The *Lex Romana Visigothorum* and its rendering of the colonate

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The *Lex Romana Visigothorum* or Breviary was compiled by order of the Visigothic king Alaric II for his Roman subjects and confirmed by him in 506[1]. It is a selection of texts from the Theodosian Code, coupled with Posttheodosian Novels, the Pauli Sententiae, the Gai Epitome and some fragments from the Gregorian and Hermogenian Code. The collection is complete and therefore presents by way of its selection – in as far as it followed the Theodosian Code – the entire written complex of Roman law rules as currently applied in the Visigothic kingdom[2]. The constitu-

[1] See on this H. Fitting, *Ueber einige Rechtsquellen der vorjustinianischen spätern Kaiserzeit*, in *ZRG,* 10, 1872, 317–340; H. Fitting, *Die sog. westgothische Interpretation*, in *ZRG,* 11, 1873, 222–249; M. Conrat, *Breviarium Alaricianum*, Leipzig, 1903 (repr. Aalen, 1963); L. Wenger, *Die Quellen des römischen Rechts*, Wien, 1954, 555–558; R. Lambertini, *La codificazione di Alarico II*, Torino, 1991; D. Liebs, *Römische Jurisprudenz in Gallien*, Berlin, 2002, 109–110, 166–176 with literature; M. Rouche, B. Dumézil (ed.), *Le Bréviaire d'Alaric, Aux origines du Code civil*, Paris, 2008. The article herein by D. Bondue, *Esclavage et colonat dans le Bréviaire d'Alaric*, 91–101, does not bring anything new. Conrat's work is a rearrangement of the laws in the Breviarium in a way, reminiscent of the German Civil Code. It is useful as survey of the law for the Romans as under the Visigoths but in the context of this study on the colonate of little use because he did not use the *interpretationes* (actually, astonishing for a man so capable).

[2] M. Piquer Marí, *El colonato visigodo a través de las interpretaciones del Breviarium Alarici al Codex Theodosianus*, in *Ravenna Capitale, Codice Teodosiano e tradizione giuridiche in Occidente*, Santarcangelo di Romagna, 2016, 113–163, speaks of a Visigothic colonate; in 118 note 16 he assumes that the norms of the Breviary did not only concern *coloni* of Romans, contrary to what O. Schipp, *Der weströmische Kolonat von Konstantin bis zu den Karolingern (331 bis 861)*, Hamburg, 2009, 313 thinks. He bases his research on the Breviary. But this was a collection made for the Roman subjects and not for the Visigoths. Unless we find Visigothic sources which deal with *coloni*, as we are able for the Burgundians, and unless these show differences with the Roman colonate (as we do not see with the Burgundians), it is, terminologically, not warranted to speak of a Visigothic colonate; even if we find that they Visigoths used the colonate and applied Roman law rules. But in the Code of Euric the colonate is not mentioned. What we have are testaments as that of Victor of Huesca (see § 49), a Roman. M. Bueno, *El Breviario de Alarico*, in *AARC,* XIV, Napoli, 2003, 629–637, here 632 cites Reccesvinth who in 660 forbade the use of Roman law from now on (Liber 2.1.10).

tions from the Theodosian Code, the Novels and the Pauli Sententiae are usually accompanied by *interpretationes*. Piquer Marí assumes the compilers chose constitutions which fitted practical purposes. By that, so Piquer Marí, their choice was not sufficient to cover the entire reality of the colonate: it focused on the productivity of the estates. The result was that the colonate degraded to an iron subjection, lowered in status but still a free status[3]. How we have to imagine this downgrading happened he does not tell, as often with historians causality is merely assumed: post hoc ergo propter hoc. Di Cintio does not take that road. She assumes that the texts chosen present in any case for 506 the existing situation, answering the question, which law in the Visigothic territories applied to the Roman inhabitants. These texts were taken from the *leges* and *ius*, the Visigothic king had not the authority to change them (he could only issue edicts for the Romans). But their application might be different and indeed often was: the *interpretationes* demonstrate this, not only as copied from a collection, but also as changed by the Alarician compilers[4]. Thus in order to know the law on the colonate in the late fifth century Visigothic kingdom, we have to consider in the first place the *interpretationes*.

As example of the *Lex Romana Visigothorum* as on one hand an example of the tradition of texts, and on the other hand as example of restructuring the transmitted texts, either textually or by composition, to accommodate new situations, I take C.Th. 5.17.1, in the LRV. 5.9.1, further C.Th. 5.17.2, C.Th. 5.18.1, which is LRV. 5.10.1, 5.19.1, which is LRV. 5.11.1, and 14.7.1, which is LRV. 14.1.1, with their interpretations. To this comes Nov.Val. 31, in the LRV. Nov. Val. 9. These are the important constitutions on the colonate, included in the LRV. Apart from C.Th. 5.17.2, they were all issued for the entire empire (C.Th. 5.17.1) or the west. There will have been more, both eastern and western, as we know from Justinian's Code, but they were not included. In other included constitutions the *coloni* are marginally mentioned. Thus these texts present, in the choice made, already the reality of 506. The interpretations will have fitted this or will have rendered that reality.

If we restrict ourselves to the constitutions, whose texts are unchanged, they present the Diocletianic colonate if we place them in their original context of the Theodosian Code. Diocletian reorganised the assessment of taxes and the levying. In that process he allowed that a private agreement between a creditor and a debtor, the *paramonè*, was entered as extract in the tax assessment of an estate, if the estate owner guaranteed through the *paramonè* the payment of the debtor's poll tax. The

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That indicates its application until then. How do we know whether the compilers focused on productivity? Should we not have had more constitutions, like C. 11.48.1?

[3] Piquer Marí, *El colonato visigodo* cit., 163.

[4] See L. Di Cintio, *L'"Interpretatio Visigothoru*m' *al* '*Codex Theodosianus*', I. *Il libro IX*, Milano, 2013; L. Di Cintio, *Nuove richerche sulla* '*Interpretatio Visigothorum*' *al* '*Codex Theodosianus*', *Libri I–II*, Milano, 2018. Her work deals with other themes.

debtor in a *paramonè* promised to serve the creditor an amount of time in lieu of interest or repayment. That implied that he had to stay near the creditor. It is formulated in a lapidary way in PS. 2.19.1. Entering this agreement or an extract of it into the assessment fixated the domicile of the debtor, now called *colonus*, and having promised to do what the estate owner might ask, he was now under his authority. Yet he remained a free person, comparable to a *filius familias*. If he fled the estate, the poll tax still had to be paid, but if the *colonus* was found on another estate, the poll tax due could be reclaimed from him or the estate owner. It is this situation which C.Th 5.17.1 reflects. A fugitive *colonus* may be reclaimed by his estate owner, the harbouring estate owner must acknowledge the due poll tax for the time of his harbouring. Those *coloni* pondering flight may be chained in a servile condition, that is, as slaves, so that they perform their duties which they have to do as free men[5].

What does the selection by the Alarician compilers present as to the colonate? First the fiscal connection. It is not clear whether the few texts on taxation in the *Lex Romana Visigothorum* reflect a continuation, be it diminished, of the Roman fiscal system, or rather the mere wish to. According to Wickham the Roman fiscal system was replaced by a system in which landowners paid directly to the king a sum like a rent. If we look at the LRV., there are not many constitutions taken over from the Theodosian Code which organise taxation: C.Th. 11.1.15 and 16 which regulate the tribute in kind on land; 11.3.3 and 4 which order that the buyer or acquirer, partially or wholly, of land must acknowledge the tax in kind and enter his name in the tax register; 11.6.1 which regulates the *superindictio*, and 11.7.4 and 20 of which c. 4 allows the sale of land whose owners refuse to pay the taxes, and c. 20 punishes fraudulent tax collectors[6]. It implies a simple system of a taxation in kind, to be delivered in three instalments, based on the registration of the owners, and collected by *exactores*. It might still fit the Roman fiscal system, but equally the system as proposed by Wickham. Of the constitutions on the poll tax as we find in Justinian's Code in C. 11.48.10 and other texts there is nothing. But the *interpretatio* to C.Th. 5.17.1 renders the *capitatio* by *tributa eius*. Does that refer to the poll tax? Or are these the taxes on land *coloni* owned privately? C.Th. 5.19.1 allows for that. More likely, however, is the explanation suggested by the interpretation to C.Th. 2.30.1, which forbids the seizing of slaves on the land because they provide by their work the *tributa*. Similarly *coloni* provided

[5] See for this B. Sirks, *The colonate in the Late Roman empire*, in *Tijdschrift voor Rechtsgeschiedenis,* 90, 2022, 129–147, which is a summary of his book *The Colonate in the Roman Empire*, Cambridge, 2024.

[6] The original issue of the texts, for the entire empire, east or west, apparently did not bother the compilers. It means that texts such as on the *coloni* which referred to the poll tax and were eastern (C. 11.50.2, for example), were not important to them. There may have been comparable western texts which were not included in Justinian's Code.

the revenues for the *tributa*, perhaps in *colonicae*[7]. Their link to the land exploitation is confirmed in the interpretations to C.Th. 2.31.1. Essential is the way the interpretation summarises the constitution where it concerns the position of the *colonus*. It says that the *colonus* must be returned and that the due taxes must be paid by the harbourer. But the pondering *colonus* has disappeared. It is now: *ipse vero qui noluit esse quod natus est in servitium redigatur*, 'he, however, who denies to be what he has been born into, must be reduced to servitude'. The *colonus* is in a condition into which he is born. If he denies this, he must be forced to serve.

This emphasis on the coloniary condition as one into which one is born, is also present in C.Th. 5.18.1, issued in 419. This constitution deals with the recall of fugitive *coloni*. It apparently is a reaction to the incursions in Italy, when in the tribulations of those times many *coloni* must have used the opportunity to flee and take up work at another estate, pretending to be free farmhands (hence the *mercedes*). Due to the length of time, the limitations of prescription are almost reached, the emperor must tackle the question of fugitive *coloni* who have married *coloni* of other estates, have children, and are now recalled to their original estate with the thirty years of the general limitation of prescription. The text mentions the *sol genitale*, the *locus cui natus est*, further the estate of the *colonus* is a *possessio*, and the claim for him is about his *proprietas*. For the rest they are to be recalled with their offspring, *peculium* and *mercedes*. If they were married, the offspring must be divided, and if it concerns a fugitive *colona*, a replacement may be returned (assumedly a *colona* too). The interpretation summarises this, adding that in Novels more is found about the offspring of *colonae*. This may refer to Nov. Val. 31.4 of 451, or to the interpretation to Nov.Val. 35 of 452 (p. 152, 200–203), where this says something about the *colonae* while referring to the constitution addressed to Palladius, which is this C.Th. 5.18.1. So the *interpretatio* read the three constitutions as comprising one subject-matter, which is in all three constitutions wholly concentrated on descendence. But the two references to the *origo* as the place one is born is ominous already. It takes little to overturn the tenor of C.Th. 5.18.1 and interpret it as establishing the colonate bond by merely and solely birth. The later Novel 31 of Valentinian does not contradict that. It confirms in its beginning the ruling of C.Th. 5.18.1, and the interpretation follows that confirmation, as does Novel 35.18 of Valentinian, again followed by the interpretation.

Whether the *interpretationes* were made in the second half of the fifth century in Italy, or in Gaul as Roux seems to assume (which is not likely), or drawn up by

[7] The term *colonica* appears in the testament of Abbo, where various relationships are suggested. Drawn up in 739 A.D., it concerns the many belongings of a rich man in the Provence (for text and translation see P.J. Geary, *Aristocracy in Provence: The Rhône basin at the dawn of the Carolingian Age*, Philadelphia-Stuttgart, 1985, 38–49). Perhaps these were economic-agrarian units, consisting of a plot of land with a house, worked by one *colonus* and his family. Due to the nature of the colonate they would be a continuous unity.

Alaric's compilers (which would be extraordinary and not likely), or taken from commentaries and adjusted where necessary to the situation of 506 (Di Cintio's opinion and quite likely), it is clear that there was a shift in the position of the *coloni* compared to the Diocletianic arrangement[8].

The texts of the said three constitutions define the colonate *only* in terms of descendance and a link to an estate. If read on their own, separated from the fiscal system — which is the case in the *Lex Romana Visigothorum* —, it allows for defining the colonate as a status of person. That would explain why we see in the Edict of Theoderic and in the *Lex Romana Burgundionum* that the colonate is a personal status, which descends on offspring. If they flee, their harbourer must pay what they might have earned during that time. In the Formula 10 of Angers, the check whether somebody is a *colonus* is twofold: on one hand the status of both parents is checked (and this is correct, because the legal system made the colonate pass over through either father or mother), on the other hand it is checked whether in the bygone thirty years no claim has been made and thus the limitation of prescription applies. There is no mention of taxes.

C.Th. 5.19.1 fits this subjected status. It states that *coloni* may not without knowledge of their patrons may alienate their own piece of land (which shows that they as free people could own land and other property, and had to pay the land tax). The interpretation simply says that *coloni* are in all respects subjected to their masters and may not alienate any property without the knowledge of their masters. This subjection is also mentioned in C.Th. 8.2.5 (*obnoxius servituti*), but the interpretation merely says that there might be a *querella* over *coloni*, viz. about their status which made them unfit for the function of *tabellarius*. Finally C.Th. 14.7.1. The text deals with *collegiati*, people subjected to the performance of urban services, who have left their town and must be recalled. Here also the offspring is also recalled. To solve the question who may claim them, the rule of the *coniugium non aequale* is prescribed. If the union is unequal, it follows the mother, if equal, viz. if *iustum*, the father. It is an application of the *ius gentium* rule on citizenship, but restricted to the status of subjection, viz. the *condicio*. The interpretation summarises this rule in a different way: if a *collegiatus* had children with a slave woman or *colona*, they are slaves or *coloni* – the maternal status dominates. If the *collegiatus* had children with an *ingenua*, that is, a woman not subjected to the power of somebody else, the children are *collegiati*. Thus the status of a *collegiatus* must have been higher than that of a *colonus* and made him considered equal to an *ingenuus*. Perhaps it was because he was not subjected to a person but to the town,

[8] With the Diocletianic arrangement is meant that the fiscal arrangement, which inserted the *coloni* into the estate census of their creditor/security, implied that the colonate was accessory to the *capitatio humana*. The abolition of this capitatio in Illyricum and Thracia liberated instantaneously the coloni in these areas from their bond to the land. See above at note 5 and now B. Sirks, *The Colonate in the Roman Empire* cit., 129-133.

like a *servus publicus*. As a consequence his union with a slave woman or *colona* was unequal: with the slave woman because no *matrimonium iustum* was possible with her, with a *colona* because she was subjected to a person (I have explained this elsewhere). Again we see that the colonate is a personal status.

To say that already before the end of the central administration in the west the colonate had become in law a mere personal status is unwarranted. The fiscal system seems to have been still in good order in the first decades of the fifth century in Italy and perhaps also Gaul (Africa and Sicily becoming under Vandal rule after 429/439). The elaborate constitution of C.Th. 5.18.1 may have functioned well along the connection with the poll tax. But without any reference to the tax, it may have been interpreted as standing on its own and its confirmation in this respect by Novels 31 and 35.6 of Valentinian will only have reinforced such an interpretation.

This was the situation in 506. It is revealed in two ways. First, the selection of constitutions makes it clear that the colonate was no longer linked to the poll tax (the corresponding constitutions are not included) but that any role of *coloni* lay in tilling the land and so providing the owners with revenues, out of which the land tax could be paid. Second, the constitutions C.Th. 5.18.1, Nov. Val. 31 and 35 treat only of estate and descendance as criteria for the colonate. Taken on their own, they make the colonate a status of person, independent of other criteria: contrary to the east where poll tax and colonate are linked and abolition of the tax implies abolition of the colonate. The way the compilers of the *Lex Romana Visigothorum* represents continuity (in the adherence to the constitutive texts) and change (in the choice of these constitutive texts and their interpretation). Did this change occur in 506 or before? It is likely that it happened already before, considering the Edict of Theoderic which knows the colonate also as a status of person. But when? Considering the Novels of Valentinian it is possible that already in 451 or 452 the determining constitutions had got a life of their own and that the status of *coloni* was interpreted predominantly as a personal status.

But this being so, what the compilers of the *Lex Romana Visigothorum* did was to select these constitutions which comprised the personal side of the colonate and left out any reference to the poll tax. Where these constitutions were in the Theodosian Code still in a structure of a fiscal system and the colonate still connected with this (as it was later on still in the east with constitutions, taken from the Code), the compilers cut them off and put them on their own, reading them in connection with Valentinian's confirmation in 31. By that they turned it, by virtue of the *Lex Romana Visigothorum* being now the exclusive legal code for the Romans[9], from a fiscal construction into a personal state, hereditary merely on account of descendance and linked to an estate.

[9] That is evident by the efforts after Clovis' conversion to Catholicism to insert constitutions from Book 16 into the Breviary. It implies they were not valid before in the south of Gaul (now Francia).