni* could be summoned or, in case of absence, be recalled, together with their family and *peculium*. Both could be ordered to perform services within the exploitation of the estate that was their *origo*. Regarding procedures, it was the same: they could sue their estate owners for unjust claims regarding their *condicio*. But the *adscripticii* had three possibilities to leave their *condicio*. They could exit their *condicio* if the estate owner consented to this. If they fulfilled their obligations for thirty years, their *condicio* changed into that of the 'free' colonate, and this applied to their children as well. This will not often have been the case. From A.D. 539 onwards, if a male *adscripticius* entered a marriage with a woman not subjected to the *condicio adscripticia*, the children of such a marriage would be 'free' *coloni* and could even transfer their *origo* to their own estate if they acquired one large enough for them to be fully occupied with it.

In both *condiciones*, the *coloni* were taxed for the poll tax. If they possessed land, they had to make a *professio* in the census of the territory where it lay and pay the tax on it

<sup>86</sup> See *CJ* 2.13–14 on this. Cf. further *CTh* 13.7.1, which describes this practice with ships, whose owners wanted to escape the compulsory transportation; and *CTh* 12.1.6 *fin.* for a decurion.

<sup>87</sup> I therefore offer this hypothesis with reservation. In view of the present state of information a good analysis of the taxation system in the Later Roman Empire is indispensable for further research.

themselves. In the case of the poll tax (*capitatio humana*), the estate owners of *adscripiti* paid this tax to the tax collectors, because they had taken on responsibility for it, while the *adscripiti* in their turn were to pay it to their estate owner. It would go too far to see in this construction a role for the estate owner as public tax collector, as Gascou does.<sup>88</sup> It was rather a case of taking over as primary co-debtor and thus being obliged to render the amount of the tax as revenue. The other kind of *coloni* was in this respect 'free' as well: such people were primarily responsible for this tax and had to pay it themselves.

Justinian underlined the contractual origin of the *adscripiti* and although we do not know how often this was the case in his time (many cases of the *adscripiti* in his reign will have been based on *origo* by descent, as will have been most or almost all cases of the 'free' colonate), it must have happened or else his emphasis would not have made sense. And we know of a case of re-admittance to the *adscripiti* (see n. 17). This means that the *adscripiti* was not a universal phenomenon which afflicted all farm labourers. And on the other side, the implementation as a status based on *origo* meant that a *colonus censitus* was not necessarily a farm labourer, but could pursue other occupations.

In view of the restricted scope of this article it is not possible to draw conclusions for the entire debate on the colonate here. But something can be said nevertheless. The many references to *coloni censiti* being away from the estate and occupying positions which shielded them from being summoned, the emphasis of Justinian on the contractual origin of the *adscripiti*, the occupations of those *adscripiti* who were of this status apparently only on account of their *origo*, indicate that for Justinian's reign the characterization of society as a socially petrified system does not hold well for this level. Neither is it possible to state that the personal position of the *colonus censitus* had deteriorated into serfdom.<sup>89</sup> This corroborates the caution as expressed by several authors. Perhaps society and the colonate were indeed so, or to an extent so in the period up until Justinian; but then one has to surmise a considerable change in both at some moment between Diocletian and Justinian.

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<sup>88</sup> J. Gascou, *Les grands domaines, la cité et l'état en Égypte byzantine*, Travaux et Mémoires 9 (1985), 22–3. Following Gascou: M. Kaplan, *Les hommes et la terre à Byzance du VIe au XIe siècle* (1992), 162. Challenged by, e.g., Sarris, *op. cit.* (n. 9), 155–9. For a summary of the increased reservations, see B. Palme, 'The imperial presence: government and army', in Bagnall, *op. cit.* (n. 65), 263–4. See also n. 31 and Section VII.

<sup>89</sup> As Demandt, see n. 9, without any reservations.