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Bondage by contract in the late Roman empire

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ABSTRACT

Legal codes and other documents of the late Roman Empire reveal a system, the colonate or sometimes (redundantly) the bound colonate in which farmers (*coloni*) had their (head and land) taxes paid by estate owners in whose census rolls they were registered. If the land changed ownership *coloni* were entitled to stay and were registered in the tax roll of the new owner. However, *coloni* and their offspring lacked the right to migrate. Developing some previously advanced ideas about *patrocinium* “patronage,” this article argues that the pristine or original form of the colonate is a voluntary contractual arrangement among free farmers, estate owners, and the imperial Fiscus which acquired a public law dimension because it required a change in the personal status of the farmer. By means of this bondage contract the contractors expected to share in the aggregate gains from reducing tax-collection costs and from stabilizing tax revenues. The paper goes on to consider the implications of the colonate for economic efficiency and concludes with some observations on the reasons for changes over time in its importance.

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1. Introduction

Legal codes and other documents of the late Roman Empire relating to the countryside reveal a system known (by scholars) as the colonate or (redundantly) as the bound colonate.¹ Farmers (*coloni*) paid their personal and land taxes to estate owners (*domini/patroni*) in whose census rolls they were registered. The estate owners in turn paid taxes to the Fiscus. The registered farmers (the various relevant terms include *censibus adscripti*, *adscripticii*, *coloni censiti* or more loosely *coloni*) and their offspring lacked the legal right to migrate.² Runaway *coloni* could legally be treated as if they were slaves—that is, roughly. The *coloni* did have rights in the land they farmed—in the sense that if it was transferred

to a different estate owner they were entitled/required to remain and to be registered in the tax roll of the new *dominus/patronus*.

Following Carrié (1982, 1983, 1997), Kehoe (2007: 164) suggests: “The government’s interest in *coloni* [cultivators] in the fourth century was chiefly the product of its fiscal policy. For this reason, it perhaps makes more sense to speak of *coloni* bound to the land rather than to use the term *colonate*, since this term suggests the existence of a new class of farmers in a semiservile condition.” The colonate is thus seen as part of a general trend in late antiquity to tie people to their professions. The most obvious problem with this line understanding of the colonate is that at all times in the later Empire period there were *coloni*, perhaps representing a majority of farmers, who were not bound to the soil (see Kehoe 2007: 166, 171). Thus the *colonate* does in fact refer to a new, or at least separate, “class” of cultivators in a “semiservile condition.” The *colonus* was not a slave but, against Carrié, neither was he free.

At present there are two main explanations of the origin of the colonate. One is built on a Marxist oriented “dismal economics of the peasant,” meaning that as a result of a progressive and inevitable deterioration/transformation of socioeconomic conditions the “peasants” (free farmers) were (as they always seem to be) reduced by ever-mounting debt into unfree “serfs” (from *servus*).³ A

¹ My thanks to Jean Gascou, Aleksandr Kopcev and Alice Rio for comments on the “bondage by contract” thesis and to Dominic Rathbone for his informative response to a query about tax collectivities in third century Roman Egypt. I am especially grateful to Egbert Koops for a close and insightful reading of an earlier version of this paper. I alone am responsible for any remaining errors. My research benefited greatly from the conscientious assistance of Evelyn Bodden of the Interlibrary Loan Department in the Cohen Library in the City College of New York.

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² For resemblances and connections between the colonate and medieval serfdom, see Freedman (1991), Garcia Moreno (2001: 198–99) and Munzinger (1998).

³ For the hereditary character of the colonate, see *CJ* 11.48.21 (cf. *CJ* 11.48.12 pr., *Novels* 54, and Jones 1958: 8–9). Offspring were legally bound by the registration of their parents as *coloni*.

³ For examples of this reasoning, see Mirković (1986, 1997: 47–64) and Kehoe (1988 47–64) and Kehoe (1988: 82–84). For a negative view, see Rosafio (2002: 129–35, 161–64).

second, equally simplistic, understanding is that in late antiquity the imperial state intensified its efforts to forcibly prevent farmers from migrating to facilitate the collection of taxes.⁴

An alternative, more contractually oriented, explanation of the bondage relationship is in terms of *patrocinium* (“patronage”) wherein powerful landlords offered protection to powerless farmers against the demands of the even more powerful imperial state (Sirks 1993, 1997, 2008). Specifically, the patrons assumed the primary responsibility to pay the (head and land) tax payments of the powerless out of some sense of duty or charity and probably lost money in the process. This line of explanation was of course not shared by officials of the state who were inclined to present themselves as protectors of the helpless against exploitation by the powerful. In 325 CE, for example, a law was passed that estate owners might not increase their demands on *coloni censiti* beyond “what he was previously accustomed (to pay) and what was exacted from him in previous years, he should approach the judge whose audience he will first be able to gain, and he should prove the crime, so that the one who is convicted of demanding more than he had been accustomed to receive might be prohibited from doing this in the future, after first having returned what he is known to have extorted by perpetrating an excessive demand (*superexactio*)” (CJ 11.50.1; tr. Kehoe in Frier).⁵ Moreover, as it stands, the *patrocinium* explanation of bondage fails to explain precisely how helpless farmers expected to help themselves by voluntarily surrendering their freedom of movement to a *patron/dominus*. Also the patronage theory fails to explain why the powerful imperial state agreed to recognize and enforce a change in the farmer’s personal status (as it certainly did) against its own alleged fiscal interest and power to squeeze taxes from individual small farmers. It seems clear that as currently formulated the patronage theory fails to explain the emergence of the colonate.

In this paper a mutual self interest-motivated version of the *patrocinium* relationship is made a building block in modeling the colonate as originating in a voluntary contractual arrangement among free farmers (not robotic “peasants”), estate owners, and the imperial Fiscus. This arrangement embodied a public law dimension because for it to work it required a change in the personal status of the contracting farmer. The paper concludes by suggesting that the colonate was destabilized by increases in taxation.

First however it is necessary to review the underpinnings of the colonate in Roman law. “Certainly, the great divide in the law of persons is this: all men are either free men or slaves” (Digest 1.5.3 Gaius; tr. Watson). “Freedom is one’s natural power of doing what one pleases, save insofar as it is ruled out either by coercion or law. Slavery is an institution of the *ius gentium*, whereby someone is against nature made subject to the ownership of another” (Digest 1.5.4 pr-1 Florentinus; tr. Watson). A restriction on the power of an individual to migrate is seen as a violation of an individual’s freedom and hence those so constrained had to be regarded as “slaves” or as “slave-like” or, to put their status in another way, they could be punished/treated in a manner normally reserved for slaves (e.g. by chaining, CTh 5.17.1). Such persons are *iuris alieni*—that is, legally under the control of another (Gaius Institutes 1.52; Banaji, 2001: 207–08; Koptev 2004: 291; Koptev 2012: 315–16, 333ff). In earlier times the entry by the censor of the name of a slave on the census roll changed his public status into “free man/citizen” (*manumissio censu*) (Buckland, 1963: 72–3). I would suggest as a possible paral-

lel that the entry of the name of a free man/citizen into the census roll of another man either immediately changed his public status into “slave” or served as the foundation for such a change. Indeed, “The Romans equated it [the duty of the *adscripticus*] to the *operae* [services/duties] of freedmen” (Sirks, 1983: 347, cf. 351).

Callistratus (Digest 40.12.37), writing in the first half of the third century CE states: “A private pact (*conventio privata*) cannot make a man anyone’s slave or freedman” (tr. Watson). This prohibition of changes in personal status by means of “private pacts” is not directed against entrance into slavery any more than against manumission (entry into freedom). It means that, for reasons of fiscality, changes in personal status must be recognized and validated by the state. Thus, it is understood that any agreement between private parties restricting the right of one party to migrate can be made legally effective only if recognized/registered by the state.⁶

One final note of caution: to be “unfree” did not necessarily mean to have a relatively low standard of living. Individuals sold themselves into slavery to obtain otherwise unattainable lucrative positions (Silver 2011: esp. 89–94) and Augustine was not speaking metaphorically when he observed: “Don’t we see incidentally, many slaves in want of nothing, and free persons begging?” (Sermons 159.5; tr. Hill, 1992). As we shall see these cautions apply specifically to *coloni* as well.

2. The colonate or bondage relationship: was participation compulsory?

2.1. Participation of estate owners

As Grey (2007: 168) points out, the registration (*adscriptio*) of farmers (*coloni*) in their (land and poll) tax rolls imposed significant limitations upon the production decision-making of estate owners. Thus, estate owners would face difficulties in replacing unsatisfactory *coloni* (CJ 11.63.3 383 CE) or in moving *coloni* from one estate to another (CTh 13.10.3 357 CE) and, moreover, CJ 11.48.7 pr. insisted in 371 CE that “As with (bound) tenants by origin (*originarii*), it is not at all permitted that farmers and slaves registered in the census (*censiti*) be sold from the land” (tr. Kehoe in Frier). I understand an *originarius* as the descendent of a registered *colonus* (Mirković, 1997: 68–9). Estate owners also surrendered some freedom over the rents they might collect (CJ 11.50.1 (325 CE), 11.50.2 (396 CE); Grey, 2007: 172).

That registration was perceived by estate owners as restrictive is demonstrated by attempts at evasion. CJ (11.48.7.1) explains: “Nor should a dodge around the law make use of this fraud by fabrication, which has often been done with tenants registered in their place of origin, that, with a small portion of the land conveyed to the buyer, the entire cultivation of the farm as a whole be taken away” (tr.). Neither might the land be sold without its registered *coloni*: “If any person should wish to sell or donate a landed estate, but to retain for himself the *coloni* to be transferred to other places, he shall not be able to do so by a private pact. For if he should suppose that such *coloni* are useful, he must either hold them along with the landed estates or release them to profit others, if he should despair of these landed estates being profitable to him” (CTh 13.10.3 357 CE; tr. Pharr; parallel CJ 11.48.2). This is not essential to the argument but the reference to a “private pact” suggests to me that such transfers might be made if the state approved (received compensation).

Most importantly, as is attested in CTh 11.1.14 (366 CE), estate owners were obligated to pay the taxes of *coloni*, “who are born to their condition and who are proved to have been enrolled on the

⁴ The history of the various theories of the origin of the colonate is reviewed by Clausen (1925) and Mirković (1997). More recent discussions include: Grey (2007: 156–58); Scheidel (2000); Sirks (2008: 122).

⁵ The term *superexactiones* refers not only to payments (labor services, crops, cash) made by *coloni* who farmed the patron’s land but also to payments (labor services, crops, cash) made by *coloni* who owned their own land.

⁶ Fiscality undoubtedly played a decisive role in the Roman law of changes in personal status. Rio (2011: 5) takes note of “the fact that personal status also affected tax status.” There is insufficient room to discuss this problem here.

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