

THE COLONATE
IN THE ROMAN EMPIRE

BOUDEWIJN SIRKS

University of Oxford



CAMBRIDGE
UNIVERSITY PRESS

Contents

Introduction	page 1
1 The <i>Status Quaestionis</i> : General Approaches	3
2 Sources and Working Method	12
2.1 Sources	13
2.2 Justification of the Retrograde Research Method Applied Here	17
2.3 Terminology	24
The Colonate in the East under Justinian, 527/534–565/642	30
3 Introduction and Background to Justinian’s Code	30
4 The <i>Coloni</i> in Book 11 of Justinian’s Code	32
5 CJ 11.48.20–24: The Central Texts on the Colonate	35
6 Entering or Imposing the <i>Conditio Coloniaria</i>	36
7 Effects of the Colonate: <i>Potestas</i> and <i>Peculium</i>	42
7.1 <i>Coloni</i> Are in the <i>Potestas</i> of the Estate Owner	42
7.2 Their Assets Are Considered <i>Peculium</i>	45
7.3 The Reality of the <i>Potestas</i> and <i>Peculium</i>	49
8 Paying Taxes	52
8.1 Taxes and Taxation	52
8.2 The <i>Colonus</i> as Taxpayer	55
8.3 The Landowner Is Factually and Administratively Surety of the <i>Capitatio Humana</i>	58
9 Occupations of <i>Coloni</i>	61
10 Transmission of the <i>Conditio</i> and the Effect of the Abolition of the <i>Senatusconsultum Claudianum</i>	67
10.1 Transmission of the <i>Conditio</i>	67
10.2 The Abolition of the <i>Senatusconsultum Claudianum</i> and the <i>Conditio Coloniaria</i>	69
10.3 The <i>Coniugium Non Aequale</i>	74
10.4 Unions between <i>Adscripticii</i> and Slaves	78
10.5 Other Cases of the <i>Coniugium Non Aequale</i>	79
10.6 Developments after the Abolition of the <i>Senatusconsultum</i> <i>Claudianum</i>	81

11	Moving <i>Coloni</i> to Other Places	85
12	<i>Coloni</i> Who Migrate and Recalling Them	89
12.1	Reasons for Migrating	89
12.2	Recalling <i>Coloni</i>	91
12.3	Limitation of Prescription against Recall	96
12.4	Immunities against a Recall	97
12.5	Another Way of Losing Labour: Exposition	98
13	Release from the Colonnate and the 'Free' Colonnate	99
13.1	Incidental Private Release	99
13.2	Institutional Release: Anastasius' Constitution	100
13.3	Institutional Release: Justinian's Constitutions	104
13.4	Other Interpretations of CJ 11.48.19	105
13.5	Anastasius' Motives	107
14	Public and Procedural Aspects of the Colonnate	109
14.1	Social Mobility	109
14.2	Procedural Privileges	110
14.3	Criminal Law and Abuse of Power	111
15	The <i>Coloni</i> on State and Imperial Lands: CJ 11.63–64, 68–69	112
15.1	General	112
15.2	<i>Coloni</i> on Patrimonial Land (<i>Fundi Patrimoniales</i>), Emphyteuticarian Land (<i>Fundi Emphyteuticarii</i>), and Combined Estates (<i>Saltus</i>)	122
15.3	<i>Coloni</i> on Land of the <i>Res Privata</i> (<i>Fundi Rei Privatae</i>)	123
15.4	<i>Coloni</i> on Land of the Imperial House (<i>Fundi Divinae Domus</i> or <i>Domus Augustae</i>)	126
15.5	<i>Coloni</i> on Land of the Fisc (<i>ταμειῶν</i>)	127
15.6	A Reason for the Privileges?	128
16	The 'Free' Colonnate	129
17	The 'Free' Colonnate: A Byzantine Serfdom?	133
18	Farmers Not Subjected to the Colonnate	135
19	Conclusions	138
19.1	The Colonnate under Justinian	138
19.2	Open Questions	144
19.3	Different Interpretations	144
2	The Colonnate in the Year 438 in Theodosius' Code	147
20	Introduction	147
20.1	General	147
20.2	The Structure of the Theodosian Code	149
20.3	The Place of the <i>Coloni</i> in the Code	150
21	The Background to the Law in the Theodosian Code	152
22	The Term <i>Colonus</i>	156
23	Entering the <i>Conditio Coloniaria</i>	157
23.1	<i>Conditio</i> and <i>Conditio nalis</i>	157
23.2	Origin of the Colonnate	160

23.3	Origin of the Colonate in the East	161
23.4	Origin of the Colonate in the West	167
24	Effects of the Colonate: <i>Potestas</i> and <i>Peculium</i>	167
24.1	Effects of the Colonate in the East	169
24.2	Effects of the Colonate in the West	173
24.3	Summary	180
25	Taxation and Complying with Taxes	181
25.1	Taxes and the <i>Coloni</i> in the East	183
25.2	Taxes and the <i>Coloni</i> in the West	186
26	Transmission of the <i>Conditio</i> and the Effect of the <i>Senatusconsultum Claudianum</i>	190
26.1	In the East	190
26.2	In the West	191
26.3	The <i>Coniugium Non Aequale</i>	194
26.4	The <i>Coniugium Non Aequale</i> and the Various Categories of <i>Conditionales</i>	198
27	Moving <i>Coloni</i> to Other Places	199
27.1	Moving <i>Coloni</i> in the East	201
27.2	Moving <i>Coloni</i> in the West	202
28	<i>Coloni</i> Who Migrate and Recalling Them	205
28.1	Flight in the East	206
28.2	Flight in the West	206
28.3	Problems with Reclaiming <i>Coloni</i> : Death, Marriage, Offspring	211
29	Public and Procedural Aspects of the Colonate	215
29.1	In the East	215
29.2	In the West	215
30	<i>Coloni Originales</i> on State and Imperial Lands	216
31	<i>Coloni</i> on Patrimonial Land (<i>Fundi Patrimoniales</i>) and Emphyteuticarian Land (<i>Fundi Emphyteuticarii</i>)	217
31.1	In the East	218
31.2	In the West	220
32	<i>Coloni</i> on Land of the <i>Res Privata</i> (<i>Fundi Rei Privatae</i>) and of the Imperial House (<i>Fundi Divinae Domus</i> or <i>Domus Augusta</i>)	220
32.1	The <i>Res Privata</i>	220
32.2	<i>Coloni Dominici</i> on Land of the Imperial House	222
33	The <i>Patrocinium Vicorum</i> , <i>Vicani</i> , <i>Coloni Homologi</i> , and <i>Rusticani</i>	223
34	The 'Free' Colonate	232
35	Farmers Not Subjected to the Colonate	233
36	Texts Not Necessarily Connected with the Colonate	234
37	Conclusions	234
37.1	Beginning of the <i>Conditio</i>	235
37.2	Taxation and Taxes	236
37.3	Transfer of Land	237
37.4	Features of the Colonate	237
37.5	Recalling	238

3	The Colonate in the East, 438–527	240
38	Enactments by the Emperors in 438–527	240
38.1	Theodosius II (402–455)	240
38.2	No Constitutions on <i>Coloni</i> by Marcianus (455–457) Have Been Transmitted	241
38.3	Leo (457–473)	241
38.4	Zeno (474–491)	243
38.5	Anastasius (491–518)	245
38.6	Constitutions Not Included	247
39	Comparing the Situation in 534 and 438	247
4	The Colonate in the West, 438–ca. 506	249
40	The Situation in the West, 438–ca. 506	249
40.1	Sources	249
40.2	Background	251
41	The Posttheodosian Novels in the Roman West, 438–post 506	254
41.1	General	254
41.2	Valentinian III	256
41.3	Majorian	262
41.4	Severus	263
42	The Council of Orange of 441, Sidonius Apollinaris <i>ep.</i> 5.19, and Remigius of Reims	264
43	The Colonate in Vandal Africa	268
44	Farmers Not Subjected to the Colonate	269
45	The Colonate in the Breviarium Alaricianum Alias the Lex Romana Visigothorum of 506 (Southern Gaul, Septimania, and Visigothic Spain): Status	269
46	The Colonate in the Breviarium Alaricianum: Obligations and Restrictions	280
47	The Colonate in Legal Writings	282
48	The <i>Coloni</i> in the <i>Summaria Antiqua</i> , 535–554	286
49	Nachleben and Conclusions	287
5	The Colonate between Theodosius' Code and Diocletian and the Third Century, 438–293/268/249	292
50	The Period 438–293/268/249	292
50.1	Development in the East in 438–364	292
50.2	Development in the West in 438–364	293
50.3	Development before 364	293
51	A Connection with Diocletian's Tax Reforms?	294
52	Farmers in the Middle of the Third Century: The Heroninos Archive, AD 249–268	295
53	<i>Oiketai</i> and <i>Metreumatiaioi</i> : A Pre-colonate?	301
54	Moulding the <i>Paramonè</i> into the Roman Law	306
55	Was There a Colonate?	308

Contents

ix

56 Reconstruction of a Chronology of the Colonnate	309
56.1 Development in the West between 364 and 438	316
56.2 Development in the East between 364 and 438	318
56.3 Development after the Theodosian Code	320
<i>Bibliography</i>	321
Sources and Abbreviations	321
Secondary Literature	322
<i>Index Locorum</i>	338
<i>General Index</i>	347