Roman Legislation as Reflected in the Settlement History of Late Antique Palestine*

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Introduction

Most researchers of the history of Palestine during Late Antiquity believe that only following the fourth century did this region recover from generations of economic and demographic decline.[1] If until then Palestine was merely a remote minor province of the Roman Empire, the Emperor Constantine's decision to legitimize Christianity and both identify and sanctify the Christian holy sites put the region's economy on track towards recovery. The construction of hundreds of churches and monasteries, complemented by the growth of pilgrimage to them, led to a huge positive change in Palestine's settlement history.[2] The flourishing settlement map of Late Antiquity and abundant archaeological material manifest this change. In Late Antiquity, almost all of the regions in Palestine, from the Galilee in the north to the Negev in the south, and from the coastal plain in the west to Trans-Jordan in the east, witnessed the most extensive settlement activity in the history of Palestine — unequalled until the modern age.[3]

Increasing recent research conducted in the rural areas of Palestine, where the majority of the population resided, makes possible a more precise chronological and spatial analysis of the settlement process in this region. This suggests that the fourth century did not constitute the turning point in the settlement history of Palestine, as previously maintained, and shows that Christianity's impact on the local settlement map was not all that significant.[4] The new archaeological information shows that even before

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1 For the political and geographical limits of Palaestina during Late Antiquity, see Y. Tsafrir, L. Di Segni and G. Green, *Tabula Imperii Romani: Iudaea Palaestina*, Jerusalem, 1994, viii.

2 M. Avi-Yonah, 'The Economics of Byzantine Palestine', *IEJ* 8, 1958, 39-51; R.L. Wilken, *The Land Called Holy: Palestine in Christian History and Thought*, New Haven, 1992, 178-83; A. Cameron, *The Later Roman Empire: AD 284-430*, Cambridge, MA, 1993, 178-9.

3 See Y. Tsafrir, 'Some Notes on the Settlement and Demography of Palestine in the Byzantine Period: The Archaeological Evidence', in J.D. Seger (ed.), *Retrieving the Past: Essays on Archaeological Research and Methodology in Honor of G.W. Van Beek*, Winona Lake, 1996, 269-83.

4 D. Bar, 'Population, Settlement and Economy in Late Roman and Byzantine Palestine (70-641 A.D.)', *Bulletin of the School of Oriental and African Studies* 67:3, 2004, 307-20. See also D.E. Groh, 'Jews and Christians in Late Roman Palestine: Towards a New Chronology', *BA* 51:2, 1988, 80-96 and especially 83-4, criticism of the common chronology, which sees 324 CE as the beginning of the Byzantine period in Palestine.

Constantine's revolution, already during the second century CE,[5] the local economy started to show signs of recovery from the two devastating Jewish rebellions. Moreover, even during the third century, in the midst of political and economic crises, Palestine experienced a period of prosperity and expansion, as manifested in the growing number of settlements, towns and villages that were built during that century.[6] Thus, a re-evaluation of the assertion that the fourth to seventh centuries were a continuous period of expansion and prosperity is also needed.[7] For although these centuries were generally a time of growth, as the archaeological excavations and surveys demonstrate, certain regions of Palestine do not demonstrate the same measure of undisturbed expansion during Late Antiquity.

I discussed one of Palestine's most important phenomena during Late Antiquity, the vast migration of settlers to frontier zones, in an earlier paper.[8] The latest archaeological information demonstrates the settlers' mobility during Late Antiquity, abandoning stable settlement areas in favor of 'frontier' zones. The colonization drive during that period included also the Negev as well as many enclaves in the heart of the land. During this period, areas with limiting geographical characteristics such as swamps or sand dunes, arid zones or places covered with thick vegetation — which had prevented settlement in those areas earlier — were now being inhabited. The main impetus for Palestine's inhabitants to move to these secondary regions was the significant increase in the number of inhabitants in their former locale,[9] which reached an estimated two million, thereby creating a massive population density in the traditional places of residence.

In this paper, I wish to focus on the demographic processes which Palestine's population underwent during the second half of the fourth century and the first quarter of the fifth century. I believe that in light of the latest evidence, it is now possible to establish a link between the settlement changes during that period and the Roman laws regarding *agri deserti* and *colonatus* which were passed at that time. These laws are commonly associated with the Roman imperial policy towards taxes levied on land and can

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5 D. Bar, 'Frontier and Periphery in Late Antique Palestine', *Greek, Roman and Byzantine Studies* 44, 2004, 69-92.

6 D. Bar, 'Was There a 3rd-C. Economic Crisis in Palestine?', J.H. Humphrey (ed.) *The Roman and Byzantine Near East*, Volume 3 (*JRA* supplement 49), Portsmouth, RI, 2002, 43-54.

7 As I. Roll and E. Ayalon's, *Apollonia and Southern Sharon: Model of a Coastal City and its Hinterland*, Tel Aviv, 1989 (Hebrew) indicates. See also Z. Safrai, *The Missing Century: Palestine in the Fifth Century: Growth and Decline*, Leuven, 1998, which claims that the fifth century was characterized by a steep decline in settlement density in most parts of Palestine. The main weakness of this research is its reliance on hoards of coins that do not enable precise analysis of settlement processes.

8 D. Bar, 'Geographical Implications of Population and Settlement Growth in Late Antique Palestine', *Journal of Historical Geography* 30:1, 2004, 1-10.

9 See M. Broshi, 'The Population of Western Palestine', *BASOR* 236, 1979, 1-10 for a minimal estimation of Palestine's population.

similarly be linked to the economic and settlement reality in Palestine during the fourth and fifth centuries.[10]

Settlement Reality in Palestine during the Late Fourth and Early Fifth Centuries

The newest archaeological surveys and excavations in Palestine's countryside now enable a more accurate assessment of the settlement history in this part of the Roman Empire during Late Antiquity. During the late fourth and early fifth centuries, many settlement changes took place: whereas in some regions we find pioneering settlement, other parts of the land are marked by desertion and a decline in population density.

This conflicting phenomenon is seen most prominently in Northern Palestine, particularly in the eastern Galilee and the lower western parts of the Golan — two regions known for their dense Jewish population during Late Antiquity. The vast archaeological information collected from research in these regions shows clearly that certain parts of the Galilean population suffered a decline during the second half of the fourth century and that this resulted in settlement desertion.

This unusual phenomenon has invited diverse explanations. Many have viewed the fifty-year gap in the settlement history of the village of Chorazin (340-390 CE) as resulting from the cruel consequences of the Gallus Revolt.[11] The gradual abandonment of the village of Meron in the late fourth and early fifth century was associated with socio-economic factors such as over-taxation and drought, as well as with natural disasters.[12] According to conventional thinking, the devastating earthquake in 363 CE was the main trigger for the abandonment of Kafer Nevoraia,[13] while the abandonment of the village of Khirbet Shema (Thecoa) was linked to the earthquake of 419 CE.[14] The drop in the population of the eastern Galilee settlements is also apparent in Horvat 'Ammudim, Tell el-Wawiyat and Kefar Hanania,[15] whose size decreased substantially during the late fourth and early fifth centuries.

It appears, then, that researchers have found it difficult to ascribe a single main reason to the eastern Galilee's settlement regression during Late Antiquity. Conventional explanations for this decline likewise fail to provide an overall explanation for the trend. The effects of the Gallus Revolt and the impact of the earthquake in 363 CE on the

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10 See Y. Hirschfeld, 'A Climatic Change in the Early Byzantine Period? Some Archaeological Evidence', *PEQ* 136:2, 2004, 133-50, and esp. 142-7, with a discussion of the relationship between the *agri deserti* laws and the settlement in Palestine's eastern and southern deserts.

11 Z. Yeivin, 'Chorazin' in E. Stern (ed.), *New Encyclopedia of Archaeological Excavations in the Holy Land*, Jerusalem, 1993, hereafter *NEAEHL*, 302.

12 E.M. Meyers, 'Meiron', *NEAEHL*, 1024-27; E.M. Meyers, J.F. Strange and D.E. Groh, 'The Meiron Excavation Project: Archaeological Survey in Galilee and Golan, 1976', *BASOR* 230, 1978, 1-24.

13 E.M. Meyers, 'Nabratein', *NEAEHL*, 1077-9.

14 E.M. Meyers, 'Shema', 'Khirbet', *NEAEHL*, 1359-61.

15 L.I. Levine, 'Excavations at Horvat "Ammudim"', *Qadmoniot* 51-2, 1980, 107-10; D. Avshalom-Gorni and N. Getzov, 'Tell el-Wawiyat — 2001', *HA* 115, 2003, 1*; id, 'Tell el-Wawiyat', *HA* 113, 2001, 2*; D. Adan-Bayewitz, *Common Pottery in Roman Galilee: A Study of Local Trade*, Jerusalem, 1993, 239-43.

settlement history of the Galilee are far from clear and need careful re-examination.[16] It is popularly attributed to the growing Roman imperial pressure on the Jewish population in the form of anti-Jewish legislation, but there is no factual basis for this.[17] In fact, there is no proof that the Roman government took any measures against Jews in general or Galilean Jewry in particular. Modern archaeological research in the synagogues of this region shows that the situation was much more complex. These Galilean synagogues, whose establishment has recently been re-dated to the late fourth and early fifth centuries,[18] precisely the time when many of the neighboring villages were depopulated, refute the explanation that an anti-Jewish agenda caused the flight from that area. The synagogues in such Galilee and Golan settlements as Bar'am, Arbel and Qazrin[19] reflect a thriving society well able to finance the impressive public buildings whose remains can still be seen today. These were by no means congregations pushed to the lower end of the socio-economic scale. The phenomenon of decline stands in utter contrast to other settlements in this region such as Meroth or Capernaum,[20] which were at a nadir during the late fourth and early fifth centuries. The stark contrast between the history of the village of Meron, which was deserted by the end of the fourth century, and the prosperity of the adjacent, thriving village of Bar'am, with its beautiful synagogue, gives rise to some obvious questions.

The settlement regression in the eastern Galilee is particularly striking when compared with the parallel process that took place on the Golan, another densely populated Jewish region. Recent excavations and surveys on the lower Golan show that the late fourth and early fifth centuries were categorically not a time of decline, but rather of prosperity and development. While the slowdown in the Galilee reached its climax in the period between 350 and 450 CE, the Golan concurrently enjoyed an era of stability and a population boom.[21] The contrast between the predicament of those adjoining regions is

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16 J. Geiger, 'The Last Jewish Revolt Against Rome: A Reconsideration', *SCI* 5, 1979/80, 250-7; G. Stemberger, *Jews and Christians in the Holy Land: Palestine in the Fourth Century*, Edinburgh, 2000, 161-84.

17 On Roman legislation regarding the Jews, see: A. Linder, *The Jews in Roman Legislation*, Detroit, 1987, 67-77.

18 J. Magness, 'Synagogue Typology and Earthquake Chronology at Khirbet Shema', Israel', *JFA* 24, 1997, 211-20; M. Aviam, 'The Ancient Synagogues of Bar'am', *Qadmoniot* 124, 2002, 118-25 (Hebrew).

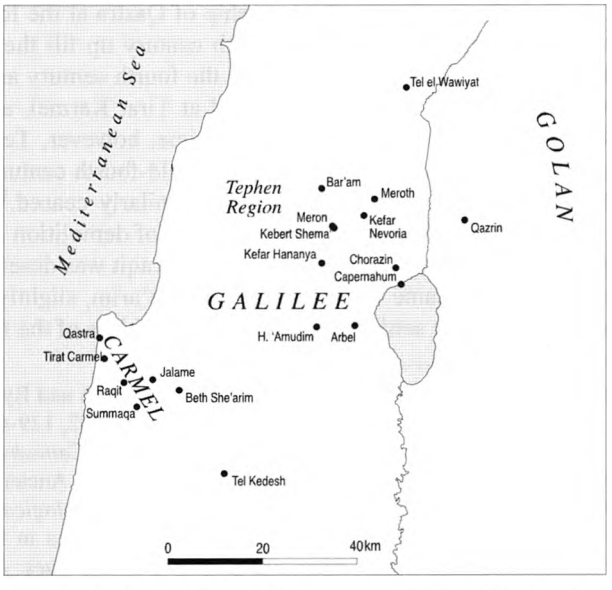
19 Meroth: Z. Ilan and I. Damati, 'The Synagogue and Beth-Midrash at Ancient Meroth', *Qadmoniot* 79-80, 1987, 87-96 (Hebrew); Bar'am: M. Aviam, 'The Ancient Synagogues'; Arbel: Z. Ilan and A. Izdarechet, 'Arbel — An Ancient Town in the Eastern Lower Galilee', *Qadmoniot* 87-88, 1989, 111-17 (Hebrew); Qazrin: Z.U. Ma'oz and A. Killebrew, 'Ancient Qasrin: Synagogue and Village', *BA* 51, 1988, 5-20, or the synagogue at Dabiyye, which was erected shortly after 395: D.T. Ariel, 'Coins from Dabiyye Synagogue', *Atiqot* 20, 1991, 74-80.

20 Meroth: Z. Ilan and E. Damati, *Meroth: The Ancient Jewish Village*, Tel Aviv, 1987 (Hebrew); Capernaum: S. Loffreda, 'Capernaum', *NEAEHL*, 292. The settlement's synagogue was built at the end of the fourth or the beginning of the fifth century.

21 See for example the settlement of Kanaf: Z.U. Ma'oz, 'Kanaf, Horvat', *NEAEHL*, 847-50, which was founded during the second half of the fourth century and reached its height at the end of the fifth century or the beginning of the sixth century. On this phenomenon, see H. Ben David, *Settlement in 'Lower Golan' During the Hellenistic, Roman and Byzantine*

apparent and may be attributed to migration. Some scholars conjecture that the Jews of Kafer Nevoraia, Meron and Thecoa migrated to the Golan, joining existing villages or establishing new ones. Yet this suggestion fails to explain the motivation for this migration. Why did the Galilean Jews trade their relatively comfortable living conditions and stable settlement routine for life on the lower Golan, with its characteristically harsh environmental conditions?[22] While the inhabitants of other parts of the Golan, mainly the north and south, enjoyed better circumstances and possessed larger tracts of land suitable for intensive agriculture, the lower Golan was notorious for its almost complete lack of fertile soil and historically scant population.[23] Nevertheless, archaeological evidence shows that the lower Golan witnessed a settlement impetus during the fourth and fifth centuries, which may be partially attributed to internal

Late Fourth and Early Fifth Century Settlement in North Palestine



demographic growth in that region, but more to immigration, presumably from neighboring areas. I would like to suggest that the main reason for this migration was not pressure on the Galilee but the attractiveness of the new destination, the Golan. Despite its prohibitive conditions, the settlers were drawn to the Golan for its land potential. The

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Periods, Ph.D. Dissertation, Bar Ilan University, 2000 (Hebrew). Nevertheless, it is important to remember that the Golan also witnessed the phenomenon of settlement desertion or decline in intensity during the fourth-fifth centuries. See for example the settlement of Giv'at Orha: Z.U. Ma'oz, 'Giv'at Orha', *NEAEHL*, 521-3; or Tell Jokhdâr: D. Urman, 'The Golan', *HA* 30, 1969, 2-4; id., 33, 1970, 11-12.

22 M. Hartal, *The Material culture of Northern Golan in the Hellenistic, Roman and Byzantine Periods*, unpublished dissertation, Jerusalem, 2003 (Hebrew).

23 H. Ben David, 'Oil Presses and Oil Production in the Golan in the Mishnaic and Talmudic Periods', *Atiqot* 34, 1998, 1-61 (Hebrew).

immigrants' ability to turn the vacant barren soil of the Golan into fertile land, mainly through betterment projects on the basalt soil, created new agricultural and settlement opportunities.[24]

Yet migration to the Golan was only part of a wider phenomenon that also involved other parts of northern Palestine during Late Antiquity. The steep mountains around Meron were settled for the first time, as were the Menasha highlands and the Carmel region, which I will discuss later.[25] These areas were characterized by harsh environmental conditions, but they were still sites of uninterrupted settlement momentum during Late Antiquity. Many parts of the western Galilee, a rocky and dissected region, were first settled during the late fourth and early fifth centuries.[26] The Tephen region provides a good example of this phenomenon, as, in the absence of permanent water sources or suitable agricultural soil, it had remained uninhabited before Late Antiquity.[27] The Carmel region also featured prominently in the habitation shift during that period, followed by a process of decline. Excavations in the township of Qastra at the foot of the Carmel show that the place flourished from the late fourth century up till the end of the sixth century.[28] Settlement in Yad Binyamin resumed in the fourth century and ceased only at the end of the eighth century.[29] The same occurred at Tirat Karmel, a village that was established during the third century.[30] At the same time, however, Tel Kedesh, on the eastern slopes of the Carmel, was deserted during the mid-fourth century.[31] Later during that century, glass manufacturing in nearby Jalame similarly ceased.[32] The village of Sumaqa, in the heart of the Carmel, underwent a process of demolition and depopulation at the beginning of the fifth century.[33] The settlement in Raqit was deserted in the middle of the fifth century,[34] and the same was true for Beth She'arim, slightly east of the Carmel, which witnessed a decisive settlement decline in the middle of the fourth century.[35]

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24 C.M. Dauphin, 'Jewish and Christian Communities in the Roman and Byzantine Gaulanitis: A Study of Evidence from Archaeological Survey', *PEQ* 114, 1982, 129-42.

25 M. Aviam, 'Large-Scale Production of Olive Oil in Galilee', *Cathedra* 73, 1994, 26-35 (Hebrew); id., 'Olive Growing and Viticulture in Upper Galilee in Ancient Times', *Israel — People and Land* 22, 1986-7, 197-210 (Hebrew); Z. Gal, *Archeological Survey of Israel, Map of Gazit* 46, Jerusalem, 1991, 13*; id., 'Ancient Synagogues in the Eastern Lower Galilee', in D. Urman and P.V.M. Flesher (eds.), *Ancient Synagogues: Historical Analysis and Archeological Discovery*, Leiden, 1995, 157-65; A. Onn, 'The Ancient Synagogue at Kafr Misr', *Atiqot* 25, 1994, 117-34.

26 E.g., N. Getzov, 'H.'Uza — 1991', *HE* 100, 1993, 16-9 (Hebrew).

27 Z. Lederman and M. Aviam, 'Rock-Cut Tombs from the Byzantine Period in the Tefen Region', *Atiqot* 33, 1997, 137-49 (Hebrew).

28 Z. Yeivin and G. Finkelsztein, 'Horvat Qastra' — 1993-1997', *HA* 109, 1999, 23*-27*.

29 S. Weksler-Bdolah, 'Yad Binyamin', *HA* 112, 2000, 98*-100*.

30 D. Lipkonski, 'Tirat Karmel (a)', *HA* 101-102, 1994, 44-5 (Hebrew).

31 E. Stern and I. Beit-Arieh, 'Excavations at Tel Kedesh (Tell Abu Qudeis)', *TA* 6:3-4, 1979, 1-25.

32 G.D. Weinberg and S.S. Weinberg, *Excavations at Jalame*, Columbia, MO, 1988, 3-4.

33 S. Dar, *Sumaqa: A Jewish Village on the Carmel*, Tel Aviv, 1998, 254-5 (Hebrew).

34 S. Dar, *Raqit: Marinus Estate on the Carmel, Israel*, Tel Aviv, 2003 (Hebrew).

35 The village was deserted during the second half of the fourth century: N. Avigad and B. Mazar, 'Beth She'arim', *NEAEHL*, 236-48, but was re-populated during the fifth or sixth centuries: F. Vitto, 'Byzantine Mosaics at Bet She'arim: New Evidence for the History of

A summary of what has been said so far indicates that at the end of the fourth century and the beginning of the fifth, northern Palestine was characterized by clear demographic-geographical mobility, whereby certain segments of the population abandoned their former habitats in favor of settlement in other regions despite their limiting geographical conditions.[36] This process was not limited to Palestine alone. A very similar phenomenon was evident in other parts of the Roman Empire as well, especially the eastern provinces bordering Palestine.[37] In pre-industrial societies, inter-regional migration was a rather rare occurrence;[38] moreover, archaeological information offers no clues hinting at the penetration of a new material culture into Palestine during Antiquity. This shows that the settlement process reviewed above was initiated from below, the outcome of local endeavors; it was not part of an external process enforced by the Roman government.

Why certain sectors of the population in Palestine preferred secondary regions over the well established areas in all likelihood has to do with the fact that in the new regions the settlers were able to find a potential supply of land that could be cultivated. More importantly, these plots of land were unclaimed by previous owners and could thus be cultivated and taken possession of by virtue of the claim that they would thus be settled and improved. For the Roman Empire, the flow of immigrants to Palestine's vacant regions had far-reaching consequences, both positive and negative. On the one hand, the Roman government may have wanted to encourage this process, as it significantly expanded the Empire's stretches of cultivated land and could augment taxes; on the other hand, migration to the periphery could make collection of those very taxes difficult. As a result, the Romans published tax laws, the most important of which are the *agri deserti* and *colonatus* laws, whose chief aim, I believe, was to tackle the new circumstances and deal with the new phenomenon of human mobility.

The Laws of *agri deserti* and *colonatus*

In 386 CE or thereabouts, Emperor Theodosius I issued a law concerning tenant farmers in Palestine:

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the Site', *Atiqot* 28, 1990, 115-46; Z. Safrai, 'Beth She'arim — A Jewish City in the Galilee', in Yi. Teper and Yo. Teper, *Beth She'arim: The Village and Nearby Burials*, Yagur, 2004, 51-70 (Hebrew).

36 This paper concentrates on northern Palestine and hardly deals with its central or southern parts. Nevertheless, it should be emphasized that these regions were characterized by far more stable settlement conditions. In these regions, as well as in Samaria, Judaea, the coastal plain and the Sharon, a wide process of settlement expansion occurred during the fourth and fifth centuries and not many settlements were deserted during this period.

37 The historical and archaeological material for those areas is vast and extensive. For North Africa, see D.J. Mattingly, 'Understanding Roman Landscapes', *JRA* 6, 1993, 359-66; id., *Tripolitania*, London, 1995. For Syria, see G. Tate, 'The Syrian Countryside during the Roman Era', in S.E. Alcock (ed.), *The Early Roman Empire in the East*, Exeter, 1997, 55-71. For Jordan, see S.T. Parker, 'The Byzantine Period: An Empire's New Holy Land', *Near Eastern Archaeology* 62:3, 1999, 134-81.

38 R.S. Bagnall and B.W. Frier, *The Demography of Roman Egypt*, Cambridge, 1994, 160-9.

> De Colonis Palaestinis. *Imppp. Valentinianus Theodosius et Arcadius AAA. Cynegio pp. 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* (*CJ* 11.51.1).[39]

Many scholars believe that the law was connected to the harsh economic conditions that prevailed in Palestine during most of Late Antiquity.[40] Meanwhile the countryside, they argue, was depopulated and impoverished by invasions and heavy taxation. Huge tracts of agricultural land were deserted, reverting to wasteland. Large estates swallowed up small farms, making big *latifundia*e the typical form of landowning. Roman trade came to a virtual halt due to soaring inflation and political turmoil, and towns in various parts of the empire were deserted, resulting in deepening destitution of the urban and rural populations.[41]

As for when, how or why the *colonus* of the principate, a voluntary tenant of the land free to move when his lease expired, chose to become the *colonus* of the Later Empire as a serf attached to the land by virtue of hereditary bondage — this issue has not yet been resolved.[42] What was it that compelled the emperors to reverse customs that had been in

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39 'As a law established by our ancestors, detaining *coloni* by eternal right, so that they are not allowed to depart from those places from which they collect harvest, or desert those fields that they once undertook to cultivate, in force in all other provinces, does not support the landlords in the province of Palaestina, we decree that in Palaestina too no colonus may rejoice in independence, as if he were a person *sui iuris*, free and vagrant, and could depart, but as in the other provinces he is to be held to the landlord so that he might not depart without punishment upon the one who receives him'; translated by M. Mirković, *The Later Colonate and Freedom*, Philadelphia, 1997, 129. The edition of P. Krueger, Berlin, 1892 adds a note: *iungendae videntur* 11.59.7 *et quae ibi laudantur*. This refers to *CJ* 11.59.7: *Idem AAA. et Arcadius A. Cynegio pp.*, which equals *Codex Theodosianus* 5.13.30. In *CJ* 11.59.6 the emperors referred to as *idem* in 7 appear as *Imppp. Gratianus Valentinianus et Theodosius AAA.* (with note: =*Th.* 10, 3, 4: *fortasse iungenda est* 11, 71, 2). *CJ* 11.59.7 is dated: *D. viii k. Nov. Constantinopoli Honorio np. et Euodio conss.*, which corresponds to October 5, 386 C.E. The addressee is Maternus Cynegius, praetorian prefect of the Orient from 384 to 388, mentioned by Libanius, *Or.* 49.3.

40 G. Alon, *The Jews in Their Land in the Talmudic Age 70-640 C.E.*, Jerusalem, 1980, 31-2; M. Avi-Yonah, *The Jews Under Roman and Byzantine Rule: A Political History of Palestine From the Bar Kokhba War to the Arab Conquest*, London, 1976, 89-136; D. Sperber, *Roman Palestine 200-400: The Land*, Jerusalem, 1978, describes the third and fourth centuries as witnessing a series of continuous economic crises. See also P. Schäfer, *The History of the Jews in Antiquity*, Luxemburg, 1995, 170-5.

41 Stemberger, *Jews and Christians*, 14-17.

42 D.J. Crawfoot, 'Imperial Estates', in M.I. Finley (ed.), *Studies in Roman Property*, Cambridge, 1976, 46-7; D.P. Kehoe, *The Economics of Agriculture on Roman Imperial Estates in North Africa*, Göttingen, 1988, 71-116; A. Cameron, *The Later Roman Empire*, Cambridge Mass., 1993, 107-12.

force for centuries and thereby fundamentally alter the nature of those laws?[43] If the theory that the *colonatus* laws were issued in response to the difficulties in enforcing tax collection during the third and fourth centuries is indeed correct, then the specific law from the late fourth century implies that there was a general shortage of agricultural labor in Palestine in Late Antiquity. Tenants were hard to come by and those who were dissatisfied with their position could easily find a different landlord willing, sometimes even eager, to hire them.

These laws were therefore traditionally regarded as reflecting a crisis economy. Here I wish to take issue with this hypothesis and suggest that they were issued in the context of a reality of economic prosperity, as I intimated earlier. I submit that the Roman legislation sought to contend with an extensive and disturbing phenomenon that characterized Palestine during Late Antiquity, of settlers, including the *coloni*, who were abandoning their traditional habitat in favor of settlement in the periphery. The laws of *coloni* represent the Roman administration's method of facing up to this situation, which threatened stability in Palestine.

The first clear evidence that *coloni* were bound to their farms comes from a general law passed by Emperor Constantine in 332 CE, although the prohibition on tenants leaving their estates may have been in force already after the Diocletianic reforms at the end of the third century.[44] The significance of this law lies not only in its forcing the tenants to return to their former owners, but in its obliging the new owners to pay to the Treasury the prescribed taxes for runaway tenants. This edict was complemented by the late fourth-century law issued specifically in the context of Palestine, which stipulated that landless tenants presented the danger of tax evasion because of their mobility. The duplication of the laws indicates that the trend was indeed quite popular.

Another set of Roman laws related to land issues deals with 'deserted lands' (*agri deserti*). This legislation was traditionally viewed as linked to the granting of legal ownership over deserted land.[45] However, a reassessment of the *agri deserti* laws indicates that the Roman administration engaged in an ongoing campaign to induce people to take on abandoned land via emphyteutic (or quasi-permanent) leases by offering them temporary tax exemptions. Most of the *agri deserti* laws involved the emperor's private estates and were enacted during the fourth century, reflecting growing awareness of the state of these areas. The big question is the reciprocal effect of these somewhat haphazard laws on the economic and settlement circumstances prevailing in Palestine at that time.

Any investigation of the *agri deserti* must begin with Emperor Pertinax's reforms. In 193 CE he decreed a law 'to make over all land in Italy and the provinces which was unfarmed or completely idle in any quantity to whoever was willing and able to farm

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43 For a summary of different opinions regarding the law, see R. Clausing, *The Roman Colonate: The Theories of its Origin*, New York, 1925; A.J.B. Sirks, 'Reconsidering the Roman Colonate', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* 110, 1993, 331-69; Pasquale Rosafio, *Studi sul colonato*, Bari, 2002.

44 See A.H.M. Jones, 'The Roman Colonate', *Past and Present* 13 ,1958, 1-13; S. Williams, *Diocletian and the Roman Recovery*, London, 1985, 126-39.

45 For an updated summary of the *agri deserti* rules, see C.R. Whittaker, 'Rural life in the Later Roman Empire', in A. Cameron and P. Garnsey (eds.), *The Cambridge Ancient History*, XIII: *The Late Empire, A.D. 337-425*, Cambridge, 1998, 281-5.

it'.[46] Like many other later *agri deserti* laws, this law, too, was intrinsically connected to the imperial estates and public land, whose vast uncultivated and possibly also vacant areas were now being offered to the community.[47] This property, particularly in the provinces, presented a constant challenge to the Roman Treasury, which sought to make it more profitable. Many earlier laws linked to the imperial *res privata* restricted movement of imperial tenants and slaves and prevented their conscription on the grounds that their work was indispensable. This shows how central this issue was for the emperors.

The *agri deserti* laws were not a monolithic block of regulations. Rather, they were issued piecemeal in reaction to specific occurrences. They should consequently be viewed under different categories.[48] The current discussion is focused on the laws that remitted taxes on uncultivated land, thereby encouraging farmers to cultivate peripheral barren imperial land which, when fallow, yielded no tax. Vast parts of the Roman Empire in Late Antiquity, especially in the empire's eastern provinces and Palestine,[49] were characterized by a constant demographic shift towards secondary lands, where huge tracts of infertile land were cultivated for the first time. It is my belief that some of the *agri deserti* laws were designed against this backdrop in a bid to encourage, legitimize and supervise this phenomenon. In my understanding, at least some parts of *agri deserti* laws should be linked to the expanding economy and to the settlement growth that characterized the region at that time. This settlement momentum and human mobility, which also involved the *coloni*, posed a threat to the Roman tax-collecting system and to the landowners who competed with each other and the system for tenant labor. The Roman tax-collecting system was based on strict property registration methods.[50] Human mobility made the Roman *fiscus* much more complicated and vulnerable and this, in turn, led to the enactment of the *coloni* and *agri deserti* laws.[51]

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46 Herodian, 2.4.6, translated by C.R. Whittaker, 'Agri deseri', in M.I. Finley (ed.), *Studies in Roman Property*, Cambridge, 1976, 140.

47 *Ager publicus* in A. Berger, *Encyclopedic Dictionary of Roman Law*, Philadelphia, 1953; F. Millar, *The Emperor in the Roman World (31 BC — AD 337)*, Ithaca, NY, 1977, 621-3.

48 See a summary of the laws in T. Lewitt, *Agricultural Production in the Roman Economy A.D. 200-400* (BAR International series 568), Oxford, 1991, 73-83; see also C.R. Whittaker, 'Colonate', in G.W. Bowersock, P. Brown and O. Grabar (eds.), *Late Antiquity: A Guide to the Postclassical World*, Cambridge, MA, 1999, 385-6.

49 See, e.g., C. Foss, 'The Near Eastern Countryside in Late Antiquity: A Review Article', in J.H. Humphrey (ed.), *The Roman and Byzantine Near East: Some Recent Archaeological Research* (*JRA* Supplement 14), Ann Arbor, 1995, 213-34; Tate, 'The Syrian Countryside', 55-71.

50 On land taxation in the late Roman Empire, see W. Goffart, *Caput and Colonate: Towards a History of Later Roman Taxation*, Toronto, 1974; R.J. Buck, *Agriculture and Agricultural Practice in Roman Law*, Wiesbaden, 1983, 40-3.

51 No measures were taken to restrict the movement of freeholder peasants, only the *coloni*. As opposed to the scores of laws that dealt with restriction of bonded *coloni* to their masters, there are but few codes which forced freeholders to return to their villages. The reason for this inequality is that there was presumably less need to enforce the law against freeholders who had cultivated prime lands for generations. In contrast to the *coloni*, who found in the secondary areas new opportunities, these established peasants would not wish to abandon their holdings.

Summary

Once the dust had settled after the two Jewish rebellions, Palestine enjoyed a period of prosperity. From the second century through the sixth century, Palestine experienced a period of calm with only occasional interruptions in the form of wars, plagues or earthquakes.[52] For nearly five hundred years, there was population growth coupled with an increase in the number of villages and in the proportion of cultivated land. The local inhabitants utilized these favorable circumstances to devote themselves to nurturing their culture and settlements, and thus enjoyed the fruits of this prosperity.

The two legal measures discussed in this paper, regarding *colonatus* and *agri deserti*, are related to the ways in which the Romans dealt with the problem of settler migration in Late Antiquity, including the bonded tenants who moved to the periphery. The population growth prompted many to head towards the fringes, where they nevertheless had to contend with swamps, secondary soils and water shortages. This being the state of affairs, it comes as no surprise that the laws of *colonatus* and *agri deserti* in fact complement each other: on the one hand, the Roman legislation encouraged farmers to work the forbidding grounds and pay taxes on them, but on the other hand, the *coloni* were prevented from forsaking their owners' lands, as this trend was perceived as a major threat to the Roman tax-collecting system and the stability of the Empire. The legislation's main objective was simply to enhance tax collection. Indeed, the new system prevailed through the fourth century: thus the situation in which massive waves of runaway tenants were deserting their traditional habitats became totally unacceptable. The practice of binding tenants to the land was probably initiated pursuant to Diocletian's reforms, once demographic mobility became more noticeable.[53] The incentive to legalize the situation and simultaneously tackle the troubling phenomenon of deserted lands remained a burning issue well into the fourth century. The bonding of the *coloni* to their estates must therefore be seen as a product not of settlement and economic decline, but of changes in the Roman tax system. There is no convincing archaeological or documentary evidence of widespread agricultural or population decline in Palestine. Therefore, the laws that had previously been interpreted as substantiating that decline should be regarded as the imperial response to the problems posed by the changing tax systems and settlement patterns during Late Antiquity. There was no large-scale land desertion in Late Antique Palestine, no radical change in the size of production units, nor an end to surplus production and trade. In fact, as I demonstrated earlier, the opposite was true: Palestine experienced one of its most outstanding periods of florescence. Throughout

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52 D.H.K. Amiran, 'A Revised Earthquakes-Catalogue of Palestine', *IEJ* 1, 1950-51, 223-46; id.,'Location Index for Earthquakes in Israel since 100 B.C.E.', *IEJ* 46, 1996, 120-30.

53 It seems that Diocletian's administrative and military reorganization of the provinces had a measurable impact on settlement in Palestine. See E.M. Smallwood, *The Jews Under Roman Rule: From Pompey to Diocletian*, Leiden, 1976, 533-8. Some fiscal measures were adopted during that period, as attested by boundary stones relating to a number of villages in the Hula Valley, in the northwestern part of the Galilee. Y. Aharoni, 'Three New Boundary Stones from the Western Golan', *Atiqot* 1, 1955, 109-14; id., 'Two Additional Boundary Stones from the Hula Valley', *Atiqot* 2, 1959, 152-4. This marshy frontier area underwent land improvements during the period in question. See now also D. Siyon and M. Hartal, 'A New Tetrarchic Boundary-Stone', *SCI* 23, 2003, 233-9.

Late Antiquity, people were on the move, seeking alternative settlement sites. The more stable and desirable settlement areas (such as the eastern Galilee), with their ample supply of good soil, had been occupied for generations, the reserve of rich landowners. This reality forced the settlers to set up camp in marginal or peripheral areas, such as the lower Golan or the Carmel. Roman legislation allowed peasants to occupy and subsequently own uncultivated land once they had developed it and paid their taxes. The farmers and the government shared a mutual interest: to clear and expand the cultivated areas. The farmers seized the opportunity to cultivate previously unclaimed areas. The central regime, for its part, was now entitled to collect more taxes from these farmers and thereby improve the Roman Empire's economic situation.

It is nonetheless important to emphasize that the archaeological evidence discussed in this paper comes from Palestine alone, whereas the legal sources refer partly to Palestine but mainly to other regions of the Empire. It seems likely, therefore, that additional research in other parts of the Roman Empire and a reassessment of the findings there might offer us a better understanding of the economic and social background to the enactment of the Roman laws pertaining to *agri deserti* and *colonatus* throughout the Empire.

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