

AUGUSTINE'S LETTER 20*:

COLONI IN FUSSALA

by

ALLEN M. HOFFMAN, JR.

(Under the Direction of Erika Hermanowicz)

ABSTRACT

Since the sixteenth century, scholars have sought to understand why a historically free segment of the Roman world, the *colonus*, was apparently tied to the land by laws of the Theodosian Code. While many scholars have called this the birth of medieval serfdom and coined the term “colonate,” this conclusion cannot be supported by linguistic analysis of the term’s Latin etymon “*colonatus*,” and derives from deterministic historiography. Furthermore, many pertinent laws are suspect because they originate from the Code’s fifth and most incomplete book, which many supplement invalidly with laws from the Justinian Code. A passage from Letter 20*, one of Augustine’s new letters, provides compelling evidence for the continued mobility of *coloni* in Fussala, a fifth century North African town. By integrating Augustine’s new evidence with linguistic, historical and legal arguments, this thesis reinvigorates the long-debated topic of the late Roman *colonus*.

INDEX WORDS: *Colonus*, *Colonate*, Augustine, Roman North Africa, Roman Law, Late Antiquity, Historiography

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DEDICATION

Carissimae coniugi meae.

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CHAPTER 1

INTRODUCTION

During the Republic and early Empire, the *colonus* was a free Roman who worked the land as a tenant. He contracted with his landlord through the traditional Roman lease, the *locatio conductio rei*, and, importantly, he was free to leave this arrangement by terminating the lease. Generally, these leases were intended for specific jobs of limited duration. For the fourth century, however, evidence from the Theodosian and Justinian Codes has been interpreted to portray an entirely different picture. According to these laws, the *colonus* was no longer party to a voluntary lease but subjected to a perpetual and interminable bond to the land upon which he worked. A landlord possessed legal actions against the flight of his *coloni* and against other landlords who sought the labor of his *coloni*. In this light, the *colonus* resembled a slave or medieval serf more closely than the free tenant he had been formerly. This alteration in the status of the traditional Roman tenant signaled a fundamental change in the spirit and nature of Roman law, which protected free men and provided strict definitions of slavery. This thesis is an investigation into the question of the mobility of Roman *coloni* in late Antiquity.

Scholars have attempted to find the source and reason for this change since the sixteenth century. Various interpretations to describe it have been developed, gained favor and then fallen into desuetude, and today the problem is linked to the long-accepted definition of the colonate. The colonate is a collective term that defines a universal class of *coloni* across the Empire that was immobilized by perpetual bonds to their land through imperial legislation. This legislation was fiscally motivated and is dated to the taxation reforms of Diocletian. A passage from the

recently discovered Letter 20* of Augustine, however, complicates both the social situation and the definition of the colonate.¹ Indeed, it presents compelling evidence that the *colonus* was not universally tied to the land and that the colonate must not be defined as a class comprised of every *colonus*. It is the goal of this thesis to examine this problem and to incorporate the evidence of Letter 20* into the question about the mobility of late Roman *colonus*.

In the passage from Letter 20*, a group of *coloni* in the small fifth century North African community of Fussala makes a threat to depart from their estate – a threat that Augustine deems serious and legitimate. The *coloni* refuse to permit the Catholic Bishop, Antoninus, to establish his Episcopal seat upon their estate. Augustine had installed Antoninus because of the increasing pressures of incorporating the Donatist church following an imperial edict of Honorius that declared the church a heresy. According to Augustine,

Then, these same *coloni* [...] wrote to their landlord² that they would depart immediately if she allowed this to happen and likewise to me so I would intervene for them lest it happen; because of them, both she and I wrote to the [Primate].³

Augustine's reaction is surprising because the letter is dated to 422/3 C. E., when scholars have argued that the *colonus* was already tied to the land. Given its potential impact on scholarship, it is surprising that this passage has not attracted more attention. The handful of scholars who discuss this passage speculate and express confusion as to why Fussala's *coloni* do not appear to be tied and why Augustine took the threat seriously. In 1983, Serge Lancel first observed the incongruency between what is known of the *colonus* from the Codes and this passage from

¹ Johannes Divjak, "Sancti Aureli Augustini Opera, Epistolae ex Duobus Codicibus Nuper in Lucem Prolatae." *CSEL 88, sec II, par. VI, (Vienna, 1981).*

² The Latin reads "*dominam*" which signals that this landlord was a woman.

³ *Ep. 20*.10: "Porro idem coloni [...] scripserunt ad dominam possessionis, si hoc fieri permisisset, se continuo migraturos et ad me similiter, ut pro eis intervenire ne fieret; propter quos et illa et ego ad senem scripsimus."*

Letter 20*.⁴ In the same year, Claude Lepelley decided that Letter 20* indicates that laws of the Codes had only the force of juristic opinion, which is contrary to everything understood about the Codes.⁵ Richard Whittaker addressed the problem in 1997 when he concluded that Augustine's account either provided misleading information about the status of Fussala's *coloni*, which would indicate that Augustine had either misled his audience or was himself mistaken, or, more radically, that the Codes simply were not applied to this circumstance.⁶ Each scholar recognized an inconsistency between Augustine's account and today's interpretation of the fifth century Roman law regarding the mobility of the *colonus*. The expectation that Fussala's *coloni* must be tied is unnecessary and originates from problems with our understanding of the colonate and the late Roman *colonus*. This thesis draws upon historical, linguistic and legal evidence to make a novel interpretation of the mobility of the late Roman *colonus*.

In chapter two, I contextualize Augustine's Letter 20* and provide the basis for taking his account as authoritative, including his realization that the threat of Fussala's *coloni* was credible. The events of the letter occur within the time period and geographical scope that is pertinent to the scholarly definition of the colonate and the late Roman *colonus*. The importance of the conflict for the Church and Augustine validates the account and examples of Augustine's interest, familiarity and interaction with Roman law underline the credibility of the threat. This chapter aims to remove beyond any reasonable doubt skepticism towards the use of Augustine's letter as admissible evidence for the question of the late Roman *colonus*.

⁴ Serge Lancel, "L'Affaire d'Antoninus de Fussala," *Les Lettres de Saint Augustin découvertes par Johannes Divjak: Communications présentées au colloque des 20 et 21 Septembre 1982*, Études Augustiniennes (Paris: Centre National de La Recherche Scientifique, 1983), 275.

⁵ Claude Lepelley, "Liberté, Colonat et Esclavage," *Les Lettres de Saint Augustin découvertes par Johannes Divjak: Communications présentées au colloque des 20 et 21 Septembre 1982*, Études Augustiniennes (Paris: Centre National de La Recherche Scientifique, 1983), 336-337.

⁶ Richard Whittaker, "Agostino e il Colonato," *Terre, Proprietari e Contadini dell'Impero Romano*, ed. by Elio Lo Cascio (Rome: La Nuova Italia Scientifica, 1997), 303.

The third chapter presents both the history of the scholarship for the colonate and a linguistic analysis of its Latin etymon “*colonatus*.” Based on this linguistic evidence, I argue that the traditional translation “colonnate” is insufficient and misleading. Instead, the translation “settlement” more appropriately suits the origin and context of the word. Historical examples of the settling of barbarian peoples within the empire substantiate this claim and supply a more understandable motive for immobilizing the demographic group designated by the term “*colonatus*” in the Codes. This reinterpretation, moreover, explains that the *coloni* of Fussala were still mobile because they simply were not settled *coloni*.

I examine the historiography behind the scholarly argument that the *coloni* were universally immobilized in the fourth chapter. Previous scholarship is all founded on evidence from the Theodosian Code and supplemented by laws from the Justinian Code. The most pertinent laws regarding the *colonus* are found in the fifth book of the Theodosian Code, which survives in an incomplete manuscript tradition. Consequently, much of the fifth book is reconstructed, but the incompleteness of the fifth book is not a sufficient reason for supplementing it with other laws from the Justinian Code. This, I argue, is an invalid method for reconstructing a universal institution. Therefore, the scholarly consensus that *coloni* were universally immobilized at the time of Letter 20* is no longer a concern and the letter is no longer inconsistent with what we know of the *colonus* in the Codes. In other words, there are two distinct strands of evidence and two valid definitions for the *colonus* in the late Roman world.

CHAPTER 2

AUGUSTINE'S LETTER 20*

In 1981, the young Austrian scholar, Johannes Divjak, added twenty-nine new letters to Augustine's literary corpus; these are generally referred to as the Divjak Letters in honor of their discoverer and are distinguished by an asterisk.⁷ Twenty-seven of these letters come from Augustine himself and the remaining two are addressed to Augustine by his Spanish contemporary Consentius.

In September of 1982, over forty scholars of diverse specialties convened in Paris and confirmed the authenticity of the Divjak Letters⁸ and noted that "*les informations multiples données par les nouvelles lettres s'inséraient fort bien dans le rest de nos connaissances à la manière des pièces manquantes ajoutées à un vaste puzzle.*"⁹ One attendant of the seminar established that the letters primarily involve "*questions juridiques, de problèms d'administration ecclésiastique et souvent appelés commonitoria.*"¹⁰ Individually, each letter proved to be invaluable for the scholars at the seminar whose specialties ranged from work on Augustine's style, Church history and, especially, the study of the legal reality of late Antiquity. Indeed, the twentieth letter, Letter 20*, is indispensable for the study of the late Roman *colonus* because the late Roman world has transmitted little concrete evidence for the mobility of the *colonus*. While

⁷ Divjak, "Sancti Aureli Augustini Opera, Epistolae ex Duobus Codicibus Nuper in Lucem Prolatae."

⁸ Claude Lepelley, "Préface." *Les Lettres de Saint Augustin découvertes par Johannes Divjak: Communications présentées au colloque des 20 et 21 Septembre 1982*, Études Augustiniennes (Paris: Centre National de La Recherche Scientifique, 1983), 9.

⁹ Ibid: "...the many pieces of information given by the new letters complement well the rest known to us adding to the form of missing pieces of a vast puzzle."

¹⁰ Ibid: "...juridical questions, about administration problems of the Church and often matters called *commonitoria*."

the Codes have been taken to present a relatively clear case for the universally tied *colonus* in the fourth century, Letter 20* does not corroborate this impression and puts forward the likely possibility that every late Roman *colonus* was not bound to the land.

The central subject of Letter 20* involves the bishop Antoninus in the North African *castellum* of Fussala. The events recounted by this letter in Fussala concerned Augustine and upset his self-confidence more than anything else in his career. Before Divjak's discovery, the affair in Fussala was known only through Augustine's Letter 209, which was addressed to the newly elected Pope Celestine in the autumn of 422 C. E. Letter 209 reveals a troubling reality in North Africa and hints at the continuing difficulties of incorporating the Donatist population into the Catholic Church. Originating from the aftermath of Diocletian's persecutions and the North African bishop Donatus, the Donatist Church thrived in North Africa until Emperor Honorius declared it a heresy in 405 C. E.¹¹ Following the proscriptions, which followed the 411 C. E. Conference of Carthage, Augustine's diocese was strained by the task of absorbing the influx of Donatists who did not wish to be heretics. The unrest in Fussala described in Letter 209 and 20* demonstrates this difficulty had reached a critical point in the years following the conference.¹²

Letter 209 indicates that many Donatist inhabitants of Fussala balked at Augustine's efforts to reintegrate them into the Catholic Church and suddenly erupted in violence against the

¹¹ James Breckenridge, "Augustine and the Donatists," *Foundations* 19, no. 1 (1976): 69-77, and Peter Brown, "Christianity and Local Culture in Late Roman Africa," *Journal of Roman Studies* 58 (1968): 85-95.

¹² *Ep. 209.2*: "*Paucos habebat illa terra catholicos; ceteras plebes illic in magna multitudine hominum constitutas Donatistarum error miserabiliter obtinebat, ita ut in eodem castello nullus esset omnino catholicus.*" "That land had few Catholics; The Donatist heresy unfortunately maintained the rest of the peoples there altogether in a great magnatude of people. It was to the extent that in this same *castellum* there were entirely no Catholics."

clergy whom he had sent to administer the area.¹³ Augustine laments the reports of wholesale flight from Fussala.¹⁴ He regards the escalating situation as a grave problem both for the spiritual welfare of the Fussalans and for the mission of the Church. He resolves to appoint a new bishop in the hope of stabilizing the area.¹⁵ Augustine explains to Celestine that the population was Punic and that, when his Punic-speaking candidate for the office suddenly declined his offer, he consecrated the young Antoninus, who was proficient in Punic, as the new bishop of Fussala. Almost immediately, Antoninus proved to be a problem for Augustine and the Fussalans, who repeatedly complained of the tyrannical abuse of his authority.

Letter 209 demonstrates that Augustine lost control over the situation in Fussala and twice beseeched Celestine for an equitable resolution.¹⁶ Following the grave accusations, which included *stuprum*,¹⁷ by the inhabitants against their new bishop, Augustine intervenes and a series of judgments are made upon Antoninus.¹⁸ Augustine does not describe these proceedings in Letter 209 but reminds Celestine that the records are already in Rome.¹⁹ Eventually, Antoninus refuses to comply with the decisions of Augustine and his colleagues and persistently asserts his right to be bishop of Fussala.²⁰ At Antoninus' unexpected reaction, Augustine realizes that the situation was spiraling out of his control. He recounts that rumors were

¹³ Ibid: "*presbyteri qui eis congregandis a nobis primitus constituti sunt, expoliarentur, caederentur, debilitarentur, excaecarentur, occiderentur.*" "The priests, who were at first dispatched for congregating them by me, were robbed, murdered, crippled, blinded and slaughtered."

¹⁴ Ibid: "*eorum reliquiis licet exiguis colligendis, quae in utroque sexu oberrabant non minaces ulterius sed fugaces.*" "although a few remaining of them were being rallied, they, no longer threatening, but as fugitives of each sex were fleeing."

¹⁵ *Ep.* 209.2: "*episcopum ibi ordinandum constituendumque curavi.*" "I resolved to ordain and establish a bishop there."

¹⁶ *Ep.* 209.6, 9.

¹⁷ *Stuprum* was outrageous moral crime.

¹⁸ *Ep.* 209.4.

¹⁹ *Ep.* 209.6: "*cetera quae a me quid opus est recoli.*" "There is writing from me there, which recapitulate the rest of the things."

²⁰ *Ep.* 209.7-8. "*aut in mea cathedra sedere debui aut episcopus esse non debui.*" "Either I ought to be a bishop in my cathedral or I should not be a bishop."

circulating in the area that the civil and military powers might soon be involved and again begs Celestine for a solution.²¹ Most importantly, Augustine fears the complete apostasy of the Fussalan population because of their abusive treatment by a Catholic bishop and is anxious that the Fussalans would be captured, tried and convicted as heretics by the imperial authorities.²² Ultimately, Augustine acknowledges his role in the conflict and tells Celestine that the Fussalans were blaming him personally and, at this point, offers to resign his position as bishop.²³ This is the only known proposal by Augustine to retire from his services to the Church.

From the contents of Letter 209, it is obvious that Augustine was faced with a personal crisis. The turbulence following the Conference of Carthage precipitated violence against the Church and the flight of many inhabitants of Fussala. This was a situation that Augustine took altogether seriously and compelled him to act by ordaining Antoninus as bishop. The style of the letter is emotionally revealing for Augustine, who is tortured, fearful and saddened by the conflict.²⁴ The affair in Fussala was known only to this extent before Divjak's discovery of Letter 20*.

The new letter describes these events in far greater detail. It is addressed to a Roman matron named Fabiola, to whom Augustine had written before.²⁵ She was providing hospitality to Antoninus while he was in Rome awaiting his Papal audience. Like Letter 209, the style of Letter 20* is remarkable. The tone of the letter is "obsequious" and "very different from that

²¹ *Ep. 209.9: "...illis et publicas potestates et militares impetus tamquam executuros apostolicae sedis sententiam sive ipse sive rumores creberrimi comminantur."* "...whether he himself or the frequent rumors were threatening against them an attack by both the civil and military powers would be executed on account of an ecclesiastical decision."

²² *Ep. 209.9: "...cum essent haeretici, a catholicorum imperatorum legibus formidabant..."* and *"...ne oderint catholicam."* "...since they would be heretics, they were fearing punishment from the laws of the Catholic emperors..." And "...so that they would not hate the Catholic Church."

²³ *Ep. 209.10: "...ut ab officio cogitem gerendi episcopatus abscedere."* "...such that I think I should retire from the duties as a bishop."

²⁴ *Ibid: "Me...tantus timor et maeror excruciat."* "I am sad and such a dread tortures me."

²⁵ Cf. *Ep. 267.*

used by Augustine towards his equals, let alone his opponents.”²⁶ His language, moreover, is fast-paced and meticulous, “as though it had been dictated in embarrassment and haste and never revised for inclusion among letters intended for posterity.”²⁷ Indeed, Augustine greets Fabiola by apologizing for the detail of the letter and by asking her to forgive him.²⁸ Then, Augustine discloses his personal attachment to Antoninus.²⁹ The letter proceeds to describe how Augustine came to know Antoninus and recalls Antoninus’s promising early career in the Church.³⁰ Importantly, Antoninus could speak Punic and was a convenient candidate for ordination as the new bishop of Fussala.

A meticulous description of Antoninus’ actions in Fussala follows and leads into detailed charges brought against Antoninus.³¹ Like Letter 209, Augustine includes *stuprum* among these charges and indicates that this charge particularly attracted his attention. Consequently, Augustine convenes a council of local bishops to investigate the charges.³² Unlike Letter 209, however, Letter 20* provides a lengthy review of the proceedings. Although the more serious charges against Antoninus were eventually dropped, the council decides in favor of the Fussalans and orders for the consecration of a new bishop to replace Antoninus. Then, Antoninus appeals to the Primate of Numidia who postpones replacing Antoninus and decrees that he may maintain his authority over eight of an unknown total number of districts surrounding Fussala. To protest

²⁶ William Frend, “Fussala, Augustine’s Crisis of Credibility,” *Les Lettres de Saint Augustin découvertes par Johannes Divjak: Communications présentées au colloque des 20 et 21 Septembre 1982*, Études Augustiniennes (Paris: Centre National de La Recherche Scientifique, 1983), 255.

²⁷ *Ibid.*

²⁸ *Ep. 20**. 1.

²⁹ *Ep. 20**. 2: “...*quis Antonino sim et quis mihi sit Antoninus et quid ei debeam.*” “...who I am to Antoninus and who Antoninus is to me and what I owe him.”

³⁰ *Ep. 20**. 2-3.

³¹ *Ep. 20**. 4-6.

³² *Ep. 20**. 7-8.

losing his Episcopal authority over Fussala, Antoninus demands the addition of a ninth district, the *fundus Thogonoetum*.³³

The reaction was sudden from the *coloni* of the *fundus Thogonoetum*. They threatened in writing to depart immediately unless Augustine and their landlord should intervene on their behalf. The passage in question follows.

Then, these same *coloni*, because they had already suffered [Antoninus] on account of their vicinity and since they had suffered those aforementioned crimes with the others, wrote to their landlord that they would depart immediately if she allowed this to happen and likewise to me so I would intervene for them lest it happen; because of them, both she and I wrote to the [Primate].³⁴

These *coloni* objected to their mistreatment by Antoninus due to their vicinity to Fussala and they sought to influence the developing situation by refusing Antoninus' demand. It is particularly significant that Augustine relates his immediate reaction to alert the Primate. While the affair up to this point had been distressing for Augustine, the events had been limited to his diocese and, therefore, his authority. The steadfast refusal of the *coloni* of *Thogonoetum* and their threat to depart, however, effectively thwarted Antoninus, who abruptly sailed for Rome, and the situation spiraled out of Augustine's control.³⁵ The rest of Letter 20* recounts the complicated events, which followed, and the Catholic efforts to limit the damage caused by Antoninus.³⁶ Augustine hoped that this detailed description would encourage Fabiola to intercede on his behalf and to persuade the young bishop to reconsider his actions.

At this point, Augustine relates that he feared even to show himself in the town since the Fussalans were naming him as the author of the disaster. In response to the rapidly deteriorating

³³ *Ep.* 20*.9.

³⁴ *Ep.* 20*.10: “*Porro idem coloni, quia eum de vicinitate iam senserant et cum aliis mala illa pertulerant, scripserunt ad dominam possessionis, si hoc fieri permisisset, se continuo migraturos et ad me similiter, ut pro eis intervenirem ne fieret; propter quos et illa et ego ad senem scripsimus.*”

³⁵ *Ep.* 20*.11-12.

³⁶ *Ep.* 20*.13-23.

situation in Fussala, the local bishops met twice, once at Tegulata³⁷ and again in Gilva where the proceedings culminated in a dramatic confrontation.³⁸ Standing before the council and unable to account for his actions, Antoninus began to shout that nothing could prevent him from returning to Fussala against the decisions of the synod.³⁹

It is unknown whether or not Letter 20* was a success for Augustine, but Letter 209 does indicate that Antoninus eventually came before Pope Celestine. Letter 20* must predate Letter 209 because Antoninus is already in Rome. Taken together, Letters 20* and 209 demonstrate that Augustine was uncharacteristically helpless and tortured by his inability to resolve the situation in Fussala. Letter 20* supplements Letter 209 by explaining Augustine's personal connection to Antoninus and to the turmoil in Fussala.⁴⁰ It is clear that Donatists heavily populated the rural districts of the diocese of Hippo and, since imperial legislation recently proclaimed them heretics, they were the source of Augustine's dilemma as he worked hard to accommodate the influx of Donatists. Augustine's efforts, however, were met with violence and, more importantly, flight, which was a serious concern and prompted the install of Antoninus as bishop. A situation rapidly fell apart until the Fussalans were again considering flight to avoid Augustine's recently ordained bishop. As a group of *coloni* reacts to the developing events by threatening to depart, Augustine responds forthwith by involving powers outside of his authority. At the same time, Antoninus appeals the Pope and, at this point, the situation escapes his Augustine's control.

³⁷ *Ep.* 20*.12.

³⁸ *Ep.* 20*.24-5.

³⁹ *Ep.* 20*. 25: "...ait vultu et voce terribili nullo modo sibi persuaderi posse." "...he said that he was not able to be persuaded with a grimace and horrible shout."

⁴⁰ *Ep.* 209.10: "...ut ab officio cogitem gerendi episcopatus abscedere." "...such that I think I should retire from the duties as a bishop."

The dramatic narrative in Letter 20*, the threat of the *coloni* of Fussala and especially Augustine's reaction to it supply an important instance in which the late Roman *colonus* does not appear immobile. Serge Lancel and Claude Lepelley note this peculiarity at the seminar in 1982. Lancel asks if Augustine's account is "*compatible avec ce que nous croyons savoir de leur statut.*"⁴¹ He points to *CTh* 5.17.1,⁴² which states clearly that fugitive *coloni iuris alieni* would be prosecuted by imperial sanctions and that they would be promptly put into a servile condition.⁴³ Lepelley, on the other hand, concludes that Augustine's account might suggest that the imperial laws were in reality more like the juristic opinions of Papinian, Ulpian and Gaius than usually thought.⁴⁴ In 1997, Richard Whittaker discusses this problem more comprehensively. He concludes that Letter 20* suggests "*l'applicazione di quest'ultima era opzionale,*" which he also considers to be "*difficile crederlo.*"⁴⁵ In order to uphold the authority of the laws, Whittaker distances himself from Lepelley and postulates that "*altrimenti la legge era semplicemente non applicata*" or that "*essa fosse praticamente inapplicata.*"⁴⁶ None of these explanations is ideal because each requires a fundamental reinterpretation of legal evidence from the Codes. The laws of the Codes were general in effect across the empire and cannot merely offer juristic opinion.⁴⁷ It is likewise doubtful that the laws were ignored or inapplicable to the situation in Letter 20*.

⁴¹ Lancel, "L'Affaire d'Antoninus de Fussala," 275. "... [this is] compatible with what we know about their status."

⁴² See Appendix A for the Latin text and English translation.

⁴³ *Ibid.* fn. 28.

⁴⁴ Lepelley, "Liberté, Colonat et Esclavage," 336-337.

⁴⁵ Whittaker, "Agostino e il Colonato," 303. "...the application ultimately of these [laws] was optional." "...[this is] difficult to believe."

⁴⁶ *Ibid.* "...otherwise, the law was simply not applied." "...it was inapplicable in reality."

⁴⁷ See John Matthews, *Laying down the Law: A Study of the Theodosian Code*, (New Haven: Yale University Press, 2000), 10-31.

An obvious solution to this problem would be to question Augustine's familiarity with the law and his ability to recognize a situation, in which laws regarding the *colonus* should apply. But this must be summarily rejected since Augustine interacted on a regular basis with Roman law. Although Augustine had no formal legal education, he held an *audientia episcopalis* in which he heard civil cases.⁴⁸ Augustine's daily life as a well-respected bishop in North Africa also required a familiarity with civil law when it affected people in his diocese. Evidence from Augustine's literary corpus demonstrates that he would indeed have been aware of any relevant laws.

Letters 10* and 24* of the Divjak Letters are good examples of Augustine's interaction with the law. In Letter 10*, Augustine writes to Alypius, his friend, concerning the problem of slave merchants in Africa who illegally trafficked Roman citizens who had been wrongly enslaved.⁴⁹ After illustrating several examples that had come to his attention, Augustine reminds Alypius that this practice was certainly illegal and he cites a law of Honorius, which prevented the sale of free men and women as slaves.⁵⁰ Augustine asserts that, if this law were enforced, his problem with the slave merchants would be simply eliminated. Importantly, Letter 10* demonstrates that Augustine was not only familiar with the law but also in possession of a copy of a specific law. He attached his copy of the law to the letter in the hope that, Alypius, as he passed through Rome en route to the imperial court at Ravenna, could verify its accuracy.⁵¹ In the case of Letter 10*, a legal issue comes to Augustine's attention, he acquires a copy of a relevant imperial law, which would resolve his problem, and takes proactive steps into learning more about the situation from Alypius.

⁴⁸ Erika Hermanowicz, *Possidius of Calama: A Study of the North African Episcopate in the Age of Augustine*, (New York: Oxford University Press, 2008), 43.

⁴⁹ *Ep.* 10*.2-3.

⁵⁰ *Ep.* 10*.3.

⁵¹ *Ep.* 10*.4.

Letter 24* indicates a similar situation. Written to Eustochius, a legal expert, Augustine explains that the practice of selling one's children into slavery in his diocese had become a problem.⁵² Augustine kindly asks for detailed information on the laws concerning the temporary leasing of persons into slavery, in which fathers could lease their children as slaves for a fixed period of time.⁵³ Although the practice was lawful, it had led to abuses that were increasingly difficult for Augustine to prevent. Letter 24* shows that when cases involving the legal status of such children occurred in his diocese, he endeavored both to study the law and to call upon the services of a professional legal expert to clarify the complexities of slave law. He thus hoped that by mastering the legislation in question, he would find loopholes through which he could free children who would otherwise remain slaves. Letter 24* also points to Augustine's interest in the *colonus*. He poses the scenario of a landlord making a *colonus* into a slave.⁵⁴ According to Whittaker, the phrase "*unde colonus originem trahit*" in the letter echoes the legal term "*colonus originarius*" of the Codes.⁵⁵ This would also indicate a similar degree of legal research as shown in Letter 10*. Most importantly, however, the scenario concerning the *colonus* and Augustine's specific legal questions underline that he endeavored to familiarize himself not just the laws concerning slavery but also the laws which were relevant to the problems he met on a regular basis.

Letters 113-116 also attest to Augustine's diligence in understanding the law in his efforts to ensure the fair legal proceedings of Faventius, a farmer from the vicinity of Hippo. Faventius took sanctuary in Augustine's church in response to accusations of wrongdoing by his landowner. After he had left the church only temporarily, he was arrested and held unlawfully

⁵² *Ep. 24**. 1-2.

⁵³ Robert Dodaro, *Augustine and Politics*, (Boston: Lexington Books, 2005), 105.

⁵⁴ *Ep. 24**.1.

⁵⁵ Whittaker, "Agostino e il Colonato," 303.

by Florentinus, the Count of Africa.⁵⁶ At first, Augustine wrote to Cresconius, a local official, to find the location the detained farmer.⁵⁷ After Cresconius had found Faventius, Augustine then dispatched one of his priests, Caelestinus, to meet with Faventius.⁵⁸ When the Florentinus obstructed the priest, Augustine wrote to the count and demanded that he obey the imperial laws regarding the detaining of a plaintiff awaiting trial. In addition, Augustine included copies of the pertinent imperial laws⁵⁹ with his letter, but Florentinus ignored them and sent Faventius to Cirta, the local provincial capital, to be tried instead by the provincial governor, Generosus.⁶⁰ Again, Augustine interceded for Faventius and sent Fortunatus, a bishop in Cirta, to appeal on his behalf,⁶¹ but, after Fortunatus had failed to obtain Faventius' release, Augustine proceeded to write to Generosus and again cited imperial law, which demanded that Faventius must not be tried in Cirta but in the proper jurisdiction.⁶² Like the examples of Letters 10* and 24* of the Divjak Letters, Letters 113-16 show that Augustine tenaciously familiarized himself with civil laws in order to protect members of his diocese.

While he was not formally trained in Roman law, these examples show that Augustine possessed the high degree of familiarity with the law to defend his diocese effectively. They also point to how much energy Augustine devoted in pursuing this activity, the quality of his research, and the time that he devoted to be adequately acquainted with the law. In light of this evidence, it is unlikely that Augustine would have been unfamiliar with laws concerning the mobility of the *colonus* and the strict sanctions imposed upon them for even meditating flight. It is improbable that, in a situation so serious for Augustine's credibility and authority in the area,

⁵⁶ Florentinus was the *Comes Africae*.

⁵⁷ *Ep.* 113.

⁵⁸ *Ep.* 114.

⁵⁹ *CTh* 9.2.6 and *CTh* 9.3.6.

⁶⁰ Generosus was the *Consularis* of the province.

⁶¹ *Ep.* 115.

⁶² *Ep.* 116.

he would have neglected to familiarize himself with the legal ramifications of illegal flight by the Fussalan *coloni*. Both Letters 20* and 209 demonstrate that Augustine showed a genuine concern for the well being of the Fussalans and surely would not have made such a glaring omission as to ignore the illegality of the threat in Letter 20* or the wholesale flight of the inhabitants of Letter 209. Augustine's account, therefore, must not be dismissed.

The reason for this peculiar inconsistency of Letter 20* with what is known of civil law derives principally from the assumption that the *colonus* was universally immobilized by legislation predating Antoninus' episcopacy. Letter 20* offers compelling evidence to the contrary. Thus we must consider whether the *colonus* was, in fact, universally tied to the land. Let us turn now to the evidence from the Theodosian and Justinian Codes on the *colonus*.

CHAPTER 3

COLONATUS

Carl Friedrich von Savigny, in his 1822 essay *Über dem Römischen Colonat*,⁶³ pioneered the modern definition of the colonate, first, he coined the term colonate itself (*Colonat* in German), second, he identified the taxation policy of the Empire as the reason for limiting the mobility of the agricultural workforce that comprised of *coloni*. The object of von Savigny's study was to demonstrate that the various types of *colonus* in the Theodosian Code shared a common condition of immobility. He noted that the various sorts of *colonus* in the Code were “*unbrauchbar, in dem die durch die willfürliche und grundlose Annahme vieler Arten von Colonen Alles verwirren.*”⁶⁴ To avoid the confusion, von Savigny focused on distilling the legal relationships, which he called *Verhältnisse*,⁶⁵ of the various forms of *colonus* to derive “a more precise meaning.”⁶⁶ In this essay, he did not seek to distinguish the types of *colonus* but rather to identify a common legal relationship [*Verhältniss*] shared by all these *coloni*. He called this legal relationship the colonate, which he used to refer to every *colonus* similarly bound by the law. He concluded that every *colonus* of the Theodosian Code was defined by three legal relationships.

⁶³ Carl Friedrich von Savigny, “Über dem Römischen Colonat,” *Abhandlung der historisch-philologischen Klasse der königlichen Akademie der Wissenschaften zu Berlin* (Berlin, 1822), 1-53:

⁶⁴ *Ibid.*, 3: “...useless, because the random and pointless assumptions of many sorts of *colonus* confuse everything.”

⁶⁵ “Relationships”

⁶⁶ *Ibid.*, 5: “...“*eine genauere Bestimmung dieser Namen wird erst weiter unten möglich sein.*”

*Die Rechte und Verbindlichkeiten aus dem Colonat sind von dreierlei Art: einige betreffen dem persönlichen Zustand, andere das Verhältniss des Colonen zum Boden, noch andere das übrige Vermögen und die Steuern.*⁶⁷

Von Savigny's definition generalizes individual situations into a collective group, which shared "Rechte" and "Verbindlichkeiten" comprising a "genauere Bestimmung dieser Namen." Later, von Savigny applies other collective terms interchangeably with the colonate. For example, he refers to it both as a "Classe"⁶⁸ and an "Institut."⁶⁹ Most important of these characteristics was the impact of "Steuern" as the primary motivation for creating the colonate. Subsequently, the colonate has come to designate the universal condition of every late Roman *colonus*.

The reason for von Savigny's innovative approach to the late Roman *colonus* was his dissatisfaction with earlier scholarship. Two scholars had posited theories to explain the immobility of the *colonus* in the Codes before the nineteenth century. Jacques Cujas was the first to write on the subject in his commentary of the Theodosian Code in 1566⁷⁰ and, almost a hundred years later in 1655, Jacques Godefroy took up the same subject.⁷¹ Both Cujas and Godefroy had no intention of explaining an origin or the formation of a new institution in the late Roman world. Instead, both scholars sought precedent for the evidence of the restricted mobility of the *colonus*. Cujas pointed to the existence of agricultural workers, *operarii* and *inquilini*, in Republican Italy, who were bound by specific duties to the landlord and to the land. He postulated that *operarii* and *inquilini* were reduced in status over time and became more like slaves than freemen. These Italian workers, Cujas concluded, were tied *de facto* to the land in

⁶⁷ von Savigny, "Über dem Römischen Colonat," *Abhandlung der historisch-philologischen Klasse der königlichen Akademie der Wissenschaften zu Berlin*, 11: "The rights and obligations of the colonate are threefold: some reach a personal situation, for others it's the relationship of the *colonus* to the land, for still others it's their remaining property and taxes."

⁶⁸ *Ibid.*, 37.

⁶⁹ *Ibid.*, 53.

⁷⁰ Jacques Cujas, *Opera IV, part I* (Paris, 1658).

⁷¹ Jacques Godefroy, *Codex Theodosianus cum Perpetuis Commentariis vol. I* (Lyons, 1665).

order to honor their duties to the landlord and were the model for the later *de iure* immobilization by later imperial laws.⁷² Godefroy, on the other hand, saw precedent in the introduction of barbarian captives, *dedititii*, who surrendered themselves to the Romans and who were set to the work of cultivating the land within the Empire:

*Mens ea mihi*⁷³ *colonos fuisse 'dedititios' qui scilicet cum sese ex barbaris nationibus dedidissent... alienis fundis colendis operam suam addixerant sub certa census et capitionis lege.*⁷⁴

Godefroy looked to Roman history to furnish examples of barbarian captives in the Empire and argued that although the taxation system immobilized them *de facto*, the barbarians were introduced for agriculture as the gerundive “*colendis*” indicates. For both Cujas and Godefroy, the immobility of the *colonus* was not a new condition created by the Codes and this condition was not a legal relationship universally shared by every *colonus*. Rather, they saw the immobility as applicable to a certain type of *colonus*: to Godefroy, these immobilized *coloni* were surrendered barbarians and, to Cujas, they were the descendants of farmers from Republican Italy.

Von Savigny found both Cujas’ and Godefroy’s theories unacceptable and untenable. He regarded them as invalid because of their inability to explain the shared legal relationships of every *colonus* and on a lack of evidence. Cujas’ theory could not account for continuity from the Republic to the late Roman world⁷⁵ and Godefroy’s theory provided no convincing historical connection between barbarian *dedititii* and the late Roman *colonus*, which he considered

⁷² Cujas, *Opera IV*, part I, 1145: “*Hi (inquilini et operarii) praediis perpetuo adhaerebant cum progenia sua.*” “These (inquilini and operarii) were bound to their estates in perpetuity with their children.”

⁷³ The antecedent to this pronoun is the author, Jacques Godefroy.

⁷⁴ Godefroy, *Codex Theodosianus cum Perpetuis Commentariis* vol. I, 455: “My opinion is that they were *dedititii*, who of course had surrendered themselves from barbarian nations... [The Romans] added their labor for the purpose of tilling their fields under a certain law of the *census* and *capitatio* tax.”

⁷⁵ von Savigny, “Über dem Römischen Colonat,” *Abhandlung der historisch-philologischen Klasse der königlichen Akademie der Wissenschaften zu Berlin*, 22.

necessary.⁷⁶ Von Savigny, therefore, saw no compelling reason to associate a condition, which applied to barbarians, with a universally shared condition by all *coloni*. Instead von Savigny cites Salvian, who complained about the oppressive burdens of taxation, which impelled the *colonus* to exchange his mobility and freedom for the protection of richer landowners.

*Cum rem amiserint, amissarum tamen rerum tributa patiuntur, cum possessio ab his recesserit, capitatio non recedit. Proprietatibus carent, et vectigalibus obruuntur. Fundos maiorum expetunt et coloni divitum fiunt [...] in hanc necessitatem redacti, ut extorres non facultatis tantum, sed etiam conditionis suae [...] et rerum proprietate careant et ius libertatis amittant...quos esse constat ingenuos, vertuntur in servos.*⁷⁷

Salvian's account identified the effects of the taxation system of the Empire as a burden impressed across the Empire on the *colonus*; it also permitted him to date the immobility of the *colonus* to the reforms of Diocletian. Diocletian restructured taxation so that citizens were enrolled by the census and taxed individually. Formerly, landlords were responsible for paying only a land tax. This reform is believed to be an administrative attempt to secure taxation revenues by focusing on the population of the Empire rather than property ownership.⁷⁸ Von Savigny argued:

Ja sie waren für die Kopfsteuer überhaupt bei Weitem die zahlreichste und einträglichste Classe, besonders seitdem die Städte von der Kopfsteuer befreit worden waren. Daher geschah es, dass die Verbindung der Kopfsteuer mit dem Colonat, obgleich sie weder im Wesen des Colonats gegründet war, noch

⁷⁶ Ibid., 25: "...aber eine historische Verbindung zwischen denselben anzunehmen, scheint mir durchaus kein Grund vorhanden." "...but to take up a historical connection between them, seems to me to present no reason whatsoever.

⁷⁷ Salvian, *De Gubernatione Dei*, 5, 8-9: "Although they lose their property, they still suffer the taxes of the things having been lost, when their property slips away from them, the tax is not withdrawn. They lack ownership, yet they are destroyed by taxes. They seek out the estates of the aristocrats and they become *coloni* of the wealthy... reduced into this poverty, as exiles not only from resources but also from their legal status... they might lack both ownership of property and they might lose their right to freedom... those, for whom it is right to be free, are turned into slaves."

⁷⁸ See Goffart, Walter, *Caput and Colonnate, Towards a History of Later Roman Taxation*, (Toronto, 1974).

*demselben ausschliesend zukam, dennoch als das gewöhnliche und regelmässige betrachtet wurde.*⁷⁹

The three, shared legal relationships of the late Roman *colonus* were, therefore, cemented in von Savigny's theory by a single administrative reform that allowed him to name the origin of the colonate an historical event.

In 1822, von Savigny sought to simplify the late Roman *colonus* of the Codes by asserting a commonly shared legal relationship. Before 1822, studies were concerned with naming precedent for individual legal relationships, which the *colonus* had with the law, and did not employ the collective term, colonate. Two years later, in 1824, a new constitution⁸⁰ was discovered, which prompted von Savigny to reassess his conclusions in the 1828, revised edition of his essay, which is preserved in its final edition of 1849.⁸¹

Christianus Wenck included this constitution in his edition of the Theodosian Code under the title: *Constitutio de Scyris*. Dated to 409 C. E. by the decree of the emperors Honorius and Theodosius II, it pertains to the fate of the Scyrae who bore arms against Rome in allegiance with the Huns.⁸² According to the new constitution, a specific law immobilized a specific group, the captured inhabitants of the Scyrian nation: "by no other right than of the *colonus*."⁸³ This constitution specifies that this group was a type of *colonus* (out of this type of *coloni*).⁸⁴ The noun "*genus*" signals that there were individual types or sorts of *colonus* and that there was not a

⁷⁹ von Savigny, "Über dem Römischen Colonat," *Abhandlung der historisch-philologischen Klasse der königlichen Akademie der Wissenschaften zu Berlin*, 23-24: "They were by far the most numerous and lucrative class for the *capitatio* tax, especially since the cities had been freed from the *capitatio* tax. Thus it happened that the connection between the *capitatio* tax and the colonate came together in the end, although it was established contrary to the nature of the colonate, then it became usual and legally established."

⁸⁰ The *Constitutio de Scyris* (CTh 5.6.3). See Appendix A.

⁸¹ Carl Friedrich von Savigny, "Über dem Römischen Colonat," *Vermischte Schriften Band II* (Berlin 1850), 54-67.

⁸² Carl Friedrich Christian Wenck, *Codicis Theodosiani: Libri V Priores*, (Oxford, 1825).

⁸³ CTh 5.6.3: "...non alio iure quam colonatus."

⁸⁴ Ibid: "... ex hoc genere colonorum..."

universal condition. This type of *colonus* was “like an adtributus”⁸⁵ and his mobility was restricted by the “punishment prescribed which applies to those receiving *coloni* by law and not their own from the tax liability of another landowner”⁸⁶ so that they would stay on “perpetual homesteads”⁸⁷ when the Empire was in “famine.”⁸⁸ The landowner was allowed to employ this *colonus* only for “the free labor of the landlord’s lands”⁸⁹ and could not reduce him “into slavery.”⁹⁰ The landowner was also charged with ensuring his immobility “so that nobody may taken [a *colonus*] away by fraude or to harbor [a *colonus*] that is fleeing.”⁹¹ This sort of *colonus* was bound to a perpetual residence on the land and not to the landowner as if “[the *colonus*] were given by a law of the *census*.”⁹² This constitution, therefore, outlines the immobilization of a specific type of *colonus*, which had a perpetual and legal relationship with the land for the purpose of alleviating a scarcity of grain. It also explains that the landowner could make use of him only for the duties of cultivation and not “to be assigned to urban duties.”⁹³ The limited relationship of the landowner with this type of *colonus* did not include a change in tax liability “with equalization or of the *census*.”⁹⁴ Honorius and Theodosius II distributed the *Scyrae* “in any province”⁹⁵ for their concerns of food scarcity and not for an increase in tax revenue.

From this constitution, von Savigny connected the term colonate with this specific type of *colonus* and abandoned his earlier conclusion that the colonate represented a universal group,

⁸⁵ Ibid: “...*semel adtributi*...”

⁸⁶ Ibid: “...*poena proposita quae recipientes alienis censibus adscriptos vel non proprios colonos insequitur*.”

⁸⁷ Ibid: “...*sedes perpetuas*...”

⁸⁸ Ibid: “...*rei frumentariae angustii*.”

⁸⁹ Ibid: “...*opera [...] terrarum domini libera*...”

⁹⁰ Ibid: “...*in servitute*...”

⁹¹ Ibid: “...*vel fraude aliquem abducere vel fugientem suscipere*...”

⁹² Ibid: “...*donatos eos a iure census*...”

⁹³ Ibid: “...*urbanisve obsequiis addicere*...”

⁹⁴ Ibid: “...*peraequatione vel censui*...”

⁹⁵ Ibid: “...*in quibuslibet provinciis*...”

which shared certain common legal relationships with every *colonus* in the Codes.⁹⁶ This abandonment impelled von Savigny to suggest that the colonate could have been created or have existed for an indefinite period of time before the beginning of late Antiquity or the tax reforms of Diocletian.

Over the course of six years, von Savigny initiated the use of the term colonate to refer to a universal segment of late Roman demography, which was characterized by common legal relationships that included a tied relationship to the land (*zum Boden*) and taxes (*Steuern*). The *Constitutio de Scyris*, however, provided sufficient evidence for von Savigny to abandon his focus on these common legal relationships and to limit his definition of the colonate to settled barbarians and to restrain the role of taxes in tying the colonate to the land.⁹⁷ He suggested,

... [es ist] möglich und selbst wahrscheinlich, dass das ganze Rechtsinstitut erst allmählig zu der bestimmten Gestalt ausgebildet worden ist, in welcher wir es späterer wahrnehmen, und dass man sich lange Zeit mit einer mehr administrativen Behandlung desselben durch die Statthalter der Provinzen begnügte.⁹⁸

In addition, he argued that the new constitution “plainly stated that a tribe of Scyrae were distributed throughout the Empire as ‘*coloni*’” and “it would not be unlikely that the whole class of *coloni* might have originated from earlier barbarian settlements similar to the Scyrae.”⁹⁹ He warned that his former conclusions did not necessarily follow from the new evidence and cautiously expressed favor in the theory of Godefroy that the practice of settling a barbarian as a

⁹⁶ von Savigny, *Vermischte Schriften Band II*, 55: “[die] Entstehung [kam] aus der Ansiedlung besieger Barbaren in Römischen Provinzen.” “The origin derived from the settlement of conquered barbarians in the Roman provinces.”

⁹⁷ *Ibid.*

⁹⁸ von Savigny, *Vermischte Schriften Band II*, 56: “It is possible and even likely that the entire institution developed first gradually into its final form, which we take to have happened later, and that the governor of a province treated the same for a long time.”

⁹⁹ Roth Clausen, *Roman Colonate: Theories of its Origin*, Studies in History, Economics and Public Law 157 no. 1 (New York: Columbia University, 1925), 37.

colonus was the principal source of the immobile *colonus* of the colonate.¹⁰⁰ Although he did not assert the converse of this conclusion, namely that the *colonus* of the colonate was not representative of every *colonus* in the Empire; this conclusion also follows from his revised interpretation.

The importance of the *Constitutio de Scyris* is paramount for defining the Latin term *colonus* because, of the four occurrences of the term,¹⁰¹ it is also the only document, law or otherwise to include the term *colonus* in its context. It can be deduced that the term applied to the settlement of barbarians as *coloni* with specific relationships both to the landlord and to the land. Moreover, this instance demonstrates that this sort of *colonus* was distinguishable from other sorts of *colonus*. The constitution also explains the motivation for applying the term *colonus* in the administrative desire to alleviate the scarcity of food and to ensure the garnering of foodstuffs by the free labor of barbarian settlers. The other three occurrences of the term *colonus* do not touch upon the colonate as fully as the *Constitutio de Scyris*. The term is also found in *CTh* 12.1.33, *CTh* 12.19.2 (*CJ* 11.66.6) and *CTh* 14.18.1 (*CJ* 11.26.1).¹⁰² In each of these instances, the laws either settle individuals in concern for the food supply or they protect the legal relationships of the colonate from abuse.

As *CTh* 5.6.3¹⁰³ provides for the public interest to augment the availability of food and prevent food shortages,¹⁰⁴ *CTh* 12.19.2 (*CJ* 11.66.6) also aims to maintain the “public interest”¹⁰⁵ This law protects persons not living by the right of the colonate from accusations of his status. During this period of Roman history, certain civic obligations were imposed on members of

¹⁰⁰ von Savigny, *Vermischte Schriften Band II*, 54.

¹⁰¹ *CTh* 5.6.3, *CTh* 12.1.33, *CTh* 12.19.2 (*CJ* 11.66.6) and *CTh* 14.18.1 (*CJ* 11.26.1).

¹⁰² For the Latin of these important laws and the English translations of them from the Theodosian Code see Appendix A and for Justinian Code see Appendix B.

¹⁰³ The *Constitutio de Scyris* will be referred to as *CTh* 5.6.3 from now on.

¹⁰⁴ *CTh* 5.6.3: “...*pro rei frumentariae angustiis*...”

¹⁰⁵ *CTh* 12.19.2 (*CJ* 11.66.6): “...*statui publico impensius*...”

certain statuses. This law shows how the imperial administration desired to protect some citizens from the obligations of other citizens while, at the same time, forcing the obligations due. In this case, persons living by the right of the colonate could not be wrongly named responsible for obligations not associated with the colonate. The colonate is mentioned indirectly in its regard to the direct focus of the sanction. Similarly, *CTh* 14.18.1 (*CJ* 11.26.1) addresses the population of cities by reacting to the beggars, who, after evaluation, seem strong and young enough to be otherwise productive. Consequently, the law addresses the unwarranted consumption and use of urban food supplies. The right of the colonate is applied to free persons, who offend this law and, by the right of the colonate, are settled in “perpetual *colonatus*”¹⁰⁶ The ablative phrase “*perpetuo colonatu*” echoes the “*sedes perpetuas*” of *CTh* 5.6.3. This sanction makes sense since they are put to work cultivating the fields in the public interest for foodstuffs and alleviating the stresses of feeding a large and hungry urban population. The verb “*fulcio*,” moreover, expresses that settlement is also meant for the interest of the *colonus* since a perpetual right to a homestead supports him. *CTh* 12.1.33 hints at the advantages of living under the right of the colonate. In this law, the phrase ‘*colonatus iure*’ seems to be advantageous to decurions, who seek “the privileges of the colonate.”¹⁰⁷ This is the only occurrence of this phrase. *CTh* 12.1.33 parallels these “*privilegia*” with the “*obsequia*” of the decurion. Specifically, the constitution seeks to stem an unwanted trend of decurions refusing curial nominations. The *obsequia* and taxation responsibilities of decurions became expensive and oppressive in late Antiquity since “the imperial administration set out through legislation to formalize and ensure the observation of

¹⁰⁶ *CTh* 14.18.1 (*CJ* 11.26.1): “...*perpetuo colonatu*...”

¹⁰⁷ *CTh* 12.1.33: “...*privilegia* [...] *colonatus iure*...”

responsibilities (*obsequia*).”¹⁰⁸ The sanction of this law, therefore, is aimed at the observation of *obsequia* and, only indirectly, the privileges of the right of the colonate from abuse.

The three instances of the Latin term “*colonatus*,” outside of *CTh* 5.6.3, demonstrate, in the first place, that the colonate was not created by the imperial administration for the purpose of tax exploitation, and, in the second place, the colonate involved settlement with specific advantages, which were distinguishable from other responsibilities. Taxation seems rather to have affected decurions more since those decurions, who had dodged their civic responsibilities, would be punished by the strength of the imperial administration: “*fisci nostri viribus vindicetur*.” The evidence of *CTh* 12.19.2 (*CJ* 11.66.6), *CTh* 12.1.33, and *CTh* 14.18.1 (*CJ* 11.26.1) agrees with *CTh* 5.6.3 that the tying of the *colonus* by the colonate was created neither by taxation motives nor taxation advantages.

The *colonus* of the colonate was tied in consideration for food production both by the introduction of barbarians to cultivate the land and by the removal of beggars from the cities. The tying to the land was balanced by advantages including taxation incentives, perpetual residence and a defined relationship with the landowner. This simply means that a tied condition to the land was not a shared condition of every *colonus*. Rather, only *coloni* living specifically under the legal conditions of certain circumstances were tied to the land. This legal relationship ensured the public’s and the *colonus*’ interest. Compositely, the four instances of the term *colonatus* demonstrate that the colonate was a legal relationship, which applied to settled barbarians (*CTh* 5.6.3) or the transplanted beggars (*CTh* 14.18.1) and protected them from legal actions (*CTh* 12.19.1) and their “*privilegia*” from others (*CTh* 12.33.1). The technical term for

¹⁰⁸ A. H. M Jones, *The Roman Economy: Studies in Ancient Economic and Administrative History* (Oxford: Basil Blackwell, 1974), 410.

this relationship seems to be the “*ius colonatus*” according to the little evidence available from the Codes.

In spite of von Savigny’s revised conclusions and the inferences drawn from the evidence of the term *colonatus*, scholarship has largely neglected the connection of the colonate with settlement and the cultivation of the land. For the past 180 years, the fiscal theory once pioneered by von Savigny has continued to prevail¹⁰⁹ largely due to the favor of the materialist historiography of the late nineteenth century and the remarkable influence of Moses Finley in the twentieth century.¹¹⁰

A materialist historiography and, especially, Marxist historiography are inherently deterministic. These historiographical methods understand history as a linear progression of one predominant structure succeeded by another predominant structure. The Marxist form of historiography argues that these structures are “modes of production” or “modes of exploitation” and explains historical progression by the term “class struggle.”¹¹¹ This approach utilizes the collectively use and definition of the colonate of von Savigny’s original 1822 essay by explaining the creation of a universal condition, which subjected an entire class of people because of the fiscal motivations of the imperial administration. This sort of fiscal theory for the colonate points to the universal oppression in order to identify the birth of medieval serfdom in

¹⁰⁹ A comprehensive list is impossible. See especially: Max Kaser, “*Das Römische Privatrecht*,” II Abschnitt (1974), 140-145; Charles Saumagne, “Du rôle de l’*origo* et du ‘census’ dans la formation du colonat romain,” *Byzantion* 12 (1937): 485ff; A. H. M. Jones, “The Roman Colonate,” *Past and Present* 13, (1958); A. H. M. Jones, *The Roman Economy*, (1974), 293-307; Walter Goffart, *Caput and Colonate, Towards a History of Later Roman Taxation*, (1974); D. Eibach, *Untersuchungen zum spätantiken Kolonats in der kaiserlichen Gesetzgebung*, (1980); Boudewijn Sirks, “Reconsidering the Roman Colonate,” *ZSS Rom. Abt.* 110 (1993): 320ff; Miroslava Miraković, “The Later Roman Colonate and Freedom,” *Transactions of the American Philosophical Society*, New Series 87, no. 2 (1997): 1-144; and Dennis Kehoe, *Law and the Roman Economy of the Roman Empire* (Ann Arbor, Michigan: University of Michigan, 2007).

¹¹⁰ Peter Garnsey, *The Evolution of the Late Antique World* (Cambridge: Orchard Academic, 2001), 85-91, and Moses Finley, *The Ancient Economy* (Berkeley: University of California Press, 1999), ix-xxxii and 84-94.

¹¹¹ Karl Marx, *Das Kapital* (New York: Synergy International, 2007), 349-52.

the late Roman world. It is crucial that von Savigny's revised conclusions can and do not exhibit a structural change in the "mode of production" or the "mode of exploitation" in the late Roman world; rather, it looks back further into the Roman world at the phenomenon of settling barbarians and other people as *coloni* for other administrative concerns than taxes.

Fundamentally, this fiscal theory for the colonate argues that a class of people, which existed universally across the Empire, suffered similar oppression by the taxation system, which depressed their condition by stressing their tied relationship to the land.

The non-Marxist form of the materialist method reached its most developed state in the work of Roth Clausen in 1925.¹¹² Clausen regarded any theory, which does not rely on the pressure of taxation, as untenable. He provided a metric for evaluating a theory and posited that if it were:

...to be regarded as a valid explanation of the origin of the colonate it is necessary to prove three things. First, it must be shown that the earlier servile condition was essentially similar to the condition of the colonate; second, that there was a continuous development from the earlier serfdom to the colonate as it was legalized in the Codes; and, in the third place, that the previous servile relationships were widely enough extended throughout the empire to serve as the basis of the colonate.¹¹³

In other words, a theory of the colonate must anticipate a universal serfdom because the colonate was a universal serfdom. This metric for the colonate predetermines that it was a universal condition of serfdom and, because of this, is not based on the evidence for the term itself. While Clausen may validly assert that the condition of the colonate was serfdom, it would certainly depend on his definition of serfdom, which could not be universal at least in the case of the evidence for the colonate. The evidence plainly states and clearly implies legal distinctions

¹¹² Clausen, *Roman Colonate: Theories of its Origin, Studies in History*.

¹¹³ *Ibid.*, 66-67.

between different sorts of *colonus* and that the term colonate cannot refer to a universally inclusive body comprised of every *colonus*.

Based on Clausen's rubric, the neglect of von Savigny's conclusions is more understandable since it does not assert a deterministic definition of the colonate. In 1833, C. L. F. Schultz was the first to apply a nascent version of Clausen's theory to the question of barbarian settlements and the colonate. Schultz insisted that a theory based on settlement in a similar nature to *CTh* 5.6.3 is impossible. He argues:

*...dass alle Colonen und Inquilinen der späteren Rechtsquellen, die beiläufig gesagt als Hauptbevölkerung des Reichs wohl an 50 Millionen Menschen ausmachten, ursprünglich durch Krieg unterworfen in die Römischen Provinzen versetzte Barbaren waren, welche die Kaiser anstatt sie als Sklaven zu verkaufen ('ohne Zweifel aus staatswirthschäftlichen Gründen') als Colonen verschenkt hätten!*¹¹⁴

If there were evidence to suggest that the colonate was comprised of every *colonus* in the late Roman world, Schultz would indeed have unveiled a significant problem with a theory connecting settlement with the colonate. Nevertheless, the deterministic definition of the colonate marginalized von Savigny's conclusions, which soon thereafter fell out of the discourse. A theory, which insists on a determinist meaning of the colonate, looks forward in anticipation of a structural change, which, in the case of the colonate, is the advent of medieval serfdom. Clausen concluded this idea.

The Roman colonate legislation, however, made serfs out of free Roman citizens, in many cases the direct descendants of the Italian race, which conquered the world. It was a measure altogether out of harmony with the spirit of Roman law, as it had been constructed through centuries of orderly development and can only adequately be explained by being attributed to a cause which was sufficient to

¹¹⁴ Christoph Ludwig Friedrich Schultz, *Grundlegung zu einer geschichtlichen Staatswissenschaft der Römer: Mit Rücksicht auf die neueste Behandlung römischer Staats- und Rechtsverhältnisse* (Oxford: J.P. Bachem, 1833), 452: "...that all the *coloni* and *inquilini* of the later legal sources, which have been mentioned in passing, a population of the empire of more than 50 million, were originally subjected through war and settled in the Roman provinces, were barbarians, which the emperors usually sold as slaves (without doubt out of economic reasons) would have been given away as *coloni*!"

demand such a drastic remedy... the higher taxes of the tetrarchy merely accelerated this tendency... Finally with the fall of the western empire the Roman tax system ceased to exist altogether, yet the colonate continued to survive but little changed up to the time of Charlemagne.¹¹⁵

Clausing is comfortable to assert the decisive end of Roman jurisprudence based on his determinist definition of the colonate, which anticipates the Middle Ages more than it pays attention to the colonate legislation itself. Clausing may have an accurate understanding of the future of the colonate, but his assertions that the constitutions of the late Roman law Codes instituted a universally immobile serfdom is entirely untenable.

Marxist historiography has influenced the study of the colonate significantly in the twentieth century. It is more specific in identifying what types of structural patterns occur in history. Jeffrey Kopstein, a political scientist, summarizes Marx's view on history.

According to Marx, three main types of society have shaped human history to date: slavery, feudalism and capitalism. Slavery was the dominant 'mode of production' in the earliest human civilizations, such as those of ancient Greece, Egypt and Rome. After the fall of the Roman Empire, slavery in Europe gave way to feudalism, in which the main class struggle was between the ruling aristocracy and the oppressed peasantry. After 1,500 years or so, this mode of production also began to weaken and disintegrate.¹¹⁶

The Marxist interpretation is more deterministic than the determinism of Clausing. Additionally, Marxist historiography inevitably presumes an historical teleology toward Communism, which, for a Marxist, is a politically relevant goal. A Marxist treatment of history, therefore, is inherently susceptible to a prejudiced historical narrative.

In his most influential work, *The Roman Economy*, Moses Finley provided a comprehensive explanation of this structural progression from slavery to serfdom in Roman history and his attention focused on the colonate. Finley's great achievement was demonstrating

¹¹⁵ Clausing, *Roman Colonate: Theories of its Origin, Studies in History*, 135.

¹¹⁶ Jeffrey Kopstein, *Comparative Politics: Interests, Identities, and Institutions in a Changing Global Order* (Cambridge: Cambridge University Press, 2005), 207-208.

a continuum of societal structure from 1,000 B. C. E. until 500 C. E. Ian Morris, in his foreword to the most recent edition of *The Roman Economy*, summarized Finley's goal.

He suggested that we could sum up the whole period from 1,000 BC through 500 AD in terms of [a] highly schematic model of this history of ancient society. It moved from a society in which statuses ran along a continuum towards one in which statuses were bunched at the two ends, the slave and the free – a movement, which was almost nearly completed in the societies which most attract our attention for obvious reasons. And then, under the Roman Empire, the movement was reversed; ancient society gradually returned to a continuum of statuses and was transformed into what we call the medieval world.¹¹⁷

Finley specifies that this structural change occurred

...in the later Roman Empire, finally, when the distinction between slaves and other forms of involuntary labor had been diminished to almost the vanishing point... the workers were all servile in the broad sense, and often still slaves in the narrow sense, a workforce, furthermore, that was recruited by breeding.¹¹⁸

This account of the later Roman Empire describes a structural change in the “mode of production,” which any Marxist historiography necessarily presumes. Later, Finley describes “the servile colonate of the Later Roman Empire” as “the forerunner of medieval serfdom.”¹¹⁹

Like Clausen and Schultz, Finley generalizes the “servile colonate” as being comprised of all those working “in the countryside [...] [who were] tied peasants, known as *coloni*.”¹²⁰

Significantly, Finley invokes the same passage from Salvian, which von Savigny first employed to insist on a fiscal origin of the colonate 150 years earlier, to argue

...that from Diocletian at the end of the third century, tenants [*coloni*] were tied, not free. The emperor's interest was taxation, not in the status of tenants, but the effect was nonetheless to convert into law what had gradually been happening in practice. And with the disappearance of the free tenant went the disappearance from the legal texts of the Classical Roman tenancy contract, the *locatio conductio rei*.¹²¹

¹¹⁷ Finley, *The Ancient Economy*, xviii-xix.

¹¹⁸ Finley, *The Ancient Economy*, 74.

¹¹⁹ *Ibid.*, 83.

¹²⁰ *Ibid.*, 84.

¹²¹ *Ibid.*, 92.

This argument also acknowledges the end of the preceding Roman legal tradition due to the institutionalization of a universal serfdom, under the name of the colonate. Finley mentions nothing of barbarian settlers or of the only four actual occurrences of the term “*colonatus*” in the Codes. Instead the colonate and its members, the tied-peasants, illustrate a determinist presentation of the evidence.

To return to Augustine’s Letter 20*, the *coloni*’s threat seems unusual because modern scholarship has applied a deterministic approach to the colonate. Since its discovery, scholars grounded in this determinist definition of the colonate have asked how the *coloni* of Fussala over a hundred years after Diocletian’s reign could have expected their threat to be taken as even remotely viable. If, however, one returns to the evidence, it seems that the Latin term “*colonatus*” is insufficiently rendered by the collective translation “colonate.” Rather, the term should be translated as “settlement.” A linguistic analysis of the Latin “*colonatus*” supports this translation.

The Latin noun “*colonatus*” belongs to a linguistic category of words called *nomina actionis*.¹²² The *nomina actionis* are created by the addition of the fourth declension suffix -tu- to a word and extends its meanings by naming the specific action the word denotes.¹²³ In Latin, the process was a productive linguistic category of nouns, which reached back into the prehistory of the language. *Nomina actionis* can derive either from verbs or nouns and can name either an action or state depending on the transitivity of the word. The quintessentially Latin word, “*senatus*” (senate) for example, is a *nomen actionis*, from which the original noun “*senex*” (elder) is extended semantically by the suffix -tu- to denote the intransitive action of being an

¹²² This is a technical phrase in Linguistics. It is written in Latin in the scholarly literature and it means “names of action” in English. I will adhere however to tradition and continue to use it in Latin.

¹²³ Andrew Sihler, *New Comparative Grammar of Greek and Latin* (New York: Oxford University Press, 1995), 613.

elder. Similarly, the nouns “*adventus*” and “*cantus*” are also *nomina actionis*, in which the meaning of the verbs “*advenio*” and “*cano*” are extended by the suffix –tu- to name the intransitive action of arriving and the transitive action of singing. Consequently, “*cantus*” and “*adventus*” are best rendered in English as an action of singing or song and an action of arriving or arrival.

Nomina actionis are not only a productive linguistic category in Latin, but also in all Indo-European languages. In German, for example, the noun *Wohnung* derives from the verb to dwell “*wohnen*.”¹²⁴ The German suffix -ung extends the meaning of this verb to denote the intransitive action or state of dwelling or residing and is most accurately rendered by the English translation dwelling or residence. English employs the suffix -ing, cognate with the German -ung, and extends the notion of “to dwell” to “dwelling” by naming the action which the dwelling structure achieves. Like these examples, the Latin “*colonatus*” extends the meaning of its etymon “*colonus*” by naming the action or state, which the meaning of “*colonus*” already denotes. The term “*colonatus*,” therefore, cannot introduce a novel connotation to the word *colonus*, and it must extend a pre-existing meaning of the term. A more suitable translation would be “the action or state of being a *colonus*.”

The Latin “*colonus*” has two related but distinct semantic connotations. The noun originally derived from the verb “*colo*,” which defines the actions of tilling or cultivating. Both meanings are closely related to the practice of agriculture but are distinct from the term “*agricola*.” In one sense, “*colonus*” refers to a farmer who farms under the conditions of a tenant. The origin of this sense is indeterminable because it exists in early of Latin literature.¹²⁵

¹²⁴ Karl Burgmann, *Elements of the Comparative Grammar of the Indo-Germanic Languages* vol. 2 (Boston: Westermann and Co., 1891), 466-70.

¹²⁵ For example, the Marcus Procius Cato, Praefatio, *De Agri Cultura* “...*et virum bonum quom laudabant, ita laudabant: bonum agricolam bonumque colonum; amplissime laudari estimabatur qui ita*

In the other sense, the *colonus* refers to an individual to whom a plot of land is given upon which he can be a farmer as a settler. This sense surfaces in an early inscription, written in Very Old Latin.¹²⁶ The term in question, “*colonatus*,” must be a semantic extension of naming the action or state of being a *colonus* in one of these two senses.

The context of the word “*colonatus*” especially in *CTh* 5.6.3 and *CTh* 14.18.1 (*CJ* 11.26.1) indicates that the extension most validly follows from the sense of the *colonus* as a settler. *CTh* 5.6.3 states that the *Scyrae* would be distributed because of food shortages onto the land “for the purpose of filling/stocking the fields of Roman landowners.”¹²⁷ It also limits the landowners’ legal relationship to these *Scyrae* by giving them the free agricultural labor on their lands¹²⁸ without tax obligations or the ability to enslave them.¹²⁹ In addition, nobody would be able “to fetch a price for this specific type of *colonus*.”¹³⁰ Instead, the *Scyrae* are promised “perpetual residences.”¹³¹ As both Clausen and Finley observed, the legal contract of tenancy is neither stated nor implied by this law. The *Scyrae* are assigned perpetual residences by no other “right than that of settlement.”¹³² This is not the condition of a tenant, whose legal relationship is with the landowner, but is the condition of a settler, whose legal relationship is with the land. Likewise, *CTh* 14.18.1 (*CJ* 11.26.1) removes those capable of agricultural labor because of “soundness of age and physical constitution”¹³³ by supporting (*fulciare*) them with perpetual

laudabatur.” “...and, when they praised him, they praised him thus ‘a good man:’ He, who was thus praised, was judged most impressively to be a good farmer and a good *colonus*.”

¹²⁶ CIL I.585.66: “*QUOI...O...EIVE IN COLONEI NVMERO SCRIPTVS EST, AGER LOCVS IN EA CENTVRIA...DATVS ADSIGNATVS EST.*”

¹²⁷ *CTh* 5.6.3: “...*agros proprios frequentandi...*”

¹²⁸ Ibid: “...*opera [...] terrarum domini libera...*”

¹²⁹ Ibid: “...*nullus sub peraequatione vel censui [...] a iure census inservitutum trahere...*”

¹³⁰ Ibid: “...*nullique licere ex hoc genere colonorum...*”

¹³¹ Ibid: “...*perpetuas sedes...*” For this sense of “*sedes*,” see Cicero, *Republic* 6, 23, 25. “*in hanc sedem et domum suam.*” “into this seat and his home.”

¹³² *CTh* 5.6.3: “...*non alio iure quam colonatus...*”

¹³³ *CTh* 14.18.1 (*CJ* 11.26.1): “...*integritas corporum et robor annorum...*”

settlement.”¹³⁴ The linguistic evidence of the term “*colonus*” and “*colonatus*” signifies that the sense of settler for “*colonus*” befits the process of producing the *nomen actionis*, “*colonatus*.” Consequently, the translation “the state of being a settler” best translates the term “*colonus*” when it is used in the same context as the term “*colonatus*.”

Although the term “*colonatus*” is not attested in the corpus of the Latin literature before 342 C. E, the settlement of barbarian peoples for the purpose of cultivation has probably occurred since the reign of Marcus Aurelius in the late second century¹³⁵ due to the devastating results of the plague of 160 C. E.¹³⁶ In 168 C. E., Marcus Aurelius settled Marcomanni in Italy¹³⁷ and Iazyges in Dacia.¹³⁸ Aurelian settled barbarians in Etruria.¹³⁹ In the reign of Claudius II after the battle of Naissus, the author of the *Historia Augusta* records that

“Many perished, and many kings were captured, noble women of many nations were captured, the Roman provinces were filled up with slaves and Scythian ploughmen. A *colonus* was made from a Goth of the barbarian frontier.”¹⁴⁰

The author of the *Historia Augusta* also reveals that Probus settled barbarians of various nations including the Bastarnae, Gepidae, Gautunnae and the Vandals.¹⁴¹ And Zosimus adds the Burgundians and Franks.¹⁴² Eutropius, Eumenius, Orosius, Eusebius and Ammianus assert that Maximian and Diocletian settled thousands of Sarmatians, Bastarnae and Carpi throughout the

¹³⁴ *CTh* 14.18.1 (*CJ* 11.26.1): “...perpetuo colonatu...”

¹³⁵ Heisterbergk developed this theory fully in 1876 and posited evidence of barbarian settlements before Marcus Aurelius; however, I am inclined to disagree since his examples make no reference either explicit or implicit to agricultural motivations.

¹³⁶ See Richard Duncan-Jones, “The Impact of the Antonine Plague,” *JRA* 9 (1996): 108-136.

¹³⁷ *Scriptores Historiae Augustae*, Marcus, 22: “Accepit in deditionem Marcomannos, plurimis in Italiam traductis.” “He accepted the Marcomanni in defeat, before he moved many into Italy.”

¹³⁸ Dio Cassius, 72, 16.

¹³⁹ *Scriptores Historiae Augustae*, Aurelian, 48.

¹⁴⁰ *Scriptores Historiae Augustae*, 9, 4, and Zosimus I, 46. *Multi perierunt, plerique capti reges, captae diversarum gentium nobiles feminae, inpletae barbaris servis Scythicisque cultoribus Romanae provinciae. Factus limitis barbari colonus e Gotho.*

¹⁴¹ *Scriptores Historiae Augustae*, Probus, 15 and 18.

¹⁴² Zosimus, I, 68 and 71.

Empire.¹⁴³ Eumenius also reports the settlement of Germans by Constantius.¹⁴⁴ Constantine settled Franks in Gaul in the “deserted areas” for the purpose of “cultivation,”¹⁴⁵ and divided Sarmatians throughout Thrace, Scythia, Macedonia and Italy.¹⁴⁶ Constantius II accepted an embassy from the Limigantes in 359 C. E, who begged for mercy and settlement within the Empire.¹⁴⁷ Ammianus also records the settlement of barbarians by Julian,¹⁴⁸ Valentinian I¹⁴⁹ and Gratian.¹⁵⁰ Following Marcus Aurelius, the historians indicate that it was an increasingly common practice of settling barbarians in the Empire. At least by the reign of Claudius II, barbarians were settled on under- or uncultivated areas and the persuasive evidence presented by Duncan-Jones of the detrimental and lasting effects of the plague implies that the motivation of Claudius II in 269 C. E. and Honorius and Theodosius II in 409 C. E. had changed little.¹⁵¹ Additionally the envoy of the Limigantes to Constantius II demonstrates that the settlement involved a favorable situation for the barbarian to become a settler. These historical examples

¹⁴³ Eutropius 9, 25; Eumenius *Panegyric Constantio*, 5; Orosius 7, 25; Eusebius, *Chron. Canon.*, 23, 10; Ammianus 28, 1, 7.

¹⁴⁴ Eumenius *Panegyric Constantio*, 21: “*ita nunc per victories tuas, Constanti Caesar invicte, quidquid infrequens Ambiano et Bellocavo et Tricassino solo Lingonicoque restabat, barbaro cultore requiescit.*” “So now because of your victories, unconquered Constantius Caesar, a small number rests on the Ambianus, the Bellacavus, Tricassinus and on Lingonician soil, he is settled for barbarian agriculture.”

¹⁴⁵ Eumenius, *Panegyric Constantino* 6: “*Franciae nationes...ut, in desertis Galliae regionibus collocatae, et pacem Romani imperii cultu iuvarent.*” “The Frank nations... so that they might aid the peace of the Roman Empire by means of agriculture, were settled in the deserted regions of Gaul.”

¹⁴⁶ Eusebius, *Life of Constantine*, 4, 6. “*quos pulsos Constantinus libenter accepit et amplius trecenta millia hominum mixtae aetatis et sexus per Thraciam, Scythiam, Macedoniam, Italiamque divisit.*” “Those, whom, having been defeated, Constantine willingly took in and then settled more than 30,000 people of mixed age and gender throughout Thrace, Scythia, Macedonia and Italy.”

¹⁴⁷ Ammianus, 19, 11, 6. “*Limigantes...parati intra spatia orbis Romani terras suscipere longe discretas.*” “The Limigantes were ready to settle on lands far distant lands within the space of the Roman world.”

¹⁴⁸ Ammianus, 20, 4, 1.

¹⁴⁹ Ammianus, 28, 5, 15. “*quoscumque cepit ad Italiam iussu principis misit, ubi fertilibus pagis acceptis, iam tributarii circumcolunt Padum.*” “Whomever he took, he sent to Italy by the order of the emperor, where, having accepted fertile earth, they, as tributaries, would settle around Padua.”

¹⁵⁰ Ammianus, 31, 9, 4. “*omnes circa Mutinam Regiumque et Parmam, Italica oppida, rura culturos.*” “They were all about to settle on rural land around Mutina, Regium, Parma and in Italian towns.”

¹⁵¹ Duncan-Jones, “The Impact of the Antonine Plague,” 108-136.

provide the evidence that von Savigny anticipated. This evidence also corroborates the linguistic analysis insofar as these precedents of creating settlers in the Empire describes the sort of action a *nomen actionis* would create from the sense of *colonus* as a settler.

The reign of Probus provides a reason for the immobilization of barbarians settled within the Empire. Zosimus relates that

...the Bastarnae, a Scythian tribe, which [Probus] himself conquered, he admitted into Thrace, settling them on assigned fields. There they continued to live in accordance with the laws of the Romans. Likewise after the Franks had submitted to the emperor and obtained homes and harassed all Greece. They even reached Sicily, broke into Syracuse and committed many murders there. At length they sailed to Africa, but were driven away from there by troops from Carthage. Nevertheless they were able to reach their homes without accident.¹⁵²

In this case, the adverse effect of settling barbarians within the Empire becomes evident. Unless they are immobile, the chances of internal commotion increase as this account by Zosimus indicates. Freedom of movement leads to significant disturbance to the peace of the interior.

The author of the *Historia Augusta* describes a similar situation.

Probus returned to Thrace and settled 100,000 Bastarnae on Roman soil; all those who had observed the treaty. But when many others were transferred from the other races, that is, from the tyrannical wars, they wandered almost throughout the whole world both on food and on sea, they caused not a little annoyance to the Roman glory.¹⁵³

Again, the threat of the settled barbarians to harass the interior was significant and resulted directly in a series of pitched battles between the barbarians and the Empire's forces. Although the connection is less explicit, the barbarians, whom Marcus Aurelius settled in Italy likewise broke their agreement and occupied Ravenna.¹⁵⁴ The emperors must have remembered the

¹⁵² Zosimus, I, 71.

¹⁵³ *Scriptores Historiae Augustae, Probus*, 18. "Ad Thracias rediit [Probus], et centum millia Bastarnarum in solo Romano constituit; qui omnes fidem servaverunt. Sed quum et ex aliis gentibus plerosque pariter transtulisset, id est ex bellis tyrannicis Probo, per totum paene orbem, pedibus et navigando vagati sunt, nec parum molestiae Romanae gloriae intulerunt."

¹⁵⁴ *Scriptores Historiae Augustae, Probus*, 18.

devastating effects of roaming barbarians within the Empire and the evidence of the Codes suggested that this was formalized in the right of settlement, the “*ius colonatus*.”

Augustine’s account of the *coloni* in Fussala and is not inconsistent with the colonate. Determinism has deeply influenced the study of the colonate. There is insufficient evidence to assert that the colonate was a Roman form of universal serfdom that fundamentally broke with the tradition of Roman law and that looked forward in anticipation towards medieval serfdom. This method necessarily predetermines the meaning of the colonate that misreads the evidence. The sparse evidence, which comes wholly from the Codes, indicates that the colonate was rather the legal settlement of barbarians and urban beggars for the purpose of augmenting and ensuring the cultivation of the land. The legal situation of *coloni* transplanted by the right of settlement, moreover, was protected against absconded decurions, who sought the advantages of this right and the avoidance of the burdens of curial and fiscal responsibilities. The term “*colonatus*” itself participates in the productive linguistic category of nouns called *nomina actionis*, which extends the meaning of a preexisting sense of a word with the addition of a suffix. This semantic extension names specifically the action or state of its root. The colonate is a *nomen actionis* from the sense of “*colonus*” that is most accurately rendered by the English translation “settlement.” Roman history suggests many examples of settling barbarians under circumstances similar to *CTh* 5.6.3 and implies that the motivation for limiting the mobility of settled *coloni* derived from violent precedents of settling barbarians since Marcus Aurelius. Augustine’s Letter 20* does not indicate or otherwise suggest that Fussala’s *coloni* were settled barbarians or settled beggars. And the colonate cannot validly apply to a universal condition of every *colonus* in 423 C. E. North Africa. The immobile *colonus* of the colonate and the *colonus* of Fussala are, therefore, mutually exclusive.

CHAPTER 4

FUSSALA'S *COLONI* AND LATE ROMAN LAW

When Letter 20* was discovered, the first scholars to study it pointed to the laws of the Theodosian Code, which pertain to the mobility of the late Roman *colonus*, and questioned the legality of the letter's account.¹⁵⁵ Augustine's account of the *coloni* in Fussala seemed inconsistent with scholarship on the *colonus* because it presumes mobility rather than a tied relationship to the land.¹⁵⁶ The reason for this inconsistency is because the evidence for the late Roman *colonus* comes predominately from one source – the Theodosian Code. This evidence, moreover, originates from the fifth book of the Code, which poses the most serious problems for reconstruction since it is impaired by a poor manuscript tradition. Some scholars have proceeded to supplement the incomplete fifth book with laws from the Justinian Code based on invalid assumptions. The subject of the *colonus* is treated differently by the Theodosian and Justinian Codes, which weakens the inference that laws of the Justinian Code can validly complement the Theodosian Code. Although the most pertinent evidence for the tied *colonus* arises from scholarship on late Roman law, the presumed mobility of Augustine's account requires that the conclusion of a universal condition affecting every *colonus* be reconsidered.

The earliest evidence that the late Roman *colonus* was tied to the land comes from a law of Constantine dated to 332 C. E. The text of the law reads:

With whomever, a *colonus iuris alieni* will have been found, he will not only restore the same *colonus* to his origin but will also acknowledge the tax liability

¹⁵⁵ Lancel, "L'Affaire d'Antoninus de Fussala," 275, and, Lepelley, "Liberté, Colonat et Esclavage," 336-337.

¹⁵⁶ Ep. 20*.10.

for that time period.¹⁵⁷ It will also be asserted that these very *coloni* who plan flight, should be bound into a servile situation by iron, so that they may be forced to satisfy the duties, which befit freemen, by virtue of servile condemnation.¹⁵⁸

This law applies strict sanctions only to the *colonus iuris alieni*. While the first half of this law specifies that the *colonus* in question is “*iuris alieni*,” the adjective “*ipsos*” modifies *colonos* in the second half and identifies that the *colonus iuris alieni* of *CTh* 5.17.1 is the same type of *colonus* in *CTh* 5.17.1.1.

While *CTh* 5.17.1 indicates that certain *coloni* in the time of Constantine were tied to their land, the language specifically stipulates that this law does not apply to every *colonus*. Instead, the law defines the mobility of a type of *colonus* – the *colonus iuris alieni*.¹⁵⁹ In addition, the law implies the motivation behind the sanction. In *CTh* 5.17.1, the sanction protects the landlord, whose *colonus* has been found with another landlord, by forcing the offending landlord to account for the *colonus*’ tax liability during the time he was not working for his landlord. *CTh* 5.17.1.1 provides for a landlord’s legal action against his *colonus* by compelling him to satisfy his preexisting responsibilities if he intends to abscond. It is important that this law does not entail a legislative act tying every *colonus* to the land but rather the legal actions available to landlords over the *colonus iuris alieni*.

Although these laws¹⁶⁰ imply that legislation of the fourth century restricted the mobility of the late Roman *colonus*, they can only be regarded to apply to certain classifications of *coloni* in certain circumstances. Interestingly, there is not any law in the Theodosian Code which explicitly defines the classifications of the *colonus* nor is there any evidence of a single legislative act elsewhere, which tied every *colonus* to the land. Scholars endeavor to argue that

¹⁵⁷ *CTh* 5.17.1. For the Latin and English Translation see Appendix A.

¹⁵⁸ *CTh* 5.17.1.1. For the Latin and English Translation see Appendix A.

¹⁵⁹ See Above, Chapter 3. *CTh* 5.6.3 presents a similar situation that also specifies a type of *colonus* – namely the settled *Scyrae*.

¹⁶⁰ As well as those laws discussed above in Chapter 3 with regard to the colonate.

the laws of the Theodosian Code fundamentally changed the legal condition of the late Roman *colonus* and bound them universally to the land.¹⁶¹ Since, however, the Theodosian Code does not contain enough evidence to reach this conclusion alone, scholars have stressed three important laws in the Justinian Code.

CJ 11.51 (386 C. E.), *CJ* 11.52 (399 C. E.) and *CJ* 11.53 (371 C. E.)¹⁶² demonstrate that the respective *coloni* of Palestine, Thrace and Illyricum were tied to the land at three different dates. In 1958, A. H. M Jones recognized that *CTh* 5.17.1 could not apply universally to every *colonus* and suggested that the binding of the “rural population to their places of registration did not in all provinces have the effect of tying *coloni* to their farms.”¹⁶³ Jones pointed to *CJ* 11.51.

As, though the other provinces, which are subject to the dominion of our mercy; let the law, which was established by our forefathers, detain the *coloni* by a certain eternal right. Thus, so that it might not be lawful for them, by whose profit they are refreshed, to depart from these places nor to abandon the things, which they have taken up to be harvested, and so that this matter might not favor the landholders of the province of Palestine, we decree also that not even one of the *coloni*, as a vagrant and especially as a free man let himself free. But by the example of the other provinces, let him thus be held to the landlord so that he might not be able to depart without the penalty of conspiracy; if he is enrolled, let the full authority be bestowed upon the landlord of the man to be recalling.¹⁶⁴

For Jones, the phrase, “as through the other provinces,”¹⁶⁵ proved that Palestine had been previously exempt from legislation already in force elsewhere until Valentinian II, Theodosius I and Arcadius promulgated this law. He argued “it soon went further and introduced the tied colonate in provinces where it had not hitherto existed. The status of tied *coloni* was gradually degraded, until they were scarcely distinguishable from agricultural slaves.”¹⁶⁶

¹⁶¹ It is my opinion that the reason for this is similar - if not the same - as described above in Chapter 2.

¹⁶² See Appendix B for the full text of these laws.

¹⁶³ Jones, “The Roman Colonate,” 10.

¹⁶⁴ *CJ* 11.51. See Appendix B.

¹⁶⁵ *CJ* 11.51: “...*cum per alias provincias...*”

¹⁶⁶ Jones, “The Roman Colonate,” 10.

As recently as 2007, Dennis Kehoe explained that the “binding of *coloni* to the land... seems to have been a gradual process.”¹⁶⁷ In 371 C. E., Valentinian I, Gratian and Valens pronounced:

Coloni and *inquilini* throughout Illyricum and the neighboring regions cannot have the liberty of leaving the land, upon which they are found to reside by virtue of their origin and descent.¹⁶⁸ Let them be slaves to the land, not by tax, but under the name and title of *coloni*. And thus, if they should depart or migrate to another place, having been called back, they are subjugated with chains and penalties.¹⁶⁹

Later, in 386 C. E., Valentinian II, Theodosius I and Arcadius issued the following edict for Thrace.

Throughout the entire diocese of Thrace the census of the poll tax is abolished forever and only the land tax will be paid.¹⁷⁰ And in case it may seem that permission has been given to *coloni*, freed from the ties of their taxable condition, to wander and go off where they will, they are themselves to be bound by right of origin, and though they appear to be free born by condition are nevertheless to be held to be slaves of the land itself to which they were born, and are not to have the right to go off where they will or change their domicile.¹⁷¹

Finally, Kehoe observed that the constitution of 399 C. E.,¹⁷² which Jones had cited, accounted for a third geographical extension of legislation against the mobility of the *colonus*. By stressing the dates of promulgation of these three laws of the Justinian Code, Kehoe constructed a narrative based on chronology and explained how the mobility of the *colonus*, originally limited to the *colonus iuris alieni* of *CTh* 5.17.1, was progressively restricted by a series of laws from the Justinian Code.¹⁷³

Jones and Kehoe employ a method whose validity has been debated for decades. The debate extends back to the reconstruction efforts of Paul Krüger and Theodor Mommsen on the

¹⁶⁷ Kehoe, *Law and the Rural Economy in the Roman Empire*, 168.

¹⁶⁸ *CJ* 11.53.1. See Appendix B.

¹⁶⁹ *CJ* 11.53.1.1. See Appendix B.

¹⁷⁰ *CJ* 11.52.1. See Appendix B.

¹⁷¹ *CJ* 11.52.1.1. See Appendix B.

¹⁷² *CJ* 11.51. See Appendix B.

¹⁷³ Kehoe, *Law and the Rural Economy in the Roman Empire*, 167-173.

Theodosian Code. These scholars worked together to publish an authoritative edition of the Theodosian Code, which they hoped would replace the 1842 edition by Haenel.¹⁷⁴ Although their work was troubled by personal differences, they generally agreed on the best methodology for reconstructing the Theodosian Code. The product of their work continues to be the authoritative edition of the Code.¹⁷⁵

While the manuscript tradition of the latter half of the Theodosian Code is generally well supported, the first five books suffer from largely incomplete manuscript support.¹⁷⁶ Reconstruction is particularly difficult for these five books because only two manuscripts support them.¹⁷⁷ A problem emerges when investigating the mobility of the late Roman *colonus* because the most pertinent laws come from the fifth book of the Code, which “offers some of the most acute difficulties of reconstruction, and the widest discrepancies between the presentations of Mommsen and Krüger.”¹⁷⁸ The discrepancy between the two scholars derives foremost from their treatment of the Justinian Code as a functional source for reconstruction since each took an opposing methodology.

Mommsen decided not to integrate into his reconstruction of the first books the laws of the Justinian Code covering the period 313-435 C. E. He chose to regard them as “*Extravagenten*” and doubted the validity of repeating laws of the Justinian Code in the Theodosian Code.¹⁷⁹ Accordingly, Mommsen adopted a stringent and rigid reconstruction method that prevented the integration of all relevant laws in the Justinian Code. He suspected

¹⁷⁴ Matthews, *Laying Down the Law: A Study of the Theodosian Code*, 97-100.

¹⁷⁵ *Ibid.*

¹⁷⁶ *Ibid.*, 85.

¹⁷⁷ The Breviarum of Alaric II, also known as the *Lex Romana Wisigothorum*, is the principal source for reconstruction. Mommsen’s edition of the first five books is deduced mainly from this manuscript. Second, the Turin manuscript’s first 16 folios preserve only small parts of Books 1-5.

¹⁷⁸ Matthews, *Laying Down the Law: A Study of the Theodosian Code*, 114.

¹⁷⁹ *Ibid.*, 91.

that there were some laws, which could not belong to headings in the complete Theodosian Code, and, which should not be included in the reconstruction efforts.¹⁸⁰ Because of this, Mommsen concluded that no general editing principle could be found to account for which law was integrated and which was not, and put forward the cautious conjecture that Theodosius II's editors simply had not found the law during their collection process while Justinian's editors of the Justinian Code had. The result is that Mommsen's edition does not include *CJ* 11.51-53.

John Matthews prefers Krüger to Mommsen's more strict method. For Matthews, Mommsen's decision "not to include in his edition of the Theodosian Code unsupported texts from the Codex Justinianus, even when he knew it to be their source, was not logical."¹⁸¹ Unlike Mommsen, Krüger integrated 230 laws of the Justinian Code into the first five and most incomplete books of the Theodosian Code. Krüger's justification for this is the well-known fact that the Justinian Code utilized the Theodosian Code as its primary source for imperial laws of the period stretching from Constantine to Theodosius II. Matthews notes that "a study of the footnotes to Krüger's edition of the Codex Justinianus would confirm that, where the Theodosian Code is complete, the laws of this period cited in the Codex Justinianus can invariably be found there."¹⁸² Matthews argues that the converse must also be true.

It should follow that the Codex Justinianus can be used as a source for laws missing from the *incomplete* books of the Theodosian Code. If a law is found in the Codex Justinianus but not in the Theodosian Code, it should be possible to assume that that was its source, and efforts be made to restore it to its appropriate title in the earlier books.¹⁸³

While it is very likely that Krüger was correct, Mommsen's editing principles are still more valid because it cannot be proved that this correlation between the Theodosian and Justinian Codes

¹⁸⁰ Matthews, *Laying Down the Law: A Study of the Theodosian Code*, 91.

¹⁸¹ *Ibid.*

¹⁸² *Ibid.*, 90.

¹⁸³ *Ibid.*

was true in every single case. It is better to be careful on subjects like the mobility of the *colonus* since there is, in the first place, so little evidence and, in the second place, this existing evidence is circumstantial.

In order to demonstrate the accuracy of Krüger's methodology, Matthews employs it to make several salient arguments for the introduction of laws from the Justinian Code.¹⁸⁴ Matthews hopes that his argument may be "a rehabilitation of Krüger's reconstruction of [the Theodosian Code's] first five books" and that "it may be read as an overdue tribute to his judgment about how this task should be performed."¹⁸⁵ Despite his skeptical treatment of Mommsen and support for Krüger, Matthews is nevertheless unable to decide whether Krüger is right in his integration of *CJ* 11.51-53 into the fifth book of the Theodosian Code. He says that "it must be open to question whether the Theodosian Code anticipated its successor with separate titles *De colonis Palaestinis*, *De coloni Thracensibus*, and *De colonis Illyricianis*" since, while "it does seem certain that the texts...belong in this part of the Theodosian Code," it is impossible to know for certain "whether or not Krüger is right in his restorations of all these titles."¹⁸⁶ For the subject of the mobility of the *colonus*, the reconstruction of these laws is extremely significant.

The principal inference upon which Krüger made this restoration is that the laws of the Theodosian Code anticipate the Justinian Code. The treatment of the *colonus* in the Theodosian and Justinian Codes is an exception to this rule and vexes Krüger's inference. The two most important indicators of the mobility of the late Roman *colonus*, *CTh* 5.6.3 and *CTh* 5.17.1, in the Theodosian Code do not anticipate specific laws in the Justinian Code. In *CTh* 5.6.3, the captured Scyrae are distributed for agricultural purposes and are consequently tied to their farms.

¹⁸⁴ Matthews, *Laying Down the Law: A Study of the Theodosian Code*, 91-97.

¹⁸⁵ *Ibid.*, 90.

¹⁸⁶ *Ibid.*, 115.

CTh 5.17.1 gives a landlord a legal action against another landlord in the interest of fiscal responsibilities and provides a sanction against the *colonus iuris alieni* by preventing their departure from their landlord. Interestingly, neither of these laws is in the Justinian Code.

CTh 5.17.1, under the title *De fugitivis colonis, inquilinis et servis*, is replaced by a law of Gratian Valentinian II and Theodosius I, *CJ* 11.64.1, which refers neither to the *colonus iuris alieni* nor to any sanctions against the flight of this *colonus*.¹⁸⁷ *CJ* 11.64.1 also begins the corresponding title *De fugitivis colonis patrimonialibus et emphyteuticis et saltuensibus* of the Justinian Code. In addition, *CTh* 5.17.1 precedes a law, which applies a sanction against landlords who steal or hide a *colonus patrimonialis* of another landlord and establishes the exaction of a monetary fine.¹⁸⁸ *CTh* 5.17.2 is the same law as *CJ* 11.64.2, which follows *CJ* 11.64.1.¹⁸⁹ *CTh* 5.17.1, therefore, poses an example, in which Krüger's inference does not apply. The Justinian Code does not contain Constantine's famous law under the same title, or elsewhere, which Krüger's inference would expect.

CTh 5.6.3 is also problematic. This law falls under the title, *De Bonis Militum*, and is unattested in the Justinian Code as well. Although this law pertains to a specific group of *coloni*, the compilers of the Theodosian Code did not consider it a separate title as Justinian's editors had done for *CJ* 11.51-53. Instead, they included it among other laws, which involved the property of soldiers and veterans. *CTh* 5.6.1 involves the legality of wills and inheritance among soldiers and *CTh* 5.6.2 refers to the loot captured by soldiers on campaign. While *CTh* 5.6.3 deals with the settlement of a particular group of *coloni*, which is geographically explicit like *CJ* 11.51-53, the compilers nevertheless did not give it a separate title. According to Krüger's method, *CJ* 11.51-53 would be appropriately restored near *CTh* 5.6.3 since they are similar in

¹⁸⁷ *CJ* 11.64.1. See Appendix B.

¹⁸⁸ *CTh* 5.17.2. See Appendix A.

¹⁸⁹ *CJ* 11.64.2. See Appendix B.

both form and content. Indeed, *CTh* 5.6.3, like *CTh* 5.17.1, is not attested anywhere in the Justinian Code. These examples for the mobility of the *colonus* weaken the inference upon which Krüger relied to amend the text of the first five books.

As Matthews has shown, the Justinian Code is a profitable source for reconstructing the first five books of the Theodosian Code. While this method proves to be generally useful and accurate, the subject of the *colonus* receives different treatments in each Code. Since examples like *CTh* 5.17.2 clearly anticipate its successor, *CJ* 11.64.2, Matthews and Krüger are right to expect that *CJ* 11.51-53 were originally somewhere in Book 5 of the Theodosian Code; however, the absence of *CTh* 5.17.1 and *CTh* 5.6.3 in the Justinian Code and, especially, their importance for understanding the late Roman *colonus* warrant the degree of caution, which Mommsen urged. The validity of Krüger's inference requires a high correlation between the texts of the Theodosian and Justinian Codes, which, in the case of the late Roman *colonus*, is inconclusive.

Due to the problematic nature of Krüger's method of supplementing *CJ* 11.51-53 to the fifth book of the Theodosian Code and the new literary evidence of Augustine's Letter 20*, Jones and Kehoe invalidly argue for a universal condition of the late Roman *colonus* with evidence from the Justinian Code. Left only with *CTh* 5.17.1 to expect that these *coloni* were tied to the land, it follows that the *coloni* of the Fussala were not *coloni iuris alieni* and that they still enjoyed a degree of mobility since they hope their threat to migrate would exert leverage in the affair of Fussala.

One problem still remains. While *CTh* 5.6.3 and *CTh* 5.17.1 have been shown that they do not apply to the *coloni* in Augustine's letter, the dates of the *CJ* 11.51-53 still precede the events in Fussala. Since all the laws included in both the Theodosian and Justinian Codes are supposed to contain the quality of "*generalitas*," it should follow that *CJ* 11.51-53 would have

been in force in Augustine's account. This problem is best addressed by considering chronology. Setting aside the more difficult problems in reconstructing the Theodosian Code, the date of its codification is indisputable.¹⁹⁰ The date of Augustine's letter can also be set a specific date. Finally, because of the style and form of the laws in the late Roman law codes, it is possible to ascertain the precise dates of each individual constitution.

Augustine's Letter is datable to sometime between the autumn of 422 and the winter of 423 C. E.¹⁹¹ This date follows all three of the laws from the Justinian Code in question: *CJ* 11.51.1 (386 C. E.), *CJ* 11.52.1 (399 C. E.) and *CJ* 11.53.1 (371 C. E.). In March 429 C. E., Theodosius II ordered the codification of his Code. Theodosius II provided directions and criteria for a panel of nine men to collect, edit and compile the Code.¹⁹² After six years, the men had compiled what was probably an immense and tangled collection of rescripts, edicts, letters, imperial decisions and constitutions. In 435 C. E., Theodosius II reiterated his expectations and guidelines for editorial procedure with another law. Two years later, in the summer of 437 C. E., the compilers completed their task and the Senate ratified the new Code with enthusiasm. This chronology is important because it stresses the fact that the text, the Theodosian Code, is far younger than the laws in question and had reached its final form only in 437 C. E. (or in the case of the Justinian Code – 529 C. E.).

A common complaint of the fourth and fifth centuries was the inaccessible character that Roman law had reached. Marcellinus Ammianus recorded the unwanted consequences of an

¹⁹⁰The Theodosian Code was ratified in the West in 437 C.E. and in the East in 438 C.E.

¹⁹¹Letter 20* is accurately datable. Roland Teske dates the letter either in the autumn of 422 C. E. or the Winter of 422-423 C. E. Teske bases this conclusion on Letter 209, which is addressed to Pope Celestine. In Letter 20*, moreover, Augustine identifies Boniface as the Pope, who died in 422 C. E. The affair in Fussala, therefore, occurred during the period spanning their Papacies. See Roland Teske, *The Works of Saint Augustine: A Translation for the 21st Century: Letters 211-270, 1*-29* Epistulae part II, vol. 4*, ed. Boniface Ramsey (Hyde Park, New York: New York City Press, 1990), 299.

¹⁹²*CTh* 1.1.5. See Appendix A.

obscure legal system in the fourth century.¹⁹³ This same problem frustrated Augustine when he asked Alypius to confirm the accuracy of a law in his possession.¹⁹⁴ Augustine also utilized his imperial connections to encourage the emperor to make the imperial laws on slavery more public.¹⁹⁵ Indeed, the quality of education depended almost completely on the lawyer's library and familiarity with the more recondite legal precedents.¹⁹⁶ These examples underline a central goal of Theodosius II in codifying the law. In February of 438 C. E., Theodosius II secured authority for his Code in the East and hoped that it would dispel the "thick cloud of obscurity" and the endless hours in study, which had "wasted away the lives of many persons."¹⁹⁷ The codification of the Theodosian Code was the result of this reality and these complaints.

In the six years during which the compilers were collecting materials for the Code, they searched for "all constitutions that were issued by the renowned Constantine, by the sainted Emperors after him, and by Us, and which rest upon the force of edicts or sacred imperial law of general force."¹⁹⁸ This instruction was included in 426 C. E. and again in 435 C. E. The question that arises is whether or not Theodosius II's panel rejected some of the material they had collected. "This is an important question for those for whom the primary use of the Theodosian Code is as a source of documentary evidence for the conditions of the Roman Empire."¹⁹⁹ Since the editors were instructed not to ignore obsolete laws, scholars must assume that "if a law of whose existence we know from another source was not included in the Code, it was not because the editors had found but rejected it, but because they had not found it in the

¹⁹³ Ammianus. 30.4.11.

¹⁹⁴ *Ep.* 10*.

¹⁹⁵ *Ibid.*

¹⁹⁶ Matthews, *Laying down the Law: A Study of the Theodosian Code*, 18-19.

¹⁹⁷ *Nov. Th.* 1, 1, 3.

¹⁹⁸ *CTh* 1.1.5. See Appendix A.

¹⁹⁹ Matthews, *Laying down the Law: A Study of the Theodosian Code*, 62.

first place.”²⁰⁰ Either this was the case of *CJ* 11.51-53 or the compilers of the Theodosian Code did not perceive that these laws satisfied Theodosius II’s criterion of “*generalitas*.”

The East-West political division of the empire during the period from Constantine to Theodosius II might have posed a problem to the codification of the Theodosian Code.

Unless one dominated the other, each tended to legislate principally for his own part of the empire, especially as regards administrative measures. The laws applied in one part thus came to differ somewhat from those applied in the other. One part could be ignorant of recent legislation in the other.²⁰¹

Theoretically, Roman law was unified and systematized, but the confusion during the period before the Code’s creation might have caused practical complications for the compilers. It is possible that *CJ* 11.51-53 were not added to the Code simply because they were not found. Of the 2,500 laws of the Theodosian Code, the majority originates in the West from Western emperors.²⁰² Since *CJ* 11.51-53 emphasize geographical areas of the East, it is possible that the compilers did not find the laws. The prevalence of Western laws over Eastern laws in the Theodosian Code is especially surprising since Theodosius II meant to reaffirm a unified system of law.

Whether or not every law in the Code possessed “*generalitas*” before it was codified is difficult or, perhaps, even impossible to ascertain. Scholars can, however, be certain that, once the laws were codified and ratified into law, every law in the Code had general bearing and force throughout the Roman world.²⁰³ Matthews believes that “*generalitas*” was a quality which all the laws of the Code shared before their codification and argues that Romans tended to view

²⁰⁰ *Ibid.*, 65.

²⁰¹ Tony Honoré, *Law in the Crisis of Empire 379-455 AD: The Theodosian Dynasty and its Quaestors* (Oxford: Clarendon Press, 1998), 130.

²⁰² *Ibid.*, 131.

²⁰³ *Ibid.*, 167-168, and Matthews, *Laying down the Law: A Study of the Theodosian Code*, 55-71.

“any pronouncement as possessing general validity” by citing Ulpian.²⁰⁴ Tony Honoré understands “*generalitas*” differently. He puts more significance on Theodosius II’s 429 C. E. and 435 C. E. laws, which prescribed meticulous definitions for what was “*generalitas*” and, therefore, to be added to the Code. While Honoré agrees that certain types of imperial pronouncements such as imperial edicts and letters expressly stated to be general or edictal, were unquestionably general both in scope and force.²⁰⁵ However he also acknowledges “the majority left the matter open.”²⁰⁶ In Honoré’s opinion, Theodosius II’s law of 426 C. E., set out to “define general laws,” which in 435 C. E. he attempted to clarify.²⁰⁷ This interpretation means that

...a law is general if, judging by form or content, the emperor intends it to apply widely; but there is a presumption that when he replies to a petition from a private individual or a consultation by a judge he means to confine the reply to the person or case that has prompted it.²⁰⁸

Honoré’s interpretation allows for the possibility that *CJ* 11.51-53 were indeed found but somehow did not meet the criteria, employed by Theodosius II’s editors to be general laws. Unfortunately, then, it would be impossible to explain why Justinian’s compilers reversed this decision.

In the search to understand the changing mobility of the late Roman *colonus*, Constantine’s 332 C. E. law, *CTh* 5.17.1, has played a critical role. By establishing strict sanctions against the *colonus*, scholars have noted an unprecedented change in the legal condition of the rural population. Augustine’s Letter 20*, however, presents a case in which the mobility of the *colonus* does not seem endangered. Since Augustine’s account is dated well after

²⁰⁴ Matthews, *Laying down the Law: A Study of the Theodosian Code*, 68-69.

²⁰⁵ Honoré, *Law in the Crisis of Empire 379-455 AD: The Theodosian Dynasty and its Quaestors*, 128.

²⁰⁶ *Ibid.*

²⁰⁷ *Ibid.*

²⁰⁸ *Ibid.*, 129.

Constantine's law, Letter 20* has attracted the attention of those interested in the mobility of the late Roman *colonus*.

Studies have used the laws of both the Theodosian and Justinian Codes to demonstrate how Constantine's law set the precedent for an increasingly prevalent practice of legally tying the *colonus* to his farm. This apparently inconsistent reality, which Augustine's account provides, relies on the assumption that the *colonus* was universally tied. Indeed, *CTh* 5.17.1 refers only to the *colonus iuris alieni*, of which there is no evidence in Letter 20*, and, consequently, must not be applied to the *coloni* of Fussala. The supplementation of the Theodosian Code with the laws from the Justinian Code, which are relevant to the mobility of the *colonus*, is invalid. While this method generally proves helpful in reconstructing the incomplete parts of the Theodosian Code, this practice requires a strong correlation between the texts of the two Codes. In the case of the *colonus*, however, this correlation is lacking and can only produce inconclusive results. Consequently, the compilers of the Theodosian Code must either have not found the pertinent laws of the Justinian Code or the compilers somehow felt that they did not satisfy Theodosius II's criteria for "*generalitas*." Setting these laws aside, only Constantine's law can be considered applicable to Augustine's Letter 20* and, since these *coloni* are not *iuris alieni* there is insufficient reason to expect them to have been tied to the land.

CHAPTER 5

CONCLUSION

In the early 420's C. E., Augustine found himself embroiled in a bitter conflict in the small North African town of Fussala. He had spent a large part of his life hoping to end the Donatist schism and to bring ecumenical peace to his diocese. Finally, it seemed as though he had been successful. As the empire officially denounced the Donatist Church, he strained to reintegrate the Donatist population into the Catholic Church. His decision to ordain a young man, Antoninus, whose friendship he had nurtured since childhood, as bishop of Fussala, soon proved to be a disaster when the entire community crumbled into anarchy. With his reputation threatened and the faith of the Fussalans in jeopardy, Augustine experienced the most troubling crisis of his career.

While scholars have known of the upsetting situation in Fussala for centuries from Letter 209, the recent discovery of 29 new letters by Johannes Divjak sheds new light on this historical event. In Letter 20*, Augustine describes how the situation quickly spiraled out of his control and culminated in the threat of a group of *coloni* in the vicinity of Fussala to depart their estates unless he intervened and stopped Antoninus. Augustine's account of these *coloni* in Fussala has attracted attention since it seems incompatible with what is known of the mobility of the late Roman *colonus*.

The most acute problem with the subject of the late Roman *colonus* is the lack of concrete evidence. Because history only records the voices of a privileged few, literary evidence has been largely unhelpful in contextualizing the authority of the legal sources with regard to a

type of agricultural worker. While the legal sources provide insight into what the Roman government aspired to be and while they can also give a glimpse into the social and economic nature of the Roman world, laws and legal evidence do not depict reality. Apart from Augustine's Letter 20*, the evidence for the period extending from Constantine until the codification of the Theodosian Code has been interpreted to indicate a significant shift in the status of the rural population.

The legal evidence has compelled many scholars to envisage the feudalism of the Middle Ages where the distinctions between man, beast and slave have diminished almost to the vanishing point in the form of serfdom. The term "colonate" is generally the name given to the Roman variety of serfdom and its usage stretches back to the middle of the nineteenth century. Some scholars have identified the colonate as a fundamental break with traditional Roman legal practices so as to declare the end of classical Roman law. If some legal evidence implies that the mobility of certain types of the late Roman *colonus* was restricted by imperial legislation, this does not mean that Roman civilization took a giant stride toward the Middle Ages. This interpretation is heavily influenced by the deterministic historiographical methodologies, which became popular in the late nineteenth century, such as materialism and, more importantly, Marxism.

The use of the term colonate must be abandoned altogether to describe any variant universal serfdom in the late Roman world. The term appears only four times in the entire Latin corpus and should be translated rather by the English noun "settlement." The right of settlement entailed the coerced settlement on un- or underdeveloped land of barbarians and urban beggars within the context of food shortages. The four occurrences of the term in the Codes and the history of this practice support this translation. Specifically, this right applied only to a certain

type of *colonus* and, therefore, cannot represent every *colonus* in the Empire. The term has been shown to be an example of the productive *nomina actionis* class of nouns in Latin, which extends the meaning of a preexisting word rather than altogether coining a new meaning.

Besides the laws, which pertain to the *colonatus*, there is insufficient evidence in the Theodosian Code otherwise to posit a universal condition for the tied-*colonus*. Some scholars have looked outside of the Theodosian Code to supplement it with laws from the Justinian Code, which was codified almost a century later. While it is certainly true that the compilers of the Justinian Code mined the Theodosian Code as a resource for laws and texts, this method cannot be applied to the subject of the late Roman *colonus*. The most pertinent laws to the mobility of the *colonus* derive from the fifth and most incomplete book of the Theodosian Code. A long-lasting debate has centered on the question of whether to employ the Justinian Code for reconstructing the fragmentary condition of this book. Scholars have proved repeatedly that this method produces valid and accurate results when there is a high degree of correlation of language between the two Codes. In any event, this correlation is inconclusive for the study of the *colonus*.

Just as the most important indicators from the Theodosian Code are not attested in the Justinian Code, the most pertinent laws of the Justinian Code are unattested in the Theodosian Code. This incongruity between the two Codes should warrant caution in employing this method as it suggests invalid and unprovable conclusions. The problem rather rests on the question of why laws, which are not attested in the Theodosian Code, are in the Justinian Code when the same laws were issued before the codification of the Theodosian Code. The answer hinges on the notion of “*generalitas*.” Either the compilers of the Theodosian Code did not find these laws,

which were surprisingly later found by Justinian's compilers, or they considered that they did not possess the quality of "*generalitas*."

In either event, the surprising lack of evidence for the mobility of the *colonus* demands that a more cautious approach be taken when restoring laws regarding the *colonus*. It would be a mistake to assume that Augustine was so unfamiliar with the laws that would seem to have had obvious applicability to his situation in Fussala. This is especially true when Augustine demonstrates that he took the time necessary to become educated on the law. Both letters 209 and 20* reveal that Augustine had a deep personal involvement in the affair and it would be a surprising exception for him to have been so neglectful in protecting the *coloni* in Fussala from impending imperial sanctions.

The scholars who have studied the *coloni* of Fussala observe that Augustine's account is inconsistent with the legal evidence. This inconsistency stems not from Augustine's letter, which represents an important resource for the study of the mobility of the late Roman *colonus*, but proceeds from an inconsistency of theory with the evidence. Setting aside the problematic method of reconstructing the Theodosian Code with the Justinian Code, the laws of the Theodosian code specify only that *coloni* by the right of settlement (*ius colonatus*) and *coloni iuris alieni* were immobile. Importantly, Letter 20* furnishes no evidence that the *coloni* of Fussala were either settled by the right of settlement or that they were *iuris alieni*. Consequently, the theory of the late Roman *colonus* should be adjusted to account for the new evidence brought to light by Divjak's remarkable discovery and also for the continued mobility of the late Roman *colonus*.

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APPENDIX A:

LAWS FROM THE THEODOSIAN CODE

CTh 1.1.5

Impp. theodosius et valentinianus aa. ad senatum. ad similitudinem gregoriani atque hermogeniani codicis cunctas colligi constitutiones decernimus, quas constantinus inclitus et post eum divi principes nosque tulimus, edictorum viribus aut sacra generalitate subnixas...

The Emperors Theodosius and Valentinian, both *Augusti* to the Senate: We have decided that, in imitation of the Gregorian and Hermogenian Codices, every constitution is to be assembled; which glorious Constantine, the divine Emperors after him, and We have decreed; which is upheld by the strength edicts or by sacred *generalitas*...

CTh 5.6.3

Idem aa. anthemio praefecto praetorio. scyras barbaram nationem maximis hunorum, quibus se coniunxerunt, copiis fuis imperio nostro subegimus. ideoque damus omnibus copiam ex praedicto genere hominum agros proprios frequentandi, ita ut omnes sciant susceptos non alio iure quam colonatus apud se futuros nullique licere ex hoc genere colonorum ab eo, cui semel adtributi fuerint, vel fraude aliquem abducere vel fugientem suscipere, poena proposita, quae recipientes alienis censibus adscriptos vel non proprios colonos insequitur. opera autem eorum terrarum domini libera utantur ac nullus sub acta peraequatione vel censui ... nullique liceat velut donatos eos a iure census in servitum trahere urbanisve obsequiis addicere, licet intra biennium suscipientibus liceat pro rei frumentariae angustiis in quibuslibet provinciis transmarinis tantummodo eos retinere et postea in sedes perpetuas collocare, a partibus thraciae vel illyrici habitatione eorum penitus prohibenda et intra quinquennium dumtaxat intra eiusdem provinciae fines eorum traductione, prout libuerit, concedenda, iuniorum quoque intra praedictos viginti annos praebitione cessante. ita ut per libellos sedem tuam adeuntibus his qui voluerint per transmarinas provincias eorum distributio fiat.

The same *Augusti* to Anthemius, the Praetorian Prefect. After our troupes were deployed by our command, we conquered the barbarian nation of the Scyrae in spacious lands of the Huns, to whom they were federated. For this reason, we give to each man a supply from this aforementioned race of men for the purpose of stocking their own fields. And so that every body might be aware that those about to be taken are taken by no other right than the right of settlement and that nobody will be permitted to fetch a price from him out of this sort of *colonus*, for whom they will be just like *adtributi*, and it will not be permitted to abduct any one of them by fraude or to harbor one fleeing. The punishment,

which is prescribed for those receiving *coloni* assigned to another's *census* or not their own, will ensue. They will be used, moreover, as free labor of the lands of the landowner and not one of them permits a change in tax or *census* liability... And it is not permitted for anybody to reduce them into slavery as if given by the right of the *census* or to assign them to urban duties. Granted that within two years after having accepted them, it is best for the difficulties of the matter of foodstuff that they be retained in whichever transmarine province is pleasing and afterwards to settle them on perpetual homesteads, for which purpose their residence in the regions of Thrace and Illyricum will be absolutely prohibited to them. Only within a five-year period shall it be permitted to make a transfer openly and freely within the confines of the same province. The furnishing of recruits, moreover, will be ceased during the aforementioned twenty year period. The distribution of these people throughout the transmarine provinces must be made to those who so wish by means of petitions to your region.

CTh 5.17.1

Imp. constantinus a. ad provinciales. apud quemcumque colonus iuris alieni fuerit inventus, is non solum eundem origini suae restituat, verum super eodem capitationem temporis agnoscat.

The Emperor Constantine to the provincials. With whomever, a *colonus iuris alieni* will have been found, he will not only restore the same *colonus* to his origin but will also acknowledge the tax liability for that time period.

CTh 5.17.1.1

Ipsos etiam colonos, qui fugam meditantur, in servilem condicionem ferro ligari conveniet, ut officia, quae liberis congruunt, merito servilis condemnationis compellantur implere.

It will also be asserted that these very *coloni* who plan flight, should be bound into a servile situation by iron, so that they may be forced to satisfy the duties, which befit freemen, by virtue of servile condemnation.

CTh 5.17.2

Imppp. valent., theodos. et arcad. aaa. cynegio pf. p. quisquis colonum iuris alieni aut sollicitatione susceperit aut occultatione celaverit, pro eo, qui privatus erit, sex auri uncias, pro eo, qui patrimonialis, libram auri cogatur inferre.

The Emperors Valentinian, Theodosius and Arcadius, all *Augusti*, to Cynegius the Praetorian Prefect. Whoever will either have accepted a *colonus iuris alieni* criminally or have hidden one by concealment is forced to exact, if the *colonus* is a private man, six ounces of gold and, if the *colonus* is inherited, a pound of gold.

CTh 12.1.33

Idem aa. rufino comiti orientis. quoniam sublimitas tua suggestit multos declinantes obsequia machinari, ut privilegia rei privatae nostrae colonatus iure

sectantes curialium nominationes declinent, sancimus, ut, quicumque ultra xxv iugera privato dominio possidens ampliorem ex re privata nostra iugerationis modum cultura et sollicitudine propria gubernaverit, omni privilegiorum vel originis vel cuiuslibet excusationis alterius frustratione submota curiali consortio vindicetur. illo etiam curiae similiter deputando, qui minus quidem quam xxv iugerorum proprietatem habeat, ex rebus vero nostris vel parvum vel minorem iugerationis modum studio cultionis exercet. ita ut omni fraude submota si qui venditione simulata praescriptas lege minuat facultates, omne, quod simulata venditione ad alium transtulit, fisci nostri viribus vindicetur. quam poenam illi etiam sustinebunt, qui captiosa supplicatione delata speciale rescriptum in fraudem sanctionis extorserint.

The same *Augusti* to Rufinus, Count of the East. Since your majesty has reported that many persons escape their duties and have designs to pursue the advantages of the right of settlement by declining curial nominations. We decree that if any man possesses in his private ownership more than 25 iugera and should control a larger measure of land of ours by his own farming and administration, every legal action based on the privilege of birth or origin is hereby voided and he shall be punished by the curia. And if a man has property of less than 25 iugera he must work a lesser amount of our land for the curia. In this way, all fraud will be eliminated, if anybody by false sale should attempt to lessen his worth in property than prescribed by law, everything he attempted to transfer will be pursued by the powers of the Treasury. Those who extort rescripts to the fraud of our sanction shall suffer the same punishment.

CTh 12.19.2

Idem aa. vincentio praefecto praetorio galliarum. actiones publicas privatasque non eadem ratione concludimus, si quidem statui publico impensius providendum est. eum igitur, qui curiae vel collegio vel burgis ceterisque corporibus intra eandem provinciam per xxx annos; in alia xl sine interpellatione servierit, neque res dominica neque actio privata continget, si colonatus quis aut inquilinatus quaestionem movere temptaverit.

The same *Augusti* to Vincentius Praetorian Prefect of the Gauls. We do not limit public and private actions in the same manner, since, indeed, more careful provision must be made for the public interest. Therefore if any man should serve a municipal council or a guild or a border fortress or any other association within the same province for thirty years, or within another province for forty years, without interruptions, he shall not be touched by any action brought in the interests of the imperial domain or of a private individual, if any person should attempt to raise any question of his status as a colonus or *inquilinus*.

CTh 14.18.1

Imppp. gratianus, valentinianus et theodosius aaa. ad severum praefectum urbi. cunctis adfatim. quos in publicum quaestum incepta mendicitas vocabit, inspectis exploretur in singulis et integritas corporum et robur annorum, adque ea

inertibus et absque ulla debilitate miserandis necessitas inferatur, ut eorum quidem, quos tenet condicio servilis, proditor studiosus et diligens dominium consequatur, eorum vero, quos natalium sola libertas prosequatur, colonatu perpetuo fulciatur quisquis huiusmodi lenitudinem prodiderit ac probaverit, salva dominis actione in eos, qui vel latebram forte fugitivis vel mendicitatis subeundae consilium praestiterunt.

The Emperors Gratian, Valentinian and Theodosius, all *Augusti* to Severus Prefect of the City. Likewise to everybody. If there should be anybody who adopt the profession of beggary and who are induced to seek their livelihood at public expense, each of them shall be examined. The soundness of body and age of each one of them shall be investigated. In the case of those who are lazy and not to be pitied on account of any physical disability, the obligation shall be placed upon them that the zealous and diligent informer shall obtain ownership of those beggars who are held bound by their servile status, and as regards those who have only the liberty of their birth, he shall be supported by perpetual settlement, provided that he shall betray and prove such sloth. The owners shall be entitled to an unimpaired right against those persons who happen to have offered either refuge to fugitives or the advice to adopt the profession of beggary.

APPENDIX B:

LAWS FROM THE JUSTINIAN CODE

CJ 11.26.1

Cunctis adfatim, quos in publicum quaestum incerta mendicitas vocabit, inspectis exploretur in singulis et integritas corporum et robur annorum, atque inertibus et absque ulla debilitate miserandis necessitas inferatur, ut eorum quidem, quos tenet condicio servilis, proditor studiosus et diligens dominium consequatur, eorum vero, quos natalium sola libertas prosequatur, colonatu perpetuo fulciatur, quisquis huiusmodi lenitudinem prodiderit ac probaverit: salva dominis actione in eos, qui vel latebram forte fugitivis vel mendicitatis subeundae consilium praestiterunt.

All those, whose poverty calls them to begging from the public, shall each be thoroughly examined as to the soundness of the body, and as to his age. The slothful and those who deserve no pity on account of weakness, shall, if they are slaves, become the property of those who zealously and diligently expose them; those who were born free, shall become supported by perpetual settlement by whosoever exposed him. If he proves to be lazy, the owner reserves the right of action against those who have kept fugitives in hiding and encouraged beggary.

CJ 11.51

Imperatores valentinianus, theodosius, arcadius; cum per alias provincias, quae subiacent nostrae serenitatis imperio, lex a maioribus constituta colonos quodam aeternitatis iure detineat, ita ut illis non liceat ex his locis quorum fructu relevantur abscedere nec ea deserere quae semel colenda susceperunt, neque id palaestinae provinciae possessoribus suffragetur, sancimus, ut etiam per palaestinas nullus omnino colonorum suo iure velut vagus ac liber exsultet, sed exemplo aliarum provinciarum ita domino fundi teneatur, ut sine poena suscipientis non possit abscedere: addito eo, ut possessionis domino revocandi eius plena tribuatur auctoritas.

The Emperors Valentinian, Theodosius and Arcadius. As, though the other provinces, which are subject to the dominion of our mercy; let the law, which was established by our forefathers, detain the *coloni* by a certain eternal right. Thus, so that it might not be lawful for them, by whose profit they are refreshed, to depart from these places nor to abandon the things, which they have taken up to be harvested, and so that this matter might not favor the landholders of the province of Palestine, we decree also that not even one of the *coloni*, as a vagrant and especially as a free man let himself free. But by the example of the other provinces, let him thus be held to the landlord so that he might not

be able to depart without the penalty of conspiracy; if he is enrolled, let the full authority be bestowed upon the landlord of the man to be recalling.

CJ 11.52.1

Imperatores theodosius, arcadius, honorius; per universam dioecesim thraciarum sublato in perpetuum humanae capitacionis censu iugatio tantum terrena solvatur. et ne forte colonis tributariae sortis nexibus absolutis vagandi et quo libuerit recedendi facultas permissa videatur, ipsi quidem originario iure teneantur, et licet condicione videantur ingenui, servi tamen terrae ipsius cui nati sunt aestimentur nec recedendi quo velint aut permutandi loca habeant facultatem, sed possessor eorum iure utatur et patroni sollicitudine et domini potestate.

Throughout the entire diocese of Thrace the census of the poll tax is abolished forever and only the land tax will be paid. And in case it may seem that permission has been given to *coloni*, freed from the ties of their taxable condition, to wander and go off where they will, they are themselves to be bound by right of origin, and though they appear to be free born by condition are nevertheless to be held to be slaves of the land itself to which they were born, and are not to have the right to go off where they will or change their domicile but their landowner uses their right and by the authority and power of lord and patron.

CJ 11.52.1.2

Si quis vero alienum colonum suscipiendum retinendumve crediderit, duas auri libras ie cogatur exsolvere, cuius agros transfuga cultore vacuaverit, ita ut eundem cum omni peculio suo et agnatione restituat.

If anyone thinks of receiving or detaining a *colonus*, he shall be compelled to pay two pounds of gold to the person whose fields the fugitive neglected and shall, further, restore the *colonus* with all his peculium and children.

CJ 11.53.1.1

Imperatores valentinianus, valens, gratianus; Colonos inquilinosque per illyricum vicinasque regiones abeundi rure, in quo eos originis agnationisque merito certum est immorari, licentiam habere non posse censemus. Terris non tributario nexu, sed nomine et titulo colonorum, ita ut, si abscesserint ad aliumve transierint, revocati vinculis poenisque subdantur, maneatque eos poena, qui alienum et incognitum recipiendum esse duxerint, tam in redhibitione operarum et damni, quod locis quae deseruerant factum est, quam multae, cuius modum in auctoritate iudicis collocamus: ita ut etiam dominus fundi, in quo alienus fuisse monstrabitur, pro qualitate peccati coercionem subire cogatur nec sit ignorantiae locus, cum ad criminis rationem solum illud sufficiat, quod incognitum sibi tenuit.

Coloni and *inquilini* throughout Illyricum and the neighboring regions cannot have the liberty of leaving the land, upon which they are found to reside by virtue of their origin

and descent. Let them be slaves to the land, not by tax, but under the name and title of *coloni*. And thus, if they should depart or migrate to another place, having been called back, they are subjugated with chains and penalties. Persons who receive another's *colonus* shall also be punished so that they make up for the work of the *colonus*, so that they compensate for any damages and must pay a fine to the sentence of the judge. So that the owner of the estate also where the stranger is shown to have been, shall be punished in proportion to his wrong-doing, nor shall ignorance serve as an excuse, because the fact that he has kept an unknown person shall alone be sufficient to constitute a crime.

CJ 11.64.1

Imperatores gratianus, valentinianus, theodosius; quicumque parvuli ex municipibus vel colonis patrimonialibus aut saltuensibus, quorum tamen avi ac patres implicati huiusmodi functionibus fuerint, coniventia militaris officii ad stipendium castrense vel officia diversa transierint, ad munera patriae vel agrorum cultus conventis ducibus tribunis ac praepositis revocentur neque his prosint stipendia.

Emperors Gratian, Valentinian, and Theodosius to Cynegius the Praetorian Prefect. The children of decurions or *coloni patrimoniales* or *saltuenses*, whose grandfather and fathers were bound to duties of that kind and who have entered the military or other imperial service through official connivance, shall be recalled to the duties in their native city or to the cultivation of their fields by the assistance of their leaders, tribunes and commanding officers, nor shall they have the benefits of any official payment.

CJ 11.64.2

Quisquis colonum patrimonialem aut sollicitatione suscepit aut occultatione celaverit, non solum ipsum restituere, sed etiam libram auri poenae nomine cogatur inferre.

Whoever has received a *colonus patrimonialis*, after inciting him to come, or conceals him, shall be compelled not only to restore him but also to pay a fine of a pound of gold.

CJ 11.66.6

Imperatores arcadius, honorius; eum, qui curiae vel collegio vel burgis ceterisque corporibus per triginta annos sine interpellatione servierit, res dominica vel intentio privata non inquietabit, si colonatus vel inquilinatus quaestionem movere temptaverit: sed in curia vel in corpore, in quo servierit, remaneat.

The Emperors Arcadius, Honorius. If anyone without being questioned has served in a curia, college or guild or other body for thirty years, neither an imperial or private claim shall be a ground to raise the point as to whether he is governed by the right of settlement or by the right of the *inquilinatus* and he shall remain in the curia or corporation he is a member.