

Taxation and the Formation of the Late Roman Social Contract

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Abstract

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“Taxation and the Formation of the Late Roman Social Contract” offers a novel interpretation of the function of taxation in late Roman society. I argue that the tax policies introduced by Diocletian at the end of the 3rd century facilitated the negotiation of a social contract between the rulers and the ruled that stipulated that all Roman citizens had rights under and responsibilities to the Roman Empire. The late Roman social contract contrasted with the social contract of the Principate, which sought to reduce the responsibilities on the emperor’s political coalition while also enabling this group to enjoy more rights under the empire. Taxation was, on the one hand, one of the citizens’ responsibilities, whose specific provisions, rates, and institutions were subject to intense negotiation between the ruler and the ruled. On the other hand, taxation functioned as a forum where state actors and taxpayers interacted, engaged in performances of the “public transcript”, and negotiated with each other, and as a medium for communication that enabled the emperor to give real world realization to his values, ideals, and normative conceptions of citizenship. Thus instead of interpreting late Roman sources for taxation individually as accurate statements of the nature of late Roman taxation, I situate them in a larger discursive context that led to a broad consensus on the social contract and the nature of citizenship.

The first chapter builds on recent work by Walter Scheidel, Gilles Bransbourg, Andrew Monson, and Carlos Noreña and demonstrates that tax policies under the Principate worked to reinforce and make visible the social and legal hierarchy that underpinned the social contract of the Principate. Tax expenditures by the state on senators, soldiers, the local elite, and the city of Rome created financial incentives for these groups to support the Roman monarchy.

Chapter 1 also serves as a point of contrast for chapters 2 and 3. In chapter 2 I reconstruct Diocletian’s vision for state-society relations from his imperial constitutions, arguing in particular that Diocletian continued a 3rd century development in which all Roman citizens were expected to be concerned with the survival of the emperor and empire. In addition to requiring his subjects to demonstrate their commitment to the empire through empire-wide displays of traditional religious devotion, as 3rd century emperors had, Diocletian proliferated obligations on certain occupations, decurions, tenant farmers, and, most importantly, taxpayers. At the same time, Diocletian insisted that his policies would be fair, rational, useful, and legal. Chapter 3 examines Diocletian’s tax policies in greater detail and concludes that by and large they reflected the vision for state-society relations outlined in chapter 2. Taxation under Diocletian would be fair, rational, useful, and legal, and, most importantly, it would locate individual taxpayers in a universal hierarchy of fiscal responsibility that defined each taxpayer as owing a discrete portion of the state’s budgetary requirements.

Chapter 4 then explores the impact that these tax policies, as a powerful medium for communicating imperial ideology, had on taxpayers' conception of the empire and their place in it. My close reading of 477 Egyptian papyri, including many valuable petitions, demonstrates that petitioners asserted their acceptance of the legitimacy of their fiscal burdens, only if those burdens corresponded to the petitioners' census documents. This acceptance had two main consequences. First, it confirmed the legitimacy of the imperial ideology, outlined in chapters 2 and 3, that in part structured *fiscalité* under Diocletian. Second, petitioners' payment of their taxes enabled them to argue that they were enthusiastic members of the imperial community who deserved the state's legal protection. This second claim transformed the label "taxpayer" into a positive moral quality of an ideal citizen. In this way, petitioners tried to use their payment of taxes to secure for themselves legal rights in the social contract.

If the observations from chapter 4 represent a constructive engagement with and acceptance of Diocletian's ideology and policies, chapter 5 is an example of the polemic criticism the emperor's policies could provoke. In his *Divine Institutes* and *On the Deaths of the Persecutors* Lactantius argues that the Tetrarch's persecution of Christian, which deprived them of the state's legal protection, revealed the ideology and institutional basis of the Tetrarchy to be unjust. On closer examination, other Tetrarchic policies appear unjust as well. Tapping into a deeper Graeco-Roman philosophical tradition, Lactantius demonstrates that Tetrarchic tax policies had a deleterious effect on social relations in the Roman Empire. Contrary to justice, taxation introduced inequality, war, violence, and discord. It would be more just, Lactantius maintained, for Romans to give charity instead, because charity would reduce inequalities and strengthen the bonds of Roman society. Rather than being the outpourings of righteous indignation, however, Lactantius' polemics should be read, like the petitions from chapter 4, as a contribution to the negotiation of the late Roman social contract.

My observation that the communicative nature of 4th century tax policies facilitated the negotiation of a social contract represents an advancement in scholarly thinking about taxation in the later Roman Empire because it reveals the ideological and ethical pronouncements that tax policies and statements about taxation could make. Taxation enabled the emperor and his subjects to communicate their conception of state-society relations and to critique what they saw as flaws in others' conceptions. This observation also has analytical value outside the narrow temporal bounds of dissertation. For example, when viewed through the lens of my dissertation, the emperor Julian's reduction of the Gallic provinces' tax rate should be seen as his attempt to communicate his commitment to a just social contract in advance of his planned revolt against Constantius II. Julian's tax policies signaled to the whole empire that he intended to be a prototypical good emperor. Herein lies the main take-away from this dissertation: when emperors, intellectuals, and petitioners mentioned taxation, they were talking about much more than taxation; they were making normative claims about how best to organize their society.

Dedication

To my Mom and Dad, and my sisters.

Acknowledgements

As a historian I have learned to see historical events as contingent, and the completion of a PhD dissertation is no exception, for it would not have been possible without the encouragement, mentorship, and timely intervention of countless people. And like other historical events, it is difficult to pinpoint a single moment and conclude confidently that it was then that completing a PhD became possible or even inevitable. I could point to my 6th grade teacher Mr. Gene Dolby who gave me detention for getting a D in Social Studies as the moment when I learned to take school more seriously. I could also thank Matthew Pearce and Tobin King, my high school swim coaches, for teaching me to work hard and diligently. I also owe debts of gratitude to the Carman and Racine families for creating a nurturing community in which to grow up. But for brevity's sake, it was really in the past 12 years, five as an undergraduate at the University of Michigan and seven as a graduate student at the University of California Berkeley, that I gained the skills, techniques, and knowledge base of a Roman historian.

I first want to thank the professors and students of the Classics Department at the University of Michigan, without whose encouragement I would not be the person I am today. In particular, Professor Sara Ahbel-Rappe first got me hooked on the Roman world in a fascinating course on pagans and Christians, and was later an invaluable mentor for my senior thesis on Neoplatonic thinkers. Professor David Potter, both through his teaching and scholarship, has taught me how to think like a historian and present history as a good story. Professor H.D. Cameron helped me through the difficult Greek of Thucydides and provided a warm environment in which to think through my historical interests. Drs. Netta Berlin and Gina Soter were also much more than my Latin and Greek teachers. I cannot thank them enough for their generosity and unmatched academic advice and personal encouragement. Again, I don't think it's possible to overstate how important the Classics Department at the University of Michigan was to me. I truly believe that my life has turned out more fulfilling because of them.

The University of California Berkeley has been a wonderful home for the past seven years, and through the vicissitudes of budget cuts, protests, and acrimonious debates, many people have been reliable sources of inspiration, mentorship, and friendship for me. Professor Carlos Noreña, the chair of my dissertation, has been the paragon of professionalism, constancy, and clear-sightedness. His perceptive critiques have always improved my thinking and kept me on the right track. From my first day at Berkeley Professor Susanna Elm, another committee member, has been a steady source of intellectual inspiration. In particular, I have learned from her the importance of reconstructing the social, political, and economic context of Roman intellectuals and their ideas. The final member of my committee, Professor Todd Hickey, taught me how to make effective use of papyri, an importance source of evidence in my dissertation. He also organized a panel on behalf of the American Society of Papyrologists at the 2016 Society for Classical Studies Annual Conference, at which I presented a version of chapter 4 of this dissertation. If there is one thing that saddens me about graduating, it is that there will be fewer opportunities to get to know these incredible people better.

Beyond my immediate dissertation committee several others have had powerful influences on my personal and academic development. Professor Ari Bryen, as of this writing at Vanderbilt University, introduced me to Roman law and encouraged me to consider how ordinary Romans used the laws and legal institutions of the empire. Until that point, my work

had focused on elite intellectuals; afterwards, I learned to be much more attuned to the influence ordinary Romans could have on the structures of empire.

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The Robbins Collection at the UC Berkeley School of Law and its stalwart librarian Jennifer Nelson provided me with the best study environment on campus, due in no small part to its unsurpassed Roman law collection, and with gainful employment during my graduate school years. This dissertation could not have been written without the Robbins Collection.

In 2012 I had the good fortune to travel to Vancouver to attend the Graduate Workshop on New Fiscal Sociology organized by Professors Monica Prasad, Isaac Martin, and Ajay Mehrotra. Not only were they generous in their travel grant for the trip, but they also provided the workshop's participants with a set of rigorous sociological tools with which to approach taxation, and with a collegial atmosphere in which to present our ideas. At a panel organized by them at the annual conference of the Social Science History Association in Vancouver, I presented the seeds of what was to become the first section of chapter 5.

When I was looking at graduate schools it was recommended that I keep in mind that although the faculty would be indispensable to my intellectual and personal growth, I would be spending most of my time talking to and learning from my fellow graduate students. Norman Underwood has been a dear friend and a constant source of good humor and sound scholarly wisdom. Chris Bonura, my roommate for the past five years and a fellow graduate student, I thank for late nights of stimulating conversations about history. Professor David DeVore, soon to be at California State Polytechnic University at Pomona, taught me how to write like a scholar, and read early versions of the ideas presented below. And Dr. Michael Taylor, as of this writing Lecturer at Santa Clara University, has been a valuable example of scholarly professionalism.

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Chapter 1: Introduction: The Tax System(s) of the Principate

My dissertation is about taxation and the politics of the Roman Empire. In particular, it is about how the fiscal system inaugurated by Diocletian and developed by his successors created new opportunities for political interaction between the Roman state and society that facilitated the emergence of what I will call a new, late Roman social contract. The gears of the late Roman fiscal system began turning at the highest levels of the imperial administration when the emperor and his advisors gathered to determine the needs of the state and how to meet them. On the basis of the most recent census data, they decided how taxes would be assessed, distributed, collected, and transported, and how they would spend revenues. From here orders went out to the praetorian prefects, and thence to the vicars, provincial governors, and individual cities, estates, and villages, detailing who owed what to the state treasury. In the process the emperor articulated his rationale for levying taxes; his administrators alerted him to difficulties they encountered; intellectuals decried injustices inherent to the fiscal system; cities and villages debated who would serve as that year's annual liturgical officials; and taxpayers struggled to collect the sums they owed.

In short, as the one experience shared by all the empire's diverse inhabitants, albeit not equally, taxation holds the key to understanding what it meant to live as a member of the Roman body politic.¹ Decisions about taxation, made in far away places by rarely seen emperors, forced Romans to ask, Did the emperor have the authority to tax them? Did they agree with the emperor's rationale for taxing? Did they get anything in return for their taxes? Did the state's treatment of them justify their paying taxes? Were their neighbors paying their fair share? From Cicero to Salvian, many Romans answered these questions in the negative.² In the *Annals* (4.6), Tacitus mentions moderate taxation only as a way of contrasting the early, benign character of Tiberius' reign with its true, evil character, while Cassius Dio (78.9) criticizes Caracalla's fiscal measures because they redistributed money from senators to soldiers to fight needless wars. Taxation was such an evocative topic to Romans that Lactantius felt that the Tetrarchs' fiscal policies warranted being compared favorably with their persecution of Christians.³ Romans' complaints about taxation were so pervasive and persuasive, in fact, that even today, conservative American pundits can warn that just as high taxation was one reason for Rome's social, moral, and political decline, so too might the United States fall victim to high taxes and big government.⁴ These sorts of logics are precisely what we are interested in, for they reveal the values, anxieties, and perceptions that, at least in part, structure public life. Of the Roman Empire, one scholar has remarked that "complaints about taxation and the perceived injustice and violent nature of tax collection were not a new feature of the late Empire. If anything, they

¹ Eck (2000), 282: "Taxation was the only area in which virtually every provincial, whether a Roman citizen or not,

² E.g. Cicero, *De Officiis* II.74 and Salvian, *De Gub. Dei* V.7

³ See ch. 5.

⁴ Bartlett, Bruce. (1994). "How Excessive Government Killed Ancient Rome." *Cato Journal* 14.2, 287-303; Black, Simon. "Taxes Brought Down The Roman Empire, And They'll Do The Same To America." *Business Insider*, Apr. 18, 2012; Salanitri, Roseann. "Rome v. America: When Nations Die." *Conservative News and Views*, Jan. 4, 2013; Federer, Bruce. "America's Eerie Parallels to Downfall of Rome." *American Minute*, Sept. 3, 2015. For a political scientific study of the "tea party" phenomenon see Skocpol & Williamson (2012).

were rather a standard motif of the Roman, empire-wide discourse on state-citizen relations and the tension and opposition between classes and social groups.”⁵

I will proceed from the propositions that taxation created intense interactions and communication between state and society, and that we can gain an understanding of how Romans⁶ thought of state-citizen relations, indeed, the “fiscal (social) contract”⁷, by paying attention to what they said about taxation. Focusing on the period between the accession of Diocletian and the death of Constantine, a moment when taxation was the subject of particularly heightened rhetoric and emotion not only among contemporaries, but also certain modern scholars, I will argue that the system of taxation established by Diocletian facilitated the emergence of a new social contract in which both the emperor, as the head of the state, and each of his citizens had certain legal rights and responsibilities to the empire. For his part, Diocletian asserted in his constitutions that he would guarantee good and fair governance, and that each citizen had the duty to contribute his labor, money, and even blood to the preservation of the Roman Empire. His subjects responded in their petitions that they would pay their taxes if the state protected them and their property from arbitrary violence and exactions, especially by state actors. This new social contract, emphasizing rights *and* responsibilities, contrasted with the social contract of the Principate, which defended the legal and social privileges of the emperor’s core political demographics by shifting tax burdens away from and tax revenues toward them, while imposing tribute on conquered communities. The social contract of the Principate sufficed to end the bloodletting of the late Republic and establish the institutional framework and political consensus required for monarchical rule by emperors, but it did not enable the state to fund extraordinary efforts in defense of the empire. The compromise social contract reached by Diocletian and his subjects created a moral and ideological rationale for a regular system of taxation and for taxpayer compliance that could have helped the state increase its net revenues. Thus, we can detect the development of a late Roman “tax state” out of the hybrid model of the Principate characterized by tribute, irregular taxation, and domain rents.⁸

The argument is divided into six parts. In the rest of this introduction I outline the “architecture” and values of the taxation system of the Principate in order to highlight its contrast with the tax system inaugurated by Diocletian. I will build on recent work to argue that the taxation system of the Principate was akin to a tributary system, supplemented by irregular taxes and domain rents. This system created a social contract in which redistributed tax revenues to the city of Rome, the aristocracies of the empire, and the armies, and rewarded social and legal

⁵ Ziche (2006), 132

⁶ I have chosen the deliberately vague term “Romans” to refer to the inhabitants of the geographical space governed by the Roman state. They did not represent, however, a proto-nation or a movement of self-determination, but a myriad of distinct communities negotiating their particular relationship to their distant autocratic rulers. For difficulties with the term “Roman” see Barrett (1997) and Revell (2009).

⁷ Moore (2004), 299: “the assumption or expectation that there is a causal connection between (1) the dependence of governments on broadly levied taxes, rather than other sources of revenue, and (2) the existence of the kinds of binding constraints on governments and institutionalized political representation that constitute the foundations of liberal democracy. Very crudely, relative to other types of states, tax states will tend toward accountable, representative government. This I will term the fiscal (social) contract proposition.” Conversely, a state that relies on tribute and revenues from the ruler’s domain will tend toward greater ruler autonomy and less bargaining power for taxpayers. See also Martin, Mehrotra, & Prasad (2009) for the relationship between taxation and the social contract.

⁸ For the definitions of “tax state” and its implications for social contracts see discussion below.

privilege with tax exemptions. This system reinforced and made visible a complex hierarchy of legal and social difference, in contrast to the more universal system of the later centuries.

In chapter 2 I will show that, as part of his greater effort to strengthen the institutional capacity of the Roman state, stabilize the empire after the chaos of the 3rd century, and improve governance, Diocletian promoted a new, more universal vision for state-society relations that bound both state and society together in a common destiny and required each Roman to contribute his fair share. Diocletian and his administration would defend the empire and enforce traditional Roman law and values (rationality, fairness, beneficence) in their policies, and Roman citizens, for their part, would observe their cultural traditions, contribute money, join the army (or pay for a recruit), perform liturgies, or serve in strategic industries, such as shipping grain to the capitals. Thus, the social contract of the later Roman Empire was based on the idea of a government more responsive to its citizens and a more universal concept of citizenship that emphasized citizens' obligations to the empire over the privilege-based model of the Principate.

Chapter 3 will argue that taxation was the central component of this new social contract of the later Roman Empire. We will see that Diocletian consciously instituted a more universal fiscal system, built on a universal census and three universal administrative concepts, *iugum*, *caput*, and *origo*, that erased the patchwork of fiscal systems and privileges existing under the Principate. This new system was heralded as rational, fair, and beneficial, and also stipulated that each Roman was obligated to pay some clearly defined portion of a universal total. This system could have functioned to create a moral and ideological rationale for taxation and taxpayer compliance. But as "the principal point contact between state and society," only a tax system that embodied the characteristics of the new social contract could bring about a change in Romans' collective consciousness about the empire and their place in it.

Chapter 4 argues that taxation facilitated the acceptance of the new social contract. At least those Romans whose lives are preserved in Egyptian papyri professed that they accepted their obligation to pay taxes, but only as legally defined by census records and property registrations. At the same time, they tried to transform their obligation into a privilege. They argued that their fulfillment of their obligation to pay their taxes made them worthy of state's support, especially in legal disputes with their neighbors or local officials. In their view, citizenship still ought to confer certain privileges. Thus, deliberately or not, petitioners engaged with and reinforced the social contract introduced by Diocletian and the nature of state-citizen relations that it underpinned.

Finally, in chapter 5 I will argue that Lactantius is the exception that proves the rule. In his attacks on the Tetrarchy in *Divine Institutes* and *On the Deaths of the Persecutors* Lactantius blamed their vicious policies, including persecution and unjust taxation, and their moral depravity on their erroneous understanding of the true nature of the divine. Thus Lactantius indicted the Tetrarchs for the very same reasons why the Tetrarchs were proud of their reign. Instead of promoting good, traditional Roman values, the Tetrarchs were depraved; instead of bringing many benefits to their subjects, the Tetrarchs ruined them; and instead of creating a sense of universal destiny, the Tetrarchs turned citizen against citizen. Thus if there was a social contract, it was inherently unjust.

By way of conclusion I will show that the argument I have made here can serve as a model for understanding other moments in Roman history when taxation took center stage, for

when Romans talked about taxation they were saying much more: they were debating some of the essential political questions of their time.

The Fiscal System(s) of the Principate

In contrast to the universalizing tax system that Diocletian would institute, the tax system of the Principate was a patchwork of rules, privileges, and structures that worked to redistribute wealth and power to the imperial system's key constituencies, Rome and Italy, the armies, and the senatorial and local elite. This tax system was supported by three main sources of revenues: *tributum soli*, *tributum capitis*, both regular taxes, and a host of irregular taxes. These taxes were not paid by everyone. Lands in Italy were exempt from *tributum soli* and Roman citizens did not pay *tributum capitis*. Certain favored cities in the provinces received a variety of exemptions from either or both of these taxes. Irregular taxes, some of which only Roman citizens paid, such as the 5% tax on inheritance, and others that could be paid by anyone, such as *portoria*. To complicate the picture, there was no single method for assessing and raising sums for the regular taxes, as each province retained its own way of doing things. Despite this variety, more often than not the Roman state relied on the local elite to collect regular taxes and remit them to Rome, both to keep administrative costs low and to provide the local elite with opportunities to appropriate revenues for themselves. The commanding position of the local elite over the collection of regular taxes raises the possibility that the state relied more on irregular taxes than the main regular taxes to meet its budgetary needs.⁹ *Publicani* collected many of the irregular taxes, though in the late 2nd century they became more subject to the supervision and control of imperial procurators.¹⁰ The state spent the majority of the revenues it collected on the army, after which substantial portions of what remained helped feed the city of Rome and pay the generous salaries of public officials.

This system worked fine to maintain what we might call the emperor's "coalition," which consisted of the senatorial and local aristocracies, the *plebs Romana*, and the armies. The relative peace of the Principate is a testament to this system's success.¹¹ The tax system was, however, designed to do little else. It supported a social contract that was based on the state's expenditure of revenues on key groups, and, therefore, produced low budgetary margins and hampered efforts to increase the state's revenues for new expenditures, like wars. While the privileged enjoyed exemptions, the vast majority of taxpayers experienced a high degree of coercion from their social superiors and had little say in how they were taxed. It was because of these weaknesses that the fiscal system broke down during the 3rd century when heightened interstate competition put pressures on the state's budget and social contract.

In fiscal sociological terms the tax system of the Principate was a hybrid model,¹² combining elements of a tributary state¹³, a domain state¹⁴, and a tax state¹⁵, and exploiting a

⁹ Scheidel (2015b)

¹⁰ Brunt (1990), 377-386, 414-420

¹¹ Burton (2002)

¹² Bonney and Ormrod (1999), 10-12; Scheidel (2015b), 160-163.

¹³ Monson and Scheidel (2015), 8. "Tributary state" can be defined as those states that impose levies on communities that they have defeated in war, which includes high incidence of plunder and extortion, yet preserves large degree of local autonomy, under threat of coercive measures (Bonney and Ormrod (1999), 1-21).

predominantly agricultural society. Reliance on “internal” revenues from tribute levied on agricultural produce requires higher levels of coercion than regimes that tax mobile capital, and yields lower levels of efficiency.¹⁶ The “external” revenues from imperial domain lands and irregular taxes, by contrast, are easier for the state to exploit, because they are not controlled by the local elite; they require a smaller and therefore less expensive administrative apparatus; and they increase ruler autonomy from the need for taxpayer compliance.¹⁷ For these reasons, the Roman Empire of the Principate did not need a well-developed civil service characteristic of advanced tax states, nor a high level of compliance from taxpayers, whose bargaining power was low.¹⁸ As a result, the Roman state did not have to be responsive to the needs of its subjects, and showed many of the same weaknesses in the face of intense interstate competition as modern tributary and domain states.¹⁹

Taxation in the Roman Republic

Before we launch into a more detailed exposition of the tax system of the Principate it is useful to outline the features of the tax system of the Republic, for many of the latter’s logics, processes, and practices carried over into the former. The earliest levy on citizens’ property was called *tributum*. In contrast to its English derivative, *tributum* was a consensual contribution, levied on property, paid on an irregular basis by free citizen-soldiers, and calculated to cover military campaigns or other communal projects; it was not a tribute paid by a conquered people.²⁰ Thus *tributum* was more akin to an irregular tax on citizens’ property. It was voted by the senate as a *decretum* or *edictum*, not a *lex*, and lasted only as long as the campaign or project. *Tributum* was levied progressively on property, with the richest contributing the most, rather than as a flat head tax, which was considered a feature of Hellenistic monarchies.²¹ The sums collected as *tributum* were on occasion repaid to taxpayers, especially after windfall of war booty.²² Thus from the earliest days, taxation, in the form of *tributum*, reflected the traditional Republican civic ideology, in which free citizen-soldiers voted to contribute to the defense and betterment of their city.

¹⁴ “Domain state” can be defined as those that live off revenues collected from lands over which the ruler exercises “regalian rights” including the ruler’s personal patrimony, agricultural tracts, mines, and tolls (Bonney and Ormrod (1999), 1-21).

¹⁵ “Tax state” can be defined as those states that collect regular levies on private property based on frequent surveys of property and greater consent from taxpayers and feature highly-developed state institutions staffed by professional civil servants (Bonney and Ormrod (1999), 1-21; Moore (2004), 298).

¹⁶ Moore (2004), 300, 303-304, 310-311. “External” revenue sources are those collected from a small base at a new collection points over which the ruler has greater control, such as tolls and customs duties and sales taxes (Blanton and Fargher (2008), 14, 112; Monson and Scheidel (2015), 15).

¹⁷ Scheidel (2015b), 163-165. “Internal” revenue sources are collected from a broader base, such as those exploiting the land, at many collection points (Blanton and Fargher (2008), 14, 112; Monson and Scheidel (2015), 15).

¹⁸ Blanton and Fargher (2008), 14, 112

¹⁹ Moore (2004)

²⁰ On *tributum* generally, see Nicolet (1976). Bang (2015), 542: “Tribute reminds us of the element of domination behind the collection of dues in a way that ‘taxation,’ in the usage of the New Fiscal Sociology, with its emphasis on negotiation and collaboration, does not.” “Tributum” would undergo a semantic shift during the late Republic and Principate, and come to signify taxes levied on subject communities (Rathbone (1996), 313; France (2006)).

²¹ Tan (2015), 211

²² Nicolet (1976), ch. 3

When external sources sufficed for the state's functions, citizens did not pay *tributum*. This is what happened after 167 BCE, when the war indemnity imposed on Macedonia after the Third Macedonian War covered the Republic's expenditures. *Tributum* was not abolished and remained a possible expedient if there were a need, but further indemnities imposed on other defeated enemies, rents on *ager publicus*, and irregular taxes, such as customs duties, sales taxes, manumission taxes, proved sufficient to keep the state solvent.²³ Moreover, the increasing reliance on soldiers paid and supplied by allied communities alleviated Rome's own military costs.²⁴ Thus, "over the course of the second and first centuries BCE...the tax burden was shifted away from the citizenry to provincial subjects, and the Romans themselves became a virtually untaxed people."²⁵ This shift transformed the Republic from a tax state into a hybrid model that relied increasingly on tribute collected in the provinces.²⁶

The piecemeal incorporation of established polities with their own institutional frameworks into the Republican empire as provinces ensured that the tribute system remained a patchwork, rather than a uniform system. This heritage would be preserved under the Principate. In Africa and Macedonia war indemnities were converted into regular tribute, imposed on local communities, who paid the Roman state directly, and in Spain the *stipendium* collected by Scipio Africanus for his soldiers became another regular payment of tribute.²⁷ The Sicilian tithes system, functioning according to the *lex Hieronica*, was preserved and farmed to *societates publicanorum*, who also farmed the tribute imposed on the province of Asia and the rest of Anatolia. *Publicani* could either collect tribute directly from taxpayers, or allow the local community collect tribute for the *publicani*, who would provide financial guarantees, supervise the process, and remit the tribute to Rome.²⁸ In other provinces, local communities collected a percentage of the harvest or lump sums demanded by Rome.²⁹

When the Social War and subsequent political settlements relieved the Italian communities of contributions that supported the Roman war effort³⁰, the state relied increasingly on the provinces and on irregular taxes for its revenues. Yet, as would prove to be a grave weakness of the tax system of the Principate as well, the state was perpetually short on funds, because the Roman elite tried to ensure that they, not the state, controlled the resources of the empire.³¹ If the state controlled more resources, "government expenditure would replace the donations of patronage as the main vehicle for distributing the surplus, creating a kind of universal patron, and most Romans would become beholden to its favours instead of the social elite's."³² The weakness of the state relative to the combined wealth of the Roman elite was problematic because during crises the state was unable to fund the great efforts needed to protect Roman society. For example, during the Second Punic War voluntary contributions by the elite kept the state afloat when citizens refused an increase in *tributum*.³³ The state's weakness

²³ Nicolet (1976), ch.1; Bransbourg (2010), 136-138; Tan (2015), 211-214.

²⁴ Gabba (1994); Kendall (2013), esp. 69-119; Dart (2014), 43-68

²⁵ Quote: Tan (2015), 214. See also Shaw (1988), 812-813; Bransbourg (2010), 171-173

²⁶ Citizens still had to pay taxes on their properties in the new provinces (Shaw (1988), 812-813).

²⁷ Jones (1974), 161-164; Brunt (1990), 325-327; Tan (2015), 214-215

²⁸ Brunt (1990); Sharp (1999), 215

²⁹ Brunt (1990), 325-327

³⁰ Kendall (2013), 675

³¹ Tan (2015), 208-209

³² Tan (2015), 223

³³ Tan (2015), 212-213

became all the more apparent during the late Republic when it was unable to outbid ambitious generals for the loyalty of the legions.³⁴ At the same time, Roman taxpayers could not check the activities of the elite, because exploitation of the provinces obviated the need for the elite to bargain with taxpayers for access to their wealth. Thus Roman citizens lost the ability to protest elite expenditures and influence policy making.³⁵

Two mutually-reinforcing policies were needed to break the cycle of violence of the late Republic: 1) the elite's freedom to grow rich from predation in the provinces needed to be restricted, and 2) the state's ability to pay soldiers' salaries and retirements needed to be strengthened. One attempt to curtail elite predation came in 43 BC when Caesar abolished tax farming for the Asian tithes, a decision Brunt saw as establishing a universal practice.³⁶ Henceforth, local communities would negotiate with Rome to pay a certain sum; how they did so was up to them.³⁷ Dispensing with *publicani* for regular taxes and charging cities with the above responsibilities was good politics. Since *publicani* were merely underwriters of the imperial budget who profited from collection, it was cheaper for Rome's subjects to dispense with them and have the cities collect and underwrite their obligations themselves.³⁸ The state was still guaranteed against financial risk and remained free from bearing the administrative costs of tribute collection, as the local elite did the assessing, collecting, and transporting of revenues. This policy change also improved the position of the local elite in the imperial system and gave them a financial interest in maintaining it.³⁹ They now found themselves in control of fiscal structures that had previously provided the Roman elite with opportunities for self-enrichment.⁴⁰ The second policy, the establishment of a military treasury, was to come as part of the Augustan settlements, which created the basic structure of the tax system of the Principate.

Tax system of the Principate

The tax system of the Principate continued many of the tributary policies of the Republican period. The Roman state collected tribute from provincial communities through a diversity of local practices, but by and large the local elite were granted autonomy to manage their communities' finances and enrich themselves by collecting their communities' financial obligations.⁴¹ For this reason, the net revenue the state received from the regular taxes was probably low and the state relied on irregular taxes for a significant portion of its budget. Exemptions from regular taxes were preserved for Italy, Roman citizens, and favored

³⁴ Syme (1939), 17-22; Nicolet (1976), 87-98

³⁵ Tan (2015), 215-217, 220-225

³⁶ Brunt (1990), 355. See also Tan (2015), 218-220. Tan cautions against overstating the political influence of *publicani*, who, though rich, were significantly less rich than the richest senators, Pompey and Crassus. Senators were investors in *societates publicanorum*, but found provincial governorships more lucrative.

³⁷ Scheidel (2015c), 240

³⁸ Jones (1974), 180-181, Brunt nn. ad loc.; Brunt (1990), 380-381

³⁹ Bransbourg (2010), 91-93, 97-99; Eich (2015), 111-112

⁴⁰ Scheidel (2015c), 241 n.42

⁴¹ The Roman state did, however, take an interest in civic finances. It required cities to seek its approval before instituting new local taxes; one duty of the provincial governor was to oversee the finances of the cities in his province; and occasionally, the state would appoint a *curator rei publicae* for cities in financial straits (Burton (2004)).

communities. Thus, like the tax system of the Republic, the tax system of the Principate functioned to redistribute revenues away from the state.

Nicolet observed that the tax system of the Principate represents a development from a fiscalité “civique”, characterized by impermanent taxes paid consensually, to a fiscalité “monarchique”, characterized by permanent taxes imposed by a ruler.⁴² Although I agree that the fiscalité of the Principate could be called “monarchique”, I disagree with Nicolet on the reasons. As we have seen (pp. 9-10), Roman citizens had not paid *tributum*, the fiscalité “civique” *par excellence*, since at least 167 BCE, but they had paid permanent irregular taxes. What makes the fiscalité of the Principate “monarchique” is that the new emperor had wrested control of how state money was spent from the senate and used state money to build political consensus for the establishment of monarchy. A combination of exemptions and targeted redistribution underpinned a social contract that assigned privileged standing and material benefits to groups that supported the ruler, while excluding other groups from the same privileges and benefits.⁴³

To facilitate the extraction of revenues from the empire, Augustus instituted a provincial census.⁴⁴ The Republican census was taken every five years and assessed property to determine individuals’ rank in the political community and their obligations to it.⁴⁵ Much uncertainty still surrounds the census of the Principate, however. In the first place, it is not certain that the census was taken in every province before Diocletian.⁴⁶ If the census was taken in every province, it was probably not done at regular intervals outside Egypt, where it was taken every 14 years.⁴⁷ Provincial censuses were more likely taken when the state thought it necessary, with an official appointed specifically for this task.

The format of the census is also the subject of much speculation. A basic feature was the leading role played by local officials, who, under the supervision of an imperial official, gathered information on the taxpayers who lived in their communities’ territories.⁴⁸ But what they recorded and how varied from province to province.⁴⁹ The census (outside of Egypt) may have recorded taxable persons and all types of capital used for cultivating the land (including slaves, livestock, draught animals, equipment), whereas in Egypt one process recorded the name, age, and status of households and another registered the land, its quality, and its relationship to water.⁵⁰ These two declarations together determined tax liabilities and liturgical obligations.

Such diversity of practices leaves open the question of the purpose of the census. The census, in its manifold forms, collected enough information for the state to identify individual taxpayers and their taxable assets in order to create a legal obligation on them for their property’s and *familia*’s taxes.⁵¹ And land surveys, despite regional differences in what they recorded⁵²,

⁴² (1976), 98

⁴³ I only address fiscal privileges, but there existed a wide array of other legal privileges as well (Garnsey (1968a), (1968b), and (1970)).

⁴⁴ Levi (1988), 23, 29: more accurate information reduces the costs of bargaining with local potentates and increases the ruler’s revenue. On the census in the Principate see Le Teuff (2012)

⁴⁵ Shaw (1988), 811

⁴⁶ Bransbourg (2010), 101

⁴⁷ Claytor and Bagnall (2015); Eck (2000), 287-288; Rathbone (1993), 89. Cf. Brunt ((1990), 329-335) who concludes that the census took place at regular intervals in each province, though the intervals of the provinces need not overlap with each other.

⁴⁸ Scheidel (2015c), 236-237

⁴⁹ Brunt (1990), 329-335

⁵⁰ Rathbone (1993), 89-92

⁵¹ See appendix.

were important for identifying type and quality of land and for centuriation of taxable plots.⁵³ However, since the state relied on local communities to collect taxes, the census was probably not used widely before Diocletian to determine individuals' fiscal responsibility.⁵⁴ Rather, the census likely helped the state to estimate how much it could demand of each community and province.⁵⁵ Local registers of landownership and personal status were, therefore, of more importance for determining how the sums demanded by the state should be distributed at the local level.⁵⁶

The Roman state demanded two main, regular taxes from provincial communities: *tributum capitis* and *tributum soli*. Like the census, these taxes were imposed unevenly throughout the empire, with certain privileged categories of communities and individuals paying fewer taxes or no taxes at all. Most *civitates* of the empire were stipendiary cities, which paid taxes to Rome. However, other cities, by a treaty with Rome, received immunity from taxes; they were called *civitates immunes*.⁵⁷ For example, Rome granted tax immunities to Athens and Sparta because of their illustrious past.⁵⁸ *Civitates*, in contrast to *coloniae* and *municipia*, which were tax exempt⁵⁹, were considered to be allies or subjects of Rome, rather than members of the Roman *Respublica*.

There also existed two, sometimes overlapping categories of person: citizen of Rome and citizen of a community other than Rome. If, for example, one received Roman citizenship as a magistrate of a *municipium*, one was both a citizen of Rome and a citizen of that *municipium*. Roman citizens and citizens of immune communities did not have to pay *tributum capitis*.⁶⁰ Nor did Roman citizens pay *tributum soli* on their property located in Italy, and properties located in privileged communities were exempt from this tax as well.⁶¹ Thus we should imagine the empire as a bewildering tapestry of tax relationships with Rome.

An additional layer of complexity was the diversity of methods for collecting the two main *tributa*. The Romans considered *tributum capitis* to be more characteristic of Rome during the regal period than the more proportional and Republican *tributum soli*.⁶² And, fittingly, poll taxes began to be imposed on the provinces during the reign of Augustus. Rathbone argued that Augustus instituted the poll tax first in Egypt and then slowly expanded its application to the

⁵² Shaw (1988), 814, citing Hyginus *Constitutio* 9f. L

⁵³ Shaw (1988), 815. Roman fiscal structures, such as centuriation, implied certain economic practices that did not conform with local practices. This imposition of not only of tribute, but also attendant economic practices, provoked rebellions of recently conquered peoples supports further the arguments made in this dissertation. Roman taxation was not so much a material burden as a symbol of conquest, subordination, and loss of autonomy. It was the symbolic resonance of taxation that elicited rebellious responses. As communities became more integrated in the empire and memory of the initial conquest dimmed, the meaning of taxation evolved from a symbol of dominance to an aspect of the compact between the community and the emperor (Dyson (1971) and (1974); Thompson (1974); Bénabou (1976), 69-251; Mattingly (1997a), p.10 n. 12 and Dossey (2010), 4-5).

⁵⁴ Bransbourg (2010), 101-103

⁵⁵ Brunt (1990), 535; Rathbone (1996), 313; Scheidel (2015c), 237-238

⁵⁶ Bransbourg (2010), 104

⁵⁷ Potter (2004), 42-45. There also existed *civitates liberae*, which were also exempt from taxes, and *civitates foederates*, whose individual treaties with Rome might have exempted them from taxes as well.

⁵⁸ Alcock (1993), 22

⁵⁹ Inhabitants of *coloniae* were Roman citizens and, therefore, exempt from taxes, and the magistrates of *municipia* were exempt (Potter (2004), 45-47).

⁶⁰ Rathbone (1996), 312; Scheidel (2015c), 234

⁶¹ Rathbone (1996), 312; Bransbourg (2010), 169-170; Scheidel (2015c), 234

⁶² Nicolet (1976), 27

other provinces.⁶³ But other scholars find the evidence inconclusive as to whether *tributum capitis* was paid in other provinces.⁶⁴ If it was collected in more than a few provinces, there was no single policy dictating on whom it would be levied: in some provinces only males were subject to *tributum capitis*, while in others both males and females paid it.⁶⁵

Like *tributum capitis* there existed no single form of *tributum soli*.⁶⁶ Generally, the census, land registration, and land surveys identified land ownership, the type of land, and its quality. Arable land, vineyard, olive trees, meadows, woods, houses, and ships were recorded. But how each was assessed and the form of payment varied. In some provinces, such as Cilicia and Syria, taxes were levied as a percentage of the assessed value of the land.⁶⁷ In others, tithes⁶⁸ or quotas⁶⁹ were paid. Egypt, again, was a unique case, for the rate of *tributum soli* had to take account of the level of the Nile flood, which could vary year-to-year, and of the types of land, for which there were variable rates.⁷⁰ Yet, much uncertainty remains: in Judaea, for example, the form of payment of *tributum soli* is not even known.⁷¹

In addition to the regular taxes, there existed a plethora of irregular taxes. Taxes on the produce of the land likely supplied the largest percentage of the state's revenues,⁷² yet Scheidel has recently estimated that if we accept Rathbone's interpretation of the Muziris papyrus, irregular taxes, such as *portoria* and import duties, could have supplied a much larger portion of revenues than previously acknowledged.⁷³ Moreover, manumission and the inheritance tax on Roman citizens were not negligible sources of revenue.⁷⁴ Relying on revenues from these "external" sources provided the state with manifold benefits. They were easier for the state to control, for devolution of the collection of regular taxes to the local elite put them in a position to deny the state access to revenues from "internal" sources. Moreover, collection of irregular taxes required a smaller and therefore less expensive logistical operation.⁷⁵ What is especially important for this dissertation is the fact that the majority of the inhabitants of the empire, though legally obligated to pay them when applicable, did not often pay irregular taxes; *tributum soli* and *capitis*, I will argue, far more important factors in how they conceptualized their relationship with the state and their place in the empire.

The two most important irregular taxes from the point of view of the social contract were the 5% tax on inheritance of Roman citizens and 1% tax on auction sales, for these kept the *aerarium militare* solvent.⁷⁶ Augustus founded this treasury in 6 CE with an initial capitalization from his own patrimony to pay retirement bonuses to soldiers.⁷⁷ The *aerarium militare* abolished the practice of the Republic in which the senate claimed the prerogative to vote on a

⁶³ (1993), 86-97

⁶⁴ Scheidel (2015c), 237. Judaea: Udoh (2005), 227-228. Greece: Alcock (1993), 21-24.

⁶⁵ Jones (1974), 164-165; Brunt (1990), 327

⁶⁶ Rathbone (1996), 312-313; Udoh (2005), 219 n.74,

⁶⁷ Jones (1974), 164-165

⁶⁸ Notably, Sicily: Jones (1974), 174-175, Brunt n. ad loc.

⁶⁹ Jones (1974), 182, Brunt n. ad loc; Brunt (1990), 335-336

⁷⁰ Brunt (1990), 327-329; Rathbone (1993); Sharp (1999), 217-223

⁷¹ Udoh (2005), 221-223

⁷² Duncan-Jones (1994), 52 n.19, estimates that 62% of Egypt's tax revenues came from taxes on the produce of the land. See also Duncan-Jones (1990) and Blanton and Fargher (2008), 126-128.

⁷³ Rathbone (2000); Morelli (2011); Scheidel (2015b)

⁷⁴ Scheidel (2015b), 159-164

⁷⁵ Scheidel (2015b), 163-165

⁷⁶ Nicolet (1976), 87-98; Corbier (1988), 263; Bransbourg (2010), 134, 152-160.

⁷⁷ *Res Gestae Divi Augusti* 17

particular retirement package for a general's soldiers.⁷⁸ Now the soldiers would be paid on a regular basis by the state, to which it was hoped they would be loyal, instead of to their generals.⁷⁹

Other irregular taxes were continuities from the Republic. A 4% tax on slave sales and 5% manumission tax were preserved.⁸⁰ Customs and tolls continued to be levied at 2-5% of the value of the goods between provinces and at 25% when crossing the eastern frontier, at least.⁸¹ Other fees were imposed as needed: requisitioned supplies and transportation, the quartering of soldiers and officials, maintenance of the *cursus publicus*, and other odd taxes, such as a nail tax in Asia.⁸² Individual provinces also had their own taxes, holdovers from their days as independent polities.⁸³ The Roman province of Arabia, for example, preserved a pre-Roman royal tax and a host of local tax rates.⁸⁴ Finally, local communities could negotiate the specific form of their tax payment. The Frisians, for example, supplied hides instead of grain taxes⁸⁵

The state during the Principate continued to rely on local communities and their notables for much of the daily business of government during the Principate, especially collection of the regular taxes.⁸⁶ Where cities did not exist, the state partnered with the prevailing political structures, such as ethnic groups, tribes, and private estates, and encouraged them to form urban political institutions.⁸⁷ Local communities were permitted freedom in how they collected their dues, but their local elite continued to underwrite their cities' tax liabilities and transport tax revenues.⁸⁸ The principle of communal liability for taxes deferred risk for the state and obviated the need for an expensive bureaucracy.⁸⁹ As in the Republic, irregular taxes were farmed to *publicani*, for a percentage of what they collected.⁹⁰ Since contracting for a percentage of the collection required greater supervision of their accounts, by the late 2nd century we see examples of imperial procurators, slaves, and freedmen supervising and, occasionally, collecting these taxes.⁹¹

In sum, diversity of practice and difference of personal and civic status characterized the tax system of the Principate. This was the intention. The emperors of the Principate preserved the diversity of the system because they did not conceive of citizenship in universal terms, as 3rd

⁷⁸ Witness Pompey's difficulty getting his eastern *acta* ratified and retirement bonuses paid to his veterans (Syme (1939), 33-35).

⁷⁹ Nicolet (1976), 87-98

⁸⁰ Rathbone (1996), 314; Scheidel (2015b), 161; Tan (2015), 211

⁸¹ Rathbone (1996), 314

⁸² Jones (1974), 179-180, Brunt nn. ad loc. Requisitioned transportation: Mitchell (1976). Nail tax: Eck (2000), 282-283

⁸³ See Wallace (1938) for the litany of taxes levied in Egypt. See Mitchell (1993), 250 for the taxes in kind levied in the Anatolian provinces.

⁸⁴ P. Yadin 16 (A.D. 127); Eck (2000), 283

⁸⁵ Tacitus, *Ann.* 4.72

⁸⁶ Jones (1974), 165, 176-177; Garnsey and Saller (1987), 26-40; Corbier (1991), 222-227; Carrié (2005); Noreña (2015).

⁸⁷ Bénabou (1976), 395-397; Garnsey and Saller (1987), 26-27; Corbier (1991), 215-216; Mitchell (1993), 80-99; Woolf (1998), 38-39, 112-135; Noreña (2015), 195-196.

⁸⁸ Brunt (1990), 388-389, 534-535; Mitchell (1993), 247-250

⁸⁹ Brunt (1990), 339-343

⁹⁰ Jones (1974), 166; Brunt (1990), 402-414. *Publicani* may have also collected regular taxes in difficult to reach places (Scheidel (2015c), 238).

⁹¹ Brunt (1990), 381-382; Eck (2000), 284-286. Cf. Jones ((1974), 166-167), who argued that by late 2nd century imperial officials collected irregular taxes, because finding *publicani* willing to farm these taxes became more difficult.

century emperors would.⁹² Rather, the social contract of the first two centuries of imperial rule was designed to reward only certain political demographics, communities, and individuals. The unequal nature of the social contract is all the more apparent if we examine more closely how the state spent its revenues.⁹³

Approximately 90% of state revenues were spent on the state's core constituencies, the aristocracies of the empire (especially Roman senate), the *plebs urbana*, and the soldiers, with the vast majority going to the latter.⁹⁴ This pattern of expenditure was no accident; it was intended to placate the political demographics capable of collective action against the emperor and give them a financial interest in the status quo.⁹⁵ As Octavian learned from Caesar, the monarch could not afford to ignore Republican institutions, especially the senate, because he needed the senate's political support and talents if his reign were to last.⁹⁶ In particular, senators and equestrians filled important imperial administrative and military posts, which earned them generous salaries, and which were a source of honor and legitimacy for the emperor.⁹⁷ During the Principate the city of Rome and its inhabitants were also a formidable political force in imperial politics. Lendon notes that the cities of the empire possessed honor, but as the *sedes imperii*, Rome surpassed the rest in prestige.⁹⁸ Before the reign of Diocletian its inhabitants were not mere subjects, but were the proud and privileged descendants of a free people who built an empire.⁹⁹ This status gave them a unique relationship with the emperor. He was their patron, their *euergetes*, and a fellow citizen who was expected to honor the *plebs Romana* and to share their values.¹⁰⁰ Indeed, the emperor's very legitimacy rested on his ability to deliver on these two counts. In the end, the People and the Senate of Rome alone could not make or unmake an emperor, but when imperial legitimacy and the local balance of power were in flux, they could lend their prestige to one claimant or another, or make an undesired emperor's job much harder.¹⁰¹

The armies, however, were the final guarantor of the emperor's reign.¹⁰² Upon an emperor's accession to the throne it was tradition that the armies and Praetorian Guard would

⁹² See chapter 2.

⁹³ Attention to the social and legal inequalities of the tax system of the Principate is characteristic of Corbier's work; see (1988) and (1991), especially.

⁹⁴ Scheidel ((2015b), esp. 156-179, 177) estimates that 60% of the state's budget went to soldiers, with another 15% going to the city of Rome in the form of handouts and buildings and 15% to civilian administrators, drawn primarily from the Roman elite. Duncan-Jones ((1994), 45) goes further, envisioning the army costing the state approximately 75% of its budget. Hopkins (1980), (1995/6), and (2009) concurs that the army consumed the majority of the state's budget. Regular and irregular taxes were the two main sources of income, but the emperor could also claim revenues from imperial mines, personal estates, legacies left to him, confiscations, as well as other short-term expedients (Duncan-Jones (1994), 5-10; Scheidel (2015b), 161-162). It also merits mentioning that there existed supplementary sources for supplying the armies: exploitation of the garrisons' territories, market exchange with local communities, the produce of imperial estates, and compulsory purchase (Rathbone (2007)).

⁹⁵ Scheidel (2015b) and (2015c), 242-252

⁹⁶ Syme (1939), ch. 22, esp. pp. 316-321; Brown (1992), 58-69

⁹⁷ Roman elite's role in the administration: Birley (1953); Campbell (1975); Talbert (1996); Eck (2000); Lo Cascio (2008). The Roman elite as a source of honor and legitimacy: Lendon (1997); Roller (2001); Noreña (2009)

⁹⁸ Lendon (1997), 74-77; Ménard (2004), 77, 89

⁹⁹ Yavetz (1988), 135-136

¹⁰⁰ Veyne (1990), 292-294, 303-304, 385-386, 390-398. We should also keep in mind that the emperor could not appear to cozy with the *plebs* for fear of offending the Senate.

¹⁰¹ Ménard (2004), 59, 95-104

¹⁰² Syme (1939), 291, 322-326; Campbell (1984), 374-382.

swear an oath of allegiance to him.¹⁰³ The emperor would repay their loyalty with a donative to the soldiers and a slightly larger one to the Praetorian Guard. This initial alignment of interests would last as long as the emperor diligently championed the armies' interests, chiefly, regular pay, social privileges, donatives at special occasions, and the avoidance of ruinous wars.¹⁰⁴ Rank and file soldiers wanted to know that their emperor was one of them, a *commilito* who did not mind roughing it on campaign and who took a personal role in combat operations.¹⁰⁵ Augustus was not much of a *commilito*, but he did succeed at establishing and controlling a political economic system that funneled the wealth of the empire into the pockets and bellies of the roughly half a million armed men who served in his name.¹⁰⁶

Finally, the devolution of tax collection to the local elite can be seen as a form of redistribution, since it enabled them to enrich themselves off the cities' rural territories at the expense of state coffers.¹⁰⁷ Continued reliance on the local elite for tax collection and other administrative activities maintained the "bargain" that Caesar struck at the end of the Republic when he abolished tax farming for regular taxes.¹⁰⁸ Permitting the local elite to control and profit from the imperial tax system can also be seen as compensation – or an imperial subsidy – for the financial burdens of guaranteeing their cities' fiscal revenues and undertaking expensive public works projects.¹⁰⁹

Thus the tax system was not necessarily designed to maximize the state's revenues; rather, it served another social desirable: to establish a particular kind of social contract. The social contract of the Principate stood on three pillars: the extension of legal privileges, including tax exemptions, to favored cities and Roman citizens; the redistribution of state revenues to key political demographics; and the state's acquiescence to elite domination of and enrichment from tax collection. This social contract emphasized the benefits and privileges that would accrue to those who complied with the system in order to build consensus on the legitimacy of the regime and the monarchical constitution. Those who did not comply, or whose compliance was not important for the regime's survival, paid taxes.¹¹⁰ Therefore, in contrast to the system formulated by Diocletian, the inhabitants of the Roman Empire during the Principate were constantly aware of legal and status differences, in part, because taxation made these visible. Paying taxes was a sign of one's subordinate status and subjugation to Rome.

The social contract was designed to bring peace and stability to the empire, and in this it largely succeeded.¹¹¹ But it failed to increase the state's power and capacity to grow its net

¹⁰³ Campbell (1984), 7, 23-32

¹⁰⁴ Campbell (1984), 5-8, 158-203 and (2002), 109-111. In addition to financial rewards, soldiers, as *honestiores*, enjoyed privileged access to courts and the emperor's ear, favorable legal provisions for accumulated and passing on property, and lenient punishments (Campbell (1984), 207-299). Indeed complaints about soldiers' greed and abuse of civilians are heard at all periods of Roman imperial history (Campbell (1984), 246-254).

¹⁰⁵ Campbell (1984), 32-59 and (2002), 112. Both Garnsey (1978) and Bowersock (1978) note in their reviews of Millar's *The Emperor in the Roman World* that he overlooked the emperor's role as the commander-in-chief of the armies of Rome. Campbell notes that this feature of the emperor became more important in the course of the second century, though the emperor rarely, if ever, fought in the ranks with his soldiers ((1984), 56-57, 65-69).

¹⁰⁶ Garnsey and Saller (1987), 88-95; Campbell (1984), 158-198

¹⁰⁷ Corbier (1991), 227, 234-237, 240

¹⁰⁸ Bransbourg (2010), 91-99, 106-107, 174-175; Scheidel (2015), 159-165, 178; Eich (2015), 111-112.

¹⁰⁹ Bransbourg (2010), 129; Scheidel (2015b), 180. The local elite received other privileges for ruling on behalf of Rome, such as Roman citizenship and armed support against their social inferiors (Noreña (2015), 197, 201).

¹¹⁰ Witness rewards granted Nicomedia and punishments inflict on Nicaea, Byzantium, and Antioch by Septimius Severus after his victories of Albinus and Niger (Potter (2004), 104-105).

¹¹¹ Burton (2002); Bransbourg (2010), 174-175

revenues and to subject society to more intense social control. This weakness was to a large degree inherent in the Roman tax system, for like all premodern tax systems that relied on taxation on agriculture¹¹², the Roman system was plagued by a high degree of inefficiency and corruption. Inefficiency set an upper limit on how much the state could collect with the coercive resources available to it. Indeed, the social contract itself can also be seen as a sign of the state's weakness and its inability to seize complete control of the sinews of power from the local elite.¹¹³ Moreover, as provincial notables became more powerful, they appropriated as rents a larger share of the tax revenues intended for Rome, and were so successful at petitioning to have a portion of their city's taxes remitted that by the late 2nd and early 3rd century many cities had received an exemption from a portion of its tax responsibility.¹¹⁴ The revenues pocketed by elites were then paid out for euergetism, which legitimized their control over all aspects of their cities' finances.¹¹⁵ As a result, the local elite amassed enough bargaining power to resist the demands of the state and to change state policies to their advantage.¹¹⁶ It is for this reason – the strong bargaining power of the local elite – that the state relied on revenues from on external, irregular sources of revenue.¹¹⁷

An additional consequence of this social contract was the precarious condition of the state's finances. Between the reign of Augustus and the end of the Severan dynasty the state rarely accumulated large reserves, and the state had little capacity to rapidly increase its revenues if its reserves proved insufficient to meet expenditures, because the local elite controlled internal revenue sources and because the social contract of the Principate required redistribution away from the state on a grand scale.¹¹⁸ In a zero-sum game, any increase in the state's net revenues threatened both redistribution to core demographics and the bargain with the local elite. Thus, while in theory, the aristocracies (especially the Senate), the population of Rome, and the soldiers benefitted from this redistributive system, this grand coalition was always an uneasy alignment of interests that required constant negotiation and maintenance, with each constituency trying to maximize its financial benefits at the expense of the others.¹¹⁹

State expenditure, then, was determined more by how much the state could collect than by its needs.¹²⁰ After the abatement of interstate competition after the middle Republic, the end of the ruinous civil wars of the late Republic, the *ralentissement* of conquests after the reign of Augustus the state's needs were small compared to the productive capacity of the empire.¹²¹ But when external pressures became more acute, the state struggled to meet its expenses, as in the late 2nd century when campaigns on the Danube strained imperial finances and required Marcus Aurelius to sell off palace property to pay for the wars.¹²² The Severan increases in soldiers' pay

¹¹² Moore (2004), 300, 310-311

¹¹³ Bransbourg (2010), 91-99, 185-186; Noreña (2015), 201. An implication of this argument is that the promotion of urbanism by the Roman state did not increase its net revenues or augments its control over its empire (Noreña (2015), 202). The Roman legal system was also limited as a means of social control (Kelly (2011)).

¹¹⁴ Bransbourg (2010), 106-107, 113-115

¹¹⁵ Veyne (1990), 70-157, esp. 118-122.

¹¹⁶ Noreña (2015), 200

¹¹⁷ Scheidel (2015b)

¹¹⁸ Rathbone (1996), 323; Scheidel (2015c), 242, 254

¹¹⁹ For example, the Senate resisted Augustus' 5% tax on inheritance precisely because it redistributed their wealth to the soldiers, who underpinned Augustus' domination of the state (Corbier (1988), 263). And the people of Rome praised emperors for their *liberalitas*, especially if it came at the expense of the Senate (Yavetz (1988), ch. 6).

¹²⁰ Rathbone (1996), 322

¹²¹ Rathbone (1996), 309-312; Bransbourg (2010), 174; Scheidel (2015c), 230-231.

¹²² Potter (2004), 61

in early 3rd imperiled finances further.¹²³ For example, when Macrinus was forced to pay an expensive settlement to the Parthians, he did not have enough left in the treasury to buy the loyalty of his soldiers and fortify his wounded political credibility.¹²⁴ Maximinus Thrax, too, was to succumb to his financial problems.¹²⁵ To compound difficulties, declining mine production reduced an important source of income for the state.¹²⁶ At the same, the state's failure to confront decisively increasing external pressures damaged the emperor's legitimacy as the protector of the social contract, and opened the door to rivals who could offer the reassurance of stability and protection.¹²⁷ When a weak emperor sensed his declining position, financial troubles meant that he could not bolster his legitimacy with timely outlays to the core political demographics. This combination of military impotence and weak imperial legitimacy, resulting from the breakdown of the redistributive social contract, was a recipe for political chaos and instability that broke the fragile fiscal system and social contract of the Principate, and just nearly brought the Roman Empire down with it.

The extent of the crisis of the 3rd century can be debated¹²⁸, but what is certain is that Diocletian's formative years witnessed a succession of weak emperors and military defeats at the hands of Rome's enemies.¹²⁹ We can sense the scars that these turbulent decades left on the man from the tenor he set for his reign. For example, in the most famous document from his reign, the Edict of Maximum Prices, Diocletian and his colleagues reflected at length on the tranquility and peace they had brought to the empire: "We, who by the kind favour of the gods have crushed the burning havoc caused in the past by barbarian nations by slaughtering those people themselves, have protected the peace established for all time with the necessary defenses of justice."¹³⁰ Decisive victories against foreign enemies were essential for peace, but so too were reforms of state and social institutions, in particular, a fiscal system that could fund the great efforts that were needed to establish and defend peace and a social contract that could build political consensus for the new, closer fiscal relationship between state and society.

¹²³ Potter (2004), 138, 235

¹²⁴ Potter (2004), 149-152, 168

¹²⁵ Potter (2004), 167-168

¹²⁶ Mine production: Bransbourg (2015), 260-262.

¹²⁷ Ando (2012), ch. 7; Scheidel (2015c), 254. Breaches of the frontier: the Sasanids in A.D. 236, 240, 252, 256, 260 (Potter (2004), 220-222); the "Skythai" in A.D. 250, 251, 252, 253, 259, 268, 280 (Potter (2004), 241, 247, 273); and the Juthungi in A.D. 260, 270 (Potter (2004), 246, 252-253, 265).

¹²⁸ Ando (2012), ch. 1. On the 3rd century generally, see Carrié and Rouselle (1999); Potter (2004), chs. 3-8; Ando (2012)

¹²⁹ MacMullen ((1982), 31) has Diocletian born between 243 and 245.

¹³⁰ Trans. Rives (2004), 139. The Latin reads: nos, qui benigno favore numinum aestuantes de praeterito rapinas gentium barbararum ipsarum nationum clade compressimus, in aeternum fundatam quietem [deb]itis iustitiae munimen[t]is saepiamus. Peace and tranquility was a common theme in Tetrarchic rhetoric (Potter (2004), 292-294).

Chapter 2: The New Social Contract of Diocletian

Introduction

Diocletian could have been a student of the New Fiscal Sociology, for he understood that his reforms, especially those of the tax system, required a new social contract with his subjects that would define and create the political consensus for their new relationship. To this end he worked consistently throughout his 21 years in power to convince, coerce, and compel his subjects to accept the changes that he was introducing. For example, after introducing a clarification in how tax liabilities were made known to taxpayers, he admonished his provincials (as related by the edict of the governor of Egypt Aristius Optatus): "...since the provincials have been done the greatest service in this as well, they should take care to pay their contributions in accordance with the divine regulations and in no way wait for the compulsion of the collector. For it is proper that each display his full devotion most zealously, for if someone should do otherwise, he would risk punishment."¹³¹ This simple statement reveals Diocletian's conception of the fundamental relationship that he wished to exist between him and his subjects: each of his subjects could expect his government to work for their benefit, but in return Diocletian expected them to be assiduous in paying their taxes.

We would do Diocletian a disservice, however, if we were to reduce the social contract that he was promoting to a simple exchange of favors – government services for taxes – for there is something much more revolutionary in him. From the constitutions it is clear that Diocletian proposed a vision for state-society relations in which both the state and its citizens had the responsibility and obligation to help revitalize and defend their empire. This way of thinking about citizenship and state-society relations, emphasizing responsibilities and obligations, transformed the social contract of the Principate, which, as we saw, mainly dispensed privileges and rewards to the elite and other politically significant groups. In particular, Diocletian believed that his government's responsibility was to fix structural defects in the functioning of the empire and to restore its traditional legal and moral foundations. To this end he and his administration undertook an ambitious reform program, diligently enforced traditional Roman law and morality, and promoted traditional values, in particular *ratio*, *utilitas*, and *aequalitas*. At the same time, he legislated to reform his subjects' religious practices and morality, which, in his view, had been corrupted by greed, superstition, and other ruinous habits. Religion and morality were two areas in which he believed Romans ought to contribute to the preservation of the empire, for correct religious practices and scrupulous morality would secure the gods' continued favor of the emperor and the empire. Other ways in which Romans ought to contribute to the empire were performing public services to their cities, working certain jobs for the state, and, as we shall see, paying their taxes. The idea that the emperor and his administration, as well as the Romans themselves, owed service to the empire was not new. But the emperor's insistence that state and society should work together in a wide range of areas on behalf of their society was new, and it advanced a more universal way of thinking about Roman Empire in which the destiny of all Romans, including the emperor, was bound to the fate of the empire itself.

Nowhere did Diocletian outline his view of state-society relations; the details only begin to emerge from a close reading of the imperial constitutions that have come down to us. As the

¹³¹ *P.Cair.Isid.* 1, ll. 10-14.

most powerful individual in the empire, the emperor's vision of state-society relations mattered, for if anyone in the empire had the power and resources to make his vision reality, it was the emperor, and the emperor's voice did reach his subjects. But as we saw in the introduction, social contracts are also "bargains" in which the ruler must account for the bargaining power and interests of society, especially those paying taxes.¹³² Moreover, technological primitivism and the emperor's dependence on the cooperation of his subordinates and the local elite for the most rudimentary tasks limited his effective power.¹³³ Some scholars have even questioned whether the emperor and his administration had the ability to devise and implement proactive policies at all.¹³⁴ Nonetheless, there is evidence that the emperor's pronouncements, ideals, and, indeed, vision for the state-society relations could have a significant impact on the outlook of his subjects. Carlos Noreña, for example, has observed that the local elite actively reproduced imperial ideals in order to reinforce their power over their social inferiors.¹³⁵ Furthermore, the importance of the emperor and his politics can be seen in the sustained critiques of intellectuals such as Lactantius and Gregory of Nazianzus.¹³⁶ What the emperor said mattered.

For these reasons we begin our study of the process by which Romans in the late empire debated and constructed the nature of citizenship with Diocletian. Part one will outline my evidence and method and address some of the difficulties that arise when writing history from imperial constitutions. Part two will examine Diocletian's attempts to establish the legal and moral basis of a more universal conception of the empire and citizenship. And part three will locate Diocletian's conception of citizens' duties to the empire in the long development of Roman universalism.

Evidence and Method

Since Diocletian did not leave behind a *Res Gestae* of his reign, his vision for the new social contract must be reconstructed from pieces of what does remain, coins, statuary, public buildings, and imperial constitutions.¹³⁷ By sheer number – more than 1,200 of Diocletian's

¹³² Levi (1988). In Chapters 4 and 5 we will explore in greater detail the bargaining position of some of Diocletian's subjects.

¹³³ Lendon (1997), 6-7. For example, the limited geographical discovery of Diocletian's Edict of Maximum Prices and the failure of Constantius I to persecute the Christians suggests that even an emperor of the stature of Diocletian would routinely run up against the inertia, apathy, or outright resistance of his administration (Corcoran (1996), 229-233, 245-253). The emperor's effective power was also encumbered by technological primitivism, the lack of a professional administration, and poor access to information (Millar (1982); Isaac (1990), ch.9; and Mattern (1999)). Greater access to information can reduce the cost to the ruler of negotiating policies (Levi (1988), 29).

¹³⁴ Mattern (1999), 21-23, 81-122. Emperor as reactive: Millar (1977), esp. 3-12. Although Millar's view has come under sustained critique for its regional and evidentiary biases (Bagnall (1979), Hopkins (1978), Burton (2002)), exclusion of some of the emperor's duties, such as commanding armies and issuing *mandata* (Garnsey (1978), Bradley (1979)), and for downplaying changes in the patterns of government (Bowersock (1978), Bradley (1979)), scholars still see an degree of passivity and reactivity in what the emperor did, especially in his role as judge (Corcoran (1996), e.g., 43).

¹³⁵ Noreña (2011), esp. 1-19.

¹³⁶ On Lactantius' response to Diocletian and the Tetrarchy see Digeser (2000) and Chapter 5 of this dissertation. On Gregory's reaction to Julian see Elm (2012).

¹³⁷ Corcoran (1996) is an indispensable study of Tetrarchic era constitutions. "Constitutions" is the name that Ulpian gave to the broad category of legal texts emanating from the emperor, including replies to petitions (rescripts), edicts, letters, judicial rulings (*decreta*), and *dicta* (*Dig.* 1.4.1.1: *Quodcumque igitur imperator per*

constitutions survive – imperial constitutions are the most importance source.¹³⁸ This abundance may be the consequence of long duration of Diocletian’s reign and the interest his constitutions prompted in later lawyers, especially the compilers of the 6th century *Codex Justinianus*, rather than a renaissance of the rescript system during his reign.¹³⁹ I will argue in this section that Diocletian’s constitutions are a good source of information for his value system and conception of what I am calling the social contract, since they functioned to communicate part of a centrally composed narrative to their recipients. Indeed, communicating with his subjects was a significant function of the emperor and became more important to Diocletian and his successors.¹⁴⁰

There are, however, two main challenges to using the preserved constitutions to reconstruct the emperor’s narrative of state-society relations. First, as mentioned, the vast majority of Diocletianic constitutions are preserved in the 6th century *Codex Justinianus*, with the remainder found in a variety of other sources.¹⁴¹ Tribonian, the *Codex*’s chief architect, and his staff borrowed heavily from two codifications of Diocletian’s rescripts attempted at his court, the Gregorian and Hermogenian codes.¹⁴² The former collected rescripts mostly from the years 285-290 and the latter from the years 293-294.¹⁴³ By removing Diocletian’s constitutions from their original contexts and inserting them into new ones, these codification processes had a profound impact on how the individual constitutions were to be understood by ancient readers.¹⁴⁴ Then in the process of compiling the *Codex Justinianus*, Tribonian and his staff reorganized Diocletian’s constitutions into a new narrative that proclaimed the legal and moral continuity of the 6th century empire with their imperial ancestors.¹⁴⁵ In other words, the texts we have from Diocletian are those that Gregorius and Hermogenian selected to proclaim the legal unity of the empire, which then remained relevant to Justinian’s empire. We have Diocletian, in brief, at third-hand. One way to compensate for this evidentiary bias is to incorporate into our study texts

epistulam et subscriptionem statuit vel cognoscens decrevit vel de plano interlocutus est vel edicto praecepit, legem esse constat. haec sunt quas volgo constitutiones appellamus).

¹³⁸ Although Maximian, Constantius I, and Galerius were each competent to issue his own rescripts, very few, if any, have been preserved (Corcoran (1996), ch. 11). I will discuss the limits of the other evidentiary sources below, pp. 58-64.

¹³⁹ Honoré (1994), 28-30. At the same time, the high turnover in emperors during the 3rd century and their preoccupation with civil wars and foreign invasions could have at least made responding to rescripts a lower priority and at most hindered the functioning of the organs of government (Potter (2004), 274).

¹⁴⁰ Communication as a function of the emperor: Millar (1977), e.g., chs. 5, 7, 8. Imperial communication under the Tetrarchs: Corcoran (1996), generally, Carrié and Rousselle (1999), 154-156, Dillon (2012). On the other media available to the emperor for communicating with his subjects, see Ando (2000), ch.4-7, Noreña (2011), 190-270.

¹⁴¹ Corcoran (1996), 10-12.

¹⁴² Connolly (2010), 39-46

¹⁴³ Corcoran (1996), 26, 37

¹⁴⁴ For example, I do not think it is a coincidence that the constitutions of the *Codex Hermogenianus* date from the year in which the Diocletian and Maximian raised the Caesars, 293, for codifying and publishing a body of laws in which Diocletian’s name appears next to his three colleagues should be seen as part of this larger project to create a narrative that asserted the legal unity of the empire and transformed the reigns of four emperors into a single imperial government. On the impact of the codification processes on the tone, force, and meaning of constitutions see Ando (2011), ch. 2; Matthews (2000), ch. 4. On these codes generally see Corcoran (1996), ch. 2. Carrié and Rousselle (1999), 148-151. Corcoran ((1996), 39-42) and (Connolly (2010), 39-41) argue in favor of the interpretation that *CG* and *CH* were intended as remedies to judicial inefficiency. I am persuaded that organizing rescripts in a codex or roll would have made accessing them in archives much easier, but I have yet to see a compelling picture of how these codes would have been used by judges, for without the original petition it is difficult to know in which contexts a governor should apply the specific law mentioned in the rescript.

¹⁴⁵ Ando (2011), ch. 2, esp. 33-36

that are preserved in other contexts, such as those found in the late Roman *Collatio Legum Mosaicarum et Romanarum*, in inscriptions, and in papyri. As we will see, constitutions from these other sources reveal much the same picture of Diocletian as do the Justinianic texts.¹⁴⁶

A second challenge is that, according to Tony Honoré, the individual constitutions themselves were the work of imperial secretaries, or teams of lawyers¹⁴⁷, who determined their substance and, we may assume, worked closely with the emperors in drafting larger policies.¹⁴⁸ For a number of reasons, however, the employment of *magistri libellorum* does not weaken the potency of the constitution as the voice of the emperor. First, during the Principate the emperor became the main source of new *leges* and he likely played a role and had the final say in legal deliberations.¹⁴⁹ Moreover, imperial constitutions are formatted in such a way that the emperor addressed his audience directly, just as individuals petitioned the emperor, not his secretaries, for redress.¹⁵⁰ And finally, by approving the appointment of the *magister* the emperor empowered the *magister* to speak for him and his administration and consented to the message. In this way, attributing the language of these texts to the stylistic idiosyncrasies of certain secretaries, though an important observation, overlooks the social function of the rescript as a mouthpiece for the emperor, even if the emperor did not pen his own responses.¹⁵¹ Thus the context and form of the texts were themselves as much a part of the narrative as the legal content.

For these reasons I have chosen to look for Diocletian's vision of the social contract in the larger corpus of his constitutions.¹⁵² This method has the additional advantage of giving a fuller, more balanced picture of how Diocletian governed, whereas the more famous administrative reforms and pieces of legislation, such as the Edict of Maximum Prices and the edicts against incest and the Manichaeans, give a distorted picture of Diocletian's ambitions, intentions, and understanding of what his government could do, and raise questions about the intent of these laws. Was Diocletian trying, for example, to justify the sweeping administrative and social changes he was making with traditional law and values?¹⁵³ Were his ambitions greater than the infrastructural capacity of his state?¹⁵⁴ Or was breathing new life into the traditions of the empire his ultimate goal?¹⁵⁵ The legacy of Diocletian's more famous edicts can still be felt in the tension in some scholarship between, for example, the impulse to read the Edict of Maximum Prices as an audacious and ill-conceived example of Diocletian's radical reforms and a growing sense that such a document was largely symbolic and of limited application.¹⁵⁶

¹⁴⁶ On the *Collatio* generally, see Frakes (2011).

¹⁴⁷ Millar (1986), 278; Connolly (2010), 54-58.

¹⁴⁸ Honoré (1994). See also Turpin (1991).

¹⁴⁹ Source of law: *Dig.* 1.2.2.11-12 (Pomponius), although the Senate and the People were still constitutionally empowered to make law (*Gaius Inst.* I.3-7). Deliberations: Honoré (1994), 20-25; Corcoran (1996), 45-6. Cf. Millar (1986) who reminds us that we do not know the precise role the emperor took in legal deliberations.

¹⁵⁰ Honoré (1994), 3, 29-34, 40-1.

¹⁵¹ In fairness to Honoré, he acknowledges this point (1994), 28-30, 33-38. Rescripts as a source of free legal advice: Millar (1977), 242-252, 537-549 and Connolly (2010), chs. 1-4.

¹⁵² My argument does not require Diocletian to have played strong, personal role, and, indeed, the vision for state-society relations that I have reconstructed may reflect an official *mentalité*. I have chosen to privilege the emperor's personal role because this was how Romans saw it. For example, when they petitioned the emperor Romans did not see themselves as petitioning his subordinates, but the emperor himself. Moreover, as we will see in chapter 5 Lactantius blamed the personal vices of the emperor themselves for the iniquities of the times.

¹⁵³ Potter (2004), 329.

¹⁵⁴ Corcoran (1996), 4-5, 233.

¹⁵⁵ This will be my contention in this chapter.

¹⁵⁶ Audacious: Potter (2004), 327-9, Harries (2012), 64-70. Symbolic: Kelly (1997b), who argues plausibly that the emperors may have intended the Edict of Maximum Prices to assign blame for inflation. Corcoran ((1996), ch.8)

The larger corpus, including the grand pronouncements, thus provides a cumulative picture of how Diocletian and his administration governed on a daily basis and responded to the more mundane realities of life in the empire. The picture we get is of a new social contract for a new empire.

The Tenor of Diocletian's Social Contract

The weakened state of the empire when Diocletian ascended the throne required a comprehensive reform program to improve administrative efficiency and infrastructural capacity. His reign witnessed great structural reforms of the army, the imperial court, imperial succession, provincial administration, taxation, coinage, and law.¹⁵⁷ In these areas Diocletian often built on reforms undertaken by his predecessors.¹⁵⁸ For instance, the *comitatus* that coalesced around Diocletian had its origins in the reign of Gallienus¹⁵⁹; Septimus Severus accelerated the professionalization of the imperial administration, centralization of administrative appointments, and division of provinces that came to characterize imperial governance in the 4th century¹⁶⁰; Aurelian too tried to reestablish a minimum precious metal content in his *aureus* and *denarius*¹⁶¹; and even Diocletian's famed collegiate rule and new court ceremony had antecedents.¹⁶² What makes Diocletian's reform agenda revolutionary is not only the scope of his efforts, ranging from monetary policy to morality, but also what it meant for the character of the Roman state. Gone were the days of an unobtrusive state seeking to devolve the functions of government to local organs of administration. Diocletian conceived of an energetic state that was capable of undertaking great efforts on behalf of the empire, but to be successful he needed access to the energies and resources of Roman society. In a word, he needed a new social contract. His purpose for proposing a new social contract was to naturalize and legitimize the new relationship between state and society in which each member of Roman society was expected to share the emperor's belief in the divine origins of the Roman Empire and be willing to sacrifice blood and treasure to defend it. The emperor's role was to restore and defend what he saw as the traditional legal and moral character of his empire and to persuade, or compel, his subjects to accept their new role.

The codifications of imperial constitutions during Diocletian's reign are the first sign that Diocletian and his administration perceived the legal system in need of reform.¹⁶³ A close look at individual laws reveals that this concern went much deeper. By comparing imperial constitutions to the relevant sections of the *Digest* we can observe that Diocletian and his

strikes a balance between the two positions: the emperors sought the approval of their subjects for their tardy response to the inflation and to assign blame, but also they tried to offer real remedies to inflation.

¹⁵⁷ For a survey of Diocletian's reforms, their debts to the past and their credits to the future, Jones (1964) is still useful. See also Ermatinger (1996); Carrié and Rousselle (1999), chs. 1, 3, 9; Potter (2004), 275-294, 326-335; Carrié (2005), 269-312.

¹⁵⁸ And Diocletian's solutions to the problems he perceived may reflect the standard toolkit that was available to the Roman governing class throughout Roman history (Adams (2004), 99-107).

¹⁵⁹ Campbell (2005), 110-130, esp. 121-122.

¹⁶⁰ Carrié (2005); Lo Cascio (2005).

¹⁶¹ Corbier (2005), 334-335.

¹⁶² Collegiate rule: one thinks of Marcus Aurelius and Lucius Verus, Pupienus and Balbinus, Philip and Priscus, and Valerian and Gallienus. Court ceremony: Kolb (2001), 25-58; Kelly (1997a)

¹⁶³ Potter (2004)

lawyers assiduously adhered to traditional Roman laws in even the most mundane cases.¹⁶⁴ Diocletian, of course, was not the first emperor to issue rulings that accorded Roman law. His attention to the details of Roman law is important because to Diocletian traditional Roman law meant more than a set of legal prescriptions; Roman law was the body of the practices and principles that the gods had ordained for the Romans and that their ancestors had consecrated by long use. As he said in his edict against the Manichaeans from 302¹⁶⁵:

Sed dii immortales prouidentia sua ordinare et disponere dignati sunt, quae bona et uera sunt ut multorum et bonorum et egregiorum uirorum et sapientissimorum consilio et tractatu inlibata probarentur et statuerentur, quibus nec obuiam ire nec resistere fas est, neque reprehendi a noua uetus religio deberet. maximi enim criminis est retractare quae semel ab antiquis statuta et definita suum statum et cursum tenent ac possident. (Coll.15.3.2)

But the immortal gods by their providence thought it right to ordain and establish that what is good and true should be judged and held inviolate by the counsel and deliberation of many good, distinguished, and very wise men. The gods also ordained that it is not in accordance with religion to oppose or resist these principles and that the old religion should not be rebuked by the new. It is a heinous crime to reconsider those things that were established and defined once and for all by the ancients and are in firm possession of their status and course in the present.

He had elaborated on this idea further in his edict on incest from 295.¹⁶⁶ He said:

Nihil enim nisi sanctum ac uenerabile nostra iura custodiunt et ita ad tantam magnitudinem Romana maiestas cunctorum numinum fauore peruenit, quoniam omnes leges suas religione sapienti puderisque obseruatione deuinxit. (Coll.6.4.6)

For our laws preserve nothing except what is hallowed and venerable and thus did the Roman people attain their present greatness by the favor of all the gods, because they safeguarded all their laws by wise sanctions of religion and concern for morality.¹⁶⁷

Thus one way for Diocletian to strengthen and defend the empire was to observe the legal traditions on which the Roman people had built their great empire. Anything less not only risked the favor of the gods; it was also an offense to Rome's divine origins.¹⁶⁸

Diocletian's rescripts cited many recognized sources of law and legal provisions.¹⁶⁹ Citations of law reflect the explicative nature of rescripts, which, in addition to granting or

¹⁶⁴ The insistence of Diocletian's government on strict adherence to traditional law both by the government and its subjects has already been noted by Carrié and Rousselle (1999), 150-153, 154-156.

¹⁶⁵ For the dating, see Harries (2012), 85.

¹⁶⁶ For the dating see Harries (2012), 72.

¹⁶⁷ Hyamson (1913) tr. slightly adapted

¹⁶⁸ *Coll. 6.4.8: si qua autem contra Romani nominis decus sanctitatemque legum post supra dictum diem deprehendentur admissa, digna seueritate plectentur.*

denying favors, informed the petitioner of what the law provided, given the facts as presented in the petition.¹⁷⁰ Moreover, a variety of phrases were used to introduce the pertinent law, such as *non est ambigui iuris* or *ratio iuris*.¹⁷¹ These were not just empty phrases or stylistic preferences of imperial lawyers; they introduced citations of *ius* that correspond to provisions found also in the *Digest* and the constitutions of earlier emperors.¹⁷²

Citing the existing body of law not only guaranteed that the gods would continue to look favorably upon the empire, but also followed in the Roman tradition that the good emperor let himself be constrained by existing laws.¹⁷³ In this tradition Diocletianic rescripts went so far as to place limits on what an imperial rescript could do for its recipient. For example, a rescript could not abrogate a sale without the consent of the new owner.¹⁷⁴ The emperors also expected state officials, including agents of the *fiscus*, to enforce the laws rather than operate outside them.¹⁷⁵ For instance, in order to protect his subjects from arbitrary confiscation, Diocletian issued a decision that officials needed an official rescript to proceed with the confiscation.¹⁷⁶ He then recruited the people to help police his officials by allowing them to use violence to protect their property against officials acting without a rescript.¹⁷⁷ This case introduces Diocletian's vision of collaboration between the state and Romans in creating a just and resilient society. The language of the rescript is also noteworthy, for it contrasts officials who act *ex arbitrio suo* with the *tenor datae legis*, imperial letters, and *iustitiae vigor*.¹⁷⁸ Diocletian held himself to a high

¹⁶⁹ For example, *Leges*: *CJ* 3.35.6: Aquilian law; *CJ* 6.37.15: Falcidian Law; *CJ* 7.71.4: Julian law concerning bankruptcy; *CJ* 8.4.4: Julian law on private violence; *CJ* 5.30.1: Twelve Tables. *Edicta*: *CJ* 2.19.7: Perpetual Edict; *CJ* 6.17.1: Carbonian Edict. *CJ* 2.36.3: an edict of Marcus Aurelius; *CJ* 2.13.1: an edict of Claudius II Gothicus. *Senatus consulta*: *CJ* 5.71.11: *senatus consulti auctoritas*. Municipal law: *CJ* 6.24.7, 8.48.1, and 10.47.2. See Corcoran (1996), 63-73 for a comprehensive treatment of the sources of law cited in Diocletian's constitutions.

¹⁷⁰ Corcoran (1996), 48-51, Honoré (1994), 37-40. Indeed some rescripts advised people to cite the work of jurists: *CJ* 9.2.11, advising Paulus, and 5.71.14, advising Papinian.

¹⁷¹ *est ambigui iuris*: *CJ* 3.22.4. See also *CJ* 3.22.1 (Alexander, 231), whose statement on the forum where a fugitive slave should be tried corresponds to that given by Diocletian in *CJ* 3.22.4. *Ratio iuris*: *CJ* 3.32.24, whose rationale can be found in *Dig.* 49.15. Examples of other phrases: *iuris est* (*CJ* 4.5.7), *cum hoc legibus interdictum sit* (*CJ* 4.6.5), *certissimi iuris est* (*CJ* 4.15.4), *Desiderium tuum cum rationibus iuris non congruit* (*CJ* 4.34.7), and *rationis est* (*CJ* 5.38.6).

¹⁷² For example, the legal explanation for the response in *CJ* 3.32.13 concerning the adjudication of possession and ownership of a slave is given in *Dig.* 10.4.3.12; *CJ* 5.4.17 preserves the same list of people forbidden from marrying each other that Paul gives in *Dig.* 23.2.14. See also *CJ* 4.10.7, whose legal explanation is found in *Dig.* 20.1.30 (Paul); *CJ* 2.42.2, whose legal explanation is found in *Dig.* 4.1.1-2 (Ulpian and Paul).

¹⁷³ Noreña (2009). *Cons.* 6.17: *scriptura, quae nec iure nec legibus consistit, nec a nobis hanc confirmari convenit, quippe cum beneficia citra cuiusquam iniuriam petentibus decernere minime soleamus*. See also *CJ* 8.48.4. According to de Ste. Croix ((1981), 497-503) corruption and abuses by the administration was one of the prime causes of the decline and fall of the Roman Empire. Certainly there were abuses, but it must be remembered that argument here is not that abuses did not exist, but that policing abuses was a key element of the emperor's image and the new social contract. On corruption see also MacMullen (1988).

¹⁷⁴ *CJ* 4.44.3. See also *CJ* 3.32.12 and 8.4.3. Honoré (1994), 170 attributes the explanation given in *CJ* 3.32.12 for the limited power of the rescript to no. 20's stylistic tendencies. I would suggest, however, that limiting the legal power of a rescript was more than style. It was a statement of the constitutional power of the emperor. See Corcoran (1996), p.55 nn.79-85 and Honoré (1994), p.170 n.389 for a fuller list of what rescripts could and could not do.

¹⁷⁵ *CJ* 2.13.1, *CJ* 8.46.5, *CJ* 4.46.2

¹⁷⁶ *CJ* 10.1.5

¹⁷⁷ The legal explanation of *CJ* 10.1.5 is provided by Ulpian in *Dig.* 43.4.1.5. Cf. *Dig.* 48.7.7-8 on the *Lex Julia de vi privata*, which considers creditors' occupation of debtors' properties without a judicial order *vis privata*, and *Dig.* 43.1.27, which permits the use of force to repel force.

¹⁷⁸ *CJ* 10.1.5: *etiamsi officiales ausi fuerint a tenore datae legis desistere, ipsis privatis resistentibus a facienda*

standard, equating in the same sentence his constitutions with existing laws and the more abstract concept of justice. Thus Diocletian tried to create the expectation for his subjects that they could rely on the emperor to make fair rulings based on law, not merely the interests of the powerful.¹⁷⁹

One step toward reinventing the social contract of the Roman Empire was to ensure that not only the emperors, but also magistrates, state institutions, and individual Romans obeyed the laws that the gods had given to their ancestors, for this would guarantee that the gods would continue to protect the emperor and the empire and that justice reigned supreme.¹⁸⁰ The edicts of the so-called “Great Persecution” are the exception that proves the rule.¹⁸¹ Here the emperors decreed that churches be destroyed and scriptures burned; high-ranking Christians be stripped of their honor and dignity; Christians of all ranks be subject to torture; Christian imperial freedmen be reduced to slaves; every plaintiff win a case if a Christian were defendant¹⁸²; and finally that Christians themselves have no action for *iniuria*, adultery, or theft. What the Tetrarchs deprived the Christians of, they guaranteed for everyone else. Ultimately, however, Diocletian and his colleagues did what they thought was just, following the very rules they imposed on his subjects. It was just that his rulings accord with the laws that the gods had ordained for them. And he argued vigorously that his modifications of laws were just.¹⁸³

Diocletian also legislated and delivered judicial rulings that accorded with more abstract principles, such as *ratio*, *utilitas*, and *aequalitas*. Again, Diocletian was not unique in ruling by these principles, but his insistence on these gives us a sense of how he envisioned the role of his government.¹⁸⁴ First, *ratio*. Diocletian and his colleagues went to great lengths in the Edict of Maximum Prices to emphasize that their decision to set maximum prices was well reasoned, when localized inflation in Antioch was creating discontent between the emperor, his soldiers, and the Antiochenes.¹⁸⁵ In *CJ* 5.62.23, a less verbose text, Diocletian reiterated the wisdom of his decisions and wisely (*consulti*) excused by decree (*forma*) a man, acting as guardian of his sister’s child, from prosecuting her on behalf of his ward, her child, since the conflict of interests

iniuria arceantur. Tunc enim is, cuius interest bona alicuius non interpellari, officialibus volentibus ea capere debet adquiescere, cum litteris nostris cognoverit non ex arbitrio suo caesarianos ad capiendas easdem venisse facultates, sed iustitiae vigorem id fieri statuisse.

¹⁷⁹ Adams (2004), 92-95

¹⁸⁰ *CJ* 9.2.8.

¹⁸¹ Lact. *DMP* 13.1, Eus. *HE* 8.2.4 and 8.5.1; Potter (2004), 330.

¹⁸² *adversus eos omnis actio valeret*. This phrase does not mean that any action would be available when a Christian was defendant. That sense is conveyed by the phrases, *competit actio*, *actio postulatur*, *actio concedenda est*, *actio locum non habet, uti actione*, *actio datur*. *Dig.* 44.7.57, 44.7.38, and 27.9.3.3 make clear that the sense of *valere* here is “to give legal force”, “have legal standing”, or “to decide for”.

¹⁸³ For example, *CJ* 7.62.6, which reforms the appellate courts: section 1: *votum gerentibus nobis aliud nihil in iudiciis quam iustitiam locum habere debere*; section 2: *cum id iustitia ipsa persuadeat ab eo haec recognosci, qui evocandi personas sua interesse crediderit*; and section 4: *Ne temere autem ac passim provocandi omnibus facultas praeretur*.

¹⁸⁴ For *utilitas*: Pliny *Panegyricus* 20, 36, 56-58, 75, 80, 94, *CJ* 1.50.1 (Gordian), 2.12.7 (Antoninus), 2.18.2 (Severus, Antoninus), 4.62.1 (Severus, Antoninus), 6.54.2 (Marcus), 10.42.2 (Antoninus), 10.68.1 (Severus Alexander). See also Longo (1972). *Aequitas* and *aequalitas*: *CJ* 2.1.3 (Severus, Antoninus), 2.1.4 (Antoninus), 2.1.8 (Severus Alexander), 2.3.12 (Severus Alexander), 3.29.2 (Valerian, Gallienus), 5.55.2 (Severus Alexander), 8.13.2 (Severus, Antoninus). See also Noreña (2011), 63-66. *Ratio*: *CJ* 12.38.4 (Gordian) and 5.51.4 (Severus Alexander); *Consultus*: *CJ* 7.2.6 (Gordian, of Marcus Aurelius), 7.32.3 (Decius, of Papinian), 8.37.4 (Severus Alexander, of Ulpian).

¹⁸⁵ *Ratio*: pr. 30, 85, 127, and 133. *Providentia*: pr. 44, 47, 50, 86, 121, and 149. See also Corcoran (1996), p.209 nn.23 and 25 for additional uses of *ratio*, and Corcoran (1996), ch. 8 for a lucid examination of this complex text.

prejudiced the *utilitas* of the ward.¹⁸⁶ *Utilitas* was also said to have motivated the Edict of Maximum Prices. Examples abound in the preamble¹⁸⁷, but one instance is particularly striking:

quis ergo nesciat utilitatibus publicis insidiatricem audaciam, quacumque exercitus nostros dirigi communis omnium salus postulat non per vicos modo aut per oppida, sed in omni itinere, animo sectionis occurrere, pretia venalium rerum non quadruplo aut octuplo, sed ita extorquere, ut nomina aestimationis et facti explicare humanae linguae ratio non possit? denique interdum distractione unius rei donativo militem stipendioque privari et omnem totius orbis ad sustinendos exercitus collationem detestandis quaestibus diripientium cedere, ut manu propria spem militiae suae et emeritos labores milites nostri sectoribus omnium comferre videantur, quo depraedatores ipsius rei publica tantum in dies rapiant, quantum habere nesciant ? (ll. 92-106)

Therefore who does not know that an audacity waylaying the public good has appeared with a spirit of auction wherever the common welfare of everyone demands that our armies be scattered not only through villages and towns, but throughout the entire journey, that it has not merely raised prices of merchandise four or eightfold, but has so twisted them that the nature of human language cannot produce the words for the magnitude of the deed? In a word, by the sale of one item a soldier is deprived of his donative or stipend and everything collected from the whole world to sustain the armies falls to the detestable profit of rapacious merchants, with the result that our soldiers seem to grant with their own hands the hope of their entire career and their completed labors to the purchasers of all things, in order that the plunderers of this state seize daily as much as they ever thought to have.

What makes this passage so interesting is the linking of *utilitas publica* and *communis omnium salus* with the wellbeing of the armies. Thus by limiting inflationary prices in support of the soldiers the emperors were acting for the common good, because the empire could not long endure if greed deprived the armies of their victuals. This language of *utilitas*, abundant in Tetrarchic rhetoric, suggests that they saw their role as protecting not just key constituencies, like the armies, but also all provincials.¹⁸⁸ Finally, *aequalitas* was a paramount consideration, especially in disputes concerning the distribution of property and burdens. For example, *CJ*

¹⁸⁶ See also *CJ* 6.20.12 and 4.36.1, which clarified which action was available to a master whose slave gave a third party a mandate to buy herself. The ruling accorded with the relevant passages in the *Digest* (17.1.19 (Ulpian) and 17.1.54 (Papinian)), but the emperors explained that the ruling was made for good reason (*optima ratione*) and that it was thought right (*placuit*). Thus even where the law was clear, the emperors emphasize that the decision was not reach arbitrarily, but rationally.

¹⁸⁷ *fortunam rei publicae* (pr. 16), *fortunaes communes* (pr. 31), *publicae felicitatis affluentiam* (pr. 79), *ex commodo publico* (pr. 146-147)

¹⁸⁸ For additional examples of the language of public benefit see also *CJ* 7.43.9, 9.2.11, 10.1.4, and 11.42.1 (*salubriter*); *CJ* 3.34.7 and 10.1.4 (*utiliter*); and *CJ* 11.42.1 and *CJ* 10.59.1 (*ob tutelam publicam*). See also *CJ* 9.41.8, in which the emperors published their policies on who could be tortured and under which conditions. The benefit (*fructus*) the provincials would receive was not being tortured immediately, but I imagine they would not have seen the benefit in the possibility of their subjection to torture later, while soldiers, veterans, and their sons were exempt outright. But this is the narrative they were trying to write; their decisions were useful and beneficial to their subjects.

3.38.3 records a case in which property was divided unequally (*inaequaliter*) *per fraudem vel dolum vel perperam*. The emperors state that *iudicia bonae fidei* will correct this inequality.¹⁸⁹

Thus Diocletian did not see his government as serving the interests of a narrow political coalition. His notion of the role of his government in the social contract was to revitalize and defend all of Roman society by enforcing Roman law and promoting general public utility through rational and fair policies. But Diocletian had learned from the emperors of the Principate that the government could only accomplish so much in the defense of the empire without the resources and cooperation of Roman society. To this end he continued the practices of earlier emperors and expanded the legal obligations that all citizens had to the state and the larger community of the empire. On the face of it, expanding Romans' legal obligations could be interpreted as a legal reform in which a greater number of areas of social life came to be regulated by public law, often in the form of legal recognition of *de facto* practices. Indeed, public law had imposed legal obligations on Romans, such as for their property's taxes or for services to their cities, long before Diocletian's reign, and Diocletian would not be the last emperor to promulgate such regulations.¹⁹⁰ But there is more to it: Diocletian's regulation of occupations and morality was part of a larger social development in which the state deemed more areas of social life – from soldiering, to occupations in service of the state, local government, farming, inheritance, morality, religion, and, as we shall see, taxation – so essential to the functioning and defense of the empire that they warranted close regulation by the coercive institutions of the central government.¹⁹¹ What is more, the universal application of some of these laws – what Roman did not pay taxes or pray to a god? – suggests that Diocletian considered all Romans to have essential functions to perform. Thus, these laws reflect more than a legal reform: Diocletian, like his successors, wanted to change Romans' self-conception. He wanted Romans to think of themselves as patriots, responsible for the empire and sharing in its fate, rather than as privileged individuals only enjoying its fruits. Law was simply the means by which the emperors tried to affect this cultural change.

The most famous 4th century example of this phenomenon is the so-called “colonnate,” which I will interpret in the next chapter as the state's attempt to clarify one class of agricultural producers' fiscal responsibilities in the new tax system implemented by Diocletian. But for members of certain other classes and occupations, in particular, decurions, soldiers, *navicularii* (shippers of grain to Rome), *pistores* (millers of grain and bakers of bread), and *suarii* (importers of meat), Diocletian and his successors mandated the performance and financial guarantee of certain functions, often as compulsory services (*munera*). In order to protect their solvency, the emperors regulated their legal rights, such as whom they could marry, how they could dispose of their property, and the *condicio* of their heirs.¹⁹² Thus, we find individuals in these professions increasingly referred to in the legal texts of the 4th and 5th centuries as *adscriptus* and *obnoxius*, that is, assigned to a certain *origo* and bound to a certain *condicio*, respectively.

First, soldiers. There were many sources of manpower available to the Roman state, including volunteers, especially from regions of the empire with a tradition of soldiering (e.g. the

¹⁸⁹ For *aequalitas* see also *CJ* 3.37.4, 4.37.3, 7.72.6, 9.1.17, and *Cons.* 2.6.

¹⁹⁰ See appendix; Jacques (1985), 304-305. The *functio navicularia*, for example, was transformed into a *munus* during the reign of Septimius Severus (Sirks (1991), ch. 4).

¹⁹¹ Sirks (1993b), 164; Marcone (1997); Carrié and Rouselle (1999), 681-682

¹⁹² *Condicio* was the Roman legal term for legal status, to which the state attached penalties, legal obligations, and privileges in a graded hierarchy (Berger (1953), 403). In the mid 4th century one's occupation or *origo* could be considered a heritable *condicio*, e.g. *pistoria* or decurionate, and could have additional obligations attached to it, such as restrictions on alienating property (Sirks (1991), 330-339); chapter 3 of this dissertation).

Balkan provinces), and recruitment of non-Romans.¹⁹³ But beginning with Diocletian (or, possibly, Constantine) the state started to recruit veterans' sons by mandating that they take their fathers' position upon retirement.¹⁹⁴ This arrangement gave formal legal recognition to what was already occurring among military families, and was based on the assumption that sons would inherit their fathers' innate military prowess.¹⁹⁵ If veterans' sons chose not to join the army or were physically unfit, they were required to join the local councils, provided that their patrimony was sufficient for the duties associated with council membership.¹⁹⁶ The same regulation applied to children of officials, who were required to enter their parents' *militia* or *condicio*.¹⁹⁷ As we shall see, this law did not make soldiering hereditary, but it did serve to specify the obligations that one social class had to the empire. Inheritance was just the legal mechanism of enforcement. Finally, those who did not serve were required to furnish a recruit or pay a corresponding tax.¹⁹⁸

In the past it was often contended that the proliferation under Diocletian of state regulation of other occupations, in particular, *navicularii*, *suarii*, and *pistores*, caused the Roman economy to operate as a state-run economy, much the like the Soviet one.¹⁹⁹ More recently, scholars such as Boudewijn Sirks²⁰⁰ have reexamined the evidence and concluded that the system developed over time for the limited purpose of ensuring Rome's, and later Constantinople's, *annona*.²⁰¹ It was Trajan who first founded in Rome and the provinces legal entities, *corpora naviculariorum*, with which the state could contract for collection and delivery grain. Members of the *corpora* included ship owners, investors, and captains.²⁰² Septimius Severus made the *functio navicularia* a compulsory public service on property (*munus patrimonii*) and his son Caracalla made the milling and baking of bread (*functio pistoria*) a *munus patrimonii* as well.²⁰³ The importation of meat to Rome (*functio suaria*) was later added to the number of *munera*. The designation of these *munera* as *patrimonii* is significant because it indicates that skill or occupation in these fields were not legal requirements, only that the liturgist's estate could financially guarantee the operations.²⁰⁴ The other type of *munus* was the *munus personale*, which, in contrast to the *munus patrimonii*, required the required the personal attention and energy of the liturgist.²⁰⁵ Thus, from a strict legal perspective, *navicularii* were not so much obligated to perform an occupation as to perform an obligatory financial service for the state.

Yet in order to maintain the ranks of the *navicularii*, *suarii*, and *pistores*, public law

¹⁹³ On recruitment see, Nicasie (1998), chs. 3-4.

¹⁹⁴ Lee (1997), 221; Nicasie (1998), 88-91; Campbell (2005), 126. The evidence, however, dates exclusively to the post-Diocletianic period: *CTh* 7.1.5 (Valens and Valentinian), 7.1.8 (Valens and Valentinian), 7.13.1 (Constantius II), 7.13.6 (Valens and Valentinian), 7.22.4-5 (Constantine); *CJ* 12.47.1 (Constantine) and 12.47.2 (Gratian, Valentinian, and Theodosius).

¹⁹⁵ *CTh* 7.22.7 (Valens and Valentinian) and 7.22.9 (Gratian, Valentinian, and Theodosius); Carrié and Rousselle (1999), 171.

¹⁹⁶ *CTh* 7.22.2 (Constantine).

¹⁹⁷ *Militia*: *CJ* 12.47.1 (Constantine). *Condicio*: *CJ* 12.47.2 (Gratian, Valentinian, and Theodosius). This latter constitution concerns the *primipilarius*, which in the 4th century refers to a liturgical official in the governor's court charged with transporting the *annona militaris* (Carrié (1979); Carrié and Rousselle (1999), 175, 766)).

¹⁹⁸ Campbell (2005), 126-127

¹⁹⁹ Carrié and Rouselle (1999), 691-692; Sirks (1991), 1-9. E.g. Rostovtzeff (1926).

²⁰⁰ (1991)

²⁰¹ See also Sirks (1993) and Carrié and Rouselle (1999), 687-692.

²⁰² Sirks (1991), 10-23, 128-129.

²⁰³ Sirks (1991), 130-142.

²⁰⁴ Sirks (1991), 141-142; Carrié and Rouselle (1999), 690.

²⁰⁵ *Dig.* 50.4.18.1 (Arcadius Charisius)

defined them as bound to an occupation (*obnoxii vocationi*). Sirks posits that *obnoxietas* was introduced at the same time as the *munus*, during the Severan period, though much of the evidence is derived from 4th century sources.²⁰⁶ Moreover, even though the *navicularii* were not prohibited from engaging in other commercial operations, in order to guarantee that the estates of *navicularii* remained sufficient to bear the risk of the *functio navicularia*, the state mandated that a majority of a *navicularius*' property be invested in his *corpus*.²⁰⁷ It was, therefore, legally the estate that bore the *munera*, as was often the case in Roman law²⁰⁸; a *navicularius* was one who owned an estate that legally bound (*obnoxius*) him to the occupation of *navicularius* and required him to perform the *munera* associated with *functio navicularia*.²⁰⁹ We shall also see in the next chapter that owning an estate of sufficient valuation required its possessor, whether decurion or plebeian, to perform patrimonial *munera* in the *origo* in which the estate was located. The attachment of *munera patrimonii* to estates is the key to understanding how obligations for, say, the *functio navicularia* or decurionate were transferred.²¹⁰ Occupations and statuses alone were not inherited, as has been traditionally thought. Instead, the state obligated certain estates to perform essential occupations as public services in order to guarantee those services; to defray the costs associated with those services; and to protect itself against potential financial losses. Diocletian continued this policy and obligated Romans to execute these functions only if they had inherited an estate to which these obligations were attached; if one chose to reject one's inheritance, one could escape the obligations associated with it, though the estate would be handed over to the local *curia* or *corpus* to be put to use.²¹¹ In the mid 4th century, however, emperors did make certain *condiciones* inheritable without inheritance of the estate and restricted the right of heirs to reject or alienate their inheritance.²¹²

In return for the service that soldiers, *navicularii*, *pistores*, decurions, and others rendered, Diocletian and his successors preserved their exemptions from other obligations.²¹³ Soldiers were exempt from civic *munera* in their *origines* and from *capitatio*, for example, and veterans continued to enjoy exemption from civic *munera*, as did *navicularii*.²¹⁴ Diocletian also granted exemptions from *munera* to teachers of the liberal arts and to physicians because he considered their professions essential public goods (*utilitas publica*); those who were away from their *origo* studying the liberal arts and law until the age of 25 received exemptions for the same reason.²¹⁵ Finally, he did not require rural farmers who had paid their *capitatio* to perform

²⁰⁶ Sirks (1991), 142-145, 169-175, 326-328. See chapter 3 of this dissertation.

²⁰⁷ See also Sirks (1991), 130-138; Sirks (1993), 164; Carrié and Rouselle (1999), 691-692.

²⁰⁸ See Appendix I.

²⁰⁹ Jones (1964), 827.

²¹⁰ For the various *munera patrimonii* see *Dig.* 50.4.18.18-25 (Arcadius Charisius, writing under Diocletian); *CJ* 10.42.8 (Diocletian et. al) decrees that the burdens of the *protostasia* was a *munus patrimonii*, that is requiring the liturgist to make financial contributions from his patrimony. See also *CJ* 10.62.3 (Diocletian et. al).

²¹¹ *CJ* 4.12.3 (Diocletian et. al), 10.32.7 (Diocletian et. al), 10.40.4 (Diocletian et. al.), 10.42.7 (Diocletian et. al); Jacques (1985), 305-306, 316; Sirks (1993).

²¹² See chapter 3, and n. 63 above.

²¹³ Jacques (1985), 309-310.

²¹⁴ Privileges of *navicularii*: Sirks (1991), 35, 47-61, 108-111. General privileges for soldiers: Campbell (2005), 121, n. 53. Soldiers' exemption from civic *munera*: *CJ* 7.64.9 (Diocletian et. al). This ruling confirms an earlier law (*CJ* 10.44.1 (Alexander)), but emphasizes that the exemption is reward for their service (*remunerantes fidam devotionem militum nostrorum*). See also 10.55.1-3 (Diocletian et. al), and *CJ* 10.66.1 (Constantine), *CTh* 7.20.4 (Constantine). Exemption from *capitatio*: *CTh* 7.13.6-7 (Constantine).

²¹⁵ *CJ* 7.35.2 (Diocletian et. al), 10.47.1 (Diocletian et. al.), *CJ* 10.50.1-2 (Diocletian et. al).

other public services.²¹⁶

This transactional granting of exemptions was a new development and altered the meaning of citizenship.²¹⁷ In Diocletian's view, citizenship was primarily defined as a set of obligations to the empire, which he and his lawyers worked to define for each social class.²¹⁸ This way of thinking stands in marked contrast to conceptions of citizenship in the early empire, when citizens could expect to receive privileges because they were citizens. These 4th century obligations also reflected an acute fear among the highest levels of government that the chaos of the 3rd century would return if the social, political, economic, and military structures of the state were not fortified.²¹⁹ But above all, Diocletian believed that Romans should share his willingness to shoulder great burdens to preserve their society.²²⁰

In addition to these public law restrictions on occupations, which applied to a proportionally small number of individuals²²¹, Diocletian also imposed religious and moral obligations on all his subjects. These obligations are consistent with his belief that citizens ought to do their part to preserve and defend the empire, for immoral practices and false religious beliefs could jeopardize the favor of the gods. For example, in his edict on incest, Diocletian proclaimed:

ita enim et ipsos immortales deos Romano nomini, ut semper fuerunt, fauentes atque placatos futuros esse non dubium est, si cunctos sub imperio nostro agentes piam religiosamque et quietam et castam in omnibus mere colere perspexerimus uitam. (Coll. 6.4.1)

For it is in no way doubted that the immortal gods will themselves continue to favor the Roman name, as they always have, and to be appeased, if we observe all those under our rule leading pious and religious lives and cultivating purely tranquility and chastity in all things.

We have already seen Diocletian make this argument (p. 35), but this section makes a rhetorical move that has so far been absent from Diocletian's constitutions: i.e., that the emperors had the duty to oversee that his subjects were leading pious lives and, as is stated later, to correct them if they were not.²²² For Diocletian and his colleagues, the stakes could not have been any higher. Additionally, Diocletian raged in his edict against the Manichaeans, quoted above, that certain troublesome individuals were casting aside the vouchsafed religious traditions of the empire and spreading dangerous and foreign superstitions.²²³ He feared that these doctrines would not only jeopardize the gods' favor, but would also disturb the moral fabric of the empire and the tranquility he and his colleagues had worked so hard to establish. For this reason

²¹⁶ *CJ* 11.55.1 (Diocletian et. al)

²¹⁷ For other exempt occupations under Diocletian see also *CJ* 10.48.2 (praepositi) and 10.57.1 (tax farmers).

²¹⁸ Jacques (1985), 317-326.

²¹⁹ Marcone (1997), 338.

²²⁰ Jacques (1985), 324-326; Potter ((2004), 329) observes that Diocletian presumed "that all provincials will share the emperor's concern over tax policy, prices, or currency."

²²¹ For example, even under Diocletian, whom Lactantius denounced for quadrupling the number of soldiers (*DMP* 7.2), the army still numbered around half a million or 600,000 men (Campbell (2005), 123-126).

²²² *Coll.* 6.4.3-4. Diocletian took additional steps to protect chastity in *CJ* 9.9.27 and *CJ* 9.9.20.

²²³ *Coll.* 15.3.1

Diocletian ordered his subjects to reform and to guard diligently their religious practices in order that they adhere closely to tradition.²²⁴

It is in this context of individuals' religious and legal responsibilities to the empire that we can understand an additional aspect of the edicts of persecution issued against the Christians. As we have seen (p. 38), these edicts ordered that all Christians lose the right to legal defense and to initiate actions against others.²²⁵ These provisions are significant for us because, as David Potter observes, they "were an open invitation for the inhabitants of the empire to join with the emperors in purifying Roman society of what Diocletian took to be the evil of Christianity. In this way the edict participated in the ideology of the central government that suggested that Roman citizens shared with the court a basic interest in defending society as a whole against those who were regarded as malefactors."²²⁶ Thus, just as Diocletian recruited Romans to police the illegal actions of his officials, so too did he make individuals responsible for their own religious practices as well as those of their fellow citizens.²²⁷

Like the regulations imposed on certain occupations and statuses, the emperors' concerns about the nature of individuals' private religious beliefs and practices reflected the notion that citizens should care about fate of the empire, for what people did in the privacy of their home could have disastrous consequences for the survival of the empire and the emperors' reign. Apprised of their role, Romans were then expected to fulfill their occupational obligations, fear the same gods, obey common laws, and share in the emperor's mission to revive and protect the empire, in short, to understand themselves as members of a universal empire.

The Slow Development of the Concept of a Universal Empire

Diocletian's belief in both his and his subjects' responsibilities toward the empire marks an important stage in the development of what Garth Fowden has called "universalism". In his view, "late antique universalism aimed at politico-cultural domination and ultimately homogenization of an area large enough to pass for 'the world'."²²⁸ In the Roman Empire, universalism culminated in the adoption of Christianity and the use of the word "Romania" to refer to the Roman Empire.²²⁹ Universalism also indicated a change in thinking, which I will explore in this section, about one's place in the world. In the early years of the empire, provincials thought of themselves first as citizens of particular cities and second as inhabitants of the Roman Empire, and emperors ruled over them as subjects.²³⁰ By the late second century, this

²²⁴ *Coll.* 15.3.6.

²²⁵ Potter (2004), 330. See above.

²²⁶ Potter (2004), 330.

²²⁷ Had the Roman propaganda machine been as capable as those of modern nation-states, the edicts could have had the potential to create the conditions of terror in which society as a whole would police itself, as portrayed, for example, in *Sophia Petrovna* (Chukovskaya (1965)). For a balanced discussion of the "propaganda" of the imperial state see Noreña (2011), 17-18.

²²⁸ Fowden (1993), 7

²²⁹ Fowden (1993), 57-58

²³⁰ It is true that a universalizing imperial ideology had existed since the late Republic and continued to motivate Augustus' imperial conquests (Brunt (1990), 433-480; Nicolet (1991)), but what distinguished this ideology from the universalism I am discussing is the conceptual position of non-Roman citizens in the empire. Augustus treated non-Roman citizens as subjects of the city of Rome, inhabiting subject cities. What I see developing during the Principate is a new way of thinking about provincial communities no longer as subjects, but as sharing in the benefits of the imperial political community, if not as proper citizens.

mentality began to reverse. Provincials, principally intellectuals, and emperors started thinking of themselves and, most importantly, others primarily as Romans and secondarily as inhabitants of cities, a development that is reflected in the imposition of new, universalizing responsibilities on certain classes of people under the Severan emperors. Diocletian's regulation of occupations, edicts on the Manicheans and incest, his persecution of the Christians, and his fiscal reforms would all reinforce this development.

The spread of universalist ideas was a slow process and involved the gradual extension of the political and social benefits and obligations to a wider social and geographical plane. The empire began as a political settlement that returned peace and stability to Italy after the ruinous civil wars of the late Republic. As *dux*, Octavian waged war on behalf of *tota Italia* and, as emperor, he was careful to settle veterans outside Italy so as to avoid further confiscations of property and social strife.²³¹ The armies were stationed on distant frontiers and Augustus himself spent many years away from the capital.²³² Subsequent princes and emperors, such as Nero²³³, made overtures to the provinces, but Rome and Italy remained the object of imperial attention, as was expected of the emperor.²³⁴

Hadrian's reign marks a distinct change in the mental geography of the empire. Upon accession he refocused the energies of the Roman state. He abandoned costly external conquests and spent much of his reign touring the provinces and soliciting their identification with the center. He canceled tax arrears, remodeled the Athenian agora, built roads, surveyed fields, and dredged harbors.²³⁵ And the provinces reciprocated: cities began to incorporate Hadrian's name into their public dedications, coins, and religious festivals.²³⁶ Provincials, who had been ruled for Rome's and Italy's benefit, now had reason to say that "Roman" denoted a common nationality.²³⁷

Caracalla changed all that in 212. As we have seen (pp. 43-45), the Severans had already made supplying Rome with food an obligation on certain individuals, but in one of the earliest examples of an imperial edict explicitly aiming at universal application²³⁸, Caracalla went further: he extended citizenship to all freeborn inhabitants of the empire, thereby bringing provincial communities into the legal and political world of the Roman *res publica*. This change in the legal status of individuals and communities neither abrogated local laws and customs nor obliged locals to order their lives according to Roman legal principles, but transformed local laws and customs into "Roman" laws and customs.²³⁹ In other words, initiating a legal action – such as, selling or gifting property, arranging for a legal guardian, or making a gift – according to local laws could now be considered a "Roman" legal act, rather than distinct from "Roman" laws.²⁴⁰ The *Constitutio Antoniniana* also changed the relationship between the emperor and his subjects. The edict stipulated that new citizens were to take his name and were asked to join the

²³¹ *Tota Italia: RGDA* 25; Syme (1939), ch. 20. On the Augustan settlements see Syme (1939), chs. 21 and 24.

²³² Tacitus *Ann.* 4.5; Syme (1939), ch. 23

²³³ Such as tax immunities for Greece and his proposal to cut a canal through the Isthmus of Corinth (Malitz (2005), 92-93). Agrippa's (Syme (1939), chs. 25 and 26) and Germanicus' (Weidemann (1996), 210) tours of the east should be seen in this context.

²³⁴ Witness Trajan's lavishing Rome with an extensive public works program after his Dacian conquests (Griffin (2000), 113-117).

²³⁵ Ando (2000), 278, 316-319, 330-332; Boatwright (2000).

²³⁶ Millar (1993a), 243-246.

²³⁷ γένους ὄνομα κοινοῦ τινοῦ (*ἐἰς Ρωμην* 63; see Oliver (1953), n. ad.loc.)

²³⁸ Moatti (2016), 72

²³⁹ Honoré (2004), 113; Ando (2012), 93-99; Humfress (2012); Humfress (2013).

²⁴⁰ Humfress (2012), 37-42.

emperor in giving thanks to the gods that he escaped the danger Geta posed to his life. This act linked the welfare of the diverse populations of the empire to the welfare of the emperor himself; provincials were asked to care about what happened to the emperor and the empire.²⁴¹ Carrié and Rousselle note that the edict also changed the meaning of taxation: whereas individuals had formerly paid taxes as subjects through their cities, which acted as intermediaries between the state and its subjects, now they paid them as citizens and could picture themselves as paying the emperor directly.²⁴² Though we should be careful not to overemphasize the speed with which this edict brought about an empire-wide change in individuals' identity and legal consciousness²⁴³, the *Constitutio Antoniniana* did loosen the specific links that the concept of *res publica* had to the city of Rome and the *Senatus Populusque Romanus*. By associating *res publicae* with the *orbis Romanus* and *imperium Romanum* 3rd century jurists and authors made *res publicae* a geographically more expansive concept that encompassed the vast majority of the empire's inhabitants.²⁴⁴ The inhabitants of the empire were now citizens of the *res publica Romana*, but inhabitants of other cities.²⁴⁵

Politically the *Constitutio Antoniniana* made a lot of sense. At the time Caracalla was incurring strong public condemnation for the murder of his brother and there may be some truth to Dio's assertion that Caracalla did it out of need for greater tax revenues.²⁴⁶ But the edict also arose from a unique demographic and intellectual context in which the character of the ruling class was becoming increasingly cosmopolitan both in its composition and outlook.²⁴⁷ Septimius Severus was the first emperor from Africa and spoke fluent Punic²⁴⁸ and his second wife, Caracalla's mother, was from Emesa, where Aramaic was spoken. And the greatest jurist of the age, Ulpian, who held high offices under the Severans and between 213-217 may have attempted an early codification Roman law, hailed from Tyre²⁴⁹, and believed, like the Stoics, that all humans, as rational beings, had dignity that Roman law and public officials out to recognize and protect.²⁵⁰ Thus if Caracalla represents one strand in Roman universal thinking – i.e., that Romans' fates were tied to the emperor and empire – then Ulpian, like Hadrian, represents the other – that the empire should work to the benefit of all its inhabitants.

Events in the middle decades of the 3rd century further developed Roman universalism. Around this time Modestinus penned his famous epithet that Rome was the *communis patria* of all Romans, thus continuing the legal universalism so prominent in the Severan period.²⁵¹ The

²⁴¹ Carrié and Rousselle (1999), 57-65; Potter (2004), 139-140, 145.

²⁴² (1999), 67; Ando (2016), 24.

²⁴³ Provincials did not instantaneously stop using local laws and customs in favor of Roman laws, but the growth of the provincial administration, division of provinces, and exclusive civil competences of provincial governors after Diocletian enabled Roman laws and principles to play a greater role in the legal life of the empire (Garnsey (2004); Honoré (2004), 115-116; Kantor (2016)). Moreover, status still distinguished citizens from each other, and the citizenship laws still linked the new citizens to specific communities that they could not reject in favor of moving to other communities (Bryen (2016), 33-36).

²⁴⁴ Moatti (2016), 68-70.

²⁴⁵ Bransbourg (2015), 259

²⁴⁶ New Roman citizens would pay the inheritance, manumission, and tax on auction sales; and the poll tax was not cancelled (Honoré (2002), 84).

²⁴⁷ Honoré (2004), 114-115

²⁴⁸ Honoré (2002), 2; Birley (1999).

²⁴⁹ On Ulpian's background see Honoré (2002), ch.1

²⁵⁰ Honoré (2002), 76-81, 86-89, 92-93. Of course humans were not equal in the amount of dignity they had, but they were equal in that they all had dignity (Honoré (2002), 85).

²⁵¹ *Dig.* 50.1.33 (Modestinus). See also Fowden (1993), 45-47

mid 3rd century also witnessed new cultural definitions of what it meant to be Roman. In 249 the new emperor Decius issued an edict that ordered all Romans – including Christians, but possibly with the exception of Jews – to sacrifice to the ancestral gods, taste the sacrificial meat, and swear that they had always sacrificed. Local magistrates would then issue receipts, akin to census declarations and tax receipts, that acknowledged an individual’s satisfactory performance of the sacrifice.²⁵² The edict, ordering an empire-wide act of religious devotion, was a departure from traditional religious practice, in which the local community organized religious events and mediated between the individual and the divine.²⁵³ The imperial cult offered no precedent either, since even though it was organized locally with coordinated, with empire-wide ceremonies and rituals, there was no legal requirement for people to participate.²⁵⁴ Decius’ edict may have been unthinkable without the *Constitutio Antoniniana*, for the latter enjoined all Romans to share in the emperor’s good fortune and thank the gods, but it neither ordered them to do so nor activated the machinery of the administration to make sure that they did.²⁵⁵ By ordering an empire-wide religious ritual Decius “created a religious obligation between the individual and the Empire.”²⁵⁶ He did not intend to persecute the Christians, though that was one practical effect of the decree²⁵⁷, but he certainly aimed to unite the plethora of ethnic groups and classes under one religious practice that would win the favor of the gods.²⁵⁸ Valerian too issued an edict ordering Christians to conform to the religious traditions of the empire.²⁵⁹ The persecutions that resulted from these edicts reflect the growing tendency to think of the citizens of the empire as sharing single set of cultural beliefs and practices and to brand those who held other beliefs as enemies (*hostes*), for failure to observe Roman traditions could risk divine retribution.²⁶⁰

Thus Diocletian’s legal and moral program, which envisioned the emperors and their administrations as the defenders of Roman laws and moral traditions and the Romans themselves as essential partners and stakeholders, are continuations of the 2nd and 3rd century policies outlined above. The honorific *parentes generis humani* that the Tetrarchs applied to themselves built on the concept of a globe-spanning *res publica* that developed in the 3rd century²⁶¹, and outlawing the Manicheans and chastising the incestuous practices of his subjects were intended to perform a similar function as Decius’ edict ordering universal sacrifice: i.e., to impose a degree of religious and moral uniformity.²⁶² Moreover, the regulation of occupations and military recruitment under Diocletian built on earlier regulations. Diocletian’s great innovation was to put in place a tax system that revolutionized the relationship of the citizen to the state and empire, requiring his subjects to farm certain plots, remain in certain administrative units, and pay a defined portion of the state’s tax needs. In fact, it is in the tax system specifically that we can see the clearest signs of Diocletian’s universalism. For he defined each taxpayer as representing a portion of a universal sum that Diocletian and his advisors had set in order to

²⁵² Rives (1999), 137-141, 149

²⁵³ Rives (1999), 144-146; On the “embeddedness” of religion in the community see the pioneering articles of Sourvinou-Inwood, published in Burton (2000).

²⁵⁴ Fowden (1993), 37-38; Rives (1999), 145

²⁵⁵ Rives (1999), 152-153

²⁵⁶ Rives (1999), 152

²⁵⁷ Rives (1999), 141

²⁵⁸ Rives (1999), 153; Potter (2004), 242-244

²⁵⁹ Haas (1983); Potter (2004), 251

²⁶⁰ See above. Moatti (2016), 73-75.

²⁶¹ Moatti (2016), 75, citing e.g. Edict of Maximum Prices: “nobis, qui parentes sumus generis humani”. See also *Pan.Lat.* 7(6).2.3

²⁶² Moatii (2016), 76

carry out crucial functions on behalf of the empire as a whole. Taxpayers, in other words, were no longer simply citizens of subject communities paying tribute to Rome. They were citizens of Rome with a financial and moral stake in empire.

Conclusion

To conclude. I have argued in this chapter that Diocletian envisioned what amounted to a new social contract for his empire that was more than a narrow or merely tactical adjustment in the specific rights and responsibilities of the citizen and state. This new contract, as I have stressed, fundamentally restructured state-society relations. Under this new contract the energies and resources of state and society would be devoted to strengthening and defending the Roman Empire. Diocletian saw himself and his administrators as defenders of Roman traditions and guarantors of rational, useful, and fair governance. At the same time, Diocletian revolutionized the nature of citizenship. Previously conferring privileges and immunities, citizenship under Diocletian now entailed religious, moral, occupational, and fiscal obligations to the empire. This vision of social contract built on a sense of universal destiny that had developed in the 3rd century, doing away with the privileges-based regime of the Principate.

One way to interpret Diocletian's vision for a new form of state-society relations is to see it as an attempt to propose a new social contract that would naturalize and legitimize a new fiscal relationship in order to increase taxpayer compliance.²⁶³ Social contracts can accomplish this legitimization and naturalization in many ways. For example, a social contract can clarify the ruler's "role in producing and promoting contributions to valued collective goods."²⁶⁴ Diocletian's claim that he and his administration abided by Roman law, promoted what was useful and rational, and protected the empire can be seen as his attempt to explicate his contributions to the public good. Moreover, the ruler can also try to increase taxpayer compliance by making the case that the social contract is fair.²⁶⁵ Diocletian's insistence on the *aequalitas* of his rulings and fiscal policies worked toward this end, as did his abolition of fiscal privileges.²⁶⁶ Finally, if the ruler is particularly successful at convincing taxpayers not only of his role but of theirs as well, he can create ideological compliance for the hegemonic institutional and material relations of the social contract.²⁶⁷ The concept of universal destiny and responsibility advanced by late antique emperors, including Diocletian, could have facilitated taxpayer acceptance of the justice of their financial obligations.

A second, not mutually exclusive perspective on this social contract is that Diocletian believed in a personal way that his society should be organized according to his version of the social contract. We who are steeped in the analytical tools of the social sciences tend to minimize individuals' personal beliefs in favor of exploring power and the legitimization of power dynamics. Considering what individuals believe by no means rejects this mode of analysis or its great utility. Indeed, the vision of society in which one believes can consciously or unconsciously legitimize one's own social power. But I propose that we take seriously Diocletian's belief in his historic mission to return the Roman Empire to its former greatness and

²⁶³ Levi (1988); Moore (2004); Monson and Scheidel (2015).

²⁶⁴ Levi (1988), 57-64; quote pg. 67

²⁶⁵ Levi (1988), 53, 56

²⁶⁶ On the abolition of fiscal privileges under Diocletian see chapter 3. Cf. Levi (1988), 53.

²⁶⁷ Gramsci (1971). The possibility of "ideological mystification" has been called into question, however: Scott (1985), ch. 8; Levi (1988), 51-52.

his idealize worldview in which his subjects shared his devotion to the empire, for the emperor could design and implement policies that worked to bring about his vision. And I propose that we start with taxation, for as the most persistent and pervasive relationship between state and society, tax policy was most effective way to materially alter state-society relations and his subjects' conceptualization of their relationship to the empire and each other.

Chapter 3 – Diocletian’s Tax System and the New Social Contract

Introduction

Taxation is the chief element of the social contract that is negotiated between the ruler and the ruled.²⁶⁸ A ruler may, for instance, use tax policies to incentivized his subjects’ compliance with a new political relationship between them. This was Augustus’ approach: in order to negotiate a political consensus for replacing the Republic with a system of monarchical rule, he offered tax expenditures to important political constituencies in the form of tax exemptions for them and disbursements of tax revenues to them. Tax expenditures were the price Augustus had to pay for their cooperation and political support. At the same time, Augustus’ tax policies had important social consequences that extended beyond establishing the legitimacy of his reign and social contract. For example, the diversity of practices and statuses that persisted under his tax system reinforced and made visible the social and legal hierarchy of the empire’s inhabitants and communities.

In modern states, too, tax policies can influence citizens’ political and social consciousness and encourage a wide array of social and economic behaviors.²⁶⁹ Mass media, public education, and policing can buttress these efforts.²⁷⁰ In the premodern world, by contrast, taxation was the only policy through which the state could incentivize certain behaviors and promote certain values *on a large scale*, because the state’s institutional power over its subjects was greatest at the points of contact created by taxation, and because taxation was the one relationship that connected the diverse populations of the empire to the state, the emperor, and to each other. This is not to say that the Roman emperor did not have access to other media for communicating his wishes to his subjects. He could respond to their petitions, issue verbose edicts, build public works inscribed with his name, erect statues, traverse the empire meeting its inhabitants, and do much more besides, but, as I will show in this chapter, all these efforts did not so consistently and pervasively connect with and influence the emperor’s subjects as taxation. We should, therefore, interpret taxation as the most effective means available to the emperor (and the state) to effect material changes in Romans’ lives and to communicate a particular value system and conceptualization of state-society relations to them.

In this chapter, I will argue, therefore, that the tax system that Diocletian introduced during his reign communicated his idealized version of state-society relations that was outlined in the last chapter. His pronouncements claimed that his tax policies were intended to be fair, rational, and useful. The policies themselves reflected these values. But above all, Diocletian’s tax system abolished the patchwork of privileges and fiscal relationships that existed under the Principate in favor of a universalizing system that reduced the taxation to a set of basic universal standards. Each field could be measured in the *iugum* and each taxpayer could be counted in the *caput*, both abstract units. Most importantly, Diocletian conceived of each taxpayer as a owing a defined portion of the state’s budgetary needs. Taxpayers no longer contributed to the empire as tributary subjects; each had a unique fiscal responsibility to the empire as a citizen.

²⁶⁸ See Chapter 1 n.1.

²⁶⁹ Howard (1997); Adema (1999); Hacker (2002); Martin, Mehrotra, and Prasad (2009), 14-18.

²⁷⁰ Education: Rury (2013). Media: Graber and Dunaway (2015); Rohlinger (2015). Policing: McPhail, McCarthy, and Schweingruber (1997); Della and Reiter (1998).

This argument is divided into five parts. Part one will survey the various media of communication available to the emperor and conclude that individually no one medium could reach as many Romans as taxation. Part two will show that Diocletian brought the same values and concepts to taxation as to the other areas of his administration. Part three will outline the basic “architecture” of Diocletian’s fiscal system and part four will trace later fourth century developments in it. Finally, part five will conclude the chapter by showing how individual aspects of the fiscal architecture could have reinforced Diocletian’s value system.

Imperial Communications

The Roman emperor had at his disposal many means of communicating with his subjects. Together these media enabled the emperor to communicate his ideology, values, and rationale to a significant segment of the empire’s population. And provincial populations heard him, incorporating the content of imperial messages into inscriptions, local histories, and self-representations; they may have even come to believe the veracity of what the emperor said. When these media are considered individually, however, each appears to have reached only a small fraction of the empire, with the literate, urban classes communicating with the emperor more than the illiterate, rural classes.

The first medium to be considered is the most important source of evidence in the last chapter, rescripts. The emperor issued rescripts in response to petitions from individuals, communities, and other collectivities. Though the ruling contained in a rescript was considered to have a general application and emperors could use rescripts to bring about larger policy shifts, the document itself was not sent throughout the empire, but posted in a public place for the petitioner, or another interested party, to copy down.²⁷¹ The Roman state produced countless rescripts, though not all by the emperor. For example, *P.Yale* I 61 (208-210) records the instructions from the prefect of Egypt to publish in Alexandria his responses to 1804 petitions that were delivered to him over three days at Arsinoe. It was easier for provincials to petition the governor than the emperor, because unless the emperor happened to reside nearby for some amount of time, provincials had to undertake an arduous and costly journey to wherever the emperor was at that time and wait around for his rescript to be posted.²⁷² Communities or large collectives were better equipped to send embassies to the emperor than individuals. For example, embassies from Aphrodisias were able to obtain fiscal immunities, grants of asylum, and other legal privileges from the emperor on a number of occasions during the Principate, just as a rhetor from Autun was able to persuade Constantine to reduce his city’s tax burden in 311.²⁷³ Doubtless, the effort of successfully petitioning the emperor was beyond the means of most provincials.²⁷⁴ The high cost of petitioning the emperor and the individualized audience of the rescript likely made the rescript a weak medium for communicating with the wider empire.

Another imperial constitution, the edict, could reach more people than rescripts, though it too had limitations when it came to informing the wider empire of the emperor’s thoughts and values. Emperors issued edicts, like rescripts, in response to inquiries from subordinates or requests from provincials, but, unlike rescripts, edicts were intended to introduce empire-wide

²⁷¹ Williams (1980); Connolly (2010), esp. 142-147

²⁷² Williams (1980), 286-7; Hauken (1998), 74-139.

²⁷³ Aphrodisias: Reynolds (1982). Autun: *Pan.* VIII (5), with Nixon and Rogers (1994), 254-287; Carrié (1994).

²⁷⁴ Connolly (2010), 139-140 argues that most petitioners were people of moderate means.

policies and were often addressed to all the inhabitants of the empire, rather than individual petitioners.²⁷⁵ Nonetheless, during the Principate edicts were an ineffective medium for communicating with a large segment of the population because they were published only on impermanent material and displayed for a limited period of time, often 30 days.²⁷⁶ Around 300 CE, however, emperors began to make greater use of the edict as a proactive form of communication to persuade and cajole their provincials to accept their policies and rationale.²⁷⁷ At the same time, we also find more examples of edicts inscribed on stone, although this development may reflect the personal initiative of a few governors or Galerius' style of governing rather than a comprehensive, empire-wide change in Roman administrative practice.²⁷⁸ In lieu of government initiative, cities published imperial edicts, especially if they were relevant to the cities themselves.²⁷⁹ Individuals, too, collected edicts, because edicts and the policies they initiated could also have significant, if sometimes traumatic, impacts on Romans' self-conception.²⁸⁰ For example, Christian authors found edicts of toleration and persecution compelling illustrations of imperial relations with Christian communities.²⁸¹ Low rates of literacy need not have been a significant hindrance to the communicative power of edicts, for "the imperial government did not expect that its subjects...would be literate; rather it demanded that they have access to a literate person."²⁸² Thus while imperial edicts received wider publication, especially in the 4th, than rescripts, the lack of government initiative to publish them on an empire-wide scale likely prevented them from reaching the status of mass communication.

In addition to imperial constitutions, messages emanated from the imperial center in a variety of other forms.²⁸³ Official inscriptions, for example, often described Diocletian and his colleagues as the restorers of the whole world²⁸⁴, and imperial imagery, such as the famous porphyry sculpture, the Portrait of the Four Tetrarchs, emphasized the concord, similarity, and otherworldliness of the emperors, as did Tetrarchic coins, another valuable medium for communicating the emperors' virtues and qualities.²⁸⁵ In addition, public monuments and buildings, such as the Diocletianic baths in Rome or the Arch of Constantine in Rome, emphasized the continuity of imperial rule, while others, such as the palaces of the emperors, projected imperial power on a grand scale.²⁸⁶ There is evidence that provincial populations paid attention to these messages. Carlos Noreña has observed that during the Principate the ideals and values communicated by the state were reproduced at the local level, especially by the local elite

²⁷⁵ Millar (1977), 258-259

²⁷⁶ Millar (1977), 254-255. Josephus (*Ant.* XIX.5.3) records that an edict of Claudius was ordered to be published for 30 days.

²⁷⁷ Dillon (2012), 85-91

²⁷⁸ Millar (1977), 255, 257; Corcoran (2007)

²⁷⁹ Reynolds (1982) on Aphrodisias; Ando (2000), 84-86, 90-96

²⁸⁰ Ando (2000), 79-81; Bryn (2016) reckons that *P. Giss* 40, a dossier of citizenship laws issued in the wake of 212 CE, was compiled by an individual in order for him to be able to assert his rights as a Roman citizen.

²⁸¹ E.g. Lactantius *DMP* 34, 1-35, 1; Eusebius *HE* VIII, 17, 3-10, IX, 1, 3-6. Devore (2013), 134.

²⁸² Ando (2000), 101. See also Noreña (2011), 302-303. On literacy in the ancient world, see Harris (1989).

²⁸³ Noreña (2011), esp. 190-244

²⁸⁴ *ILS* 619 (Rome, 298-300), 617 (288, Egypt), and 618 (290, Ausburg); Potter (2004), 292-293

²⁸⁵ On the porphyry group see MacCormack (1981), 31-32; Huskinson (2005), 681, 684-685. On Tetrarchic coins see Potter (2004), 281-284. On the communicative potential of coins in general see Wallace-Hadrill (1981), in addition to Noreña (2011).

²⁸⁶ Duval (1997); Potter (2004), 281, 285; Huskinson (2005), 688-691

during the Antonine Period.²⁸⁷ The local elite found that erecting statues of the emperor and proclaiming his virtues in inscriptions associated themselves with the emperor, augmented the perception of their importance in their local communities, and “reinforced their differentiation from, and dominance over, the masses.”²⁸⁸ Although the local elite found the more militaristic and authoritarian image of post-Antonine emperors less amenable to their needs²⁸⁹, the evidence from the Antonine Period suggests nonetheless that some provincial communities were paying attention to the imperial messages that were being communicated through official inscriptions, coins, and statuary.

It is less clear however, that imperial ideals penetrated more deeply and broadly into provincial society than the urban elite. There is some evidence that it did, in the form of votive offerings to Victoria Augusta and Fortuna Augusta found in rural domestic contexts²⁹⁰, but in order for the nuanced language of imperial virtues to change the way provincials thought about the emperor, the empire, and their relationship to them, provincials had to do more than look down at the coins they carried in their pockets; they had to go to the central places where the elite erected statues and inscriptions; to witness the proximity of statues of the local elite to statues of the emperors and the gods; and to read the dedications of the local elite to the emperors. To be sure, at least 10% of the empire’s population lived in urban contexts, where they would have had ample opportunity to view official inscriptions and buildings and local dedications proclaiming the emperor’s virtues, and many more would have traveled frequently to cities and towns for business, festivals, commerce, or visiting family.²⁹¹ Nonetheless, it was the reproduction of imperial virtues in public contexts, often in cities by the local elite, that gave imperial virtues their meaning and potency.²⁹²

A final way for the emperor to communicate with his subjects was to visit them personally. Hadrian and Augustus stand out as two of the most well traveled emperors of the Principate, while others, such as Antoninus Pius, were conspicuous for ruling from Rome.²⁹³ Later emperors, such as Septimius Severus, Aurelian, and Diocletian and his colleagues, traveled frequently for war.²⁹⁴ During their travels emperors passed along the main military roads through cities, providing large and small urban populations alike with opportunities to interact with them in public places, such as the circus, forum, or theaters.²⁹⁵ In the later empire, the *adventus* of the emperor became a highly choreographed ceremony, intended to inspire awe in onlookers and convey imperial majesty.²⁹⁶ But as Julian’s time in Antioch shows, the emperor and his entourage may not have always been welcome.²⁹⁷ One reason for this was the high cost and great effort required to supply, house, and entertain the emperor, his court, and his soldiers,

²⁸⁷ Noreña (2011), ch. 5.

²⁸⁸ Noreña (2011), ch. 6, quote on 310. See also Harland (2003), 155-160

²⁸⁹ Noreña (2011), 283-297

²⁹⁰ Noreña (2011), 305-310

²⁹¹ On levels of urbanism see Lo Cascio (2009). On relations between town and country see Rich and Wallace-Hadrill (1991); Erdkamp (2001); Patterson (2006); Zuiderhoek (2016), ch. 3.

²⁹² Noreña (2011), 273-276, 303-305

²⁹³ On Augustus’ travels see Syme (1939), ch. 23, and for Hadrian’s see Syme (1988).

²⁹⁴ On Severus’ travels see Potter (2004), 101-104, 109-118; for Aurelian’s see Potter (2004), 264-270; and for Diocletian’s see Barnes (1982), 47-88.

²⁹⁵ Yavetz (1988), 18-24; Veyne (1990), 400-401; Ménard (2004), 47-49.

²⁹⁶ MacCormack (1981)

²⁹⁷ Julian in Antioch: Elm (2012), ch. 7

even if they were just passing through a city's territory.²⁹⁸ Thus an emperor could only expect to look upon a fraction of his subjects, and when he did, the strains attendant on his presence may have complicated efforts to convey imperial majesty and beneficence.

In short, Roman emperors had at their disposal many means of communicating imperial ideology to provincials, and in aggregate, these media could have successfully persuaded provincials of the veracity of imperial ideals. In fact, Clifford Ando has argued that when provincials added emperor's names to their cities or festivals, as they did with Hadrian, or when they published imperial edicts, erected their own statues of the emperor, or filled out census documents, they acknowledged the veracity of and reaffirmed the ideals and normative views communicated in these media. For Ando, these processes facilitated the emergence of an empire-wide consensus on the role and position of the emperor that explains the endurance of the empire's configurations of power.²⁹⁹ But, as I have argued, no one medium had the potential to be heard or read by anything more than a small segment of the population at any given time.

If any means of communicating with the majority of inhabitants of the Roman Empire existed, it was taxation. Taxation was not just a message to be received, digested, and responded to; it was an exploitative relationship that Romans felt in their bodies, from either transporting tax payments or the hunger of a reduced harvest or the tax collector's compulsion.³⁰⁰ Moreover, after Diocletian's reforms erased the diversity of fiscal practices and privileges that existed under the Principate, theoretically all Romans had a direct fiscal relationship with the state, a relationship that was defined by the interests, value system, ideology, and objectives of the Roman state. Taxation also entangled Romans, urban and rural, literate and illiterate, in relationships with each other.³⁰¹ These qualities makes taxation unique, and mean that adjusting taxation was one of the few ways the emperor could communicate a change in state-society relations to the entire population. Therefore, the values and ideals that Diocletian brought to taxation would have had a real impact on how his subjects conceptualized their place in the empire.

Taxation and the Social Contract under Diocletian

To highlight the close parallel in values and ideals that existed between Diocletian's fiscal policies and his larger vision for state-society relations I want to begin with one text, *P.Cair.Isid.* 1. This papyrus is a copy of a gubernatorial edict promulgated on March 16, 297 by Aristius Optatus, a prefect of Egypt. The papyrus was preserved in the archive of Aurelius Isidoros, a resident of Karanis whom we will come to know better in the next chapter. Though only a gubernatorial edict, the edict of Aristius Optatus provides us with a window into Diocletian's intentions for his tax reforms, because it summarized and ordered the publication of an imperial

²⁹⁸ E.g. *P.Panop.Beatty*. See also Corcoran (1996), ch. 8 on the inflationary impact that the emperor's presence might have on local prices.

²⁹⁹ Ando (2000). This view has gained much traction not least because the Roman state was not strong enough to rule by outright coercion and had to rely, to an extent, on the goodwill of the ruled (Lendon (1997), 2-23). But his argument is not without its problems. For one it is hard to know exactly what ancients were thinking when they paid their taxes or erected a monument. Some may have done so out of a sense of duty, awe, or fear, but for others self-interest may have motivated them. Noreña argues for the latter. In his view the factor explaining the consensus Ando observes may be more a convergence of the interests of the imperial government and the local elite (Noreña (2011), esp. 300-302).

³⁰⁰ Given (2004)

³⁰¹ Corbier (1991)

edict that introduced important changes in how taxes were to be collected in Egypt. This document is also incredibly important for understanding Diocletian's vision for state-society relations, because it demonstrates that *ratio, utilitas, aequitas*, universalism, and the rule of law were also characteristics of taxation under Diocletian.

Ἀρίστιος Ὁ[πτ]ᾶτος ὁ διασημότη[ατ]ος ἑπαρχος Αἰγύπτου [λέ]γει·
 γνόντε[ς οἱ] προνοητικώτατοι Αὐτοκράτορε[ς ἡμῶ]ν Διοκλητι[αν]ὸς καὶ
 Μαξιμιανὸς οἱ Σεβαστο[ῖ] καὶ Κωνσταντίος καὶ Μαξιμιανὸς οἱ ἐπιφανέστατοι
 Καίσαρ[ε]ςνε . . . ὡς ἔτυχεν τὰς ἐπιβολὰς τῶν δημοσίων εἰσφορῶν
 γίνεσθαι ὡς τινὰς μὲν κου[φ]ίζεσθ[α]ι ἄλλους δὲ βαρεῖσθαι, τὴν κακίστην
 ταύτην καὶ ὀλέθριον συνήθειαν ἐκκόψαι ὑπὲρ τοῦ [συμ]φέροντος τῶν ἑαυτῶν
 ἐπαρχιωτῶν τύπον τε σωτήριον δοῦναι καθ' ὃν δέοι τὰς εἰ[σφο]ρὰς γίνεσθαι
 κατηξίωσαν. πόσα οὖν ἐκάστη ἀρούρα πρὸς τὴν ποιότητα τῆς γῆς ἐπεβλήθη καὶ
 πόσα ἐκάστη κεφαλῇ τῶν ἀγροίκων καὶ ἀπὸ ποίας ἡλικίας μέχ[ρ]ι π[ο]ίας, ἀπὸ
 τοῦ προτεθέντος θεοῦ διατάγματος καὶ τοῦ αὐτῷ συνηνωμένου βρεουίου [οῖς] τὰ
 ἀντίγραφα τούτου μου τοῦ διατάγματος δημοσίᾳ προὔταξα, ἔνεστιν
 πᾶσι . υνο[. .]ν. [εὐ]εργετηθέντες οὖν καὶ ἐν τούτῳ τὰ μέγιστα οἱ ἐπαρχιωταὶ
 φροντισάτωσαν ἀκολούθως τοῖς θειώδως διατυπωθεῖσιν τὰς εἰσφορὰς μετὰ πάσης
 ταχύτητος ποιήσασθαι καὶ μηδαμῶς ἀνάγκην τοῦ ἐπείξαντος ἐκδέχεσθαι.
 προσῆκεν γὰρ τὰ εἰς καθοσίωσιν σύνπαντα προθυμώτατα ἕκαστον πληροῦν· εἰ
 γὰρ τις ἄλλο πράξας ὀφθεῖη μετὰ τὴν τοιαύτην δωρεὰν κινδυνεύσει.
 προσετάχθησαν δὲ οἱ ἄρχοντες καὶ οἱ προπολιτευόμενοι ἐκά[σ]της πόλεως καὶ
 τοῦ θεοῦ διατάγματος μετὰ μεγαλοῦ βρεουίου τὸ ἀντίγραφον ἔτι τε καὶ τούτου
 εἰς ἐκάστην κώμην εἴτ' οὖν τόπον ἀποστεῖλαι ὑπὲρ τοῦ εἰς γνῶσιν ἀπάντων ἢ
 τάχο[ς] ἐλθεῖν τὴν μεγαλοδωρίαν τῶν Αὐτοκρατόρων ἡμῶν καὶ τῶν Καισάρων.
 ἀ[ν]αμμν[ή]σκονται δὲ καὶ οἱ πρακτῆρες ἐκάστου εἴδους πάση δυνάμει
 παραφυλάττειν· [εἰ] γὰρ τις παραβάς ὀφθεῖη κεφαλῇ κινδυνεύσει (ἔτους) ιγ καὶ
 (ἔτους) ιβ καὶ (ἔτους) ε τῶν κυρίων ἡμῶν Διοκλητιανοῦ καὶ Μαξιμιανοῦ
 Σεβαστῶν καὶ Κωνσταντίου καὶ Μαξιμιανοῦ ἐπιφανεστάτων Καισάρων,
 Φαμενώθ κ.

Aristius Optatus, the most distinguished prefect of Egypt, says: the most provident rulers, Diocletian and Maximian, Augusti, and Constantius and Galerius, the most renowned Caesars, knowing that the levies of the public taxes have been made such that some people have had their burdens lightened while other have had theirs increased, resolved to put an end to this most evil and destructive custom for the benefit of the provincials themselves and to issue a salutary principle according to which taxes ought to conform. Therefore, it is possible for each to know how much tax belongs to each *aroura* in accordance with the quality of the land and how much is levied on each head of the rustic communities and from what age until what age from the divine edict that has been published and from the schedule that is affixed to it. To these I have attached copies of my edict for public display. Accordingly, since the provincials have been done the greatest service in this as well, they should take care to pay their contributions in accordance with the divine regulations and in no way wait for the compulsion of the collector. For it is proper that each display his devotion in all

ways most zealously, for if someone should do otherwise, he would risk punishment. As for the magistrates and leading members of each city, they have been ordered to send out a copy of the divine edict together with the schedule, and my edict as well, to each village or locality whatsoever in order that the munificence of our Augusti and Caesars should be known to all as quickly as possible. The collectors of each kind of tax are reminded to be steadfastly on guard, for if someone should transgress, he would risk capital punishment. Years 13 and 12 and 5 of our lords Diocletian and Maximian, Augusti, and Constantius and Galerius, most renowned Caesars.

The first value, rationality³⁰², appears near the beginning of the gubernatorial edict in line two, where we read the aorist participle γνόντες. This participle is placed in an emphatic position at the front of the clause in order to inform ancient readers at the outset that the emperors knew the facts of the situation. The participle is followed directly by the superlative adjective προνοητικώτατοι, again, highlighting the deliberate and thoughtful nature of the emperors' actions. The provisions themselves also speak to the emperors' efforts to convey rationality, as well as transparency. In their edict the emperors ordered a schedule of how tax obligations would be determined to be published in every Egyptian city and village in order that the provincials would know how much tax liability each *aroura* and each member of their families owed and why. By publishing this schedule the emperors also intended to inform provincials how they reached this amount.

The promulgation of the official schedule also emphasizes that the emperors wanted the laws of the empire – in this cases, an imperial constitution – to regulate taxation.³⁰³ Henceforth exactions would not to be made arbitrarily and behind closed doors, and property would not to be confiscated by the state; rather, taxes would be collected according to a transparent, rational, and legal system, and any and all malfeasance by tax collectors and taxpayers alike would be punished. The emperors were emphatic that their “salutary principle” (τύπον σωτήριον) be obeyed.

The problem that the τύπος sought to correct was inequality. The emperors were disturbed to find that in practice some taxpayers paid a lot, while others were let off lightly (ὡς ἔτυχεν τὰς ἐπιβολὰς τῶν δημοσίων εισφορῶν γίνεσθαι ὡς τινὰς μὲν κου[φ]ίζεσθ[α]ι ἄλλους δὲ βαρῖσθαι).³⁰⁴ They call this inequality a “most evil and destructive custom” (τὴν κακίστην

³⁰² Carrié and Rousselle ((1999), 155) have already noted the importance of rationality in this text.

³⁰³ See also Jones (1964), 67; Goffart (1974), 31-32; Grey (2011), 189-190, 194-197; and *P.Panop.Beatty* 2 ll. 229-244: ἐκάστης συντελείας εἰς ῥῆτὴν ποσότητα ἐκ θείου νόμου περιορισμένης. The rule of law was expected to prevail even in cases concerning the treasury, which under Roman law did enjoy some legal advantages over ordinary Romans. For example, the treasury could not influence the outcome of cases between private individuals (*CJ* 2.17.3-4; cf. *Dig.* 1.18.6.2 (Ulpian) and *CJ* 2.17.1-2 (Gordian, 241)). The treasury was also not empowered to overturn valid contracts made in good faith, even if the interests of the treasury were involved or alleged to be at stake (*CJ* 4.44.3, 4.33.4 (3), and 7.39.1). What was true of the Tetrarchs' decisions in fiscal cases was also true of their decisions concerning liturgies. For example, *CJ* 4.12.2 states that a wife's personal property could not be seized for her husband's fiscal debts nor, as in *CJ* 4.12.3, for his liturgical obligations. The law guiding these two decisions was the *Senatus Consultum Velleianum*, which stated that a woman could not assume financial liability for others (*Dig.* 16.1.2.4 (Ulpian)).

³⁰⁴ The Greek here parallels closely the Latin of *CJ* 10.43.4 in which Diocletian ordered his governors to make sure that the burdens of liturgies were distributed equally:

Ultra modum sumptuum te muneribus civilibus gravari levatis aliis praeses provinciae non patietur, sed aequalitatem tam iuris quam censurae memor circa ordinem custodiet.

ταύτην καὶ ὀλέθριον συνήθειαν). The use of συνήθεια is important, because it implies that the unequal distribution of fiscal burdens was a habitual practice, a fixed characteristic of the system, rather than a temporary departure from the norm. Diocletian might have been right, because, as we saw in the introduction, the fiscal system had always permitted the local elite to distribute fiscal burdens as they saw fit. Moreover, even in 300, a few years after the edict of Aristius Optatus was promulgated, the procurator of the Lower Thebaid still found himself ordering that taxes be collected in the amount specified by the emperors' edict.³⁰⁵

A return to equality, the emperors insisted, would be a benefit (ὕπὲρ τοῦ [συμ]φέροντος) to all provincials.³⁰⁶ The beneficence and utility of their policies is a message that the emperors maintain throughout the edict; they even called their solution to the problem salutary (σωτήριον), as if by their very word they could bring salvation to the distressed. Moreover, the provincials were to realize that they had been done a great service ([εὐ]εργετηθέντες... τὰ μέγιστα). In return for this benefit Diocletian expected each Roman to show his loyalty by, among other means, paying his taxes (προσήκειν γὰρ τὰ εἰς καθοσίωσιν σύνπαντα προθυμότατα ἕκαστον πληροῦν).

Ἐκαστον, which appears throughout the text, emphasizes the universality of the new policies. The point of appending the schedule to the imperial edict was to inform everyone (ἔνεστιν πᾶσι) of what each field (ἐκάστη ἀρούρα) and each person (ἐκάστη κεφαλῆ) was being charged. Thus Diocletian and his colleagues pictured their tax policies joining not only every person but also every field in an expression of loyalty. I believe that they were more concerned about Romans' loyalty to the empire than to themselves, for at the end of the Edict of Maximum Prices the emperors called upon "the devotion of all Romans in order that their obedience and scrupulousness preserve what has been established for the public good."³⁰⁷ It is no wonder, then, that individuals' failure to pay taxes risked severe punishment, for fiscal delinquency was proof in Diocletian's mind that a person was not loyal to the empire and was not committed to the great project he and his colleagues had undertaken; it was an abdication of responsibility for the good of the whole, deserving capital punishment.³⁰⁸

To summarize: *fiscalité* was not somehow a unique administrative function that operated according to separate rules. On the contrary, this section has demonstrated that Diocletian brought the same values and conceptualization of state-society relations to taxation as he had in other areas of government. He did not seek to heap burden upon burden on his subjects; rather, his tax policies were to stand for all that was fair, rational, and useful in his administration. Moreover, his provincials were to understand that paying taxes was another duty that Diocletian's expanded conception of a universal empire required of them. Like other imperial pronouncements, however, the edict of Aristius Optatus, for all its specious phrases, could have failed to accomplish anything more than taking up space in Aurelius Isidoros' archive, if it were

³⁰⁵ *P.Panop.Beatty* 2 ll. 229-244

³⁰⁶ See also *CJ* 10.59.1, in which Diocletian stated that customary levies went toward public safety (*sed et sollemnibus indictionibus ob tutelam publicam eos satisfacere necesse est*). Cf. *CJ* 10.19.2 (Constantine, 320): *qua facultate praebita omnes fore credimus prouiores ad solvenda ea, quae ad nostri usus exercitus pro communi salute poscuntur*.

³⁰⁷ *Ll.* 145-153: cohortamur ergo omnium devotionem, ut res constituta ex commodo publico benignis obsequis et debita religione <custodi>atur, m[ax]ime cum e<iu>s modi statuto non civitatibus singulis ac populis adque provinciis, sed universo orbi provisum esse videatur, in cuius pe[rnici]em pauci atmodum desaeuisse noscantur, quorum avaritiam nec prolixitas temporum nec divitiae, quibus studeisse cernuntur, m[iti]gare aut satiare potuerunt.

³⁰⁸ On the increased harshness of punishments under later emperors see Garnsey (1968a); Ste. Croix (1981), 461-473.

not accompanied by attendant adjustments to tax policies. But when we compare the rhetorical choices Diocletian made to describe taxation with the details of the policies themselves, much the same picture emerges: Diocletian's tax policies were conceived of and implemented as a universal system aiming at the fair and rational distribution of tax burdens.

The "Architecture" of Diocletian's Tax System

There is much that is still unknown about the system of taxation that Diocletian implemented. For example, the conversion of the abstract fiscal unit, the *iugum*, into real units of measurement remains a mystery, and despite the wealth of evidence from Egypt, scholars do not know when and where taxpayers paid their taxes in cash or in kind.³⁰⁹ Nonetheless, the basic structure of the system is relatively clear. During the course of his reign Diocletian introduced the foundations of a universal method for assessing and distributing tax burdens, called the *iugatio-capitatio*.³¹⁰ The *iugatio-capitatio* was not a new tax, but a new means of using abstract fiscal units, the *caput* and *iugum*, applicable in every province, to calculate what portion of the global sum of various taxes and materiel required by the state that each administrative level, from the diocese to the individual family, could pay. Additionally, Diocletian took steps to incorporate irregular exactions, such as the *annona militaris*, military recruitment, liturgies, and other services into the larger fiscal system.³¹¹ Constantine continued to incorporate irregular exactions by turning the *coemptio* of precious metals into a regular tax.³¹² The new mode of assessment and the incorporation of these other fiscal elements introduced greater regularity and uniformity to the system, as, in contrast to the Principate, theoretically all property, in each province, was measured by the same abstract units and had its fiscal liabilities assessed in the same way.³¹³ Moreover, unlike in previous centuries when the Roman state taxed cities (and their territories), which were then free to collect the sums they owed in whatever way they pleased, under the new system, the central government transformed an old administrative unit, the *origo*, into the fundamental administrative unit of the fiscal system on which the state, not the local government, levied taxes and in which people were obliged to pay them. This new method for assessing and distributing tax liability enabled the state and provincial governments to intervene more closely in local affairs by subjecting local administrative practices to central oversight to an unprecedented degree and, therefore, to increase its net revenues at the expense of the local elite.³¹⁴

The first step in implementing the new fiscal system was to gather information on taxpayers' households and landholdings. So in 287 Diocletian began to replace periodic provincial censuses and the fourteen-year census in Egypt, which had ceased to be taken in the mid 3rd century,³¹⁵ with a regular, five-yearly census in each province.³¹⁶ In each census

³⁰⁹ For a full list of known unknowns see Bransbourg (2010), 14-30.

³¹⁰ Jones (1964) remains an indispensable starting place, although some of his conclusions, such as the conversion of the *iugum*, have been rejected. Carrié (1994) is the classic work on the *iugatio-capitatio*. See more recently Grey (2007a), (2007b), and (2011), ch.s 6-7; Bransbourg (2010) and (2015).

³¹¹ Jones (1964), 61; Grey (2011), 189-190

³¹² Carrié (1994), 50

³¹³ Goffart (1974), 32-33

³¹⁴ Bransbourg (2015), 269

³¹⁵ Bagnall and Frier (1994)

³¹⁶ Although the recensus of the empire began in 287, the process took decades to complete, requiring numerous adjustments to communities fiscal burdens (Bransbourg (2015), 266). Census activity: Potter (2004), 326; Adams

taxpayers would declare their taxable “non-animate” (*iuga*) and “animate” assets (*capita*) before local officials.³¹⁷ The *caput* and *iugum* were abstract fiscal units that were convertible into concrete measurements. The *caput* was a fraction arrived at by dividing the number of taxpayers in a family by the number of taxpayers their *origo*³¹⁸, and the many units of land measurement used throughout the empire could be converted into the *iugum*.³¹⁹ Scholars have attempted to discover the conversion rates from real units to the *iugum*, but consensus remains elusive.³²⁰

In Egypt the process of declaring one’s assets was divided into two separate procedures: a declaration of persons and a land registration. The land registration recorded each plot, its size, its location, the status of the land (public, royal, or private), and what it grew (wine, olives, wheat, waste, pasturage).³²¹ The declaration of persons recorded all the taxed (ὑποτελής) and untaxed (ἀτελής) members of the household as well as the household’s location.³²² As the evidence from Egypt shows, these procedures were elaborate affairs that required the presence of a horde of local officials who would be held accountable for the validity of the declaration.³²³ Finally, the *censitor* would sign the declaration. The initial registration was updated through subsequent declarations called *professiones* or *iugationes*.

The census not only recorded the information used to calculate tax liability, but also determined where one was responsible for taxes; in other words, taxpayers were not only accountable for a certain fiscal liability, but they were also required to pay that sum in a particular administrative unit, the *origo*. An *origo* was a circumscribed administrative unit that could be burdened with various taxes, levies, or *munera*, although it was not necessary that all *origines* carried the same burdens, as, for example, a *capitulum* was an *origo* that also paid recruit taxes.³²⁴ Diocletian did not invent the *origo*, for it had existed since the early empire, when it was used to determine where one was required to perform one’s *munera* or register for the census, and it continued in the late Empire to denote links to a municipality.³²⁵ Diocletian’s tax system expanded the concept to include villages and estates, as well.

The state then used census information to calculate each *origo*’s productive potential and the share of the state’s global budgetary requirements that the each *origo* could bear. The first step of this process was to tally up each *origo*’s total *capita* and *juga* and combine them to

(2004). Moreover, *P.Cair.Isid.* 2 (298), 3 (299), 4 (299), 5 (299), and 7 (298/299), *P.Col.* VII 124 (298-302), 7 (307), *P.Corn.* 20 (302), and *P.Amh.* 2 83 (301-307) are among the many papyri that mention the censor Julius Septimius Sabinus. The property boundary inspections in Syria should also be understood in the context of a recensu (Millar (1993b), 195-196, 535-544). *Contra* Goffart (1974), who saw few signs of census activity (44). See also Jones (1953), Thonemann (2007), and Harper (2008) for studies of the later 4th century census inscriptions from Asia Minor.

³¹⁷ “Non-animate” and “animate”: Goffart (1974), 47; Carrié (1994), 43-47; Grey (2007a), 160, n.33.

³¹⁸ Carrié (1994), 45 and (1999), 596. This is Goffart’s third meaning of *caput* ((1974), 41). Grey (2011), 191 n.50 departs from Carrié’s analysis of *caput* as both the abstract unit of liability and a variable of the calculation and considers it only the abstract unit of liability. In papyri, the term “καπιτὰ” refers to rations destined for military animals (e.g. *O.Douch* I 45), but is a transliteration of the plural of *capitum*, not *caput* (Duncan-Jones (1990), 107).

³¹⁹ Jones (1964), 62; Goffart (1974), 32-33; Carrié (1994), 46; Grey (2011), 190-191

³²⁰ Harper (2008), 91-98; Bransbourg (2015), 266-267

³²¹ For examples of these declarations, see n.316.

³²² *P.Cair.Isid.* 8 (309); *P.Sakaon* 1 (310)

³²³ Present at declarations were town councilors, διδάσκαλοι (secretary), assistants (βοηθοί) to the liturgical tax collectors, surveyors (γεωμέτραι), and boundary inspectors (ὀριοδείκται). See for example *P.Sakaon* 2 (300), *P.Cair.Isid.* 3 and 4 (299).

³²⁴ Carrié and Rousselle (1999), 170-172; Grey (2007a), 170-172.

³²⁵ Grey (2011), 191-192

produced the *iugum sive caput*, also called *capitatio*³²⁶ and ζυγοκεφαλή in Greek, which was the sum that an *origo* owed. This sum was also assessed in the *caput*. Here I follow Carrié’s formulation in which the *caput* was both the second half of the formula for calculating liability and the abstract unit of liability itself.³²⁷ Next, the state added together the *capita* (in the second sense) of all the empire’s *origines* in order to arrive at the theoretical productive potential of the empire as a whole. Finally, the *capita* (in the second sense) of each *origo* could be divided into the total *capita* of the empire to arrive at the fraction of the empire’s global total for which each *origo* was accountable. This information enabled the state to set a budget, because it provided the state with a clearer sense of what the resources of the empire could support. Moreover, the *caput* (in the second sense) allowed the state to determine what fraction of its budgetary requirements a province or *origo* could bear and how to distribute its total budgetary requirement among the provinces and *origines* in proportion to their productive potential.³²⁸ During the Principate emperors did not have the ability to set a budget, because the state collected from provincial communities what it thought they could pay, rather than what it needed.³²⁹

This system relied on up-to-date information not only so that tax burdens were distributed fairly, but also so that the state could be sure that it would collect the amount its budget required. Any change in an *origo*’s population or cultivation or in the environment could threaten its ability to pay what the state expected it to pay, and large-scale shifts in agricultural production could disrupt the predictive nature of the tax system.³³⁰ The five-year assessments helped the state maintain its records, and provided taxpayers with opportunities to bring their fiscal liability back in line with their means. Moreover, cities and individuals could also petition to have the number of *capita* they owed adjusted if their liability was out of proportion with their productive potential (as in *Panegyric VIII* (5)). But reducing one *origo*’s share simply shifted the difference to the others, if the state did not reduce its overall budgetary needs at the same time. Nonetheless, since the system was built on the assumption that agricultural production would remain constant, it was poorly designed to respond quickly to inevitable changes in the productive landscape. It was this inflexibility, rather than high rates, that was likely most troublesome for taxpayers, because they had to adjust their subsistence practices to the demands of the state rather than to their caloric needs or climatic events, such as poor harvests or even

³²⁶ Goffart (1974), 35; Grey (2011), 190-191

³²⁷ Carrié (1994), 43-47, especially 44 and (1999), 599-602. Cf. Jones (1964), 65-67; Goffart (1974), 44; Bransbourg (2015), 271. Grey ((2011), 191) however, argues that each *capita* could be earmarked to satisfy “a particular charge or liturgy.” I do not find this argument persuasive. First, Grey cites *CTh* 11.16.4, but this constitution does not clearly evidence earmarking *capita* for all taxes. The relevant passage says, “manu autem sua rectores scribere debebunt, quid opus sit et in qua necessitate per singula capita vel quantae angariae vel quantae operae vel quae aut in quanto modo praebendae sint.” Second, Sheridan (1998) demonstrates that in the 4th century the *vestis militaris*, at least, was distributed proportionally by the *iugatio* method in Egypt (87-105). Third, plots of land are described in Egypt as bearing numerous taxes (*P.Cair.Isid.* 102 (303/4) and *P.Mich.* XII 636 (302) = P. NYU 1 21 = SB XII 10880). Fourth, when *capita* are mentioned in literary sources, such as the *Panegyric VIII* (V) thanking Constantine for remitting 7,000 *capita* or Ammianus’s *Res Gestae*, in which Julian reduces the conversion rate between *capita* and *solidi* (Amm. 16.4.16), it is not specified that these *capita* are earmarked for any particular charge. For these reasons, I follow Jones and Carrié in interpreting *capita* as a notional figure that represented a portion of a global sum of *capita*.

³²⁸ *P.Cair.Isid.* 102 (303/4), *P.Mich.* XII 636 = *P.NYU* 1 21 = *SB XII* 10880 (302); Grey (2011), 191; Bransbourg (2015), 265

³²⁹ Based on previous collections the state would likely have had a good idea of how much revenue they would take in (Scheidel (2015b), 237-238). Moreover, the irregular censuses could have given a ballpark estimate of what the state could ask of an individual community (Corbier (1991) and (2005a))

³³⁰ Grey (2007b)

crop failure.³³¹

This standardizing tax system thus created macro-level uniformity and did away with diverse systems of the past.³³² At the same time, Diocletian abolished the complex patchwork of privileges that characterized the fiscal system of the Principate. The validity of the privileges regime had already been called into question by the gradual spread of citizenship in the provinces during the first two centuries AD.³³³ But the *Constitutio Antoniniana* signaled the beginning of the end when its grant of universal citizenship made all free males liable for the poll tax, erasing the distinction that the poll tax symbolized between Roman and non-Roman.³³⁴ Still, some immunities from the poll tax were maintained until mid third when the poll tax ceased to be collected altogether.³³⁵ The patchwork of hierarchical legal statuses and privileges that characterized the urban landscape also became radically simpler when Diocletian abolished the category of “free and immune” cities and the *ius Italicum*, which Diocletian made an empty status anyway by subjecting Italy to taxation, just like all the other provinces.³³⁶ Finally, the defined portion that each *origo* owed under this distributive system and the state’s greater ability to identify individuals’ fiscal burdens limited the local elite’s privileged enjoyment of what had been one of the advantages of collecting taxes for the state during the Principate, namely, shifting their own tax burdens onto their social inferiors while sequestering some of the state’s revenues into their own coffers.³³⁷

Even though the perks of collecting taxes had been reduced, the state still demanded that the local elite continue to perform many of the same essential functions as they had during the Principate. Indeed, salaried imperial officials do not begin to appear regularly in the sources as being responsible for collecting taxes until the late 4th century.³³⁸ Numerous magistrates and liturgists were charged with carrying out the assessment, collection, transportation, and distribution of tax revenues.³³⁹ Evidence from Egypt permits us to witness how this functioned in practice, though we should keep in mind that these tasks may have been performed differently in different provinces. While imperial appointees, and occasionally the emperor, oversaw the census of the empire, local assessment was the responsibility of the community. For example, in *P.Cair.Isid.* 3 and 4 (299) and *P.Sakaon* 2 (300) we find many officials – town councilors, διδάσκαλοι, assistants (βοηθοί) to the liturgical tax collectors, surveyors (γεωμέτραι), and boundary inspectors (ὄριοδείκται) – present at the surveying of individuals’ property and

³³¹ Inflexibility: Bagnall (1985), 307-308; Lewit (2009). Low rates: Hopkins (1980), 116-124; Bagnall (1980), 185-187, and (1985), 299-308; Carrié (1993), 152. Cf. Ziche (2006), 129-130, who argues that inflation kept tax rates artificially low. Bransbourg (2010), 12-14 agrees that rates of taxation under Diocletian was not as high as the sources decry; it was instead the monetization of collection that made taxation more onerous. For the view that late Roman taxation was burdensome see MacMullen (1987).

³³² Macro uniformity concealed persistent local diversity (Bagnall (1980); Carrié (2007)).

³³³ Bransbourg (2015), 259

³³⁴ Carrié (2005), 274

³³⁵ Carrié (2005), 273-274

³³⁶ Bransbourg (2010), 709, 738-739, 813; Bransbourg (2015), 269

³³⁷ Bransbourg (2010), 91-115 and (2015); Scheidel (2015b)

³³⁸ See below.

³³⁹ On compulsory serviced in Egypt see Lewis (1982). According to the late 3rd century jurist Arcadius Charisius, fiscal liturgies were, strictly speaking, a personal *munus*, but because liturgists were obliged to commit substantial amounts of their time and money to fulfilling their administrative liturgies, liturgies may be better described as “mixed”, if not amounting to a tax on the local elite (*Dig.* 50.4.18.8-9 (Arcadius Charisius); Laniado (2002), 123-125)). *Munera personalia* required the personal attention and energy of the liturgist, whereas *munera patrimonii* required financial contributions from the liturgist (*Dig.* 50.4.18.1 (Arcadius Charisius)). Mixed liturgies: *Dig.* 50.4.18.1 (Arcadius Charisius). For this division of fiscal functions see Mitthof (2001), 82.

personally vouching for the accuracy of the resulting document. Records were kept in the local records office.³⁴⁰

The collection and transportation of tax revenues remained a complex logistical undertaking. For grain taxes, until about 325 Egyptian taxpayers deposited their taxes in the granary and then throughout the year transported their deposit from the granary to the harbors.³⁴¹ The σιτολόγοι – the liturgical officials overseeing the granaries – would issue chits for transporting *n. artabas* of grain, and the receivers (ὕποδέκτης or ἀποδέκτης) at the harbor would issue a receipt saying that they received *n. artabas* and would credit that amount to the account of the σιτολόγοι, since the σιτολόγοι were still financially responsible for the grain during transit. This process enabled people to focus on the harvest by requiring only a local delivery to the village granary at harvest time and by distributing the work of transporting grain to the harbors throughout the year.³⁴² After 325, however, taxpayers transported their grain directly to the harbor in the span of a month after the harvest. The σιτολόγοι still oversaw this process, organized the caravans, and guaranteed the taxes financially.³⁴³ This new process brought revenues to the state much more quickly.³⁴⁴ In addition to the σιτολόγοι, the ἀπαιτητής and ἐπιμελητής were officials charged with overseeing the collection of other taxes and products, such as wine and chaff.³⁴⁵ Because receivers, collectors, and overseers could be appointed for individual taxes, the system of collection and transportation was easy to replicate.³⁴⁶

There were other liturgical officials, the διαδότης and *primipilarius*, who were charged with distributing taxes in kind to military units for supply.³⁴⁷ This process appears, however, to have taken place in a more *ad hoc* fashion than assessment, collection, and transportation. For example, in *P.Sakaon* 20 (319), “the receiver of bread for baking for the most excellent soldiers there stationed” (ὕποδέκτης σίτου ἄρτοποιίας τῶν διακιμένων ἐνταῦθα γενναιοτάτων στρατιωτῶν) acknowledges a receipt of 43 *artabas* of wheat from the σιτολόγοι and in *P.Abinn.* 5 (c.346) Abinnaeus, the *praepositus* of the local cavalry unit, asks the ἐπιμελητής for a certain amount of foodstuffs, which the latter has hitherto been unable to collect from the taxpayers.³⁴⁸

Developments and Changes in the New Tax System

These main pillars of the Diocletianic tax system – the *iugatio-capitatio* method for assessing and distributing tax liabilities, the *origo*, and the roles of local officials – remained largely in

³⁴⁰ For example, *P.Cair.Isid.* 24 (first quarter of 4th century) preserves a list of people in arrears and in *Chrest. Mitt.* 196 (307 CE) an official is ordered to check the public records kept by the βιβλιοφύλακες to see if a taxpayer still owes something to the public treasury. See also *P.Oxy.* XXXIII 2665 (305-6), *P.Cair.Isid.* XVII (314), *P.Oxy.* XXXVIII 2849 (296), *P. Oxy.* XLIII 3141 (300).

³⁴¹ Bagnall and Lewis (1979), 94-95, 102

³⁴² Bagnall and Lewis (1979), 101

³⁴³ Bagnall and Lewis (1979), 100; Bagnall (1993), 157

³⁴⁴ Bagnall and Lewis (1979), 102

³⁴⁵ On ἀπαιτητής see Palme (1989). On ἐπιμελητής see Cuvigny and Wagner (1986), x-xi

³⁴⁶ ὕποδέκτης: *CPR* XXIV.4 (first half of the 5th century) for various taxes. ἀποδέκτης: *P.Cair.Isid.* 13 (314) for chaff and *P.Cair.Isid.* 47 (309) for barley. ἀπαιτητής: *O.Stras.* 1 461 (300-500) for barley and *O.Stras.* 1 287 (4th century) for wine. ἐπιμελητής *BGU* XIII 2296 (339) for wine, *P.Lond.* III 971 (4th century) for barley, *P.Lond.* III 985 (4th century) for recruits, *O.Mich.* I 234 (279) for fodder, *O.Mich.* IV 1123 (301-302) for chaff.

³⁴⁷ Carrié (1979); Bagnall (1993), 157; Potter (2004), 390.

³⁴⁸ For additional examples of the distribution of provisions to soldiers, see *P.Abinn.* 4 (c.346); *P.Oxy.* VIII 1115 (284); *P. Oxy.* XXXIII 2668 (311); and *P.Oxy.* LXIII 4358 (c.316-8).

place during the 4th century. Modifications to the *iugatio-capitatio* appear to have consisted mostly of clarifying the fiscal obligations of certain groups, formally incorporating other irregular levies into the regular tax system, and tinkering with the exchange rate from *capita* (in the second sense) to real currency. For example under Constantine we find regularized and incorporated into the fiscal system what had been “parafiscal” elements of Tetrarchic fiscalité, such as reimbursed requisitions of gold and silver and unpaid corvées.³⁴⁹ Most of these new taxes were collected in cash in order to restore the treasury’s stocks of precious metals.³⁵⁰ Moreover, the census continued to be taken, but the indiction period was extended from five years to fifteen years in 313/314.³⁵¹ Finally, the conversion rate of the *caput* (in the second sense) into real currency fluctuated, as when Julian reduced the rate from twenty-five to seven *solidi* “pro capitibus singulis”³⁵², and when Valens may have intended to cut tax rates by half after the revolt of Procopius.³⁵³

The *origo* continued to determine where one owed taxes and *munera*; however, by the reign of Constantius II the *origo* came to play a greater role in determining the *condicio* of decurions, at least.³⁵⁴ Recall from the last chapter that *condicio* was the Roman legal term for legal status, to which the state attached penalties, liturgical obligations, and privileges in a graded hierarchy.³⁵⁵ The key texts for placing this change in the function of the *origo* during the reign of Constantius II are *CTh* 12.1.38 (346) and *CTh* 12.1.42.2 (354). *CTh* 12.1.38, addressed to the praetorian prefect, concerns decurions who have left their *curiae* for service in the military or administration:

Constantius et Constans ad anatum praefectum praetorio. quoniam nonnulli curiis derelictis domesticorum seu protectorum se consortio copularunt, scholarum etiam quidam nomen dederunt militiae aut palatinis sunt officiis adgregati, cunctos iubemus omni frustratione submota ad curias revocari. ne tamen diuturnitatis ratio videatur esse neglecta, quicumque sub armis militiae munus comitatense subierunt, si necdum quinque stipendia compleverunt nec pro publica defensione proeliis adfuerunt, reddantur. qui vero palatini nominis praeferunt dignitatem, si curialem trahunt originem, infra tot annos militiae nudati praesidiis oppidanis restituantur obsequiis. de qua re magistrum equitum ac peditum et virum clarissimum comitem domesticorum, nec non etiam sacrarum largitionum comitem et magistrum officiorum et castrensem, sub quibus cuncti esse noscuntur, credidimus commonendos, ut tua insistente prudentia et scribente de nominibus singulorum unusquisque *propriae condicioni reddatur*. dat. x kal. iun. caesena constantio iiii et constante iii aa. cons. (346 mai. 23).

³⁴⁹ Bransbourg (2015), 271. For imperial bullion purchases see Rea (1974).

³⁵⁰ Carrié (1994), 59-60, 62-63; Potter (2004), 390-391

³⁵¹ In AD 306/7 Galerius ordered another census (Lact. *DMP* 23), which produced the burdensome *novus census* in Gaul mentioned in *Panegyric VIII* (5) (Carrié (1994), 39) and another census was taken in Egypt in 309/310 (Carrié (1994), 57). Indiction: Carrié (1994), 37-39

³⁵² *Amm.* 16.5.14. Thus someone who was held liable by his *professio* for two *capita* (in the second sense) would, by Julian’s new conversion, have to pay 14 *solidi* for taxes instead of 50. The manuscript tradition actually preserves “pro capitulis singulis” though Carrié ((1994), 43-44) suggested that the emendation to “pro capitibus singulis” is to be preferred.

³⁵³ *Them. Or.* 8.112d– 113c; Lenski (2002), 293-295.

³⁵⁴ Jacques (1985), 318-323

³⁵⁵ Berger (1953), 403; *CTh* 12.1.16 (319, Constantine) and 12.1.29 (340, Constantius and Constans).

Constantius and Constans to Anatolius, Praetorian Prefect

Whereas, some men have abandoned the municipal councils and have joined themselves to the group of household troops or imperial bodyguards, and some have even given their names to the imperial service of the scholarians or have associated themselves with the palatine office staffs, We order that all frustrative devices shall be barred and all such persons shall be recalled to the municipal councils. However, in order that the consideration of length of service may not appear to be disregarded, if any persons under the arms of imperial service should undergo compulsory public service as field army troops, and if they should not yet have completed five terms of service or been in combat service in defense of the state, they shall be returned to the municipal councils. Any persons sporting the rank of the palatine name, if they are claiming a curial *origo*, within the aforesaid number of years they shall be stripped of the protection of imperial service and restored to the compulsory duties of their towns. We believe that the masters of the horse and food, the most noble count of the household troops, also the count of the sacred imperial largesse, the master of offices, and the palace steward, under whose authority all the aforesaid members of the imperial service are known to be, should be admonished about this matter, and Your Prudence shall insist and shall write about the names of each of these persons so that each one of them shall be returned to his proper *condicio*.

Given on the tenth ay before the kalends of June at Caesena in the year of the fourth consulship of Constantius Augustus and the third consulship of Constans Augustus. (Trans. Pharr (1952), slightly modified.)

This passage is important because it is the first to mention an *origo curialis*. Here *curialis* describes the nature, rather than location, of the *origo*, and specifies which responsibilities came with the *origo*: i.e., those of a decurion.³⁵⁶ This conclusion is confirmed by the occasional replacement in 4th and 5th century constitutions of *origo* with *genus*, which conflates what had been in the past two separate processes.³⁵⁷ The first process was the conferring of the *origo*, which determined where one had to perform one's responsibilities³⁵⁸, and the second was the assumption of status and its attendant responsibilities, which passed from father to son with the transfer of property, but continued not to be inherited.³⁵⁹ Thus when the emperors said that these people should be returned to their *propria condicio*, they meant a return both to curial status and to their *origo qua* administrative district, concepts that are expressed simultaneously in *origo curialis*.

The second text, *CTh* 12.1.42.2, addressed to the senate of Caesena, concerns a similar problem:

³⁵⁶ For *origo curialis* see also, *CJ* 10.32.31 (371, Valentinian, Valens), *CJ* 10.32.32 (Gratian, Valentinian, Theodosius, 380), *CTh* 12.1.56 (Julian, 362), *CTh* 12.1.58 (Valentinian, Valens, 364)

³⁵⁷ For the replacement of *origo* with *genus* see also *CTh* 12.1.14 (353, Constantius), *CJ* 10.32.22 (362, Julian), *CTh* 12.1.178 (415, Honorius and Theodosius)

³⁵⁸ *Dig.* 50.1.1.2 (Ulpian), 50.1.6-7 (Ulpian)

³⁵⁹ Sirks (1993b), 164-167

Et cuncti, qui per officia diversa nomina dederunt militiae, *si de curialium numero originem trahunt*, soluti sacramentis vestris coetibus adgregentur. dat. xi kal. iun. mediolani constantio a. vii et constantio iii caes. cons. (354 mai. 22).

And all persons who have given their names to the imperial service throughout the various office staffs, if they are claiming an *origo* from the class of decurions, shall be released from their oaths of imperial service and adjoined to your group.

Given on the eleventh day before the kalends of June at Milan in the year of the seventh consulship of Constantius Augustus and the third consulship of Constantius Caesar. (Trans. Pharr (1952), slightly modified.)

The key phrase here is “de curialium numero originem trahunt.” Although this text already assumes that Caesena is the *origo*, it states that the *origo* passes along with the *condicio* of decurion. Gone are the days when the *origo* determined only where one had to perform one’s duties, as in *CTh* 12.1.12 (325, Constantine): “si qui vel ex maiore vel ex minore civitate originem ducit.”³⁶⁰

Another development of the dual system of *iugatio-capitatio* and *origo* was the “colonate”. Scholars have long debated the nature of the colonate and its significance for the later Roman Empire. The Marxist strand of historiography, for example, has made the influential argument that the colonate, as a form rural dependency, reflects an intermediary stage in the transformation of the ancient economy, characterized by slave labor, into the medieval one, characterized by serfdom.³⁶¹ The purpose here is not to offer a comprehensive study of the colonate and the relevant historiography on the topic³⁶², but rather to define *colonus* and the colonate as primarily a legal consequences of the implementation of Diocletian’s fiscal reforms, rather than as an integral component of them.

The centrality of the *origo* to Diocletian’s fiscal reform, which, as we have seen (p. 74), required the inhabitants of the empire to be registered as owing taxes in a particular *origo*, was the impetus for the legal-fiscal category “colonus” and for the colonate.³⁶³ Since there were among the inhabitants of the empire people whose *origines* were private estates on which they either lived or worked in a semi-permanent condition, Diocletian’s new fiscal system necessitated the clarification of the legal-fiscal status of these workers. I follow Cam Grey in using “colonus” in the restricted, legal-fiscal sense to refer to dependent laborers registered by the census or the landlord’s *professio* or *iugatio* with their landlord’s estate as their *origo*.³⁶⁴

³⁶⁰ Si qui vel ex maiore vel ex minore civitate originem ducit, si eandem evitare studens ad alienam se civitatem incolatus occasione contulerit, et super hoc vel preces dare tentaverit vel qualibet fraude niti, ut originem propriae civitatis eludat, duarum civitatum decurionatus onera sustineat, in una voluntatis, in una originis gratia. For the locative nature of the *origo* see also *CJ* 10.40.6 (Diocletian, Maximian), *CTh* 12.1.5 (317, Constantine), and *CTh* 12.1.12 = *Brev.* 12.1.2 = *CJ* 10.39.5 (325, Constantine).

³⁶¹ Engels (1968); Anderson (1974); Ste. Croix (1981); Wickham (1984). Cf. Weber (1950)

³⁶² For historiographical reviews see Carrié (1982); Sirks ((1993a), n.1); Scheidel (2000); and Grey (2007a).

³⁶³ Grey (2007a), 170-174; Carrié (1983), 216-221

³⁶⁴ *Contra Vera* (1997), 198-199. Vera adopted a wider view to account for diverse economic practices in addition to legal categories. In his view *colonus* meant in late antiquity “piccolo affittuario”, that is, a landless peasant or a rent paying tenant who owns his own land but is cultivating directly someone else’s land with his own means. On the one hand, this definition has the advantage of dispelling the notion that all *coloni* experienced the same degradation of their status to quasi-servitude and of highlighting the diverse modes of organizing rural labor (Vera

Registration linked the *colonus* and landlord in a chain of responsibility for the taxes of the estate.³⁶⁵ However, since the state found that its legal-fiscal category *colonus* did not encompass all those in the empire who might be called *coloni*³⁶⁶, over time the state felt the need to qualify its legal-fiscal category with the adjectives *originarius*, *originalis*³⁶⁷, *adscripticius*³⁶⁸, and *inquilinus*, to indicate more clearly the fiscal relationship between the *colonus*, landlord, and *origo*.³⁶⁹ The first reference to legal limitations on *coloni* comes in *CTh* 5.17.1 (AD 332)³⁷⁰; however, according to Goffart, in AD 332 the *colonus* was not yet “bound”.³⁷¹ The “bound” *colonus* first appeared in the mid 4th century when plots had to be sold together with their *coloni*.³⁷² Thus, *colonus* was a legal-fiscal category of persons who paid their taxes through their landlords³⁷³, not a personal status of servitude, though obligations, restrictions, and bonds came to limit in practice the notional freedom of *coloni*.³⁷⁴

The term “colonate” refers to the body of *ad hoc* regulations concerning registered tenants (*coloni*) and their fiscal responsibilities.³⁷⁵ The colonate was neither a “generalized condition of rural dependency” nor a coherent, unified legal concept, but rather the product of a series of imperial constitutions that were implemented piecemeal over the 4th century in response to inquiries from individual officials trying to apply a universalizing fiscal system to a heterogeneous empire.³⁷⁶ The aim of these constitutions was to restrict the economic activities of certain tenants and their landlords so as to preserve an *origo*’s tax base, and to add a layer of legal-fiscal obligation to the existing tenancy and labor arrangements by defining the relationship

(1997), 186, 199-206, 210-213). On the other, the definition overlooks the fiscal-legal dimension of the phenomenon.

³⁶⁵ Grey (2007a), 165-6

³⁶⁶ Hence the utility of Vera’s observation (n.364).

³⁶⁷ Sirks (1993a), 344, especially n.44, aptly observes that in Carrié’s (1983) formulation everyone in the empire could be described as *originalis*, as decurions are in *CTh* 12.1.13 (326), since *originalis* refers to registration in an *origo*. Sirks’ point is that the evidence does not support Carrié’s contention ((1983), 216-221) that the *capitatio* and *origo* were universal policies (342-4). I am, however, convinced by Carrié that Diocletian at least intended that all inhabitants of the empire should be registered in an *origo* (see also Carrié (1994), 62) and for my purposes the caution that a premodern empire such as Rome’s might not have been capable of enforcing its reforms is less important than the intention and motivations.

³⁶⁸ In Carrié’s view, *adscripticius*, *originarius*, and *originalis* are roughly synonymous and when used to describe *coloni*, they refer to the *colonus*’ registration in the census with his landlord’s estate as his *origo*. Registration, and hence the terms *adscripticius*, *originarius*, and *originalis*, fixed the *colonus*’ legal-fiscal relationship with and obligations to the state as well as how and where his obligations were to be paid and performed ((1983), 216-221, 230-232). Grey follows Carrié, though thinks that *adscripticius* is a 5th century term. Sirks (1993a), however, argues that the “adscripticiate” was a harsher form of the colonate than the “free colonate”, which arose in the later 4th century (351-358) and was “based upon an agreement between landowner and *colonus* to guarantee an administrative duty, preceding or annexed to the contract of labor or lease (thus a *pactum adiectum*)” (346). I do not think these views are mutually exclusive and can be fruitfully combined: in some cases the colonate/adscripticiate, as a legal-fiscal term, recognized and regulated what had been originally an ad hoc private arrangement between landlord and tenant.

³⁶⁹ Grey (2007a), 170-171

³⁷⁰ Goffart (1974), 66; Grey (2007a), 166

³⁷¹ Goffart (1974), 75; Sirks (1993a), 344 and n.44

³⁷² Goffart (1974), 78-86

³⁷³ Kehoe (2007), 168

³⁷⁴ Carrié (1982), 351-353; Carrié (1983), 85-86

³⁷⁵ Grey (2007a), 160

³⁷⁶ Grey (2007a), 160. This is not to say, of course, that in responding to individual situations the government was not motivated by a coherent set of goals and values.

of “*certain tenants vis-a-vis the tax system.*”³⁷⁷ This relationship may have held landlords responsible for the taxes of their *coloni*, even if they still paid their taxes in their own name.³⁷⁸

In my view, the *coloni* and colonate of the late Roman legal sources represent the recognition and regulation by the state’s legal apparatus of existing social phenomena that had created greater degrees of dependency between tenant and landlord. There was likely no single phenomenon that produced *coloni*.³⁷⁹ In some cases a contract between landlord and tenant in which the landlord agreed to pay the tenant’s taxes could have preceded state recognition, as Sirks envisioned.³⁸⁰ In other cases simple bullying or dire household finances could have reduced small holders to dependency on a larger landowner.³⁸¹ Rathbone offers another plausible scenario in which the state could have recognized local forms of organizing tenant labor on a semi-permanent basis and the collective payment of taxes.³⁸² Moreover, customary or long-term tenancy arrangements could have received official recognition.³⁸³ We should also not rule out the possibility that the state’s tax system incentivized landlords and tenants to cooperate in paying taxes. The point here is that the legal-fiscal concept *colonus* reduced the diverse motivations for a variety of economic practices to a single issue, the regular payment of taxes; taxation was so important to Diocletian and his successors that it defined, in part, the status of the individual.³⁸⁴ We should keep in mind, however, that there still existed independent tenant farmers, who farmed their landlords’ land under a new form of the *locatio-conductio* contract, and independent small holders who used tenancy to diversify their subsistence portfolios.³⁸⁵

Another legal development of the new tax system was a heightened concern for the continuous cultivation of land, which we find expressed most distinctly in the imperial constitutions concerning the *agri deserti*. Like the colonate, the legislation concerning the *agri deserti* reflects the implementation of Diocletian’s fiscal reforms and the state’s attempts to reconcile diverse economic practices that often left fields uncultivated with the universalizing tax system, which assigned tax liability to individual plots of land and expected consistent production.³⁸⁶

As with other aspects of the fiscal system, emperors continued to modify the roles and positions of decurions within the wider framework of imperial administration. The long-term trajectory of the *curiae* and its members was toward political marginalization, becoming pronounced in the late 5th and early 6th centuries, as bureaucrats, bishops, and soldiers, whose social power had been augmented by Diocletianic and Constantinian administrative reforms and imperial patronage of the church, competed with decurions for limited influence and imperial

³⁷⁷ Grey (2007a), 158 (my emphasis).

³⁷⁸ Landlord’s fiscal responsibility: Grey (2007a), 167; Sirks (1993a), 336. Paying in their own name: Carrié (1983), 221 and 236, *contra* Goffart (1974), 80-81

³⁷⁹ Vera (1997), 211-222

³⁸⁰ (1993a), 345-347

³⁸¹ Bullying: *CJ* 2.19.7 (293, Diocletian et al.), *CJ* 2.36.3 (294, Diocletian et. al.), *CJ* 3.32.17 (293, Diocletian et al.), *CJ* 3.38.3 (290, Diocletian and Maximian). Dire finances: Kehoe (1988), 38-39.

³⁸² Rathbone (1991), 120-139, 404-409. See also Vera (1997), 210-211 for this interpretation applied to the *saltus Burinitanus*.

³⁸³ Custom: Vera (1997), 211-213. Long-term tenancy: Kehoe (2007), 163-165.

³⁸⁴ Kehoe (2007), 170

³⁸⁵ Not widespread: Carrié (1983), 230. *Locatio-Conductio*: Vera (1997), 186-198. Portfolio: Carrié (1983), 231; Foxhall (1990), 104, 111-112; Rowlandson (1996), 96, 98-99

³⁸⁶ Grey (2007b). Cf. Adams (2004), 95-99 who interprets Diocletian’s policies as an attempt to bring more land under cultivation in order to increase revenues.

patronage.³⁸⁷ In the early 4th century, however, the decurions were the main beneficiaries of the new opportunities for social and career advancement and immunities from *munera* that Diocletian's expansion of the civilian administration and military offered.³⁸⁸ And although Constantine's creation of a senate for Constantinople provided the richest decurions with a way to escape their provincial towns and *munera*, it was his patronage of the church that played a greater role in changing curial career patterns.³⁸⁹ But because the local elite performed essential roles in the tax system, this new social and career mobility had the unintended consequence of enticing decurions away from these local administrative tasks and jeopardizing the reliable collection and distribution of taxes.³⁹⁰ As these new opportunities rendered curial service even less attractive, the state strove to regulate closely how decurions disposed of their property, what positions in the imperial civil and military services or the clergy they could hold, to what rank they could attain, whom they married, and where they lived³⁹¹, while simultaneously enrolling new members, such as clerics, veterans, and wealthy villagers.³⁹² Eventually, the state started experimenting with replacing decurions with imperial administrators. For example, in 364 Valens and Valentinian replaced decurions with *susceptores*, who were members of the provincial governor's staff in tax collection. Though this system was later abandoned, it reflects an attempt by the central government to bring more areas of local autonomy under its oversight.³⁹³ By the 5th century imperial officials regularly appear alongside decurions in tax collection.³⁹⁴

Conclusion

These, then, were the main features of Diocletian's fiscal reform program and they were quintessential Diocletianic policies, for they reflected and reinforced his vision for state-society relations that I outlined in the last chapter. If the above reconstruction is correct, Diocletian's fiscal policies also aimed for a high degree of sophistication and rationality. The *iugum* was designed to organize a variety of measurements and types of land under a single heading, and the *caput* enabled the state to distribute portions of its budgetary needs to individual *origines*, in accordance with their productive ability. The requirements of *aequitas* could be satisfied by the assessment of fiscal liability in proportion to taxpayers' declared assets, rather than from a rough estimate or the whim of the local elite. Moreover, conversion schedules, which circulated, would have enabled taxpayers to compare what they were being charged against the amount their declarations stipulated. Finally, the concept of collective responsibility for an *origo's* liability enabled taxpayers to hold each other accountable.³⁹⁵ As for universality, Gilles Bransbourg has called Diocletian's fiscal system "une fiscalité universelle pour un empire universel."³⁹⁶ The

³⁸⁷ Libanius *Or.* 47 and *Or.* 39.6, 10; Laniado (2002); Wickham (2006), ch. 4; and Grey (2011), ch.4. For a more pessimistic interpretation of the fate of the curial classes see Liebeschuetz (2001).

³⁸⁸ Jones (1964), 741-745; Carrié (2005), 311-312; Brown (2012), 22-25.

³⁸⁹ Jones (1964), 745-747; Laniado (2002), 5-9; Potter (2004), 387-389, 391-392; Brown (2012), 32-36.

³⁹⁰ Goffart (1974), 31; Grey (2007a), 169-170

³⁹¹ Jones (1964), 738-748; Bagnall (1993), 55; Laniado (2002), 11-15, 20-22

³⁹² Laniado (2002), 11-15, 20-22; Potter (2004), 390.

³⁹³ Lenski (2002), 297

³⁹⁴ Laniado (2002), 104-106

³⁹⁵ *P. Oxy.* 12 1415 (late third). Carrie and Rousselle argue that the collective responsibility requirement of the *origo* is a sign of the emperors' interest in fiscal justice ((1999), 193).

³⁹⁶ (2010), 7

empire-wide census and the universal fiscal units, which minimized provinces' idiosyncratic customs, are clear examples of universality. The abolition of the privileges regime and patchwork of tax systems not only reduced inequalities but also reflected the notion that all Romans had fiscal responsibilities, not just those unfortunate enough to lack privilege. New categories were even created, such as the colonate, to specify individuals' fiscal responsibilities.

Structuring the empire's fiscal institutions according to these values did more than signal the emperor's priorities to his subjects, as did other media of imperial communication. Because taxation gave real world realization to the values that structured it, there could be no stronger message than his tax policies that Diocletian intended to revolutionize the most important relationship between state and society, transform Romans into taxpaying citizens, from tribute paying subjects, and move the Roman state decisively in the direction of a tax state. According to Bonney and Omrold "a tax state is one in which the larger proportion of the ruler's revenues comes from taxes, which may be of various kinds but are characterized by their regularity and quasi-permanence."³⁹⁷ Moreover, "taxation tends to be exacted more systematically than tribute; it requires principles of assessment and a machinery of exaction; and it may involve a degree of consent from the ruler's subjects."³⁹⁸ From the above reconstruction, I would argue that these characteristics of a tax state also describe Diocletian's fiscal reforms: they were more systematic than under the Principate, based on clearer, universal principles, supported by an enlarged administrative apparatus, and enhanced the state's access to tax revenues. We will explore taxpayer consent in the next chapter, but for now it is worth repeating the observation made at the end of the last chapter that Diocletian, like other rulers, worked to win the consent of Roman taxpayers by clarifying his "role in producing and promoting contributions to valued collective goods", by making the case that taxation was fair and reasonable, and by advancing a more universal conception of citizenship and its attendant responsibilities.³⁹⁹

At the same time Margaret Levi has noted that some coercion is necessary to increase taxpayers' quasi-voluntary compliance with the tax regime.⁴⁰⁰ In the Roman Empire, soldiers, who often supported tax collection, could be on hand to supply coercion.⁴⁰¹ The impulse to compel obedience would have been all the stronger in a tax system like Diocletian's that relied on consistent local production throughout the empire. For example, *P.Cair.Isid.* 126 (c.308/9) preserves a letter between two *praepositi pagi* concerning an imperial edict that provided a monetary reward to local officials who successfully returned taxpayers living in an *origo* other than their own to their proper *origo*.⁴⁰² In other cases the principle of collective responsibility could multiply an individual's tax burdens if members of his *origo* had fled.⁴⁰³ What is more, the emperor's multiplication of his subjects' duties may have forced them to behave in new, uncomfortable ways, such as by working in an occupation they hated, changing their land use patterns to maintain local production quotas, or remaining in a dying community. Thus, while Diocletian may have labored to introduce a system of taxation that was inspired by, and to a certain degree reflected, the values of fairness, universality, rationality, and utility, his subjects'

³⁹⁷ Bonney and Omrold (1999), 16. See also Schumpeter (1991), 102-111; Wickham (1997), esp. 27, 39-42.

³⁹⁸ Bonney and Omrold (1999), 16

³⁹⁹ Collective goods: Levi (1988), 57-64, quote pg. 67. Fair: Levi (1988), 53, 56.

⁴⁰⁰ Levi (1988), 54

⁴⁰¹ *P.Abinn* 3 (344), *P.Abinn.* 11 (c.346), *P.Abinn.* 9 (c.346), *P.Abinn.* 15 (mid 4th), *P.Abinn.* 16 (mid 4th), *P.Abinn.* 29 (mid 4th). Collecting: *P.Panop* 15 (308-9), *P.Abinn.* 13 (mid 4th); Sperber (1969) and Isaac (1990), 282-304.

⁴⁰² See also *P.Oxy.* XLVI 3302 (300/1), *P.Sakaon* 34 (321), *CPR* 7 15 (305), *P. Lond.* VI 1915 (330-340) (= Sel. Pap. 1 160), *P.Abinn.* 27 (mid 4th).

⁴⁰³ *P.Sakaon* 33 (320), 42 (c. 323), 44 (331/2), 35 (332). See also *P.Cair.Isid.* 128 (314)

personal experiences with taxation likely differed dramatically from Diocletian's idealized version. It is this tension between the emperor's idealized version of taxation and individuals' personal experience with it that gave rise to the dialogue that we observe in Egyptian papyri between individual Romans and state actors about the proper form of state-society relations.

Chapter 4: Taxation, Petitions, and the Negotiation of the Social Contract

Introduction

When Diocletian and his colleagues spoke, they spoke in both words and deeds, issuing imperial communiqués that proclaimed their ideology and designing policies that reflected those ideals. Taxation, I have argued, was the most important of their policies because it gave real world realization to the emperors' values, ideals, and priorities in ways that other policies and forms of communication could not. In this chapter, we are shifting perspectives, from what the emperors' tax policies tell us about their understanding of state-society relations to Romans' experiences with those policies and the effect those policies could have had on how Romans themselves thought about state-society relations. In an empire as diverse and expansive as Rome's, however, there was no standard experience with taxation, even after Diocletian introduced greater fiscal uniformity across the empire. This chapter does not, therefore, aim at a comprehensive treatment of fiscal experiences or at revealing the one true experience; rather, I aim to build from a handful of cases as a possible theory about the nature of the impact that Diocletian's fiscal policies had on his subjects' mentalities.

It is not surprising that taxation was influential in the lives of Romans, because, as I have noted throughout, taxation was the principal point at which the Roman state and its subjects met, connected with each other, and communicated. Consider, for example, *P.Cair.Isid* 1. This gubernatorial edict, examined in the last chapter, was published in 297 CE by the governor of Egypt, Aristius Optatus, to introduce important changes in tax collection in Egypt and detail the Diocletian's and his colleagues' rationale for the changes. Unlike the other imperial constitutions that we have examined, this document was neither inscribed on stone in a prominent place in a city, nor deemed worthy of inclusion in the *Codex Justinianus* or *Digest*. On the contrary, it was unearthed in a private context, likely a home, along with 174 other papyri that document the official and private business of one Aurelius Isidoros and his relatives.⁴⁰⁴ It is not known how Isidoros came by a copy of the edict, but the contents of what remains of the archive give us some clues.⁴⁰⁵ Many of Isidoros' documents concern taxation in some way: 64 are receipts for taxes paid or delivered by Isidoros and his relatives; 29 are lists, accounts, and reports of taxes collected by Isidoros and his relatives as part of their liturgical duties; and 10 are census declarations of property and people.⁴⁰⁶ The contents of archives reflect the choices and priorities of their compilers, in addition to the vicissitudes of preservation, and Isidoros' is no

⁴⁰⁴ Context of discovery: van Minnen (2010), 465. The majority of the archive of Aurelius Isidoros has been collected in the volume *P.Cair.Isid*, with others collected in *P.Col.* VII, *P.Mert.* I and II, and *P.Mich.* IX and XII (Geens (2013a)).

⁴⁰⁵ Geens ((2013a), 7) proposes, plausibly, that Isidoros received an official copy of this edict because he was serving as a village official at the time of its promulgation. I would still contend that the context is private, as the distinction between private persons and local officials should not be pressed too firmly; local tax officials were drawn from local men of standing who would return to private life after their term of service ended bringing their "official" documents with them (Vandorpe (2009), 232). Moreover, the edict was found in an archive that contained private business documents not only of Isidoros, but also his relations as well.

⁴⁰⁶ Geens (2013a), 12.

exception.⁴⁰⁷ That documents concerning taxation figure so prominently in what remains of his archive suggest that, for Isidoros, taxation was an important aspect of his life and central to the story he wanted to be able to tell with the documents. Moreover, the choice to keep an official edict concerning taxation signals the personal relevance of the emperors' words and tax policies to Isidoros, as well as Isidoros' engagement with taxation both through the rhetoric of imperial messages and the payment of taxes themselves.

Many of Isidoros' contemporaries kept similar archives, and when we examine more closely the contents of their archives, especially petitions, for how taxation is discussed in them, a vivid picture emerges of the meaning of taxation for individuals' relationship to the Roman state and each other. From my reading of these documents I will argue, therefore, that in their petitions Romans professed to accept the fiscal obligations that the Diocletian's administration imposed on them, but only to the amount required by the official method for calculating and assigning liability, outlined in the last chapter. When these petitioners were forced to pay taxes beyond the official amount, such as on land that they did not own or at rates exceeding the official rates, they protested, citing their census records, tax receipts, lists of responsible taxpayers, and sums that had been legitimately or illegitimately allotted to their villages. Their attempts to have their fiscal cases adjudicated in this way signaled their consent to the state's method for levying taxes and to Diocletian's vision for state-society relations that underpinned it, which, as we saw chapters 2 and 3, created legal and ethical obligations on Romans, including for tax payment. Petitioners need not have personally believed in the fairness or rationality of the emperor's vision, however, for by citing their fulfillment of their fiscal obligations in petitions concerning a wide array of issues unrelated to taxation, they could present themselves as deserving of the state's help and obtain favorable rulings. Nonetheless, citing tax credentials in new contexts, even if as calculating attempts to catch officials' eyes, had important consequences: it reinforced and expanded Diocletian's conception of the label "taxpayer" as less a pure fiscal-legal category than a moral characteristic of the "ideal" Roman citizen whom the state ought to protect and defend. More importantly, by their constructive engagement with the Diocletian's conception of the state's and citizens' obligations, these petitioners contributed to the negotiation of a social contract in which both the Roman state and Roman citizens had legal and ethical rights and obligations to each other.

To sustain this argument, I will first provide an overview of my data set of petitions and tax documents and my methodology for reading them. I will then explore the citation of administrative documents in petitions and legal cases concerning taxation, before considering the influence of taxation on conceptions of the ideal citizen. Finally, I will address the problem of whether petitioners actually believed in what they were saying about the role of the citizen and state, and will argue that their true belief in these ideas is less important than the contribution of their ideas to the structuring of imperial political discourses. By way of conclusion, I will synthesize my findings in this chapter with the previous two chapters in order to set up the rhetorical and political context in which Diocletian's most polemic critic, Lactantius, was writing.

⁴⁰⁷ Vanderpe (2009), 218: "[P]apyrologists have always used 'archive' to designate both public and private records..." and "a *deliberate* collection of papers in antiquity by a single person, family, community (e.g. of priests), or around an office." On possible motivations for keeping certain documents see Vanderpe (2009), 237-240

Evidence and Method

My argument is based on an examination of 477 papyri (and a few ostraka), the majority of which date between Diocletian's first full year as emperor and the death of Constantine, 285-337 CE, though I have also included some temporal outliers for illustrative purposes. Although my focus is on the reign of Diocletian, I have thought it justifiable to examine papyri from the reigns of his successors on the grounds that the papyri that form the core analytical component of this chapter were produced by people who came of age during the reign of Diocletian.⁴⁰⁸ To gain a sense of the representativeness of my data set I performed a search on papyri.info for documents from the years 285-337 CE. My search yielded 1,980 papyri and ostraka whose dates are known to be between those years, and 18,687 papyri that may possibly date from the period, though surely many of these are either earlier or later. Plainly, we are dealing with a large body of evidence that itself only reflects a small number of the documents produced in Egypt during this period, let alone across the great expanse of the Roman Empire. But to anticipate my argument below, this chapter does not claim to reveal the one social contract agreed on by all Romans, but to propose a plausible theory about how Romans could engage with Diocletian's tax policies and ideology and the conclusions they could draw.

I began my research with several archives from my period. The volume *P.Cair.Isid*, preserves 146 documents from the archive of Aurelius Isidoros, while Aurelius Sakaon's archive (*P.Sakaon*) contains 98 and Flavius Abbinaeus' (*P.Abbin.*) 84.⁴⁰⁹ These archives were invaluable sources for how individuals could use their payment of taxes and the language of taxation to make arguments about the roles of the Roman state and citizens' obligations. Moreover, *P.Panop.Beatty* preserves two long rolls from the *strategos* of the Panopolite nome that detail the workings of the machinery of taxation at the local level, and *P.Col. VII*, edited by Bagnall and Lewis, contains 71 documents from our period, including some documents from Aurelius Isidoros' archive as well as others that elucidate the role of liturgical tax officials.⁴¹⁰ Finally, I performed metadata and key word searches from a lexicon of words related to taxation, which I have compiled in Appendix II. These searches yielded numerous papyri, though many were simple tax receipts or the accounts and reports of tax officials that I discarded in favor of texts that deal with taxation in a substantive, narratological way, such as petitions, court cases, minutes of council meetings, and letters. This left me with 76 texts, which I have listed in Appendix III, for a total of 477 documents.

Of these 477 documents I focused my detailed analyses on only a small portion, mostly petitions produced by a few individuals. Petitions are powerful evidence for documenting individuals' personal experiences with and conceptions of Diocletian's tax system, yet, as with any type of evidence, they present challenges. First, the final copies of petitions were often written by scribes, who transformed the petitioners' own words and experiences into acceptable versions of the genre.⁴¹¹ As such, petitions are full of formulae and stock information that echo legal language, scribal practice, and legal prescriptions.⁴¹² Even when we remove the conventional features of petitions, it is difficult to discern the facts of the case from the

⁴⁰⁸ I also implicitly assume a strong continuity in imperial ideology between Diocletian's abdication and the death of Constantine, though I have yet to demonstrate this, perhaps in the book.

⁴⁰⁹ *P.Cair.Isid.*: Boak and Youtie, (1960). *P.Sakaon*: Parássoglou (1978). *P.Abbin.*: Bell (1962). On these archives see also Geens (2013a); (2013b); and (2013c).

⁴¹⁰ *P.Panop. Beatty*: Skeat (1964); Geens (2003). *P.Col. VII*: Bagnall and Lewis (1979).

⁴¹¹ Kelly (2011), 41-45

⁴¹² Kelly (2011), 45-49

remaining material because petitioners often misrepresented what really happened and why.⁴¹³ In a pessimistic analysis, then, petitions are poor sources for recovering the facts of life in Roman Egypt.⁴¹⁴ My goal, however, is not to recover concrete facts, but to explore how some petitioners used their petitions and why they chose to write petitions. Here I build on the work of Ari Bryen who has argued that petitions transformed and translated emotional, often chaotic experiences into narratives.⁴¹⁵ Narratives enabled petitioners to provide their interpretations and explanations of events and invest them with symbolism and meaning.⁴¹⁶ These details – the idiosyncratic values, logics, and priorities recoverable from petitioners’ narratives – are of interest to me, not the concrete facts of what happened. In this regard, my method for reading petitions is the same as my method for reading imperial constitutions, from which I too tried to recover the underlying logics.

Still, the nature of petitions makes it difficult for historians to say anything certain about petitioners’ beliefs. Did, for example, petitioners believe in the veracity of the narratives they composed? Did they subscribe to the underlying logics? Or were petitioners trying to present the narrative that they thought their audience would find most persuasive? In truth, we will never know what petitioners actually believed, but in a way their belief is not important. I will address this point in greater detail below, but for now it suffices to say that the petitioners examined here could contribute to the formation of a political discourse and negotiation of a social contract without actually believing in the veracity of their contribution. Moreover, a project that aims to recover the true beliefs of petitioners can fall into the trap of writing anecdotal histories of life in Roman Egypt, as beliefs vary widely by individuals. Though valuable in its own right for depicting how individuals experienced and responded to the structures of the state as individuals, anecdotal history is less useful for generating plausible theories about how government structures and ideologies could have influenced, for example, conceptions of state-society relations throughout the polity.⁴¹⁷ That is my goal here: to generate from a detailed analysis of several petitions a plausible theory of how Diocletian’s tax system could have influenced how Romans living during his and his successors’ reigns thought about their relationships with each other and with the state. Nonetheless, to defend against the critique that the stories I tell are no more than anecdotes of idiosyncratic musings by a handful of Roman citizens I have included in the footnotes additional papyrological illustrations of my observations.

Petitioners’ Acceptance of their Fiscal Obligations

The first set of petitions concerns cases in which the petitioners believed that they had been forced to pay taxes beyond what was legally required of them. Despite perceived abuses, the petitioners complained about neither the legitimacy of the tax nor the state’s method for calculating fiscal liability, and they did not question the state’s right to collect taxes. Indeed, they cited administrative documents produced by the fiscal system in support of what they understood to be the correct amount that they were obligated to pay. Their citation of tax

⁴¹³ Kelly (2011), 56-62, 73-74

⁴¹⁴ Thus Kelly (2011), ch. 2 generally.

⁴¹⁵ (2013), 90-91

⁴¹⁶ See also Bryen (2014a) and (2014b)

⁴¹⁷ I take my cue here from Hickey (2009), 507-508 and Bryen (2013), 22-23.

documents and attempts to have their tax burdens adjudicated reinforced the legitimacy of the laws and procedures for calculating fiscal obligations that were already on the books.

In the first example, *P.Cair.Isid.* 68 (309/310), a petition to a *praepositus pagi*, Aurelius Isidoros complained that he was being nominated illegally (*παρανομίαν πάσχω*) to the position of *sitologos*, while those who should have performed the *sitologia* were being protected from nomination by the village scribe. The position of *sitologos*, the local liturgical official in charge of collecting and transporting grain taxes, was not strictly a tax, though it could encumber the office holder with sizable financial burdens. Isidoros began his petition with a statement that the law ought to help and protect people of small means (*μετριοί*), such as he, who was *metrios* himself, for he had already paid a lot in taxes on the 140 arouras he owned, which included unproductive land.⁴¹⁸ Isidoros' fiscal obligations could have been confirmed by reference to the tax receipts he kept or by an examination of his land declarations, similar to *P.Cair.Isid.* 4 and 5 (299), in which Isidoros declared his responsibility for taxes on 53 59/64 arouras.⁴¹⁹ By mentioning what he had paid, Isidoros was claiming that because he had already fulfilled the fiscal responsibilities of his lands he was neither liable for nomination nor financially able to take the place of men who were not *παρε[στῶ]τες* to their village in the *sitologia*, with its additional financial responsibility for arrears on unclaimed unproductive land. Concerning *παρε[στῶ]τες* the editors note, "the general sense of this phrase is expressed in the literal translation 'standing by the village,' i.e. 'lending their assistance to the village.' In practice, this would come to mean performing the liturgies that would normally fall to their lot."⁴²⁰ Isidoros, therefore, was petitioning to have the laws enforced properly and his particular obligation to the treasury recognized. He also intimated that he would be willing to serve as *sitologos* provided that he was nominated according to the laws and correct procedures, but he was not, for he had already satisfied what was legally required of him.

In a second petition, *P.Cair.Isid.* 69 (310), this time to a *strategos*, Isidoros once again appealed to administrative documents and procedures to counter what he saw as illegitimate fiscal impositions. In his typical fashion, he began his petition with a statement that the law should protect people from oppression (*ὑπερανακρατῖσθαι*), illegal exaction (*παραπράττεσθαι*), and deprivation of rights (*παρανομίσθαι*).⁴²¹ And typically, he tried to show that this is exactly what had happened to him. His opponent, Acotas, was forcing him to pay dues on land that Acotas had always cultivated and on which he had always paid dues. If paying of taxes on these lands was not enough to prove Acotas' ownership⁴²², checking commonly available administrative documents in which the abutting properties, boundaries, and former owner of the property were listed would substantiate Acotas' ownership of the property (*πρότερον Ὁρίωνος ἄρξαντος...διὰ τῶν ἀγρογιτόνων καὶ ὀριοδίκτου αἱ ἐξετάσις γείνονται*). This information, the boundaries, abutting properties, and former owner, were often listed when real property was sold or declared for tax purposes.⁴²³ Finally, as in the last example, Isidoros returned to his own

⁴¹⁸ For Isidoros' financial situation see Kehoe (1992), 158-165.

⁴¹⁹ Boak and Youtie (1960), 269. Extracts of land declarations could be made (*P.Col.* VII 124, and *P.Mich.* XII 62, a duplicate of *P.Col.* VII 124, ll. 1-29).

⁴²⁰ Boak and Youtie (1960), 271.

⁴²¹ I follow Boak and Youtie's interpretation that the tricolon of infinitives stating the laws purpose and beginning in line 5 is interrupted and completed in lines 15-16 ((1960), 273).

⁴²² In *P.Sakaon* 43 (327), a petition to a *praepositus pagi*, tax payment was also cited as evidence of ownership.

⁴²³ Boundary inspections and neighbors: *P.Sakaon* 59 (305) and 60 (306), *P.Oxy* IX 1200 (266), *P.Yadin* 7 (120) and 20 (130), and *P.Cair.Isid.* 3 (299), 4 (299), and 5 (299). Former owner: *P.Sakaon* 59 (305), *P.Oxy* IX 1208 (291),

record of paying taxes, saying that he paid all the taxes owed on the 140 arouras that were registered to him. In this petition Isidoros was thus asking a court of law to recognize that official administrative documents held the key to his fiscal responsibility, for they created a legal obligation on the possessor to pay taxes on the lands he possessed.⁴²⁴ As with the *sitologia*, Isidoros assented to paying taxes, provided that his land registration showed he owed taxes on those lands. This means that in Isidoros' view, he had a unique fiscal obligation to the state, determined by the specific property he possessed.

A final example from the archive of Aurelius Isidoros, *P.Cair.Isid.* 71 (314), is described as “memoranda for a petition.” This document and another, *P.Cair.Isid.* 72 (314), similarly described, were likely used to draw up *P.Cair.Isid.* 73 (314), a petition to the prefect of Egypt, in which the Isidoros and a fellow villager lodged a series of complaints against the *komarchoi* of Karanis and the *praepositus pagi*.⁴²⁵ *P.Cair.Isid.* 71 lists the allotments (μερισμοί) in cash and kind that the komarchs, in collusion with the *praepositus pagi*, had imposed on Karanis in order to argue that the komarchs were acting arbitrarily (ὡς βούλονται πράσσωσιν) and unjustly (οὔτε τοῦ δικαίου φροντίζουσιν). Moreover, the komarchs failed to consult the *tesserarii*, *quadrarii*, and the scribe, and they did not think of κλήρου (οὔτε κλήρου...φρ[ο]ντίζουσιν). The editors note their difficulty translating κλήρου, suggesting that it could refer to “the total area of land possessed by an individual” or to “the burden of a man’s liturgical assignments.”⁴²⁶ In its basic meaning, κλήρος referred to something that was apportioned, such as taxes, liturgies, inheritance, or allotments.⁴²⁷ Because in *P.Cair.Isid.* 71 Isidoros was complaining about having illegitimate sums imposed on the village by the komarchs, κλήρος likely refers to the sum that Isidoros thought the village owed or at least to how that proper sum should have been arrived at. Once again, Isidoros considered just tax burdens those officially levied by the state and supported with proper administrative documentation. This claim was made by referencing fiscal documents, which allowed him to contrast the μερισμοί unjustly imposed with what the village actually owed, the κλήρος. Additionally, the language surrounding κλήρου supports this conclusion. Lines 9-10 read “οὔτε γραμματέως οὔτε κλήρου οὔτε τοῦ δικαίου φρ[ο]ντίζουσιν”. In the same breath the author linked the village scribe and the official allotment (κλήρου) with justice. Justice lay in what had been laid down officially, not in the caprice of officials acting as they wish.⁴²⁸

In these three documents Isidoros recognized the legitimacy of the fiscal regime and asserted his willingness to abide it, while his opponents, at least in Isidoros' rendering, were intentionally disregarding the laws. However, the mere fact that the laws on taxation might have been broken suggests that Isidoros' perspective might not have been unanimous, i.e., that some people did not want to pay their taxes. We may also doubt the sincerity of Isidoros' claims and the accuracy of his presentation of the situation, for, as Bagnall notes, behind *P.Cair.Isid.* 69

P.Oxy XII 1475 (267), *P.Yadin* 7 (120), and *P.Col.* VII 181 (342), which records the plot being sold as ἐπ' ὀνόματι of the former owner.

⁴²⁴ See Appendix I

⁴²⁵ Boak and Youtie (1960), 281-288.

⁴²⁶ Boak and Youtie (1960), 280.

⁴²⁷ Preisigke-Kiessling (1924), 802-807.

⁴²⁸ It should be noted that in *P.Cair.Isid.* 73 Isidoros is given the title *tesserarius* and his fellow petitioner is called *quadrarius*. These were village-level officials with a fiscal portfolio who appear in papyri around the turn of the 4th century (Solieman (2012)). In *P.Cair.Isid.* 71 Isidoros was complaining not only that the komarchs were acting outside official protocol by not consulting the *tesserarius* and *quadrarius*, but also that they were not consulting Isidoros himself. For this reason we should expect a degree of personal outrage to have motivated this petition.

(310), as well as other documents from Isidoros' archive, were likely disputes of long standing.⁴²⁹ Taxation and the shifting of tax burdens, then, could have served as an arena for local disputes and antagonisms in which Isidoros was himself a belligerent. What matters here, though, is the logic of public declarations, not the penumbra of conflict and dissent, for, as we shall see at the end of this chapter, it was what was said in public, rather than the true facts of the situation, that had a greater impact on the structuring of political thought and behavior.

We find similar claims being made in the archive of Isidoros' contemporary Aurelius Sakaon. In *P.Sakaon* 35 (c.332) and 44 (331/2) Sakaon and his fellow petitioners not only performed an acknowledgement of the legitimacy of the fiscal regime, they also recognized that official methods for determining and assigning fiscal responsibility created legal obligations between them and their fellow villagers. *P.Sakaon* 35 appears to be a briefing drawn up for a courtroom advocate.⁴³⁰ The situation was as follows. Only Sakaon and two neighbors were left paying taxes for a mostly deserted and barren Theadelphia. Unfortunately, they were only able to pay a portion of what Theadelphia owed. In *P.Sakaon* 44 we learn that Sakaon and those remaining have gone out to find their former neighbors and tried to drag them back to the village to pay their taxes. Since they found some of them, but were unsurprisingly repulsed with violence, Sakaon and his gang petitioned the prefect to have these people returned to Theadelphia. These two documents come at the end of a saga that had been unfolding since 320, when in *P.Sakaon* 33 Sakaon asked the *praeses* either to order the upstream villages to open the canals or to attach the lands of Theadelphia to the downstream villages.

Recall that Diocletian's fiscal policies created on a larger scale than before collectivities whose inhabitants were legally responsible for that collectivity's tax burden and that involved people in new relationships of power.⁴³¹ Even though demographic outflows and infrastructural decay increased the fiscal burden of Sakaon and his remaining neighbors, publicly they did not question the government's right to levy taxes, the legitimacy of the taxes themselves, or even the administration's method for determining fiscal liability. But because they found paying all of their collectivity's taxes nearly impossible, they proposed two solutions for revising the terms, not the framework or laws, of their relationship with the state. The state could either, as in *P.Sakaon* 33 and 35, attach Theadelphia to more productive villages to shift some of Theadelphia's fiscal burdens to more productive lands, a suggestion that was in line with how Diocletian's policy of *capitatio-iugatio* calculated fiscal responsibility.⁴³² Or, as in *P.Sakaon* 44, those who were registered as owing taxes on lands in Theadelphia could be returned to the village to pay their taxes, a suggestion that was in line with Diocletian's policy of the *origo*.⁴³³ This last suggestion reveals that Sakaon recognized that Diocletian's fiscal policies created not only new legal obligations between state and society, but also new obligations between Romans themselves that were legally binding and subject to adjudication.

A final example, *P.Col.* VII 174 (c.325-350), lends additional support to the argument that Romans acknowledged that administrative documents, in this case, the census⁴³⁴, created

⁴²⁹ Bagnall (1993), 166, 223.

⁴³⁰ This document is described as a "narratio", but Bagnall and Lewis ((1979), 165-169) argue that the symbol "n" that begins this document may be better resolved as Ν(ομικός) than as n(arratio). *P.Col.* VII 174 (c.325-350) and *P.Sakaon* 35, as well as others like them, were likely prepared by a *nomikos* to inform the advocate, or *rhetor*, about the case. In the large margins left on these documents the advocate could and did make notes for himself.

⁴³¹ Ch. 3 above; Grey (2011), chs. 6-7.

⁴³² Sakaon makes the same request in *P.Sakaon* 42 (c.323), ll.15-18.

⁴³³ See also *P.Ross.George.* III.8 (340s) and Rathbone (2008) for a similar phenomenon.

⁴³⁴ ἀπεγράψαντο ἐν τοῖς κήνσοις (Ll. 2, 15).

legal obligations on them and between taxpayers themselves. This papyrus is described as a “memorandum for an advocate”⁴³⁵ in which the document’s writer argued that his clients owed taxes only on the land registered to them in the census, even though the collapse of irrigation infrastructure left the land in Karanis unproductive and their finances strained. The collapse of irrigation infrastructure affected others in the area as well, but they fled, leaving the advocate’s clients to pay their neighbor’s taxes. The advocate asked that, instead of his clients, those who properly owed taxes in Karanis be compelled to pay them. Once again petitioners referred to administrative documents – here, the census – to determine who was legally obligated to pay taxes in Karanis. It was what was recorded in the census that determined obligations.

In sum, the petitioners examined here did not try to argue that the emperor and his administration could not collect taxes or that their method for determining personal fiscal liability was somehow faulty, misconceived, or illegitimate.⁴³⁶ Instead, petitioners petitioned in order to ensure that their taxes were limited to the amount determined by the census, declarations of land and people, and the actual production of their land. Indeed, petitioners referred to these administrative documents in their petitions.⁴³⁷ By appealing to the state’s own documents in their legal cases, the petitioners tried to make the institutions and ideals of the empire work for them.⁴³⁸ In this case, petitioners exploited a central tenet of imperial ideology: that the legitimacy of the administration was rooted in the legitimacy of its documentation and the ideals of good and stable government.⁴³⁹ By citing the documents, petitioners were forcing the state to choose between standing by its professed ideals or openly flouting them, which the petitioners hoped would translate into concrete legal action by the state on their behalf.⁴⁴⁰

In the process of citing these documents, however, petitioners did something more: they performed an acknowledgement of the legitimacy of the emperor’s fiscal regime and showed themselves to have recognized that fiscal rituals – the census and declarations of land and people – created legal obligations on them, and that the associated documents embodied their obligations to the state.⁴⁴¹ Moreover, the language of the petitions itself constructs the fiscal obligations as legitimate. In this regard, these petitions echoed Diocletian’s vision for state-society relations, which, as I have argued, imposed many obligations on his subjects, including tax payment, and might also suggest, of course, that a true consensus existed between the emperors and the petitioners on the legal rights and responsibilities of the government and its subjects.⁴⁴² Thus, as in other instances when Romans tried to turn imperial institutions and ideology to their advantage, by using census records, declarations of property and land, and tax

⁴³⁵ See n.430 above.

⁴³⁶ Other examples: *CPR* 17.1 35 (339), *P.Ryl.* IV 617 (c. 317), *P.Cair.Isid.* 73 (314), *P.Cair.Isid.* 75 (316), *P.Sakaon* 41 (322), *P.Sakaon* 37 (284), *P.Oxy.* XXIV 2407 (late third century), *P.Wisc.* I 32 = *Pap. Choix* 27 (305); *P.Oxy.* XLVI 3302 (300/1).

⁴³⁷ Other examples: *P.Col.* VII 124 (298-302) and 125 (307), *P.Cair.Isid.* 62 (296), *P.Sakaon* 43 (327), *P.Oxy.* XXVII 2476 (288), *P.Princ.* III.119 (c. 325), *P.Ryl.* IV 654 (c. 302-9).

⁴³⁸ Sherwin-White (1963); Gagos and van Minnen (1994); Ando (2000); Connolly (2010); Harker (2011); Noreña (2011); Grey (2011); Humfress (2013); Bryen (2013). The authors cited here rightly observe that a wide range of classes of Romans, from the most prominent senator down to the humble farmer, could exploit imperial structures and ideology for their benefit, whereas the individuals examined here were by and large the village elite.

⁴³⁹ Ando (2000), 49-130, esp. 57-79.

⁴⁴⁰ Bryen (2013), ch. 5

⁴⁴¹ Appendix I.

⁴⁴² Ando (2000), esp. 57-70, 336-405; Connolly (2010), 119-120; Bryen (2014a).

receipts to protect themselves against allegedly illegitimate exactions of money and labor, petitioners helped bolster the legitimacy of imperial system as a whole.⁴⁴³

The Taxpayer as the Ideal Citizen

Taxation played a role in determining the nature and content of late Roman politics in another significant way. Abuses by the administration were not the only problems Romans experienced. As in any other society, conflicts, many of which did not concern taxation, inevitably arose.⁴⁴⁴ When petitioners appealed to the Roman judicial system, they employed a number of tactics to embellish their side of the story and present themselves as deserving the state's help. One tactic was to mention the payment of taxes or the performance of services.⁴⁴⁵ Citing tax credentials in new contexts, I argue, expanded the social meaning of the label "taxpayer" from a pure fiscal-legal category to a moral category that expressed an important aspect of the "ideal" citizen.

One example of this phenomenon is *P.Cair.Isid.* 62 (296), a petition concerning a dispute over property. The petitioners, Isidoros' sister-in-law, Taesis, and her sister, Kyrillous, asked the *beneficiarius* to compel their step-mother to furnish some documents so that they could recover property which, they believed, she had stolen from them. The petitioners alleged that through fictitious contracts with their late father, which she refused to produce, their step-mother stole some sheep, a mina of gold, and a slave girl, who, it was claimed, had been given as security for her dowry. The petitioners ended the petition with a summary of their taxpaying record, saying, "for not a mean sum of public and private debts do we pay, and have paid, on behalf of our aforementioned father for public and private lands registered to him."⁴⁴⁶ This citation of tax credentials here is significant exactly because it was a transparent appeal to the *beneficiarius*' good will. Certainly the petitioners could have made the claim that their step-mother's theft of their father's sheep threaten their ability to pay their taxes, but they did not. They merely asked that the *beneficiarius* help them *because* they had regularly paid a large amount of taxes, whereas, in their view, their step-mother had broken the laws. Here the petitioners (and their scribe) showed themselves savvy enough to know that legal cases were not won and lost only on the legal plane, but also the moral. They knew that they must appear to the magistrate as deserving of the state's help. In this way, the petitioners were, in effect, making what we would call a moral argument for a certain definition of the ideal Roman.⁴⁴⁷

A second example also comes from the archive of Aurelius Isidoros. In *P.Mert.* II 92 (324), Isidoros asked that the *praepositus pagi* help him to obtain redress for the damage his neighbor's cattle had wrought on his fields, for the law, he claimed, required that cattle that had damaged others' property be confiscated by the treasury and that their owners be held financially responsible for the damage.⁴⁴⁸ As in the previous example, this petition could have reflected

⁴⁴³ Ando (2000), ch. 7; Noreña (2011); Bryen (2013), ch. 6.

⁴⁴⁴ Connolly (2010), esp. 22-29, 100-136.

⁴⁴⁵ Grey (2011), ch. 7, esp. 216-225. Connolly ((2010), 100-136) identifies three strategies for approaching the law: 1) law as an arena of contest and one tactic in dispute resolution; 2) law as an impartial arbiter of last resort; and 3) law as the apparatus of a hostile authority to be circumvented. The petitioners examined in this chapter were often utilizing the first strategy, in which the language of taxation was one tactic to win the favor of the law.

⁴⁴⁶ II.28-30, οὐκὸλίγα γὰρ τελοῦμεν κα[ὶ] ἀ]πεπληρώσαμεν ὑπὲρ τοῦ π[ρ]οκίμενου ἡμῶν πατρὸς ὀχλήματα δημόσια τε καὶ ἰδιωτικά ὑπὲρ ἧς ἐσωματίσθηπα[μπὸλ]λου δημοσίας τε κα[ὶ] ἰδιωτικῆς γῆς.

⁴⁴⁷ For an additional example of citations of tax credentials on behalf of petitioners see *P.Ryl.* IV 654 (c. 302-9)

⁴⁴⁸ For this law see *Dig.* 9.1. See Kehoe (1992), 158-165 for a full discussion of the situation.

Isidoros' concern that the loss of his harvest would affect his ability to pay his taxes, or worse, that the loss of crops would threaten his subsistence, since he did in fact present himself as having been reduced to poverty because of his payment of taxes. However, lamentation of the precarious state of his finances was one of Isidoros' common rhetorical techniques and may reflect more his feelings of vulnerability than his actual poverty.⁴⁴⁹ His characterization of his opponents as possessing great influence (μεγάλα δυνόμενοι ἐπὶ τῶν τόπων) and wishing to drive him from his *origo* (βουλόμενοι μαι τὴν ἰδίαν ἐγκαταλίψει) supports this argument. But if we focus on the language, we see that Isidoros was making a subtler and indeed more significant argument. For he claimed that he was *reduced* to poverty *because* he assiduously paid his taxes (ὑπὲρ ὧν μὴ σπειρομένων τὰ τῷ ταμείῳ πολλῷ χρόνῳ τελῶ καὶ τούτων ἔνεγκα εἰς πενίαν περιέστην).⁴⁵⁰ His alleged poverty, therefore, was intended to highlight his loyalty and to accentuate his fulfillment of his fiscal responsibilities. Thus in a deft move, Isidoros presented himself as both deserving and needing the help of the *praepositus pagi*. This is the same sort of moral argument that we saw being made in *P.Cair.Isid.* 62 above, that one's fiscal responsibility should make one a worthy candidate for the state's help.

The petitioner of *P.Amh.* II 142 (second quarter of 4th century) also used taxation to draw a moral distinction between himself and his opponents. A dispute of long standing lurked behind this petition in which the petitioner who had farmed his lands for a long time was attacked repeatedly by people wishing to farm them. The first time this happened he petitioned the prefect who ordered the *praepositus pagi* to inspect the lands to determine whether the petitioner owned the lands or not. After the *praepositus pagi* did this, he confirmed the petitioner's ownership of the lands. The petitioner tried to farm his lands again, only to have his enemies block him again five years later. In the present document, the petitioner was once again demanding redress. In framing his petition, he claimed that his enemies despised his quiet way of life and used their wealth and tyranny to enjoy the fruits of his labor. They attacked him as thieves ([ληστικῷ τρόπῳ ἐπ[έ]βησαν) with clubs and swords (μετὰ ῥοπάλων καὶ ξιφῶν) wishing to kill him (βουλόμενοι ἀναιρηῆσαι), whereas he paid his dues and taxes regularly (ἐμοῦ τελούντος), and minded his own business. Though the complete sense is obscured by the loss of the left side of the papyrus, it appears that the petitioner was *claiming* that all he wanted was his lands to be returned to him so that he could continue to pay his taxes.⁴⁵¹

The distinction that the petitioner drew between himself and his opponents was common, though significant, for he was making the same moral argument, but took it one step further. The contrast between the taxpayer and those described as “thieves” or “bandits” was intended to distinguish someone willing to participate in the community, the taxpayer, from those bent on undermining the community. The phrase ληστικῷ τρόπῳ, “in the manner of thieves”, though hackneyed in nature⁴⁵², held the specific legal and moral implications of someone acting violently in a legal space outside the duty-bound (*officia*) body politic in which “exceptional legal rules apply,” such as the high seas or mountainous frontiers.⁴⁵³ Additionally, as Shaw

⁴⁴⁹ Common technique: *P.Cair.Isid.* 68, 73, and 74. Vulnerability: Connolly (2010), 138-140, summarizing Brown (2002).

⁴⁵⁰ For other examples of this technique see *P.Oxy.* I 71 (303), *P.Sakaon* 40 (318/320), *CPR* 17.1 9b (320) = *Chrest. Wilck.* 379 = *P. Cairo Preis.* 4, *P.Mert* II 92 (324).

⁴⁵¹ Ll. 17-18 ἀποκαταστήσαι μοι τοὺς φό[ρο]ς τοῦ τοσο[ύ]του χρόνου ἵνα ταῦτα ἀπολαβὼν εὐγνωμονήσω/[-ca.?-τ]ῆ δημόσια τελῶ ὑπὲρ αὐτῶν. τελῶ is likely a subjunctive in a purpose clause set off by ἵνα in the previous line. For other examples of feigned eagerness to continue paying taxes see *P.Sakaon* 36 (c. 280), *P.Sakaon* 40 (318/320).

⁴⁵² Bryen ((2013), 94) observes that this phrase was often used to describe burglary and express surprise.

⁴⁵³ Heller-Roazen (2009), 10-11.

notes, “[*latrones* were men who threatened the social and moral order of the state by use of private violence in pursuit of their aims”⁴⁵⁴, but over time the term became a catchall for “all violent opposition to established authority short of war.”⁴⁵⁵ Thus by pairing an evocative condemnation of his opponents’ anti-social behavior with his own willingness to pay taxes, the petitioner could to portray himself as a morally upstanding member of the imperial community. Certainly, the petitioner made use of other equally evocative rhetorical topoi to contrast himself with his opponent – his poverty, unobtrusive way of life, and diligent cultivation of his land – but it was taxation that drove home the petitioner’s worth to the state actor who would receive the petition.

In the final example, *P.Sakaon* 38 (312), a petition to the prefect, Sakaon’s nephew, Melas, claimed that Sakaon abducted his own daughter from Melas’ household in order to prevent her from being married to Melas’ son, Zoilos. Melas also added that because Zoilos was *sitologos* and, as such, paid the taxes owed to the treasury by the now abandoned village of Theadelphia, Melas feared that his son might flee. The rest of the petition details Sakaon’s other crimes and Melas’ attempts to have the girl returned. The mention of Zoilos’ *sitologia* is noteworthy for a two reasons. First, it is difficult to see why Melas decided to bring up Zoilos’ role in the tax system in the first place. The present case did not pertain at all to taxation and, within the text, Melas’ digression on his son’s *sitologia* is incongruous with the direction of the petition. Melas was manifestly trying to make his son more appealing to the Roman judicial system and in doing so, Melas, like the other petitioners, contributed to transforming the label “taxpayer” into a positive, moral quality of the subject.

The second and more interesting feature of the petition is Melas’ threat that Zoilos would flee his responsibilities as *sitologos* if Sakaon did not allow the marriage to happen, because the marriage should not have affected Zoilos’ ability to discharge his duties. In petitions, however, threatening the administration with fiscal flight was a common trope but in this case Melas was making a subtle claim about the role of the state.⁴⁵⁶ In effect, he was asserting that it was the state’s responsibility to come to his son’s aid, and that if it failed to do so, his son would no longer have the responsibility to serve as *sitologos*. This vision of the state picks up on the discussion of the last section but here the argument is taken one step further: one man’s participation in the fiscal regime was contingent upon the state providing him with justice. The implication was that a large scale failure by the state to provide justice could have led to the unraveling of the fiscal system, as more people lost the motivation to pay taxes.

Melas’ petition resonates with an inscription from Skaptopara (238 CE), which records a petition sent to Gordian III as well as the emperor’s response.⁴⁵⁷ Here the petitioners complained that some people, including soldiers, who attended the market near their town were in the habit of demanding quarter and entertainment from the villagers without payment. The petitioners had repeatedly appealed to the governor on this issue, but to no avail. In the present petition they lamented that if they were not relieved of these burdens they would flee, thus taking their taxes with them, but if the emperor were to help them, they would be able to keep paying their

⁴⁵⁴ Shaw (1984), 3-4.

⁴⁵⁵ Shaw (1984), 6.

⁴⁵⁶ The flight that Melas threatens here was essentially a fiscal category for taxpayers who had left their *idia* (*origo*) when they could not or did not want to pay their taxes or perform *munera*, and those who were “in flight” did not pay their taxes (*P.Col.* VII 175 (339)). On fiscal flight see Thomas (1975); Lewis (1983), 163-165, 183-184; and Lewis (1995), 357-374.

⁴⁵⁷ Hauken (1998), 74-139.

taxes.⁴⁵⁸ These two examples illustrate that the Roman Empire was built on contract between the state and taxpayers in which the state's ability to provide justice to its taxpayers justified its collection of taxes.⁴⁵⁹ Its failure to provide justice eliminated a significant, non-coercive incentive to continue paying taxes.

To sum up: just as the emperor and the elite drew on a set of ideals and virtues to fashion their public *personae*, so too did ordinary Romans return frequently to their own set of ideals, characteristics, and tropes for self-fashioning.⁴⁶⁰ To his senatorial peers the emperor was *primus inter pares*, respectful of their honor, and a magistrate of the state and a philosopher, and to his soldiers he was a *commilito*, solicitous of their wellbeing.⁴⁶¹ To everyone else, he was their beneficent ruler, lavishing them with abundance and protecting their lives.⁴⁶² The elite, on the other hand, presented themselves as cultured litterateurs steeped in *paideia* who also possessed significant political *auctoritas*.⁴⁶³ More ordinary Romans, by contrast, drew on the tropes available to them that they thought would resonate with their audience in the imperial government, namely, poverty, unobtrusiveness, farmer, and, above all, taxpayer. In their petitions, even in those concerning disputes of a non-fiscal nature, Romans showcased their tax credentials, such as their payment of taxes or performance of liturgical tax collecting functions, in the hope of making the Roman judicial system more sympathetic to their cause. In general, they tried to portray themselves as law-abiding taxpayers and vulnerable victims of often violent, law breaking tyrants.⁴⁶⁴ The petitioners' assiduous taxpaying thus bolstered their image as loyal members of the imperial community.

The result of this rhetoric was a broadening of the meaning of the label "taxpayer" in late Roman society. By highlighting their diligent fulfillment of their fiscal responsibilities petitioners contributed to the transformation of the taxpayer into a positive, moral quality.⁴⁶⁵ Even if the mention of tax credentials in petitions was a transparent appeal to the goodwill of the Roman judicial system, the petitioners were still *doing* something; they were making a moral argument that paying taxes rendered the petitioner deserving of the state's help and that being a taxpayer was among the virtues of an ideal Roman citizen.⁴⁶⁶ But in doing so, it must be remembered, Romans were building on the positive valuation of taxation as the obligation of a patriotic Roman that Diocletian and his administration had already proposed. Even so, Romans could turn the state's own categories and ideals against it, as Melas did: if good, patriotic Romans paid their taxes, then the state ought to help them out. Taxpaying could thus be made contingent upon the state's ability to deliver justice to its taxpayers, and, in theory, a large-scale failure by the state to provide impartial justice to its subjects could lead to the unraveling of the entire imperial tax system.

⁴⁵⁸ ἔὰν δὲ βαροῦμεθα, φευξόμεθα ἀπὸ τῶν οἰκείων καὶ μεγίστην ζημίαν τὸ ταμεῖον περιβληθήσεται — ἵνα ἐλεηθέντες διὰ τὴν θείαν σου πρόνοιαν καὶ μείναντες ἐν τοῖς ἰδίοις τοῦς τε ἱεροῦς φόρους καὶ τὰ λοιπὰ τελέσματα παρασχεῖν δυνησόμεθα: (LI. 91-911).

⁴⁵⁹ See also *P.Cair.Isid.* 78 (324).

⁴⁶⁰ Cf. Roller (2001) and Noreña (2009), for the role the elite could play in defining the emperor.

⁴⁶¹ E.g. Lendon (1997), ch. 3; Elm (2012), chs. 2-3, 7.

⁴⁶² E.g. Veyne (1990); Noreña (2011), chs 2-3.

⁴⁶³ E.g. Brown (1992); Gleason (1995); Sailor (2008); Elm (2012), chs. 4-6, 8, 9.

⁴⁶⁴ See also *P.Cair.Isid.* 75 (316), *P.Abinn.* 28 (mid 4th), and *P.Abinn.* 45, 46 (343).

⁴⁶⁵ Ando (2000), 7 notes that a central process in the creation of ideological consensus between the central government and its subjects was the incorporation by subjects of administrative documents into narratives of their life history.

⁴⁶⁶ Speech as action: Tully (1988), 8-16; Skinner (1988a), 56-63 and (1988b), 99-118.

Once again, an examination of the discourse around taxation reveals the high degree of overlap in the state's and its subjects' conception of the basis of their relationship. Taxation, then, was much more than the extraction of resources by the public sector. It was at the heart of the late Roman political process in which not only the emperor and the elite, but also ordinary Romans sought to define the principles and direct the institutions on which Roman society was built. And petitioning was more than a means of obtaining legal redress and an arena for social contestation; it was also a way for Romans to express their political expectations of the state and of each other.

Taxation, the "Public Transcript", and the Organization of Imperial Politics

As mentioned above, the main challenge of writing such a social history of taxation from petitions is the difficulty of recovering the petitioners' actual voices and sentiments, which are often drowned out in rhetorical topoi, legal formulae, misrepresentation, and outright lies.⁴⁶⁷ In all likelihood, petitioners dreaded paying their taxes, as they had to cart huge quantities of produce to distant granaries or ports, and had to endure the condescension of their neighbors whose social power was increased by nomination to local office.⁴⁶⁸ Those unlucky enough to have been nominated likely resented the additional financial and physical burdens of their liturgies. Yet, publically in their petitions, taxpayers and local agents of the fiscal system professed (or performed professions of) their willingness to pay and serve, as long as the state protected their interests and recognized and rewarded their efforts. And, as I will argue in this section, these public declarations mattered more for the political and conceptual organization of the empire than whatever feelings the petitioners might have harbored within. Public declarations mattered precisely because they were performances and speech-acts, which were laden with highly resonant ideological terms. That is, they were performances of what Scott calls "the public transcript."

The public transcript represents the set of ideological terms, speech-acts, and behaviors activated in public space that often, though not necessarily, reinforce dominant class relations, formalized assumptions of superiority and inferiority, and institutions of appropriation from subordinate groups.⁴⁶⁹ In my view, the public transcript plays a significant role in structuring and giving meaning to political life.⁴⁷⁰ It plays this role because it constrains how groups interact with each other across the power gradient, since to maintain the appearance of domination and subordination, dominant and subordinate groups must behave in particular ways and play assigned roles. Departures from the public transcript can pose dire consequences for these groups and for the stability of social interactions: subordinate groups risk violent reprisals from the dominant groups, and, conversely, dominant groups risk revealing their power to be arbitrary. The public transcript is reinforced when its ideological terms, speech-acts, and behaviors become law or enshrined as custom, and are enforced by the coercive power of state or

⁴⁶⁷ Kelly (2011), ch. 2.

⁴⁶⁸ Ch.3 above.

⁴⁶⁹ Scott (1990), ix-xi.

⁴⁷⁰ I do not think Scott would disagree that broadly speaking the public transcript structures the interactions of social groups ((1990), 20 and 91). But he would say that it is far from the complete story of social relations, for which one would have to study the hidden transcripts.

social institutions. As law and custom, the public transcript becomes a fixed feature mediating and organizing public life.⁴⁷¹

Moreover, the performance of the public transcript gives life to the meanings with which the public transcript is invested. Ideological terms, for example, possess particular meanings, criteria for application, and the potential to evaluate behaviors and areas of social experience. Skinner gives the example of the term “art”. “Art” has certain criteria for application that differentiate it from other terms such as “manufactured” or “production”, which lack the demonstration of skill necessary for art. When the term “art” is applied to an object, the object gains the positive evaluation of something exhibiting a high degree of skill and vision.⁴⁷² When ideological terms are supported by the sanction of law or custom, certain legal rights and prohibitions are assigned to them and, as a result, they become fixed features of political organization. In this way, the use of ideological terms can limit the range of possible behaviors and actions because, for the application of ideological terms to be plausible, those who apply them, especially to themselves, actually have to have taken reasonable steps to fulfilling the criteria for application. To continue the example of “art”, for someone to reasonably call oneself an artist, one must have devoted the time, energy, and resources to obtaining and demonstrating the skills that are generally associated with artists. Those who try to lay claim to the label “artist” without obtaining and demonstrating the necessary skills (i.e. without fulfilling the criteria for application) are often ridiculed as sham interlopers.⁴⁷³

In terms of the present chapter, speech-acts, such as “I am a taxpayer and as a taxpayer I deserve the state’s help”; or behaviors, such as making census declarations; or ideological terms, such as “just taxation” or “bandit,” were all part of the public transcript of the late Roman Empire and, consequently, helped to set the parameters for political life. First, for self-characterizations like “I am a taxpayer” to be plausible, Romans actually had to have paid their taxes, made census declarations, registered property, and had to be able to cite these documents. Moreover, when petitioners asserted that paying taxes made them deserving of the state’s support, they contributed to the evaluative potential of the label “taxpayer”, giving it a positive connotation. And when ληστής was set in opposition to taxpayer, the latter acquired additional resonance as one who participated in the local and imperial communities. Thus “taxpayer” could only apply to those who paid taxes and, when applied, it signified someone on whom the state could expend political capital to defend in court, whereas a ληστής could be justly punished as befitting a ληστής.⁴⁷⁴ In a word, ideological terms enable specific political action.

Similarly, emperors and taxpayers both contributed to defining the criteria that needed to be met for evaluative terms, such as “just” (δίκαιος), to be applied to taxation. Let us recall that in Isidoros’ view (*P.Cair.Isid.* 71, above), a fiscal obligation could only be called just if it passed through official channels and was in line with the village’s κληρος, a definition with which Diocletian would have agreed.⁴⁷⁵ Again, the presence or absence of these criteria enabled certain political action to take place. If the criteria for just taxation were present, the petitioners implied

⁴⁷¹ Scott (1990), 10-13, 28-32, 66-67; Skinner (1988b), 108-118 and (1988c), 131-132.

⁴⁷² Skinner (1988c), 123-124

⁴⁷³ Witness the contemporary debate about whether Kim Kardashian West’s compilation of selfies, *Selfish* (2015), constitutes “art” (Garber, Megan (2015). “You Win, Kim Kardashian.” *The Atlantic* May 13, 2015; Jones, Jonathan (2015). “Why Kim Kardashian’s pregnancy selfie would turn Titian on.” *The Guardian* August 12, 2015; Anderson, Victoria (2015). “No, Kim Kardashian’s pregnant selfie is not a work of art.” *The Conversation* August 17, 2015; Moore, Laura Jean (2017). “Kim Kardashian West is the Outsider Artist American Deserves.” *Vice* April 12, 2017).

⁴⁷⁴ For legal treatment of bandits see *Dig.* 48.6; *CJ* 3.27.1-2, 9.2.11, 9.16.3; and *CTh* 7.18.14.

⁴⁷⁵ Chs.2-3 above.

their willingness to pay taxes or perform *munera*. If, however, the criteria were absent, then the petitioners sought redress. Like the term “art”, petitioners could debate whether the criteria were present and what additional criteria might be required for taxation to be called just.⁴⁷⁶ Sakaon, for example, would have included the equal sharing of his village’s tax burdens among the criteria for just taxation, and Melas the state’s administration of justice. In this way, petitioners contributed to the writing of the public transcript and the formation of a political discourse, both of which would enable them to take certain political actions and to require other actions of the state. This discourse around the speech-acts, behaviors, and ideological terms of taxation came to define important aspects of life in the late Roman Empire.

By way of summary I want to turn a skeptical eye on the main thesis of this section. The persistence of arrears⁴⁷⁷, especially in the Fayyum, may suggest that many Romans were not interested in paying their taxes, or at least not as assiduous as the likes of Aurelius Isidoros, and that the discourse of taxation permeated Roman society only superficially. Formal political discourse, however, is produced overwhelmingly by those who participate in the political process. I do not deny that people probably did not like paying their taxes and found every excuse to escape their responsibilities. But for the formation of a discourse and the structuring of political life, what people said away from the public eye – the hidden transcript – mattered less, especially at the level of imperial politics, for as Scott notes, the hidden transcript and other forms of peasant resistance aim at “working the system...to their minimum disadvantage”, rather than changing larger government structures.⁴⁷⁸ Moreover, if we had access to the hidden transcript, we might find that subsistence concerns and social risk dominated Romans’ thinking about taxation, not a theory of state-subject relations.⁴⁷⁹ This chapter, I hope, has demonstrated that publically Romans evaluated the “fairness” of the fiscal regime by the degree to which the sums they were ordered to pay corresponded to the administrative documents of the fiscal system and by the ability of the state to provide regular and impartial justice to its citizens.⁴⁸⁰ As a result, subsistence had less of an impact on the organization of imperial politics than the public transcript. A final problem that the concept of the hidden transcript reveals is the possibility that petitioners were not aware that they were contributing to a public dialogue about the relationship between state and society, but were instead employing the stock phrases and examples that petitioners had used for centuries to try to make the authorities sympathetic to their particular problem.⁴⁸¹ In my view, the degree of overlap between the emperor’s emphasis on taxes and Romans fiscal obligations and the statements of those petitioners analyzed above suggests that

⁴⁷⁶ For comparative examples see Scott (1985), ch. 5.

⁴⁷⁷ For example, *O.Kell.* 98 (301-302), 108 (181-305), 269 (201-399); *P.Cair.Isid.* 17 (314) and 40 (306-7); *P.Col.* V 3 v.3 (155); *P.Mich.* IX 573 (316), *P.Mich.* X 594 (51); *P.Oxy.* IX 1194 (264-265). A metadata search of “arrears” on papyri.info yields 60 results from the Roman and Byzantine period. More surely exist. Jones (1964) cited other examples of later Roman governments writing off arrears, but seemed unable to decide whether the fiscal system “was not by modern standards highly efficient” (467) or “worked only too efficiently” (468). Jones was probably right in both regards. The infrastructural power of the Roman state was certainly much less than most modern states, but for a premodern state, the Roman fiscal system was likely efficient and effective, for, as Wickham observes, the late Roman fiscal system united regional economies and political units into a resilient whole that survived several crises ((2006), ch. 3).

⁴⁷⁸ Scott (1990), x. See also Scott (1990), 1-5, 20, 28-32, 66-67. Hidden transcripts and peasant forms of resistance may have had a greater impact on local discourse (Scott (1985), chapter 6).

⁴⁷⁹ Grey (2011), ch. 2.

⁴⁸⁰ “Publically” is the important qualifier for I am not implying that Romans stopped thinking in terms of subsistence or social risk or that subsistence was not a grave concern.

⁴⁸¹ Bryen (2013), 13-14.

many Romans were at least aware of “the prevailing conventions of political argument at the time”⁴⁸² and that by making the terms and ideas of the public transcript a significant part of their self-presentation they helped reinforce conventions governing the use of these terms and ideas. Thus in their own way petitioners played the part of political theorists.⁴⁸³

Conclusion

In conclusion, just as taxation was an effective medium for Diocletian to communicate his conception of state-society relations to his subjects and to translate them into reality, so too did taxation create opportunities for Diocletian’s subjects to relate to the state their expectations of it and their understanding of their own rights in the imperial system. In short, taxation enabled late Roman society, from top to bottom, to debate the nature of state-society relations and negotiate the social contract that would provide organization to the imperial community. This negotiation did not take place in a singular formal settling, but played out over the course of the reigns of Diocletian and his successors, as emperors introduced tax policies and articulated their rationale and ideals; as state actors implemented these policies; and as taxpayers, confronted with new realities, struggled to pay their obligations and complained to the state about perceived abuses. And the social contract was never codified as the constitution of the late Roman state, but existed as a sort of *Zeitgeist*, constantly in flux, but ever present, informing and structuring state-society relations.

The features of the social contract can be detected and pieced together, as I have done, from snippets of what members of late Roman society said. When I compare Diocletian’s pronouncements on state-society relations and his policies themselves with what his subjects were saying in their petitions I observe a high degree of overlap between Diocletian’s vision for state-society relations and those of the petitioners examined here. Diocletian insisted that Romans had a wide-range of legal and ethical obligations to the state and imperial community, the most important of which was paying taxes, and petitioners professed to accept those obligations as legitimate. In turn, petitioners argued that their fulfillment of their fiscal obligations rendered them morally upstanding members of their community deserving of the state’s help, a formulation that Diocletian’s state, so committed to fairness, the rule of law, rationality, utility, and universalism, would have embraced. Put another way, taxation created the opportunity and impetus for the Roman state and the people it governed to define the rights and responsibilities each had to the other.

Roman political life, then, was ideally characterized by a balance of legal and ethical rights and responsibilities, not by a predatory state trying to maximize its take of its subjects’ income. In practice, however, different social groups possessed unequal combinations of legal

⁴⁸² Skinner (1988b), 103.

⁴⁸³ Tully (1988), 10-13; Skinner (1988b), 107-117. According to Skinner and Tully political theorists respond to what they see as problematic political activities by manipulating the prevailing political conventions to change the moral identity of a political action. To this end they can alter the criteria for the application of ideological terms. For example, a theorist could argue that “just” can be applied to taxation if certain additional conditions are met. Theorists can also change range of these terms’ speech-act potential. For example, *utilis* might originally carry a neutral evaluative potential, but theorists might argue for a more positive evaluation, or conversely, *utilis* might convey a positive evaluation that the theorist wants to portray negatively. If the political theorist is successful in persuading his audience of his alterations, then new conventions for using an ideological term join or replace existing ones, thus adding to the moral identity of a society.

rights and responsibilities. The best known illustration of the legal inequality of the later period is the distinction drawn in the legal sources between *honestiores* and *humiliores*, with the former receiving preferential treatment before the law and the latter being subject to harsher legal penalties and restrictions. Unequal treatment before the law had long been a characteristic of the Roman Empire, but in Late Antiquity the state began to subject *humiliores* to increasingly harsher and more elaborate punishments.⁴⁸⁴ The rise of *coloni* (in the strict legal sense) can be seen as a related development, in which Roman law sought to curtail the freedoms of one class of individuals for the specific purposes of maintaining its tax base.⁴⁸⁵ This inequality does not, however, compromise my argument because equality before the law was never a necessary feature of the late Roman social contract; nowhere did the social contract state that different classes of people should have the same rights. Rather, the social contract specified only that individuals had *both* legal and ethical rights *and* responsibilities. Consider *coloni*. Paradoxically, their fiscal status not only created stringent obligations on them, but also conferred certain rights, such as limits on how much rent landlords could demand from them (*CJ* 11.50.1 (Constantine, 325) and protection from being sold as slaves (*CJ* 11.48.7 (Valentinian and Valens)). The state certainly granted these rights to further protect its tax base, but they were rights nonetheless.

This chapter, then, has explored how late Roman petitioners negotiated their specific package of rights and responsibilities with the state. Taxation was central to this process, both as one of the main matters to be negotiated and as the main forum for negotiation. An outcome of this negotiation was the payment of taxes in return for the state's legal protection. The next chapter provides a counterexample: when the state failed to provide legal protect, taxpayers claimed they were not obligated to pay their taxes.

⁴⁸⁴ Characteristic of long standing: Garnsey (1968b). Harsher penalties: Garnsey (1968a). On both see Garnsey (1970).

⁴⁸⁵ See ch. 3

Chapter 5: Taxation, Persecution, and Lactantius' Critique of the Social Contract

Introduction

The rough consensus on the main feature of the social contract – citizenship characterized by rights *and* responsibilities – was reached between the state and Romans who were (or at least claimed to be) stakeholders in the imperial system.⁴⁸⁶ The petitioners I examined were taxpayers; they performed compulsory services as active members of their communities; they followed traditional religions; and they farmed their land. They could expect the state to be solicitous of their rights, and they were, therefore, more willing to accept the state's obligations on them, especially fiscal ones. The state was not so accommodating, however, to those who held alternative visions for state-society relations, such as Christians, Manichaeans, and taxpayers whose subsistence practices or personal ambitions required them to leave their *origines*, occasionally subjecting these groups to legal coercion and persecution.⁴⁸⁷ But instead of preventing these groups and others like them from taking seats at the negotiating table, coercive measures motivated them and gave them opportunities to argue forcefully on behalf of their visions.⁴⁸⁸ Thus, far from being peripheral to the main negotiation of the late Roman social contract, those who held alternative visions for state-society relations were integral parties to it. None more so than Diocletian's harshest critic.

Born around 250 CE in North Africa and trained in Latin rhetoric, Lactantius could have been considered a success story and a valued stakeholder in Diocletian's empire. For he rose to the pinnacle of a rhetorical career when Diocletian appointed him to the court-endowed chair of rhetoric at Nicomedia, then an imperial capital. But as a convert to Christianity, Lactantius would have been unable to fulfill the religious obligations that Diocletian required of his subjects, and was dismissed from his post shortly after the beginning of "Great Persecution" (303-313 CE).⁴⁸⁹ In response to these events Lactantius penned two treatises, *Divine Institutes* and *On the Deaths of the Persecutors*. *Divine Institutes*, written between 305 and 310, responded to charges leveled against Christians by pagans that Christians' abandonment of the

⁴⁸⁶ Connolly ((2010), 19-21, 68-69, 72-75, 137-158) argues that the petition-rescript system gave the "middling sort" – property owners with enough money to pay for the service of a scribe or advocate and undertake the costly processes of getting a response from the emperor – an opportunity to make Roman law, and, I would argue, negotiate the social contract. Though my sample size is rather small, consisting of imperial pronouncements and a handful of petitions from Egypt, I maintain that my findings offer a plausible model of how the negotiation could have been conducted throughout the rest of the Empire, for villages' inscriptions of their petitions to emperors and governors as well as imperial rescripts, themselves products of petitions and letters from private persons, suggest a voluminous dialogue between state and society. On these inscriptions see Hauken (1998), and on petitions see Bryen (2013), in addition to Connolly (2010).

⁴⁸⁷ Manichaeans: *Coll.* 15.3.2 (302). Christians: e.g. Lact. *On the Deaths of the Persecutors* (henceforth *DMP*), 13.1. Relocated taxpayers: *P. Cair. Isid.* 126 (c.308/9).

⁴⁸⁸ Bryen (2014a). See also Shaw (2011), esp. chs. 3-4: it was often the intervention of state power in the Donatist controversy that precipitated sectarian violence and inspired apologetic tracts, polemics, and new historical narratives.

⁴⁸⁹ Bowen and Garnsey (2003), 1-6.

religious traditions of the Empire threatened its unity and peace.⁴⁹⁰ In this text Lactantius argues that only the worship of the one true God, not Diocletian's and his colleagues' promotion of traditional law and piety, could lead to wisdom, align *ius civile* with *ius naturale*, and, in short, establish a just basis for state-society relations.⁴⁹¹ *On the Deaths of the Persecutors*, on the other hand, completed between 313 and 315, is a sophisticated political treatise that, I argue, details the multifarious injustices, including persecution, that Diocletian, Maximian, and Galerius introduced into their relations with their subjects.⁴⁹²

In this chapter I will argue, therefore, that these two texts should be read together as an effort to critique the political and moral order of the Tetrarchy and to propose a new, Christian basis for a just social contract.⁴⁹³ At the heart of Lactantius' critique is the concept of justice. In Graeco-Roman philosophical traditions justice described both the ideal relationship between the various members of a society and their commitment to preserving their society. Lactantius did not object to this understanding of justice's function, for he too believed justice essential to maintaining the bonds of his community. Rather, he believed that pagans did not know true justice and, therefore, they undermined the strength of their communities. The true origin of justice, Lactantius argued, is in the pious worship of God, who teaches man how to be just to his fellow man through displays of *miser cordia*, *aequitas*, and *humanitas*. By contrast, Lactantius continued, worship of the false deities of the Graeco-Roman pantheon, championed by Diocletian, lead people into all manner of vice and injustice, including *avaritia* and *cupiditas*, and condition them to value material objects above justice, piety, and equality. For this reason, Diocletian, Maximian, and Galerius stopped at nothing in their pursuit of worldly wealth, instituted taxation, which did nothing but divide humanity further, and scorned God's laws with unjust, self-serving laws. Lactantius' definitions of justice and injustice thus invalidated the three main areas of Diocletian's vision for state-society relations: traditional piety, Roman law, and taxation. Therefore, more than an attempt to write himself social prestige and honor, or to construct a Christian religious identity, we should understand *Divine Institutes* and *On the Deaths of the Persecutors* as Lactantius' contribution to the negotiation of the late Roman social contract.⁴⁹⁴

This argument is divided into five parts. Part one provides background in the philosophical and political traditions with which Lactantius was engaged and shows how orators, philosophers, and critics used taxation as evidence of an emperor's justice or injustice. Working the *Divine Institutes* part two seeks to undercover Lactantius' definition of justice and highlight

⁴⁹⁰ On this text see Digeser (2000); Walter (2006); Schott (2008), ch. 3; Thomas (2011), ch. 5; and Colot (2016). For the date: Digeser (2000), 8.

⁴⁹¹ Heck (1978), 177-182.

⁴⁹² For the date: Bowen and Garnsey (2003), 3. On the genre of the text: Creed (1984), xxxviii-xli; Soby (1980), 12-32, who notes that *DMP* does not fit neatly into a single genre, but incorporates elements of imperial history, Christian apology, literary criticism, and panegyric. It is true that the stated purpose of the text is to testify to the historical role of God's vengeance against the persecutors of Christianity (*DMP* 1.7-8, 52.1-5), but Lactantius' discussions of how the persecutors met their well-deserved, grisly ends takes up only a small portion of the text's 52 chapters. Flower ((2013), 66-67) also notes that *DMP* is weighted heavily toward examples of the emperors' injustice, rather than persecution.

⁴⁹³ Here I draw on the work of Jeremy Schott ((2008), esp. 1-11) who argues that Christian apologetics were discursive and constructive, in that they engaged in the broader philosophical and religious debates of the time and sought not only to reply to criticisms but also to formulate and propose alternative theories.

⁴⁹⁴ Literary and philosophical accomplishments as a source of prestige: Brown (1992); Gleason (1995); Marincola (1997), 57-62; Lendon (1997), 38; and Sailor (2008), 8-37. Constructing Christian religious identity: Digeser (2000); Walker (2006); Schott (2008); Colot (2016).

some of the qualities of a just society from his perspective, and part three does the same for injustice. Part four shifts to *On the Deaths of the Persecutors* and argues that Lactantius, like the rhetors who came before him, deployed taxation and the concepts justice and injustice to evaluate the reigns of persecuting emperors. Finally, a conclusion contextualizes taxation in the broader debate on how best to govern the Roman Empire.

Justice in Theory and Practice

Lactantius' preoccupation with defining justice and injustice in books 5 and 6 of *Divine Institutes* suggests that he was concerned with the best way to organize society, for in non-Christian (and Christian) sources justice is the virtue that arises when the ideal relationship is established between the parts of a whole, whether the parts are social groups in an empire, members of a local community, or divisions of the soul.⁴⁹⁵ Plato's well-known definition of justice was a fundamental starting point for other ancient definitions. In the *Republic* justice is the relationship virtue *par excellence* and comes into existence in both soul and city when the best part of each, the reason, rules over the remaining two divisions, the appetitive and spirited, producing health and moderation.⁴⁹⁶ Injustice is the relationship vice wherein the appetitive part, together with the spirited, usurps power from the reason and drives from soul and city all sense of shame and good, replacing it with madness and lust.⁴⁹⁷ Thus, Socrates says, "to produce health is to establish the parts of the body in a relationship of mastering, and being mastered by one another that is according to nature, while to produce sickness is to establish a relationship of ruling and being ruled by one another that is contrary to nature."⁴⁹⁸ Justice, therefore, is the natural relationship, whereby each part of the soul and city does its own proper job: the reason rules, the spirit assists the reason, and the appetites produce what the other parts need.⁴⁹⁹

Cicero's Stoic interpretation built on Plato's and engaged with the Academic skeptic Carneades, who argued that justice was neither natural nor useful.⁵⁰⁰ In Cicero's view, justice is both natural and imminently useful, for it is the "social virtue"⁵⁰¹ that enables men to form and preserve *societas*, the association of humans. Without justice there can be no *societas*, the worst evil for a social animal like man. Justice encourages one to value *societas* above money, honors, and relationships, and directs the other virtues toward the benefit of *societas*. A just man is someone who values *societas* and does everything he can to strengthen its bonds. The simplest way to demonstrate one's love for one's *societas*, and therefore to be just, is to obey the laws.

Ulpian, being more concerned with the practical problems of governing a legally pluralistic empire than theorizing abstract concepts like justice, adopted a basic Stoic definition of justice, saying *Iustitia est constans et perpetua voluntas ius suum cuique tribuendi. Iuris praecepta sunt haec: honeste vivere, alterum non laedere, suum cuique tribuere* (*Dig.* 1.1.10 pr.-1).⁵⁰² In another place, Ulpian says that *ius*, which is the art of goodness and equality (*ius est ars*

⁴⁹⁵ Loi (1966), 584-585.

⁴⁹⁶ *Rep.* 4.441E, 4.442C-D, 9.590C-E.

⁴⁹⁷ *Rep.* 9.573A-D.

⁴⁹⁸ *Rep.* 4.444.D (Bloom trans.).

⁴⁹⁹ *Rep.* 4.433A, 4.434C.

⁵⁰⁰ *Cic. Rep.* III.1-28. On Cicero's definition of justice see Atkins (1990) and (2000); Schofield (1995). On the Stoic writers generally see Gill (2000).

⁵⁰¹ Schofield (1995), 204.

⁵⁰² Johnson (2000).

boni et aequi (Dig.1.1.pr.), was derived from *iustitia*. The main objective of *ius* is to make people good and society just through grants of rewards and the application of legal punishments. These definitions encapsulate the social quality of justice that we have seen in the aforementioned theories.

Finally, for the Epicureans obeying the laws was not enough to be considered just. Rather, justice lies in the formation of a social compact between rational beings that aims to promote the internal safety and stability of society. As such, justice is a subcategory of useful things, whose goal is the good of the individual and the whole community. Not all laws are just, but all laws must be useful to be considered laws according to the Epicurean system. Thus, a law becomes just when it binds two or more humans together in a mutually beneficial relationship.⁵⁰³

To summarize: this brief survey shows that in ancient definitions justice prescribes how people should act in human society and facilitates and preserves the association of humans. Justice does this by providing the guide for establishing correct laws and procedures for interaction, and for curtailing behavior that is harmful to both individuals and society as a whole. The Romans believed their laws embodied justice, promoted individual and common utility, made people good, and strengthened the bonds of *societas*. Any law or policy that did not accomplish all these things was not just. Because of justice's role as the foundation of society, it could be deployed as a powerful means of praising or denigrating public officials and their policies. Indeed, in the imperial period justice defined "the correct relationship between a monarch and the law" and ensured that the emperor submitted to the laws and promoted justice among his subjects.⁵⁰⁴

Justice's evaluative potential can be seen clearly in the two late third or early fourth century treatises historically attributed to Menander of Laodicea, the Rhetor.⁵⁰⁵ These treatises provided schematic suggestions for the many speeches an orator might be called upon to compose. For the *basilikos logos*, the speech in praise of a king or emperor, for example, Menander suggests that the orator should amplify all the good things about the subject, including his native land, ancestry, circumstances of his birth, childhood and upbringing, education, and his accomplishments in war and peace.⁵⁰⁶ Accomplishments in peace should be divided into sections on the emperor's temperance, wisdom, and justice. In particular, under justice, the orator should mention his humanity (*φιλανθρωπία*), accessibility (*εὐπρόσοδον*) to petitioners, and the protection he gives his subjects.⁵⁰⁷ Moreover, it should be noted that the emperor promulgates just laws that facilitate just interactions between people, and abolishes unjust ones.⁵⁰⁸ Finally, "under justice you should commend mildness toward subjects," and "you should also say that he sends just governors to the nations, peoples, and cities, guardians of the laws and worthy of the emperor's justice, not gatherers of wealth," and, most importantly, that when the orator mentions the tribute and taxation the emperor imposes, he should point out "that he [the emperor] is concerned also for his subjects' ability to bear those burdens lightly and easily."⁵⁰⁹ Menander's advice is significant because it explicitly connects the happy life of

⁵⁰³ Alberti (1995).

⁵⁰⁴ Noreña (2009), 274-276 (quote p. 274).

⁵⁰⁵ On the validity of his authorship see Russell and Wilson (1981), xxxiv-xl. See also Heath (2004).

⁵⁰⁶ 2.368.

⁵⁰⁷ 2.375

⁵⁰⁸ 2.375

⁵⁰⁹ 2.375: καὶ ἐρεῖς ὅτι δικαίους ἄρχοντας κατὰ ἔθνη καὶ γένη καὶ πόλεις ἐκπέμπει φύλακας τῶν νόμων καὶ τῆς τοῦ βασιλέως δικαιοσύνης ἀξίους, <οὐ> συλλογέας πλούτου. ἐρεῖς ἔτι καὶ περὶ τῶν φόρων οὐς ἐπιτάττει καὶ τοῦ σιτηρεσίου τῶν στρατευμάτων ὅτι στοχάζεται καὶ τοῦ κούφως καὶ ῥαδίως δύνασθαι φέρειν τοὺς ὑπηκόους.

subjects and cities, good administration, and moderate taxation with the emperor's justice. In other words, because the emperor is just and puts a high value on justice, he establishes a positive relationship with his subjects, of which moderate taxation is one manifestation. As will become clear, especially with Lactantius, the opposite was true of invectives: because the emperor is unjust and does not value justice, he establishes a negative relationship with his subjects, complete with burdensome fiscal policies.

When analyzing late antique panegyrics scholars have often looked to Menander Rhetor as their likely model.⁵¹⁰ This need not have been true, for there were probably many rhetorical handbooks circulating the ancient world, and Menander himself owed much to a much older and deeper Graeco-Roman political tradition.⁵¹¹ For example, taxation had played an important role in praise and blame before Menander's time, as in Cicero's condemnation of Verres' lawless collection of the Sicilian tithes and Pliny's praise of Trajan's reduction in taxes.⁵¹² Another of Menander's inspirations may have been Plato. For example, the virtues of the emperor that Menander recommends the orator discuss, courage (ἀνδρεία) in war, justice (δικαιοσύνη), temperance (σωφροσύνη), wisdom (φρόνησις), are the same virtues Plato gives in book 4 of the *Republic*.⁵¹³ Menander also suggests calling the emperor's administrators guardians of the laws (φύλακες νόμων), another phrase of possibly Platonic origin.⁵¹⁴ But the idea that rulers should be guardians of the law enjoyed long currency in Hellenic political thought. For example, Dio Chrysostom says that the good emperor should be like a shepherd to his people, not a host of banquets (ἐστιάτορα) or a guest of banquets (δαιτυμόνα).⁵¹⁵ The word ἐστιάτωρ also appears in Plato's *Republic* in a similar discussion of the type of people the rulers should be.⁵¹⁶ Might Menander's source have been Dio Chrysostom rather than Plato directly? For our purposes the answer is not important. Nor is it important if panegyrists were specifically following Menander's recommendation, because Menander was not advocating anything all that novel, but tapping into a deeper tradition and adapting its topoi and concepts, like justice, to a later Roman audience.⁵¹⁷ Menander is thus the clearest example from the later Roman Empire of the justice-taxation topos that, as we shall see, his contemporaries were also using. His schematic recommendations help us to identify moments when orators were referring to an emperor's justice more obliquely and less schematically than Menander. So where orators mention the

⁵¹⁰ See, for example, Athanassiadi ((1992), 61-63) and Browning ((1976), 74-76, 130), who consider Julian's panegyrics to Constantius II unoriginal speeches based on Menander's model. Cf. Tougher ((2012), 22-28), who provides a more nuanced assessment of Julian's inspirations.

⁵¹¹ For a survey of other rhetorical handbooks see Kennedy (2003).

⁵¹² E.g. Cic. *Ver.* 2.2.169, 2.3.73, 2.3.131-3, 138; Pliny *Pan.* 41.1. Ziche ((2006), 130-134) cites additionally Tacitus and rabbinic literature for instances when taxation was used to praise or blame a public figure. Ziche draws the conclusion that taxation functioned as a rhetorical topos to characterize good and bad emperors. He is certainly right, but this dissertation will argue that tapping into these topoi was also an essential part of the construction of a social contract.

⁵¹³ Men. *Rh.* 2.372, 276; Plato *Rep.* 4.427E. Plato initially uses σοφία for wisdom, but at *Rep.* 4.432A we find φρόνησις.

⁵¹⁴ *Rep.* 4.421A: ἀλλὰ τῶν μὲν ἄλλων ἐλάττων λόγος: νευρορράφοι γὰρ φαῦλοι γενόμενοι καὶ διαφθαρέντες καὶ προσημασμένοι εἶναι μὴ ὄντες πόλει οὐδὲν δεινόν, φύλακες δὲ νόμων τε καὶ πόλεως μὴ ὄντες ἀλλὰ δοκοῦντες ὄρας δὴ ὅτι πᾶσαν ἄρδην πόλιν ἀπολλύασιν, καὶ αὐτῶ τοῦ εὖ οἰκεῖν καὶ εὐδαιμονεῖν μόνοι τὸν καιρὸν ἔχουσιν.

⁵¹⁵ *Or.* 1.13: ἀλλ' ὡς οἶόν τε προσέχοντα τὸν νοῦν αὐτῶ καὶ τοῖς ὑπηκόοις, νομέα καὶ ποιμένα τῶ ὄντι τῶν λαῶν γιγνόμενον, οὐχ ἐστιάτορα καὶ δαιτυμόνα, ὡς ἔφη τις.

⁵¹⁶ *Rep.* 4.421B: ὁ δ' ἐκεῖνο λέγων γεωργούς τινας καὶ ὥσπερ ἐν πανηγύρει ἀλλ' οὐκ ἐν πόλει ἐστιάτορας εὐδαιμόνας, ἄλλο ἂν τι ἢ πόλιν λέγοι.

⁵¹⁷ This explains the importance of the emperor being available to petitioners and the emperor's rule over diverse nations, situations that did not apply in Plato's world.

exempla of justice recommended by Menander we may assume that they were signaling the emperor's justice to their audiences.⁵¹⁸

Other examples of the justice-taxation nexus come from the competing narratives of the reigns of Constantius II and Julian.⁵¹⁹ Though falling outside the narrow window of this dissertation, the portraits of these two men are useful comparanda, for they illustrate that an emperor could at one time be praised for establishing a just fiscal relationship with his subjects and at another time be blamed for an unjust fiscal relationship. First, Constantius. Julian wrote two panegyrics to Constantius, the first in 356, likely before he had arrived in Gaul, and the second sometime after his arrival.⁵²⁰ What Julian's intentions were for writing these speeches is a vexed question, but for our purposes they do not matter as much as Julian's use of the justice-taxation topos.⁵²¹ Though he did not deploy this topos as schematically as Menander, Julian still included the relevant examples of the good emperor's justice. In the first oration Julian points to Constantius' justice, saying that his deeds themselves recall his strength, courage, sound judgment, and justice.⁵²² In his second oration, Julian gives Constantius' justice a more Platonic formulation: "And he granted entirely command to the part of the soul that is by nature royal and authoritative, but not to the spirited and undisciplined part."⁵²³ As a result, Constantius' rule was characterized by all that one could expect of a just ruler:

φιλόπολις δὲ ὢν καὶ φιλοστρατιώτης τῶν μὲν καθάπερ νομεὺς ποιμνίων ἐπιμελεῖται, προνοῶν ὅπως ἂν αὐτῷ θάλλη καὶ εὐθηνῆται τὰ θρέμματα δαυλιούσας καὶ ἀταράχου τῆς νομῆς ἐμπιπλάμενα, τοὺς δὲ ἐφορᾷ καὶ συνέχει, πρὸς ἀνδρείαν καὶ ῥώμην καὶ πραότητα γυμνάζων καθάπερ σκύλακας εὐφυεῖς καὶ γενναίους τῆς ποίμνης φύλακας, ἔργων τε αὐτῷ κοινωνοὺς καὶ ἐπικούρους τῷ πλήθει νομίζων, ἀλλ' οὐχὶ ἀρπακτῆράς τινας οὐδὲ λυμεῶνας τῶν ποιμνίων καθάπερ οἱ λύκοι καὶ κυνῶν οἱ φαυλότατοι, οἱ τῆς αὐτῶν φύσεως καὶ τροφῆς ἐπιλαθόμενοι ἀντι σωτήρων καὶ προαγωνιστῶν ἀνεφάνησαν αὐτοὶ δηλήμονες. (2.86D-87A)

Being a lover of the city and the soldier he takes care for his flock just as a shepherd, considering how their young might thrive and flourish taking their fill of abundant and undisturbed pasture, and he watches over them and keeps them

⁵¹⁸ Flower ((2013), 37-43) notes that an orator could expect an audience to recognize topoi. Indeed, the audience expected the orator to use them.

⁵¹⁹ See also Flower (2013), 101-102 for attacks on Constantius' justice by Nicene Christians. Significantly, these polemics also emphasized the rule of law, especially in the treatment of bishops, as a sign of justice.

⁵²⁰ On the date of the first see Tougher (2012), 21-22, and of the second see Drake (2012), 39

⁵²¹ Opinions of these speeches differ widely. In the first oration some scholars have seen mere formal rhetoric (Browning (1976), 74-76) and "studied unoriginality" (Athassiadi (1992), 61-62), while recent analyses have detected a subtle critique of Constantius' political ideology (Tougher (2012), 24-28). As for the second, because it departs from Menander more clearly, scholarly opinions have paid more attention to Julian's possible motives. Most conservatively, Browning ((1976), 97) considered the second oration an affirmation of Julian's loyalty to Constantius. Others have gone further seeing in the work a political manifesto (Bidez (1965), 175) or a panegyric of Julian himself and his own deeds (Athassiadi (1992), 63-66). Finally, Drake has gone so far as to suggest that the speech is a parody of a panegyric born of winter boredom ((2012), 41-44). Drake also provides a useful summary of previous opinions, including some not discussed here ((2012), 38-39).

⁵²² *Or.* 1.16D: καλοῦσι γὰρ ἡμᾶς ἐφ' αὐτὰς αἱ πράξεις ὑπομιανήσκουσαι τῆς ῥώμης, τῆς εὐψυχίας, εὐβουλίας τε ἅμα καὶ δικαιοσύνης.

⁵²³ *Or.* 2.87D: καὶ ὅλως τὴν ἡγεμονίαν ἀποδοὺς τῷ φύσει βασιλικῷ καὶ ἡγεμονικῷ τῆς ψυχῆς μορίῳ, ἀλλ' οὐ τῷ θυμοειδεῖ καὶ ἀκολάστῳ.

together, conditioning them to be courageous and strong and gentle, just like well-bred dogs, noble guardians of the flock, and considering them his companions in his labors and guardians of the masses, but not robbers or corrupters of the flock like wolves and the most worthless of dogs, who having forgotten their nature and training reveal themselves harmful rather than saviors and champions.

Again, Julian's debt to Plato is obvious, but this passage also illustrates all the proofs of justice advised by Menander. Constantius' care for his subjects as a shepherd cares for his flock calls attention to his mildness toward his subjects; his conditioning of his administrators to be upright guardians (φύλακας) fulfills Menander's advice to mention that an emperor sends our guardians of the laws (φύλακες νόμων).⁵²⁴ Finally, Julian's contrast of the noble guardians Constantius set over his subjects with wolves alludes to Constantius' bearable fiscal policies, for the wolf was a common image of rapacity in Graeco-Roman political writings.⁵²⁵

At the same time, Julian and his party could manipulate these same aspects of Constantius' reign to portray him as unjust. For example, Julian's self-justifying letter to the senate and people of Athens provided examples of Constantius' harshness toward subjects, poor governance, and disregard of the rule of law. Julian first praises Athens' tradition of excellence in justice and then asks that the Athenians live up to their traditions and be sound judges of Constantius' justice and injustice.⁵²⁶ He then launches into a diatribe accusing Constantius of illegal treatment of his own and Julian's family and executing many without trial.⁵²⁷ This treatment foreshadowed the harsh treatment of the Gauls by Constantius and his administrators, many of whom Julian was forced to dismiss after his promotion to Caesar because of their rapacity and the oppressive financial burdens they imposed on individuals and cities.⁵²⁸

Julian himself was the subject of differing accounts. In contrast to Constantius II, Julian's party portrayed him as just. Libanius' funeral oration, though not a pure *basilikos logos*, still included the relevant examples of the good emperor's justice, as Menander recommended for the *epitaphios*.⁵²⁹ Julian's commitment to justice can be seen most clearly by his dismissal of many of Constantius' administrators, who were plundering the wealth of the provinces.⁵³⁰ But Julian promoted justice in his own right. His passage of beneficial laws, especially those aiming at restoring town councils, exemplifies his mildness toward his subjects and his adherence to the rule of law and good governance.⁵³¹ Julian also sent out good governors and appointed upright judges.⁵³² Finally, Julian demonstrated his concern for his subject's fiscal burdens by, for

⁵²⁴ For examples of Constantius' mildness see *Or.* 1.17A, 42A-444D and *Or.* 2.88B-89A. For good administration see *Or.* 2.89C-D, 90C-91C. And for moderate taxes see *Or.* 2.87C, 92A.

⁵²⁵ Lact. *DI* 5.5.5-12; Lact. *DMP* 52.2; Plato *Rep.* 3.415C, 416A, 8.565D-566A; Cic. *Phil.* 3.11; Sen. *De Ira* 2.14-15; Dio 56.16.

⁵²⁶ *Ep.* 5.269D-270A.

⁵²⁷ *Ep.* 5.270C-271A, 272A-C.

⁵²⁸ *Ep.* 5.282D 274A-B. For his dismissal of Constantius' men see also Lib. *Or.* 18.110, 131-145; Amm. 21.16.17. Of course, the rapacity of Constantius' administrators is mostly Julian's propaganda, but what matters is the logic he used, the logic of justice and taxation.

⁵²⁹ 2.420: ἐγκωμιάσεις δὲ ἀπὸ πάντων τῶν τόπων τῶν ἐγκωμιαστικῶν, γένους, γενέσεως, φύσεως, ἀνατροφῆς, παιδείας, ἐπιτηδεύματων. On Libanius' *Epitaphios* see Angiolani (2000) and Criscuolo (1998).

⁵³⁰ See n.528.

⁵³¹ Lib. *Or.* 18.145-148, 151.

⁵³² For examples of good administrators see Lib. *Or.* 18.104: ἄρχοντάς τε ἐπὶ τὰς πόλεις ἐξέπεμπεν ἀντὶ πονηρῶν μὲν ἀγαθούς. Notice the parallel language to Men. *Rh.* 2.375: ἄρχοντας κατὰ ἔθνη καὶ γένη καὶ πόλεις ἐκπέμπει. For upright judges see Lib. *Or.* 18.182.

example, sending accountants to oversee military expenditures in Britain.⁵³³ Libanius ends his *epitaphios* by lamenting the present state of affairs. Pagans were being attacked, temples destroyed, philosophers and teachers of rhetoric harassed, decurions abused, society at large impoverished, and barbarians were invading unimpeded, to boot.⁵³⁴ In sum, Julian's death led to the fraying of social bonds and augured in a general social decline. Even his fiercest critic, Gregory of Nazianzus, had to admit that Julian's reign showed promise.⁵³⁵

But despite the good that he did do, Gregory maintained that Julian's reign was a far cry from the justice of Constantius II. In his view, root of Julian's injustice was his incorrect understanding of philosophy, rhetoric, and the nature of the divine.⁵³⁶ As a result, he marred the good things he did by enacting persecutory policies against Christians. Gregory says:

Ἦ δρόμος μὲν ἀνεκτῶς διοικούμενος, καὶ φόρων ἄνεσις, καὶ ἀρχόντων ἐκλογή, καὶ κλοπῶν ἐπιτίμησις, καὶ τᾶλλα ὅσα τῆς προσκαίρου καὶ ἀκαριαίας μακαριότητος καὶ φαντασίας, μεγάλην ἔμελλε τῷ κοινῷ παρέξειν τὴν ὠφέλειαν, καὶ περιθρυλλεῖσθαι ἡμῶν ἔδει τὰ ὅτα τούτων ἐπαινουμένων· δῆμοι δὲ στασιάζοντες καὶ πόλεις, καὶ γένη ῥηγνύμενα, καὶ οἰκίαι διστάμεναι, καὶ συζυγία σχιζόμεναι, ἃ τῷ κακῷ πάντα ἦν εἰκὸς ἀκολουθεῖν ἐκείνῳ, καὶ μέντοι καὶ ἠκολούθησε σφόδρα, ἢ πρὸς εὐδοξίαν ἐκείνῳ κάλλιστα εἶχεν, ἢ τῷ κοινῷ πρὸς ἀσφάλειαν; Καίτοι τίς οὕτως ἢ πρὸς ἀσέβειαν εὐκολος, ἢ τῶν κοινῶν ἔξω λογισμῶν, ὅστις ἂν ταῦτα συμφήσειεν; Ὡσπερ γὰρ ἐν τοῖς σώμασιν, ἐνὸς μὲν ἢ δυοῖν μελῶν ἀσθενέστερον διακειμένων, οὐ χαλεπῶς ἀναφέρει τὰ λοιπὰ, καὶ συντηρεῖται τὸ τῆς ὑγείας ἀγαθὸν τῷ πλείονι, ὃ τάχα ἂν κάκεῖνα πρὸς τὸ βέλτιον ἐπανεέλθοι· τοῦ δὲ πλείονος στασιάζοντος καὶ πικρῶς ἔχοντος, οὐδὲ μία μηχανὴ μὴ τὸ πᾶν ἔχειν κακῶς, καὶ κίνδυνος ἤδη τὸ τοιοῦτο σαφῆς· οὕτω κὰν τοῖς ἀρχομένοις τὰς μὲν καθ' ἕκαστον ἀρῥωστίας συμβαίνει τῷ κοινῷ κρύπτεσθαι κρεῖσσον ἔχοντι· τῶν πλειόνων δὲ σαθρῶς ἐχόντων, τῷ παντὶ κίνδυνος. Ὁ μοι δοκεῖ ἄλλον μὲν ἂν τῶν, τῷ παντὶ κίνδυνος. Ὁ μοι δοκεῖ ἄλλον μὲν ἂν ἰδεῖν, καὶ τῶν σφόδρα μισούντων ἡμᾶς ἐν τῷ νῦν καιρῷ, καὶ τῇ τοσαύτῃ τῶν Χριστιανῶν ἐπίδοσει. Τοῦ δὲ ἢ πονηρία τοῖς λογισμοῖς ἐπεσκότισε· καὶ διὰ τοῦτο μικροῖς τε ὁμοίως καὶ μείζοσι πλέκει τὸν διωγμὸν. (4.75)

On the one hand, the government was administered moderately, as were the collection of taxes, the selection of officials, the punishment of the corrupt, and many other things of fleeting and momentary happiness and illusion, and these things were destined to provide a great service to the community, and our ears could not but resound with their praises. On the other, peoples and cities were at strife, and races were torn apart and households divided and marriages cloven, all of which seemed likely to follow that one evil, and of course did follow to a great degree. Were these most evil things a boon to that man's reputation or a source of strength for the community? And yet is there anyone either so prone to impiety or so devoid of common sense that he would approve of these things? For just as in bodies, when one or two parts are corrupted, the remaining parts endure without

⁵³³ Lib. *Or.* 18.82.

⁵³⁴ Lib. *Or.* 18.286-290.

⁵³⁵ *Or.* 4.75 and below.

⁵³⁶ *Or.* 4.43-45. On the competing narratives of Julian and Gregory see Elm (2012).

difficulty, and the benefit of health is preserved for the greater part, by which the corrupted parts may return to a better state. But when the greater part of the body is at bitter strife, there is not a single thing that would prevent the whole from being corrupted; such a state is a manifest danger. Thus also among rulers it happens that moral failings in individuals are hidden from the community, when it is strong, but when the majority is diseased, there is danger to the whole. I think that any one else would see this, even those who presently hate us the most and those of Christian charity. But his wickedness has clouded his reason and for this reason he contrives to persecute the small and great alike.

Gregory concedes that Julian's reign began auspiciously, mentioning some elements that Menander suggested should be included in the *basilikos logos*: good governance, bearable taxation, just magistrates. But Julian, knowing neither God nor true justice, enacted persecutory policies toward Christians, severed the very bonds of society that these policies were supposed to strengthen, and corrupted what was good and just in his reign and empire. In the end, Julian turned Romans against Romans and undermined the justice of his own laws.⁵³⁷ Even though Gregory did not mention justice outright, his focus on the divisive nature of Julian's reign and aspects of Julian's reign commonly associated with justice, including taxation, suggests that he had justice in mind.

In sum, justice was a chief virtue of the emperor and other public figures. It described the emperor's commitment to bringing the empire into an ever-tighter union and combating the centrifugal forces pulling it apart. As *fiscalité* was a fundamental relationship that the emperor and his subjects shared, it was ripe for exploitation by panegyrists and polemicists trying to characterize the emperor's reign in a particular way and evaluate the justice of his relationship with his subjects. In this way panegyrics and polemics, not mere court propaganda or unoriginal academic exercises⁵³⁸, contributed to the negotiation of the social contract, for they were self-conscious attempts by concerned provincials to define what they thought was truly just or unjust about an emperor's reign; to evaluate an emperor's policies, actions, and decisions; and, above all, to influence the audience's attitude of the emperor and his legacy.⁵³⁹ Even what aspects of the emperor's reign the panegyrist (or polemicist) chose to include or exclude from his speech reflected the political, social, and religious issues relevant to him, his audience, and the times.⁵⁴⁰ It was into this well of philosophical traditions and imperial ideologies that Lactantius was tapping in his critique of the Tetrarchy: Diocletian's fiscal policies were not built on a just relationship with his subjects, but grew from the injustice that Diocletian introduced into Roman society.

⁵³⁷ For mob violence encouraged by Julian see Gr. Naz. *Or.* 4.86-90. For Julian's spurning of legal equality see Gr. Naz. *Or.* 4.98.

⁵³⁸ Panegyrics as propaganda: MacCormack (1975). The unoriginality of panegyrics: Athanassiadi (1992), 61-62. For a survey of earlier scholarly views of panegyrics see Nixon and Rogers (1994), 26-31; Rees (2002), 22-24. On the requirements of the genre see Russell and Wilson (1981), xi-xxxiv.

⁵³⁹ Nixon and Rogers (1994), 32-33; Flower (2013), 8, 37-43, 56-61.

⁵⁴⁰ Scholars have been especially attuned to Libanius' engagement with contemporary issues: Cribiore (2013), 35-38, 77-79; Wiemer (2014), 188, 202; Malosse (2014), 100. But we also see contemporary concerns coming through in *Pan.* 8 to Constantius I and *Pan.* 5 to Constantine, whose concerns are the depopulation of the Gallic countryside and the local tax burdens, and in Julian's second oration to Constantius II, where he laments the destruction of traditional pagan cults (80C).

Justice in Divine Institutes

The task Lactantius set for himself in *Divine Institutes* was to defend Christianity against its pagan critics and to publish a handbook, an *Institutes*, of the “true religion” that would lead the wise and the ignorant alike down the only path to salvation and immortality.⁵⁴¹ And to justice, for, according to Lactantius, it was only when Constantine, as emperor, accepted the one true God and defended His religion that justice returned to human relations.⁵⁴² Constantine’s predecessors, however, had been led astray by their impiety and discordant philosophies down a path of injustice and persecution.⁵⁴³ Lactantius’ conviction that only Christianity could teach humans how to create a just society set him in direct opposition to the views, policies, and traditions that Diocletian and his colleagues had espoused, and it required him to explain why the consensus reached by the Roman state and its subjects on their proper rights and responsibilities was, in fact, a contract of injustice. *Divine Institutes*, then, can be read as Lactantius’ blueprint for what he saw as a just social contract.

Though Lactantius was tapping into a longer philosophical tradition that was concerned, like him, with the establishment of just social relations, he did more than copy a pagan definition directly into his work, for his belief in the one true God, the sacrifice of Christ, and the wisdom of Scriptures led him to define justice with strong Christian valences, in purposeful contradistinction to his pagan predecessors.⁵⁴⁴ Lactantius was aided in defining justice by his highly syllogistic reasoning. For example, in section 3.9.19 of *Divine Institutes* he says, *Sed ipsa humanitas quid est nisi iustitia? Quid iustitia nisi pietas? Pietas autem nihil aliud quam Dei parentis agnitio*. By this reasoning, Lactantius could argue that *humanitas* was the same as *Dei agnitio*. As a result, his definition of justice was neither wholly pagan nor wholly Christian, was semantically complex and nuanced, embraced many virtues simultaneously, including, but not limited to, *religio, pietas, sapientia, virtus, aequitas, humanitas, and misericordia*, and consisted of rights and responsibilities (*officia*) to both man and God that his pagan interlocutors did not recognize.⁵⁴⁵ This style of reasoning makes it difficult to discover Lactantius’ master definition of justice, but from a close reading of his discussions of the virtue I will argue that Lactantius defined justice as man’s primary responsibility to worship the one true God as the Father in the way that the Prophets and Christ revealed and his secondary responsibility, learned through worshipping God, to treat man as his spiritual equal through acts of charity and respect for private property. The ultimate aim of *iustitia* is to preserve human society on Earth and to obtain an everlasting life of bliss in the Afterlife.

In *Divine Institutes* Lactantius bases his definition of justice on the observation, variously phrased, that *origo [iustitiae] in religione, ratio [iustitiae] in aequitate est*.⁵⁴⁶ The first phrase

⁵⁴¹ *Divine Institutes* (henceforth *DI*) 1.1.7-10, 12

⁵⁴² *DI* 1.1.13, 16; 5.1.6

⁵⁴³ *DI* 1.1.15-17

⁵⁴⁴ *DI* 6.10.1. Purposeful contradistinction: Loi (1966), 584; Bowen and Garnsey (2003), 25-36; Buchheit (1979), 362-367. Christian influences on Lactantius’ thought: Loi, (1966), 609-621. Cf. Wayman (2013); Colot (2016), chs. 2-3 for additional discussions of Lactantius’ understanding of justice.

⁵⁴⁵ Loi (1966), 588-615.

⁵⁴⁶ *DI* 5.14.7. See also *DI* 5.14.8: *tamen duae sunt omnium principales, quae ab ea divelli separarique non possunt: pietas et aequitas; DI* 5.14.11: *Pietas vero et aequitas, quasi venae sunt ejus; his enim duobus fontibus constat tota iustitia.*

means that one learns justice through religion, because religion teaches man to worship God, the most important *officium* of justice, and to treat man as his equal, the second *officium* of justice⁵⁴⁷:

Pietas vero et aequitas, quasi venae sunt ejus; his enim duobus fontibus constat tota justitia. Sed caput eius et origo in illo primo est, in secundo vis omnis ac ratio. Pietas autem nihil aliud est quam Dei notio.... Si ergo pietas est cognoscere Deum, cujus cognitionis haec summa est, ut eum colas, ignorat utique iustitiam, qui religionem Dei non tenet. (DI 5.14.11-12)

In truth piety and equality are like the veins of justice, for the whole of justice springs from these two founts. But the head and origin of justice is in the first and in the second all of its strength and nature. Piety, however, is nothing other than knowing God.... Therefore, if piety is to getting to know God and the most important part of getting to know God is worshipping him, then he who does not acknowledge the religion of God is certainly ignorant of justice.

The logic of this passage highlights Lactantius' syllogistic reasoning. The act of getting to know God is what Lactantius calls piety, which he equates to worshipping God and the *religio* of God.⁵⁴⁸ By this reasoning *cognitio Dei* and *cultus Dei* are the same act, as well as sources of justice. Lactantius makes the argument that religion is the source of justice in another way:

Itaque ut brevius et significantius utriusque rei summa officia determinem, scientia est, Deum nosse, virtus, colere: in illo sapientia, in hoc iustitia continetur. (DI 6.5.19)

Therefore in order that I establish more briefly and clearly the most important duties of each matter, knowledge is knowing God, and virtue is worshipping him; the former contains wisdom and the latter justice.

Worshipping God in the manner of the true religion is, therefore, also the source of wisdom.⁵⁴⁹ By syllogism then wisdom is justice. Wisdom consists of knowing that the purpose and the primary *officium* of one's life is to worship God as the Father.⁵⁵⁰ If everyone were to worship God, they would realize that they are "bound together by a sacred, inviolable bond of divine relationship", from which knowledge man would not think to commit crimes against man.⁵⁵¹ Thus justice is the wisdom obtained from worshipping God with a pure mind and soul and with acts of virtue, instead of sacrificed material offerings.⁵⁵²

Thus justice to God and man has its origin in religion and one *officium* of justice is owed to God. The other is owed to man. Justice to man consists of treating man as his equal, which Lactantius called *aequitas*.⁵⁵³ Just as *religio/pietas/cognitio Dei* do double duty as both the

⁵⁴⁷ Buchheit (1979), 357.

⁵⁴⁸ Loi (1966), 599.

⁵⁴⁹ Loi (1966), 614; *DI* 4.3.10: *idcirco et in sapientia religio et in religione sapientia est*. See also *DI* 3.26.1-13 and 6.9.24.

⁵⁵⁰ *DI* 3.9.14-15, 6.1.2

⁵⁵¹ *DI* 5.8.6: *ideoque divinae necessitudinis sacro et inviolabili vinculo copulatis, nullae fierent insidiae*

⁵⁵² *DI* 3.9.14-15, 6.9.24, 6.1.5-11.

⁵⁵³ *DI* 5.10.10-14, 5.14.16-18.

source of justice and a practice of justice, so too does *aequitas* have two valances in Lactantius' system: *aequitas* is an *officium* of the just person and the chief characteristic of a just society.⁵⁵⁴ *Aequitas* originates from the knowledge, gained through showing justice to God by worshiping him, that God created men equal in order that they be equal.⁵⁵⁵ It is man's duty to fulfill God's wish and treat his fellow man as equal:

Altera est iustitiae pars aequitas: aequitatem dico non utique bene judicandi, quod et ipsum laudabile est in homine iusto; sed se cum ceteris coaequandi, quam Cicero aequabilitatem vocat. (5.14.15)

The other part of justice is equality. By equality I do not only mean judging well, which is itself praiseworthy in a just man, but equaling oneself with others, which Cicero calls *aequabilitas*.

Aequitas then is the voluntary equaling of oneself to one's fellow man, even to those of much lower social status.⁵⁵⁶ This version of *aequitas* is, to borrow V. Loi's phrase, an inner moral attitude (*un atteggiamento morale interiore*) that all just people share.⁵⁵⁷ In *Divine Institutes* *aequitas* is also the chief characteristic of a just society. Inner moral *aequitas* creates social and economic *aequitas* through the cumulative effect of just, *aequus* people equaling themselves to others and performing the *officia* of justice, such as giving charity, refraining from taking what belongs to another, protecting children and widows, caring for the sick, and burying paupers and strangers.⁵⁵⁸ A society can only become just when all forms of inequality are removed from the minds of the people, from their interactions, and from social structures.⁵⁵⁹

In book 6 Lactantius complicates this picture by redefining the *officia* of justice. He says, "But nevertheless the first duty of justice is to unite oneself with God; the second with man. The first is called religion (*religio*) and the second is termed compassion or humanity (*misericordia vel humanitas*)."⁵⁶⁰ Scholars have recognized the need to explain this abrupt renaming of the *officia* of justice. V. Buchheit believed that Lactantius mentioned *misericordia* and *humanitas* in a context intended specifically for a Christian audience, whereas *aequitas* was mentioned in a context intended for a non-Christian one⁵⁶¹, and Loi thought that the treatment of the duties of *humanitas* and *misericordia* was in dialogue with pagan ethics, which recognized the imperative "do not harm one's neighbor", but did not recognize "care for one's neighbor".⁵⁶² Both are certainly correct. Linguistic clues also suggest a change in purpose, for when interpreting a pagan allegory about the justice of Saturn's reign in book 5, Lactantius uses the adjective *liberales*, which had a long tradition in non-Christian ethics, especially as a virtue of the

⁵⁵⁴ Buchheit (1979), 358.

⁵⁵⁵ *DI* 5.14.16: *Deus enim, qui homines generat, et inspirat, omnes aequos, id est pares esse voluit.*

⁵⁵⁶ *DI* 5.15.6.

⁵⁵⁷ Loi (1966), 590.

⁵⁵⁸ Charity: *DI* 5.15.4, 16.11. Private property: *DI* 5.17.11-12, 5.22.6. Children and widows: 6.12.21-23. Care for the sick: *DI* 6.12.24. Burials: 6.12.25-28.

⁵⁵⁹ *DI* 5.14.19-20.

⁵⁶⁰ *DI* 6.10. 2: *Sed tamen primum officium iustitiae est conjungi cum Deo; secundum, cum homine. Sed illud primum religio dicitur; hoc secundum misericordia vel humanitas nominatur* (Bowen trans.).

⁵⁶¹ Buchheit (1979), 361.

⁵⁶² Loi (1966), 588.

emperor⁵⁶³, to describe the generosity of people in Saturn's day, whereas Christian thinkers seized on *miseritordia* and *humanitas* as uniquely Christian values.⁵⁶⁴

I think Lactantius' syllogistic reasoning also helps explain the sudden appearance of *humanitas* and *miseritordia*. Recalling Cicero's concern for *societas*, Lactantius argues that *humanitas*, "the greatest bond that humans form among themselves"⁵⁶⁵, is the ultimate earthly goal of just people establishing a just society:

Conservanda est igitur humanitas, si homines recte dici velimus. Id autem ipsum conservare humanitatem, quid aliud est, quam diligere hominem, quia homo sit, et idem quod nos sumus. (DI 6.11.1)

The bonds of humanity must, therefore, be preserved, if we wish to be rightly called humans. That is to say, preserving the bonds of humanity is nothing other than caring for a person, because he is a human, and because we are the same.

Preserving *humanitas*, therefore, consists of caring for another person because that person is a human and because all humans are equal, which, as we have seen (p. 139), is the inner moral attitude *aequitas*. This time recalling Plato⁵⁶⁶, humans form *humanitas* because God created them naked and weak:

Hominem vero quia nudum fragilemque formavit, ut eum sapientia potius instrueret, dedit ei praeter caetera hunc pietatis affectum ut homo hominem tueatur, diligat, foveat, contraque omnia pericula et accipiat, et praestet auxilium. (DI 6.10.3)

Because God truly created man naked and weak, in order that He equip him especially with wisdom, He gave man in addition to these things this feeling of piety, so that man will protect man, care for him, cherish him, and offer and accept help against all dangers.

Not only did God created all men equal, but He also created people with physical weakness in order that they would cultivate wisdom and piety, which, as we know, are justice. It is from wisdom and piety that mankind learns that it must band together for protection and support, that is, to form *humanitas*. *Humanitas*, therefore, is the ultimate goal of a justice society.⁵⁶⁷ *Aequitas* is the main characteristic of a just society and an *officium* of justice allied with the greater

⁵⁶³ DI 5.5.7: *Quod poetae dictum sic accipi oportet, non ut existimemus nihil omnino tum fuisse privati, sed more poetico figuratum; ut intelligamus, tam liberales fuisse homines, ut natas sibi fruges non includerent, nec soli absconditis incubarent, sed pauperes ad communionem proprii laboris admitterent. Flumina jam lactis, jam flumina nectaris ibant.* On the history of the virtue *liberalis*, see Noreña (2012), 82-87.

⁵⁶⁴ Though both *miseritordia* and *humanitas* had currency as non-Christian virtues (Noreña (2012), 37, 49, 64, 88 n.184, 71 n.116), the bishop Ambrose argued that *miseritordia* was an essential Christian virtue (Brown (2012), 240) and in Augustine's view, *humanitas* took the form of giving alms to unrelated, non-dependent paupers (Brown (2012), 135-136). On Lactantius' use of *humanitas* see also Högel (2015), 85-90.

⁵⁶⁵ 6.10.4 *Summum igitur inter se hominum vinculum est humanitas*

⁵⁶⁶ *Rep.* 2.369B-C

⁵⁶⁷ DI 6.10.2: *quod ea sola vitae communis continet rationem.* See also DI 6.11.20-21, 12.1.

officium, humanitas. It is the duty of humans to create *humanitas*, but *humanitas* is also something that just people living in a just and equal society enjoy.

Misericordia is a virtue allied to *aequitas* and a means, among others, by which humans can promote *aequitas, iustitia*, and, ultimately, *humanitas*. *Misericordia* consists of using one's wealth to help the poor and to feed the hungry without hope of a reward.⁵⁶⁸ Man owes this to his fellow man, not only because they are created equal, but also because helping the needy without hope of a reward preserves *humanitas*. *Misericordia*, moreover, promotes *aequitas*, because the wealthy, showing *misericordia* to the needy, voluntarily redistribute their wealth to the less fortunate to such a degree that all enjoy equal prosperity.⁵⁶⁹ This act is what Lactantius called *se cum ceteris coaequandi* (DI 5.14.15). *Misericordia* also serves to remind us that in practice justice and injustice, whether defined by Christians or non-Christians, had financial consequences for society. To summarize: though the nature of Lactantius' reasoning enables him to call *humanitas* and *misericordia officia* of justice, the place of these two virtues in his system is more complicated. The former is both an *officium* of justice and the desired end of creating a just society on Earth and the latter is a virtue that helps create the condition of *aequitas*, necessary for *humanitas* and *iustitia*.

Being just, therefore, is the twin act of being *pious* to God through worship and *aequus* to man through treating all people as equal and giving charity to the poor. The ultimate reward of justice is to preserve *humanitas* on Earth and earn an eternal life of bliss in the Afterlife. Man must be *pious* to God because it is the purpose of his existence⁵⁷⁰, whereas man must be *aequus* to man in order to preserve *humanitas*. Justice promotes *humanitas* by teaching people to value innocence above life. Taken *ad extremum*, justice is worth having of its own, even if that means drowning in a shipwreck rather than taking a plank from a weaker person.⁵⁷¹ The just person would rather die than sow the seeds of enmity in society.⁵⁷² Just people also contribute to society in other positive ways, such as by giving charity to the needy and caring for the sick. A society founded on justice and populated by the just knows no social divisions and its members consider each other spiritually equal. No one is master and no one is slave.⁵⁷³ All vices are absent.⁵⁷⁴ People who seem rich are rich in charity and people who seem poor are rich in the justice of their wanting for nothing.⁵⁷⁵ Above all because divine law, which teaches people to live in harmony, is followed, there is no need for coercive legal measures, which only lead to greater injustices and injuries.⁵⁷⁶

Injustice in Divine Institutes

Notably absent from Lactantius' vision for a just society is taxation. This is because taxation is a feature of unjust societies. Just as the origin of justice is piety, so too is the origin of injustice impiety, or the worship of false gods, whose behavior and message inculcate vices, rather than

⁵⁶⁸ DI 6.12.1-3. See also DI 6.10.9.

⁵⁶⁹ DI 5.5.7-8.

⁵⁷⁰ DI 6.1. 2.

⁵⁷¹ DI 5.17.20.

⁵⁷² DI 5.17.11. See also DI 5.22.7-10, 6.18-19.

⁵⁷³ DI 5.14.17.

⁵⁷⁴ DI 5.8.6-8.

⁵⁷⁵ DI 5.15.6. See also DI 5.14.18. I imagine this would be a hard sell to those who were actually poor.

⁵⁷⁶ DI 5.8.9, 6.9.1-8.

teach virtue and wisdom.⁵⁷⁷ The two most baneful vices are *avaritia* and *cupiditas*.⁵⁷⁸ These vices destroy *humanitas* because they introduce social, economic, and political inequalities, and lead people to commit acts of violence against each other and covet each other's property.⁵⁷⁹ Unjust leaders stop at nothing to satisfy their desires: they persecute the just, pious, and innocent; promulgate the most ruinous and unjust laws for their own benefit; and overturn just social relations.⁵⁸⁰

This is where the Tetrarchs (save Constantius I) went wrong.⁵⁸¹ They persecuted the just, prevented them from worshipping God, and forced everyone to worship "cults of death"⁵⁸² instead, thus denying both God and man their respective rights and condemning their fellow humans' souls to death. The result of the emperors' policy of promoting impiety was a society teeming with other unjust, corrupt, and like-minded persecutors and criminals. "Why," Lactantius has them ask, "would not all be equally bad, rapacious, shameless, adulterous, perjured, desirous, and fraudulent?"⁵⁸³ These were the sort of people

"who beset the highways in arms, who play pirate on the seas, or, if they cannot pillage openly, brew poisons in secret, who kill a wife to have the dowry, or a husband to wed the adulterer; who either strangle their own children or, if they are too pious for that, expose them; who fail to contain an incestuous lust for a daughter or sister or mother, or a priestess; who conspire against country and fellow-citizen; who even have no fear of a parricide's sack; who commit sacrilege and rob temples of the gods they worship, and who...grab legacies, plant false wills, remove or shut out rightful heirs, trade their bodies for sex."⁵⁸⁴

The list continues for two more sections.⁵⁸⁵ This list of crimes is of interest because these were also crimes under Roman law.⁵⁸⁶ Lactantius is implying that pagan leaders were so vicious that they failed to live up to their own standards of law and morality. If they placed such a low premium on justice, how could ordinary people continue to value justice and keep their hands from others' property and wealth?⁵⁸⁷ It was left to Christians to practice what is "aequum et bonum", a phrase meant to recall what Roman law was supposed to do.⁵⁸⁸ The original impiety of the emperors gave rise to a society that valued worldly wealth above innocence and justice.

⁵⁷⁷ *DI* 5.8.10-11, 5.10.15-18

⁵⁷⁸ *DI* 5.6.1

⁵⁷⁹ *DI* 5.5.2-13, 5.6.2-5, 5.22.5-6

⁵⁸⁰ Persecution: *DI* 5.11.1-19. Unjust laws: *DI* 5.6.3. Overturn social relations: *DI* 5.9.15-18.

⁵⁸¹ *DI* 5.9.23-24, 6.9.1-2.

⁵⁸² *DI* 5.19.1: *mortifera sacra* (Bowen trans.).

⁵⁸³ *DI* 5.9.7-8: *Cur non omnes sint aequae mali, rapaces, impudici, adulteri, periuri, cupidi, fraudulentii?*

⁵⁸⁴ *DI* 5.9.15-16 (Bowen trans.).

⁵⁸⁵ *DI* 5.10.17-18.

⁵⁸⁶ For example, *Dig.* 43.8.2.45 forbids the forceful occupation of public highways; Cicero calls pirates *communis hostis omnium* (*Off.* 3.107); *Dig.* 48.8 concerns the *Lex Cornelia* on murderers and poisoners; and *Dig.* 48.9.9 prescribes the "parricide's sack"; and finally false wills were punishable under the *Lex Cornelia* on forgery (*Dig.* 40.10.2).

⁵⁸⁷ *DI* 5.22.6. See also 5.21.7-11.

⁵⁸⁸ *DI* 5.9.22. Bowen and Garnsey (2003) n. *ad loc.* note that this phrasing should recall the beginning of Ulpian's institutes, where Ulpian says, *ius est ars boni et aequi...boni et aequi profitemur* (*Dig.* 1.1.1.1). On this phrase see above.

The Tetrarchs enacted other disastrous and unjust policies, chief among which was taxation, for taxation violates justice's basic principles of *humanitas* and *aequalitas*. In the first place, taxation, in Lactantius' view, is essentially an act of violence that deprives one person of what God gave for common use and enables another to hoard the necessities of life and grow rich and powerful at the expense of his fellow man.⁵⁸⁹ Moreover, contrary to Diocletian's belief, paying one's taxes does not qualify as justice, since taxes cannot be considered just if they are given for a reward, which, as we have seen (pp. 104-109), petitioners expected, or under some sort of compulsion or obligation, as Diocletian saw it.⁵⁹⁰ Taxation also deepens divisions in humanity by funding war.⁵⁹¹ Although Lactantius grants that the Roman state had sound civil legal grounds for waging war and collecting taxes, he denies that these laws accord with divine law, because they were framed to promote the state's *utilitas*, which amounted to organized theft.⁵⁹² This attack on "national" interests comes at the end of critiques of Cicero's *De Officiis* and a poem by Lucilius, the satirist of the 2nd century BC. Working through individual lines of the poem, Lactantius comes to, (*Virtus:*) *commoda praeterea patriae sibi prima putare*: "virtue is to believe that the interests of one's country come first."⁵⁹³ This mentality is what the development of the universal ideology of the 3rd century was intended to bring about; the state wanted Romans to think of themselves as sharing the state's interest in the good of the whole community. But Lactantius believed that favoring one's own country meant harming another and its citizens. He says, "virtue is to extend the borders with lands violently taken from others, to increase one's control, and to levy greater taxes. These are not virtue, but the overthrow of virtue."⁵⁹⁴ Thus taxation and universalism, both central features of Diocletian's vision for state-society relations, actually created the conditions of injustice, inequality, and suffering.

Lactantius held that the only thing more important than strengthening the bonds of human society was an eternal life of bliss in contemplation of God. But both would be difficult to obtain when war and taxes drove great wedges between civilizations and sowed the seeds of injustice in one's society. Lactantius proposed as a solution the abolition of taxes, for in a just world, people would be motivated by *aequitas*, *miser cordia*, and *humanitas* to give to the poor.⁵⁹⁵ They would not seek fleeting renown by spending their money on fancy public buildings or violent public spectacles; neither is true humanity, neither lasts.⁵⁹⁶ True and eternal justice is giving to those who are in need, because they are in need, with no hope of reward, because only charitable giving to the poor could strengthen *humanitas*.⁵⁹⁷

Though Lactantius did not think in terms of social contracts, in advancing his arguments about justice and injustice he was, in effect, proposing an alternative social contract based on fundamentally different roles for the state and its subjects, and on different ways of using and distributing wealth.⁵⁹⁸ He did not believe that citizens had the obligation to serve the Roman state, as Diocletian insisted, but rather each other. He did not believe that *utilitas publica* was

⁵⁸⁹ *DI* 5.5.5-8, 5.6.1-2.

⁵⁹⁰ *DI* 6.12.18.

⁵⁹¹ *DI* 6.6.18-23.

⁵⁹² *DI* 6.9.2-6.

⁵⁹³ *DI* 6.6.18.

⁵⁹⁴ *DI* 6.6.19: *Id est, fines propagare aliis violenter ereptos, augere imperium, vectigalia facere majora. Quae omnia non utique virtutes, sed virtutum sunt eversiones.*

⁵⁹⁵ *DI* 6.10.8-10. See also Loi (1966), 591.

⁵⁹⁶ *DI* 6.11.20-6.12.9.

⁵⁹⁷ *DI* 6.11.26-28, 6.12.2-3.

⁵⁹⁸ Later Christian thinkers would continue to develop Lactantius' ideas of charity (Brown (2012), esp. chs. 3-4, 8).

served by the “military-tributary complex”⁵⁹⁹, but rather by charity to the poor. And he did not believe that the false deities of Rome taught the emperors how to protect individuals’ rights, *humanitas*, and *aequitas*, but rather the Christian God. But herein lies the root of the Tetrarchs’ failings:

A quibus si persuasionis eius rationem requiras, nullam possint reddere; sed ad maiorum iudicia confugiant, quod illi sapientes fuerint, illi probaverint, illi scierint. (DI 5.19.3)

If you were to demand an explanation of this conviction from them, they would be able to give none; but, they would retreat behind the judgments of their ancestors, on the grounds that they were wise, that they recommended it, that they knew.

Diocletian thought he could make Rome great again by restoring what he saw as traditional Rome.⁶⁰⁰ Lactantius disagreed: “It is exactly this ignorance which makes them so evil in persecuting the wise, when they pretend that they are acting in their interests and want to recall them to a right understanding.”⁶⁰¹ One only needed to consider the Tetrarchs’ “accomplishments” to see how misguided they were.

Injustice in practice: On the Deaths of the Persecutors

If *Divine Institutes* provides the philosophical explanation for the injustice of Diocletian’s and his colleagues’ reigns, then *On the Deaths of the Persecutors* reads as a resume of their unjust misdeeds. Like the panegyrics and invectives discussed above, Lactantius drew on “classical” themes and tropes to underscore the Tetrarchs’ injustice, such as disregard of the rule of law, torturing citizens, and greed. But Lactantius also brought his own concerns to his depictions of the misrule of the Tetrarchs, for example, emphasizing persecution and impiety.⁶⁰² Most importantly for our purposes, like the orators he gave a place of prominence in his account to taxation. By now we should not be surprised that Lactantius attacked the Tetrarchs’ fiscal policies, given its origin in injustice and its important evidentiary value in panegyrics and invectives. But at the same time, we now know that in mentioning taxation, Lactantius was doing much more than citing a common rhetorical topos: he was expressing his rejection of the social contract agreed on by Diocletian and his subjects.

On the Deaths of the Persecutors begins with a short introductory history of earlier persecutions of Christians. This introduction reaffirms the thesis of *Divine Institutes* that emperors persecuted and ruined their subjects because they had abandoned justice.⁶⁰³ Lactantius says of Nero’s persecution:

⁵⁹⁹ I have borrowed this term from the title of a graduate seminar I took with Professor Carlos Noreña in Spring 2011.

⁶⁰⁰ E.g. the edict against the Manichaeans (*Coll.* 15.3).

⁶⁰¹ *DI* 5.19.5: *Sed haec ipsa ignoratio efficit, ut in persequendis sapientibus tam mali sunt, fingantque se illis consulere, illos ad bonam mentem velle revocare* (Bowen trans.). See also *DI* 5.8.10-11.

⁶⁰² Flower (2013), 66-67. Indeed, most orators emphasized different virtues and vices depending on the circumstances and their own purposes (Flower (2013), 97).

⁶⁰³ For a discussion of the ancient historiography on the reigns of persecuting emperors see Schwartz (1978).

Qua re ad Neronem delata cum animadverteret non modo Romae, sed ubique cotidie magnam multitudinem deficere a cultu idolorum et ad religionem novam damnata vetusta transire, ut erat execrabilis ac nocens tyrannus, prosilivit ad excidendum caeleste templum delendamque iustitiam et primus omnium persecutus Dei servos Petrum cruci adfixit, Paulum interfecit. (DMP 2.6)

When this matter was revealed to Nero, accursed and baneful tyrant that he was, since he had noticed that not only in Rome but everywhere a great multitude was deserting the cult of idols and condemning old practices and joining a new religion, he hastened to overturn the heavenly temple and abolish justice, and having been first to persecute the servants of God crucified Peter and killed Paul.

The key phrase of this passage is *ut erat execrabilis ac nocens tyrannus*.⁶⁰⁴ Because Nero was a tyrant, he harmed his subjects with unjust policies and treated God and His religion with contempt. Though Lactantius only mentions persecution, Nero's failure to show justice to religion and God meant that he would have failed to show justice to his fellow man as well. Lactantius introduces Domitian's persecution similarly:

Post hunc interiectis aliquot annis alter non minor tyrannus <Domitianus> ortus est. Qui cum exerceret invisam dominationem, subiectorum tamen cervicibus incubavit quam diutissime tutusque regnavit, donec impias manus adversus dominum tenderet. (DMP 3.1)

Some years after Nero another tyrant of no mean stature was born, Domitian. Although he presided over a hated tyranny, he oppressed his subjects for quite some time and ruled safely, until at length he stretched his impious hands against the Lord.

This passage emphasizes that Domitian had oppressed his subjects for a long time before he persecuted. Notice that Lactantius did not distinguish between Christian and non-Christian subjects, for Domitian's injustice harmed the whole of society. This passage has been cited as evidence of Lactantius' "senatorial bias."⁶⁰⁵ Certainly Lactantius would have shared with Tacitus a hatred of Nero and Domitian. But this passage reveals something else. It reveals the merging of the political ideals and values of Lactantius' pagan senatorial predecessors with his own experiences as a Christian provincial. Now the persecution of Christians and the abuse of provincials were to be included among the crimes of those emperors traditionally defined as bad by their consequences for Italian senatorial class.⁶⁰⁶ The example of Decius succinctly captures

⁶⁰⁴ Lactantius also uses *tyrannus* to describe the three of four Tetrarchs: *DMP* 1.3, 31.5, and 49.1. "Tyrant" should signify injustice and all the other vices associated with it (Arena (2007), Forsdyke (2009), Saxonhouse (2009), Stadter (2009)).

⁶⁰⁵ Creed (1984), xl.

⁶⁰⁶ Flower ((2013), 66) notes, however, that Lactantius does not mention instances of persecution under other emperors traditionally seen as bad, such as Caligula and Commodus, though I find it hard to expect persecution under Caligula at such a nascent stage in Christianity's development. Moreover, although according to Lactantius, the Antonines, traditionally seen as good emperors by the senatorial class, did not persecute, we do know that sporadic persecution did occur under these emperors (*DMP* 3.4. Martyrs under the Antonines: Frennd (1967), chs. 1,

persecutors' abandonment of justice: "After many years an accursed animal, Decius, appeared who harassed the Church. Who would persecute the Church except a evil man?"⁶⁰⁷ Lactantius did not consider emperors bad because they persecuted, but because their evil and unjust natures drove them to oppress their subjects and persecute Christians.⁶⁰⁸

Lactantius' summaries of the reigns of earlier persecutors prove that unjust emperors tormented both their Christian and non-Christian subjects alike, and under such emperors persecution was only a matter of time. The following chapters, 7-9, advance the same proposition in the case of the Tetrarchs. These three chapters, devoted to three unjust emperors (save, again, Constantius I) and their crimes, demonstrate that Diocletian, Maximian, and Galerius were bad emperors under whom both Christians and non-Christians suffered. As Lactantius' narrative of the early years of the Great Persecution (chapters 10-16) follows immediately on these chapters, I suggest that Lactantius intended the reader to see the persecution as the natural outcome of the emperors' evil characters, corrupt administrations, ruinous policies, and the unjust social relations they established. Chapters 7 – 9 are, therefore, essential for assessing the relationship between taxation, persecution, and justice in *On the Deaths of the Persecutors*. What emerges from Lactantius' narrative is what we expect after a close reading of *Divine Institutes*: before the ultimate crime of persecution the emperors' injustice was manifesting itself in burdensome fiscal policies that were ruining the empire and destroying *humanitas*.

Chapter 7 wastes no time presenting the evidence of Diocletian's injustice: *Diocletianus, qui scelerum inventor et malorum machinator fuit, cum disperderet omnia, ne a deo quidem manus potuit abstinere*. Whereas the just person values innocence above all else, the first thing we know about Diocletian was that he was the source of crimes and evils, he ruined everything, and he persecuted Christians. Since innocence in *Divine Institutes* was mentioned in the context of interactions with other people, the mention of *scelera* and *mala* should signal injustice toward man.⁶⁰⁹ We also learn that Diocletian acted unjustly toward God by persecuting His religion. Thus in the first sentence of the narrative of Diocletian's reign Lactantius makes clear that the result of his breach of justice owed to both God and man was the ruin of everything, as Lactantius had predicted injustice would do in *Divine Institutes*. The next sentence claims that Diocletian's timidity as well as greed, which Lactantius had considered in *Divine Institutes* to be one of the two main vices operating in an unjust society, were chiefly to blame for destroying the

8). In this case I do not think Lactantius is glossing over unpleasant moments in Roman history merely to indulge his "senatorial bias", because he had a more nuanced appreciation of traditional Graeco-Roman culture. Take for example his verdict on Plato. He believed Plato was very close to knowing God and attaining true wisdom (*DI* 2.10.25). Plato knew that there is only one God, and expounded the wonders of God's creation in the *Timaeus*; he knew that the soul is immortal (*DI* 1.5.1); and he knew that an integral characteristic of justice was equality (*DI* 3.21.2). But because Plato did not have full knowledge of God, he did not possess true wisdom and made a terrible mistake in his conception of a just society (*DI* 3.18.10, 3.21-22). The sharing of property, children, and marriage in Kallipolis would, Lactantius thought, destroy all virtue and chastity rather than promote justice. Although Plato was a good and wise man, his ignorance of God led him to propose an imperfect basis for a just society (Digeser (2000), 84-90). See Perrin (1978), 208-213, 230-1 for other doctrines of Plato that Lactantius thought were incorrect. The same could probably be said of the Antonines: true justice was not possible under emperors who did not fully submit to God, however good and wise they were (Heck (1978), 177).

⁶⁰⁷ *DMP* 4.1: *Exstitit enim post annos plurimos execrabile animal Decius, qui vexaret ecclesiam; quis enim iustitiam nisi malus persequatur?*

⁶⁰⁸ Cf. Bowen and Garnsey ((2003), 49) who contend that Lactantius considered the emperors bad because they persecuted.

⁶⁰⁹ *DI* 5.22.7-10.

world.⁶¹⁰ The following sections of the chapter give examples of the deleterious policies, inspired by injustice, which recall both *Divine Institutes* and Menander Rhetor. Like “Jupiter” in *Divine Institutes*, Diocletian corrupted those around him, enlarged the bureaucracy, and filled it with equally unjust magistrates.⁶¹¹ Despite the proliferation of magistrates, the administration was not more efficient, but consumed more resources and oppressed the people with confiscations, proscriptions, and multifarious injuries.⁶¹² Lactantius connects these administrative reforms with the need to supply the enlarged armies, but instead of bringing the benefits of peace to the empire, as the emperors themselves claim⁶¹³, the lawless collection of army supplies threatened the very foundation of Roman civilization, cities and agriculture.⁶¹⁴ The incidence of these unbearable burdens fell all the heavier because Diocletian’s greed, not justice, determined how the treasury would be managed⁶¹⁵, and his own willful mismanagement (*iniquitates*) caused the runaway inflation that his Edict of Maximum Prices failed to solve.⁶¹⁶ Lactantius’ discussion of fiscal policy is significant because it reveals him using the theoretical approach borrowed from Graeco-Roman tradition and developed further in *Divine Institutes* – taxation as a sign of injustice – to invalidate imperial claims about the public utility of their reign and the morality of citizens’ fiscal obligations.

Diocletian’s greed found further expression in his building program.⁶¹⁷ Diocletian is said to have seized whole quarters of a city, probably Nicomedia⁶¹⁸, and evacuated their populations, as if the city had been captured by enemies (*quasi urbe ab hostibus capta*), in order to build public works, factories, and palaces for himself and his family.⁶¹⁹ The language of war used here deserves comment because it is a common topos in *On the Deaths of the Persecutors*, as, for example, in the description of Galerius’ census, where censors are said to have descended on the Roman population as victors treat the conquered under the law of war (*iure belli*).⁶²⁰ In both cases, Lactantius claims that Diocletian and his colleagues treated their subjects as enemies, rather than by the body of legal rights and responsibilities afforded citizens, as Diocletian

⁶¹⁰ DMP 7.2: *Hic orbem terrae simul et avaritia et timiditate subvertit*

⁶¹¹ DI 5.5.9-13.

⁶¹² DMP 7.4.

⁶¹³ E.g. Edict of Maximum Prices, pr.16-24

⁶¹⁴ DMP 7.3: *Adeo maior esse coeperat numerus accipientium quam dantium, ut enormitate indictionum consumptis viribus colonorum desererentur agri et culturae verterentur in silvam.* That urbanism and agriculture were considered the foundation of Roman civilization is supported by a passage from Tertullian (*De Anima* 30.3) in which he discusses the effects of human progress. Likewise, the Romans knew things were bad when fields and cities were abandoned (Cic. *Man.* 15; *Pan.* 11.10.2). We also find concern for the health of cities expressed in *Pan.* 5.5.4-7.6, 8.9.3-4, 8.21.1, and 9.18.1-3, which may reflect actual conditions after some areas of Gaul were devastated in the late 3rd century (Rogers and Nixon (1994), 121 n.28, 169 n.71, 274 n.29, 275 n.31).

⁶¹⁵ DMP 7.5: *Idem insatiabili avaritia thesauros numquam minui volebat.*

⁶¹⁶ DMP 7.6-7: *Idem cum variis iniquitatibus immensam faceret caritatem, legem pretiis rerum venalium statuere conatus est; tunc ob exigua et vilia multus sanguis effusus, nec venale quicquam metu apparebat et caritas multo deterius exarsit, donec lex necessitate ipsa post multorum exitium solveretur.*

⁶¹⁷ As emperors were expected to build useful infrastructure and beautiful public works for cities (Boatwright (2000), ch. 6), Lactantius’ criticism may stem not only from his belief that Diocletian was greedy, but also from his conviction that it was unjust to devote resources to buildings, which would only bring fleeting glory rather than to the poor, who are truly in need of charity (DI 6.11.20-28).

⁶¹⁸ Creed (1984) n. ad DMP 7.9.

⁶¹⁹ DMP 7.9. Pliny also employs *hostis* to praise Trajan’s euergetism: Trajan benefitted his subjects in many ways without having to raise taxes (*Pan.* 29.3: *Quippe non, ut ex hostico raptae perituraeque in horreis messes, nequidquam quiritantibus sociis auferuntur*).

⁶²⁰ DMP 23.5.

claimed his administration would. This is only part of the story. In *Divine Institutes* war is mentioned as a force that precludes the existence of justice because it divides humanity. By drawing on the language of war, Lactantius is harkening back to the theoretical foundation of *Divine Institutes* to show that Diocletian did not value the bonds that held his society together and that his vision for state-society relations was unjust and destined to fail. Compulsory labor and transportation from the provinces for work on these buildings, which probably reflect actual levies on the provincial populations, exacerbated the hostile treatment that Romans were already receiving.⁶²¹ Whether by treating provincials as enemies or levying services, the end was the same: the Roman society as ruined, again in stark contrasts to the Tetrarchs' own ideology.⁶²²

Finally, Lactantius says he will pass over the innumerable people whose property was violently seized on spurious charges, another familiar charge aimed at tyrants.⁶²³ Thus Lactantius' narrative of Diocletian's reign in chapter 7 paves the way for the persecution by revealing Diocletian's injustice and lawless hostility to the Roman people. On the eve of the Great Persecution, all Romans, Christians included, were suffering from Diocletian. How they were suffering is significant. It was Diocletian's injustice that drove him to impose unbearable fiscal and financial burdens on the Roman population. Injustice was felt financially under Diocletian.

In his provinces Maximian was also spurning justice. What concerned Maximian was his own happiness and the fortune of his reign, a strong indication of an unjust temperament⁶²⁴, and the only way he thought to obtain these goals was to deny nothing to his lust and base desires (*His rebus beatum se iudicabat, his constare felicitatem imperii sui putabat, si libidini et cupiditati malae nihil denegaret*).⁶²⁵ This passage implies three points about Maximian. First, Lactantius does not say, to adapt his own phrase, *his constare felicitatem* societatis humanae *putabat*, for in his view, Maximian cared more for preserving his reign than strengthening the bonds of human association. Second, because his main concern was for himself and his reign, he paid little attention to the administration of the empire.⁶²⁶ Third, Maximian's *libido* as well as *cupiditas*, which the *Divine Institutes* held to be a chief characteristic of an unjust society and a tyrant, were more powerful determinants of his actions than justice.⁶²⁷ The consequences of Maximian's carelessness and injustice were the maintenance of the treasury by illegal confiscations of senatorial wealth⁶²⁸ and the sexual assault of men and women of high birth.⁶²⁹ Once again we see that Maximian's injustice caused onerous fiscal and financial burdens for Romans and, additionally, the breakdown of the moral code for aristocratic Roman behavior.

After passing over Constantius I with a comment on his nobility⁶³⁰, Lactantius depicts Galerius as more beast than man, more evil than good, his reign full of injustice. Of course, for Lactantius the policy of persecution was itself the most heinous of Galerius' transgressions of just behavior, not Diocletian's, for Galerius strong-armed his older, more timid colleague away

⁶²¹ DMP 7.8. For levies of labor and transportation see Mitchell (1976) and Isaac (1990), 282-304.

⁶²² DMP 7.10: *Et cum perfecta haec fuerant cum interitu provinciarum.*

⁶²³ DMP 7.12.

⁶²⁴ DI 5.6.1-10.

⁶²⁵ DMP 8.6.

⁶²⁶ DMP 8.3. For Lactantius' concern for efficient imperial administration see DMP 18.4-5 and 19.6.

⁶²⁷ For *libido* as a tyrannical vice see Arena (2007), 149-160.

⁶²⁸ DMP 8.4.

⁶²⁹ DMP 8.5.

⁶³⁰ DMP 8.7: *Constantium praetereo, quoniam dissimilis ceterorum fuit dignusque qui solus orbem teneret*

from a moderate course into a drastic one.⁶³¹ But Galerius' crimes were not limited to Christians alone.⁶³² Under Persian influences Galerius wanted to make Roman citizens his slaves and to deprive them of their freedom (*libertas*) and privileges (*honores*), a particularly grievous crimes in Roman consciousness, even if Lactantius' ideal society did not recognize earthly rank.⁶³³ High-ranking Romans were now subject to torture in civil cases, whereas only lower classes had been subject to torture in criminal cases.⁶³⁴ Even worse, crucifixion, in the past reserved for *humiliores* convicted of treason, was now available for *honestiores*.⁶³⁵ For *humiliores*, Galerius delighted in inventing new gruesome tortures.⁶³⁶ If torture was not a clear enough sign of Galerius' injustice, he broke every law of humanity (*contra omne ius humanitatis*) by drowning the most pitiful of society.⁶³⁷ Galerius was ignorant that preserving and strengthening *humanitas* by helping the poor and weak was one of the most important duties of a just person, not to mention a just emperor. The last of Galerius' crimes was his hindering of the administration of justice by extinguishing eloquence (*eloquentia extincta*), exiling and executing legal experts, and appointing judges with no legal background and with no assessor to aid them.⁶³⁸ Thus under Galerius injustice reigned and the laws were suspended.⁶³⁹

Whereas Lactantius limited the effects of Diocletian's injustice to fiscal and financial burdens and added the sexual abuse of Roman citizens to Maximian's, Lactantius' Galerius actually spent time inventing new ways to torture Romans and deprive them of their legal rights. But true to form, Lactantius accuses Galerius of fiscal and financial abuses as well. He introduces the destruction wreaked by Galerius' census of the empire in chapter 23 with, *At vero illud publicae calamitatis et communis luctus omnium fuit, census in provincias et civitates semel missus*.⁶⁴⁰ The language here is significant. *Publicae calamitatis et communis luctus* here contrasts with the Tetrarchs' own ideology, which emphasized the *publica utilitas*, *communis saltus*, and *beatitudo* their reign brought to the empire. Galerius himself proclaimed the public benefit of his reign in similar language in his edict cancelling the Great Persecution (DMP 34.1) and such language would have accompanied his census edict, as it did in *P.Cair.Isid.* 1. Moreover, *at vero* affirms the horror of what preceded and simultaneously elevates Galerius' fiscal crimes above his earlier ones. His earlier crimes – persecution, various novel tortures, and attempts at enslaving the Roman populace – were merely vexatious⁶⁴¹; the census was the source of public calamity and the common misery of all. As with Galerius' other crimes Lactantius' discussion of the census yields examples of the language of war and instances of torture.⁶⁴² But the census created a new problem: the breakdown of normal social relations. In a passage

⁶³¹ DMP 17.1, 11.8.

⁶³² DMP 22.1: *Quae igitur in Christianis excruciantis didicerat, consuetudine ipsa in omnes exercebat.*

⁶³³ DMP 21.1-3. See *DI* 5.15.2-5 for criticisms of earthly rank.

⁶³⁴ DMP 21.3. This statement may reflect actual developments in penal practices witnessed in other sources (Garnsey (1968a); Harries (1999), 139-141).

⁶³⁵ DMP 21.3.

⁶³⁶ DMP 21.7-11.

⁶³⁷ DMP 23.9. For this phrase in the context of injustice see *DI* 6.10.8.

⁶³⁸ DMP 22.4-5.

⁶³⁹ DMP 22.5.

⁶⁴⁰ Galerius' census was likely the quinquennial installment of a system that Diocletian established in 287, rather than a new policy (Carrié (1994), 35-6).

⁶⁴¹ DMP 21.1: *Adeptus igitur maximam potestatem ad vexandum orbem, quem sibi patefecerat, animum intendit.*

⁶⁴² Language of war: DMP 23.1: *Censitoribus ubique diffusis et omnia exagitantibus hostilis tumultus et captivitatibus horrendae species erant*; DMP 23.5: *Quae veteres ad versus victos iure belli fecerant, et ille adversus Romanos Romanisque subiectos facere ausus est.* Torture: DMP 23.2.

reminiscent of Thucydides' Stasis at Coreyra, Lactantius claims that the census pitted children against their parents, the most faithful slaves against masters, and wives against husbands.⁶⁴³ The census, instead of heralding a return to equality (*P. Cair. Isid.* 1), had, in Lactantius' view, the opposite effect, destroying the *humanitas* and the social integrity of the empire. Finally, Lactantius similarly stereotypes Galerius' introduction of a new tax for his *vicennialia* with amplifications of the distress to the human race, armies of rapacious officials, torture, and loss of necessary victuals.⁶⁴⁴ How could taxes paid under such compulsion be just?⁶⁴⁵

In sum, Lactantius' polemic against the Tetrarchy detailed the numerous ways their injustice, born from their worship of false gods, tore the empire apart. His analysis of their reigns in *On the Deaths of the Persecutors* is theoretically consistent with *Divine Institutes*, which predicted that injustice would give rise to war, moral corruption, rapacity, crimes of all sorts, and taxation. This is an important point: Lactantius did not admit of just taxation; all taxation was unjust. The contrast with Diocletian's and his subjects' understanding of taxation could not be starker. Whereas they had through they had reached a fair deal, supported by law, loyalty, and equality, Lactantius maintained that the whole basis of the Tetrarchic social contract was rotten from the core and thoroughly unjust. A stark contrast, indeed.⁶⁴⁶

Conclusion

Together *Divine Institutes* and *On the Deaths of the Persecutors* presented a comprehensive critique of Diocletian's vision for state-society relations, and proposed an alternative model for structuring late Roman society. Recall from chapters 2-4 of this dissertation that Diocletian and his subjects negotiated a social contract in which all Romans were obligated to pay taxes, observe traditional religious beliefs and practices, and work certain jobs. At least those Romans whose petitions are preserved for us professed to accept their obligations as legitimate, in return for the state's commitment to enforcing Roman laws, abiding by the ideal of fairness, and defending their legal rights. Lactantius rejected each of these provisions. The obligation to worship in the traditional way was misguided because it would not instruct worshippers in the virtues of justice, wisdom, and fairness, to name but a few, and because it had led to misrule by emperors past and present. Persecution, instead of gaining the favor of false gods, angered the one true God and denied Roman citizens access to Roman law, and taxation, instead of enabling the state to act in the public's interest, produced greater injustice and divided Roman society. Diocletian's vision for state-society relations was born of injustice and, therefore, entirely unjust. Better, Lactantius maintained, to worship God, who taught charity, compassion, humaneness, and true justice.

This Christian alternative social contract introduced the possibility that Christianity could serve as the civic religion of the Empire and chart its moral and ethical course.⁶⁴⁷ It is not clear, however, that Lactantius intended his vision for the social contract to be a policy

⁶⁴³ *DMP* 23.2. *Pietas*, the "quintessential Roman 'family value'", was likely Lactantius' main reference here (*On pietas* see Evans Grubbs (2011), quote p. 377).

⁶⁴⁴ *DMP* 31.3-6.

⁶⁴⁵ *DI* 6.12.18. See also *DI* 5.20.7.

⁶⁴⁶ Ziche ((2006), 132) notes that Aurelius Victor also presented an account of Diocletian's fiscal policies that contrasted sharply with Lactantius'.

⁶⁴⁷ Colot (2016), ch. 4

recommendation.⁶⁴⁸ Certainly as tutor to the heir of the first Christian emperor, Lactantius would have been a strong position to advocate for his vision, but Constantine is not known for having been a strong champion of Christian morality, and Crispus never had the chance.⁶⁴⁹ It is better, I believe, to see Lactantius as writing in the tradition of earlier elite Roman authors, such as Seneca, Pliny, and Tacitus, who, by means of a nuanced language of virtues, vices, and paradigmatic relationships, had worked to define a narrow window of appropriate imperial behavior and acceptable exercise of power.⁶⁵⁰ By focusing on the character and virtues of the emperor the earlier elite writers formulated “nothing less than the normative framework in which emperors operated.”⁶⁵¹ These ideals could exert indirect pressure, as emperors would, it was hoped, want to embody those ideals and earn a reputation as good emperors from their aristocratic peers.⁶⁵² Official sanction of Christianity post-312 provided elite Romans with new arenas for exerting pressure on emperors, such as in defining the acceptable set of Christian beliefs and practices that even Roman emperors had to observe.⁶⁵³ All these efforts by the Roman elite were part of on-going negotiation of the social contract. Lactantius is no exception. His works also attempted to define good rulership and to clarify what rights and responsibilities Roman citizens had and to whom. In this regard, Lactantius, as well as his elite predecessors, shared a common endeavor with the petitioners from chapter 4. The only difference is the Lactantius could reach a larger audience.

⁶⁴⁸ Garnsey and Bowen (2003), 49-51. Lactantius could be credited with helping make charity central to late antique Christian thinking, though he did not invent the concept of Christian charity, and pagan Rome had its own form of almsgiving (Brown (2012), 60-63).

⁶⁴⁹ Evans Grubbs (1995). The evolution of the social contract under Constantine will be chapter 6 of the book version of the dissertation.

⁶⁵⁰ Ideals: Noreña (2009). Paradigmatic relationships: Roller (2001). Relationships, such as gift-giving, father-son, and slave-master, defined the legal, political, and moral nature of the emperor, and structured the organization and expression of imperial power for the same reason as ideals, such as justice, did. For example, defining the emperor as a gift-giver implied an unequal exchange between unequal powers, an important aspect of the position of emperor; accepting a gift was an acknowledgement of the emperor’s greater status and the legitimacy of his gift-giving and indebted the receiver to perform a future act of good will for the emperor (Roller (2001), ch.3).

⁶⁵¹ Noreña (2011), 56

⁶⁵² Brown (1992), 50-51, 56-57; Lendon (1997), 124. Of course, not all emperors wished to be seen as good by their aristocratic peers. One thinks of Nero, for example, who valued highly the goodwill of the common people (Malitz (2005), esp. ch. 6.).

⁶⁵³ Humfress (2007)

Chapter 6: Conclusion

Fiscal sociology teaches us that taxation is often the essential feature of the social contract that is negotiated between the ruler and the ruled.⁶⁵⁴ This observation is no less true of the ancient world. Augustus, for example, used tax expenditures to build a political coalition that would support his new form of monarchical rule, and Diocletian imposed new fiscal obligations on his subjects that they professed to accept only within the narrow limits of what their fiscal-legal documents (e.g. census declarations) determined. But a central observation that I have made in this dissertation is that the negotiation of tax policies, and of social contracts more generally, can also produce a clash of worldviews, ideals, values, and priorities that can have profound consequences on how individuals construct their identity and understand their social relationships.

The two case studies I have examined help us to observe this process in action. Augustus inherited a political and social regime that was built around a social and legal hierarchy in which Roman citizens, especially the elite among them, enjoyed preferential treatment before the law; Italy did not pay the *tributum soli* and Roman citizens did not pay *tributum capitis*; and each province retained its own method for collecting and paying taxes to the Roman state, with favored communities enjoying exemptions. Augustus (and his successors) continued and expanded this privileges regime. Existing tax revenues were diverted overwhelmingly to senatorial administrators and the soldiers, and new taxes were instituted to pay for soldiers' retirement bonuses. The local elite were also permitted wide leeway to profit from collecting their communities' taxes. These policies succeeded in stabilizing the Roman political system and ending the political and military chaos of the late Republic. But more importantly for our purposes, the tax policies of the Principate conditioned the inhabitants of the empire to think of themselves first as citizens of a city and second as inhabitants of Rome; tax policies functioned to make clear who was important in the empire and who was not.

Diocletian instituted tax policies that were radically different from those of the Principate, in part to augment the state's institutional capacity to fund great efforts in defense of the empire. But Diocletian's policies also reflected a distinctly late Roman conception of society. Built on a new universal way of conceptualizing the empire in which Romans were expected to share certain religio-cultural norms and to be concerned with the safety of the emperor and empire, Diocletian's tax policies envisioned each taxpayer as obligated to contribute a discrete portion of a universal sum required by the state for the defense of the empire. Taxation was thus based on the notion that all citizens had direct obligations to the empire. This way of thinking is apparent as well in Diocletian's expectation that his subjects observe traditional religious beliefs and practices and follow in the occupational footsteps of their fathers, if their jobs were deemed essential to the public. But lest he be seen as a tyrannical ruler, Diocletian emphasized that his policies would reflect certain values – fairness, rationality, utility, and legality – and would protect his subjects from arbitrary abuses by state actors. By instituting tax policies that accorded with these values, Diocletian could claim that he was concerned to establish a positive relationship with his subjects.

The institution of policies that created legal, cultural, and ethical obligations on Romans had profound consequences for how they thought about their relationships with the state and with

⁶⁵⁴ Ch. 1, n. 1.

each other. Consider Aurelius Isidoros and Aurelius Sakaon, both central subjects of chapter 4. These men professed in their petitions to state actors to accept the legitimacy of their fiscal obligations, insofar as the sums they were ordered to pay matched the information contained in their census records. In doing so, they, and others like them, bolstered the legitimacy of Diocletian's universal vision for state-society relations more generally. At the same time, Isidoros and Sakaon realized that petitioning the state offered them an opportunity to make imperial institutions work to their advantage. Because they had paid their taxes, they argued, the state was obliged to lend them legal support in disputes with their neighbors and state actors who had offended them.

This exchange between Diocletian and his subjects had two main consequences. First, the taxpayer was transformed from a member of a defeated subject community on whom the conquering Romans levied tribute, to a morally upstanding member of the imperial community on whom the Roman state ought to expend political capital to defend. Second, this exchange facilitated the negotiation of a late Roman social contract in which Romans were required to maintain a stake in the survival of the empire and, as a result, they had the right to enjoy the benefits of empire, especially the state's legal protection. This social contract is apparent when we examine the arguments of those who dissented from this consensus. Lactantius, for example, believed that by persecuting Christians the state had broken the social contract, established an unjust relationship with his subjects, and thus nullified Romans' obligations to pay taxes. The just thing for Romans to do in this case was to give charity to their fellow man.

To conclude, what was negotiated between the ruler and the ruled was much more than the specific tax rates individuals would pay or the services they might be called on to perform. The negotiation of the specifics of the fiscal regime was, I argue, a negotiation of the nature of citizenship and an attempt to define the rights and obligations of the citizen, as well as the state's prerogatives and responsibilities toward its citizens. To be sure, these rights and responsibilities had significant implications for tax collection, since an ideology that guaranteed legal rights could augment taxpayers' bargaining power relative to the ruler.⁶⁵⁵ I maintain, however, that taxation was only one dimension of how citizenship was conceived after Diocletian's reign. More importantly, this package of rights and responsibilities was a statement of what the state could and could not do to its subjects; of one's ethical relationship to the larger imperial community; and of one's dignity as a Roman.⁶⁵⁶

Taxation was so central to the construction of ideas on citizenship in the late Roman Empire because in the ancient world the ruled experienced their rulers' ideals, values, and priorities predominantly through his tax policies.⁶⁵⁷ Other than taxation, there existed fewer media and fora for communication between the state and its constituents than today, and the ones that did exist – such as, imperial constitutions, coinage, and official inscriptions – all reached a smaller audience than did taxation, which, as a medium for communication, conveyed clearly the emperor's ideals, values, priorities for state-society relations. Moreover, as the principal point of contact between state actors and Romans, taxation was also a forum where performances of the public transcript, professions of loyalty, demonstrations of resistance, and negotiation could occur.

⁶⁵⁵ Levi (1988), 17-23, esp. 21-22

⁶⁵⁶ A central observation of Bryen (2013) is petitioners' concern with defending their personal dignity after intracommunal violence had damaged it.

⁶⁵⁷ Grey (2011), 181.

These characteristics of taxation – 1) that taxation functioned as medium and forum for communication between the state and society and 2) that taxation could be construed as representing an emperor’s or a citizen’s commitment to preserving a positive social contract – made it a unique force in Roman society at all points in Roman history and ripe for exploitation by emperors, ambitious aristocrats, intellectuals, and peasants to advance their own ideological and political ends.⁶⁵⁸ We are already familiar with the cases of Julian and Constantius (pp. 128-133), but if we examine more closely how Julian used his fiscal policies to make normative political and ideological claims, and the logic underpinning those claims, it is possible, I suggest, see my conclusions as offering a potential model for interpreting statements about taxation made throughout Roman history.

Julian’s Social Contract

In 355 Flavius Claudius Julianus was appointed Caesar in the western provinces by his older cousin, the emperor Constantius II. By early 356 Julian had arrived in Gaul, where Constantius likely intended him only to represent the imperial house. He was to do what Constantius told him and leave the nuts and bolts of the administration to Florentius the praetorian prefect, the *magistri militum* and *equitum*, and other experienced faces of the regime.⁶⁵⁹ Julian had other plans, however, and sought to transform his provinces into the model of good governance. In retrospect Julian’s admirers found more to praise in his performance as Caesar than as Augustus.⁶⁶⁰ Indeed, as we saw in chapter 5 (pp. 132-133), even Gregory of Nazianzus had to credit Julian’s prudent administration of Gaul. His achievements in Gaul included the conscientious administration of justice and combating administrative malpractice, rebuilding ruined cities, victory in war, and moderating the fiscal burdens of the Gallic provinces.⁶⁶¹ These achievements are notable because they were also the subject matter that Menander Rhetor recommended that panegyrists cite in praise of kings and emperors.⁶⁶² Julian’s supporters were thus tapping into the rhetorical and philosophical traditions of the empire to portray Julian as a prototypical good emperor. At the same time, Julian, steeped in these traditions himself, seems to have gone to great lengths to accomplish the feats of the good emperor and, more importantly, to publicize them.

Consider taxation. Upon his arrival in Gaul Julian realized that the combination of barbarian incursions and unnecessarily high rates of taxation had driven the inhabitants of Gaul to the extremes of poverty, which only an across the board tax cut could relieve. What is more, Julian found that he could reduce the burdens on his subjects, while still satisfying all his budgetary needs. So Ammianus:

Ad ultimum exceptis victoriis, per quas vastantes saepe incolumi contumacia
barbaros fudit, quod profuerit anhelantibus extrema penuria Gallis, hinc maxime

⁶⁵⁸ Peasants’ use of taxation: Grey (2011), ch. 7.

⁶⁵⁹ Lib. Or. 18.42; Matthews (2007), 81-82, 87-93

⁶⁶⁰ Amm. 16.1.5; 22.3

⁶⁶¹ Gr. Naz. Or. 4.75. Administration of justice: Lib. Or. 18.82-85; Amm. 16.5.1-13, 25.4.7-8. Rebuilding cities: Lib. Or. 18.46, 52. Victories in war: Lib. Or. 17.14-15 and Or. 18.38-40, 53-81; Amm. 25.4.10-13. Moderate taxation: Lib. Or. 18.82; Amm. 25.4.15

⁶⁶² Pp. 127-129 above.

claret, quod primitus partes eas ingressus pro capitibus singulis tributi nomine⁶⁶³ vicenos quinos aureos⁶⁶⁴ repperit flagitari, discedens vero septenos tantum munera⁶⁶⁵ universa complentes: ob quae tamquam solem sibi serenum post squalentes tenebras adfulsisse cum alacritate et tripudiis laetabantur. (16.5.14)

Last of all, not to speak of the victories in which he routed the savages, who often fell with spirits unbroken, what good he did to Gaul, labouring as it was in utmost destitution, appears most clearly from this fact: when he first entered those parts, he found that twenty five *aurei* were demanded for individual *capitibus* in the name of tribute, but when he left, only seven for full satisfaction of all duties. And on account of this, as if clear sunshine had beamed upon them after an ugly darkness, they expressed their joy in gaiety and dances. (Trans. Rolfe (1982), slightly modified.)

Recall that the term *capitibus* is the plural of *caput*, the abstract unit of fiscal liability that could be converted into hard currency (pp. 73-74, 79). Taken together with the following section (16.5.15), where Ammianus tells us that Julian chose not to remit tax arrears because any remission would disproportionately benefit the rich, scholars have interpreted Julian's tax reduction, at face value, as evidence that tax rates in the 4th century had slowly increased, to a large degree because of corrupt officials.⁶⁶⁶ Jones even considered high rates of taxation to be one of the chief causes of the decline and fall of the Roman Empire.⁶⁶⁷ To be sure, I am not rejecting the argument that taxation could have had deleterious consequences for the social, economic, and political life of the Roman Empire: for example, Constantine found it plausible that taxation could exacerbate the difficulties caused by barbarian incursions, and remitted a portion of Autun's fiscal liability.⁶⁶⁸ Rather, I am making an argument about Julian's public behavior and the message he and his admirers were sending to the Gallic provinces about the nature of his reign. Julian, I argue, reduced the Gallic provinces' taxes in order to signal to them (and the rest of the empire) that he was a good emperor and he cared about their wellbeing, in order to build a political base from which to stage his rebellion against Constantius.⁶⁶⁹ We cannot know whether the inhabitants of Gaul actually danced upon hearing the news or not, but the official message is clear: Julian's tax reduction convinced the inhabitants of Gaul that he cared about them.

Support for my argument comes from the function of Julian's tax reduction in Ammianus' larger narrative and from a comparison with another episode in Ammianus' history when Julian intervened in the tax policies in Gaul. The citation of Julian's tax reduction at

⁶⁶³ It is interesting that *tributum* is still being used for taxation. Carlos Norena has pointed out to me that structurally Diocletian's tax system is similar to the Republican model, which the state levied on Roman citizens only the sum that it needed to cover expenses.

⁶⁶⁴ Ammianus must mean *solidos*, as the *aureus* had been completely replaced by the end of Constantine's reign (Corbier (2005a), 336-337).

⁶⁶⁵ Ammianus' use of *munera* is perplexing. Surely he does not mean that these sums were intended to cover liturgies?

⁶⁶⁶ Themistius *Or.* 8.112-113; Jones (1964), 451-454, with nn. 99-101; Jones (1966), 173; de Ste. Croix (1981), 321, 490, 498; MacMullen (1987), 747-749.

⁶⁶⁷ Jones (1964), ch. 25; Jones (1966), 366-369; (1974), 83-89

⁶⁶⁸ *Pan.* VIII (5), with Nixon and Rogers (1994), 254-287; Carrié (1994).

⁶⁶⁹ Potter (2004), 490-491, citing *Jul. Epp.* 12 and 14 as evidence of Julian's intention to revolt.

16.5.14 comes at the end of Ammianus' digression on the qualities that made Julian a prototypical good emperor, who, as we know, ensured that his subjects were taxed lightly.⁶⁷⁰ I think it is plausible that this particular tax reduction is the outcome of a very public confrontation that Julian had with his praetorian prefect Florentius, which Ammianus records in Book 17, chapter 3.⁶⁷¹ At 16.5.14 Ammianus could simply be alluding to this future episode in order to sustain an argument about Julian as a ruler. If this theory is correct, then a close reading of Julian's confrontation with Florentius can help us understand Julian's motivation for reducing taxes in Gaul. If not, then comparing the two episodes can at the very least reveal a trend in Julian's approach to governing.

After further military successes against Germanic peoples (Amm. 17.1-2) Julian turns to relieving the Gauls of their oppressive tax burdens (17.3). Like the panegyrist who had successfully persuaded Constantine to reduce Autun's tax burdens, Julian considered tax reduction as a way to alleviate the losses that the landowners had suffered.⁶⁷² However, Florentius, more concerned with revenue shortfalls than the health of the provinces, thought it expedient to impose extraordinary levies on Gaul.⁶⁷³ Julian refused in dramatic fashion, because he knew that these extraordinary levies would drive Gaul to the extreme of poverty.⁶⁷⁴ Instead, he publically⁶⁷⁵ calculated that the current rate of *capitatio* would far exceed what was needed.⁶⁷⁶ When an extraordinary levy was at any rate proposed, Julian, again publically, made manifest his utter dismay and continued his protestation.⁶⁷⁷ Eventually Julian's protests succeeded in getting Constantius to retract his approval of the extraordinary levy and protecting the Gallic provinces from what Julian (and probably they) saw as cruel extortion.⁶⁷⁸ In the process Julian was also able to wrest the administration of Belgica Secunda from Florentius, with the result that no government official would be able to exacerbate the calamities already oppressing Gaul with additional taxes.⁶⁷⁹ And as Ammianus stated at 16.5.14, the Gauls were relieved and more

⁶⁷⁰ Amm. 16.5.16: Inter has tamen regendi moderandique vias bonis principibus aemulandas barbarica rabies exarserat in maius.

⁶⁷¹ On this episode see Potter (2004), 490-491; Matthews (2007), 88-90

⁶⁷² 17.3.1: aerumnosis possessorum damnis mederi posse credebat, tributatiocinia dispensavit.

⁶⁷³ 17.3.2: Cumque Florentius praefectus praetorio cuncta permensus, ut contendeat, quicquid in capitatione deesset, ex conquisitis se supplere firmaret. *Capitatio* should refer to the sum that Gaul owed according to the *capitatio-iugatio* system outlined in chapter 3.

⁶⁷⁴ 17.3.2-3: talium gnarus, animam prius amittere quam hoc sinere fieri memorabat. Norat enim huius modi provisionum, immo eversionum, ut verius dixerim, insanabilia vulnera saepe ad ultimam egestatem provincias contraxisse, quae res, ut docebitur postea, penitus evertit Illyricum. Julian's assertion that taxation could cause poverty recalls a similar claim made by Aurelius Isidoros (*P.Mert.* II 92; pp. 105-106 above).

⁶⁷⁵ 17.3.4: praefecto praetorio ferri non posse clamante se repente factum infidum. Florentius later reported to Constantius that he was concerned with being discredited (litterisque Augusti monitus ex relatione praefecti, non agere ita perplexe ut videretur parum Florentio credi (17.3.5)). This confrontation was at its core an argument about who had the authority to levy taxes in Gaul. Two constitutions issued in the names of both Constantius and Julian (*C.Th.* 11.16.7-8) decreed that only the praetorian prefects had the authority to make extraordinary levies and that they had to immediately seek the emperors' approval (Potter (2004), 490).

⁶⁷⁶ 17.3.4 Iulianus...scrupulose computando et vere docuit non sufficere solum, verum etiam exuberare capitacionis calculum ad com meatuum necessarios apparatus.

⁶⁷⁷ 17.3.5: Nihil minus tamen diu postea indictionale augmentum oblatum sibi nec recitare nec subnotare perpressus humi proiecit.

⁶⁷⁸ 17.3.5: ut praeter solita nemo Gallis quicquam exprimere conaretur. Cf. 17.3.5: incrementa, quae nulla supplicia egenis possent hominibus extorquere.

⁶⁷⁹ 17.3.6: nusitato exemplo id petendo Caesar inpetraverat a praefecto ut secundae Belgicae multiformibus malis oppressae dispositio sibi committeretur ea videlicet lege, ut nec praefectianus nec praesidalis apparitor ad solvendum quemquam urgeret. quo levati solatio cuncti, quos in cura

willing to pay their taxes after Julian's intervention on their behalf, in contrast to what Ammianus says about Constantius, who incurred much hatred because of his tax policies.⁶⁸⁰

What does this episode tell us? I suggest that by making a public defense of his tax reduction Julian was demonstrating his commitment to a just social contract to the Gallic provinces, especially the well-positioned *Belgica Secunda*⁶⁸¹, and to the rest of the empire. Similar to the social contract reached by Diocletian and his petitioners, Julian assured taxpayers that they only had to pay the official rate and that he was solicitous of their wellbeing and legal rights.⁶⁸² Taxpayers rejoiced at this news and willingly paid all their taxes.⁶⁸³ This public confrontation was pure political theater and it worked: Julian articulated his commitment to the rule of law and his concern for the wellbeing of his subjects, and his subjects consented to Julian's right to levy taxes and rule and assented to his vision for state-society relations. When the rest of the empire heard about Julian's public confrontation with Florentius over tax rates in Gaul, they would know what kind of Augustus he intended to be and support him in his bid to revolt against Constantius.⁶⁸⁴

Thus I contend that what has often been cited as evidence of the high-burden that the late Roman tax system imposed on taxpayers indicates instead the creation of a narrative by a prospective emperor and his communication of his solicitousness of his subjects' rights and wellbeing. So too do Lactantius' writings tell us more about his normative views on state-society relations than the actual rates of taxation under the Tetrarchs. Herein lies the main take-away from this dissertation: when emperors, intellectuals, and petitioners mentioned taxation, they were talking about much more than taxation; they were making normative claims about how best to organize their society.

⁶⁸⁰17.3.6: quo levati solatio cuncti, quos in cura Separat suam, nec interpellati ante praestitutum tempus debita contulerunt. Libanius (Or. xviii.80-1) picks up on this official version: Julian increased financial revenues while returning prosperity to Gaul. See also Pan. Lat. III(XI).4-5. Hatred incurred by Constantinius: Amm. 21.16.17

⁶⁸¹ *Belgica Secunda* was located between Julian's winter quarters at Paris and his summer campaign headquarters at Trier (Potter (2004), 491 n.96).

⁶⁸² Official rate: *capitationis calculum* (17.3.4); *sollemnia... nedum incrementa* (17.3.5); *praeter solita nemo Gallis quicquam exprimere conaretur* (17.3.5). Solicitous of wellbeing: *aerumnosis possessorum damnis mederi* (17.3.1); *insanabilia vulnera saepe ad ultimam egestatem provincias contraxisse* (17.3.3); *rescripsit gratandum esse si provincialis hinc inde vastatus saltem sollemnia praebat, nedum incrementa, quae nulla supplicia egenis possent hominibus extorquere* (17.3.5); *quo levati solatio cuncti*, (17.3.6); *quod profuerit anhelantibus extrema penuria Gallis* (16.5.14); *ob quae tamquam solem sibi serenum post squalentes tenebras adfulsisse* (16.5.14); *nec praefectianus nec praesidalis apparitor ad solvendum quemquam urgere* (17.3.6); *Norat enim hoc facto se aliquid locupletibus additurum, cum constet ubique pauperes inter ipsa indictorum exordia solvere universa sine laxamento compelli* (16.5.15)

⁶⁸³ *cum alacritate et tripudiis laetabantur* (16.5.14); *nec interpellati ante praestitutum tempus debita contulerunt* (17.3.6)

⁶⁸⁴ See n. 668 above.

Appendix I – Roman Tax Law

In so far as one can say that the Roman state had a “tax law”, or any public law for that matter⁶⁸⁵, Roman tax law created an obligation on the taxpayer to pay regular taxes on the land he possessed and on the liturgist to perform a specific service.⁶⁸⁶ In short, Roman tax law created an obligation on Roman subjects to *do* something. It is in this fundamental element that we can see the influence of the Roman private law of obligations on public law. According to Zimmermann, “... *obligatio* in classical Roman law implied both ‘duty’ and ‘liability’: a relation existed in terms of which the debtor ought to (i.e. was ‘bound’ to) perform whatever he had promised to perform (or, in the case of delict, to compensate the victim); only if he failed to comply with this duty did he become liable in the sense that his body and/or property were exposed to execution.”⁶⁸⁷ As a result, if the debtor failed to perform what he had promised, the creditor could begin an *actio in personam* against his debtor. As an *obligatio* created a duty for the debtor and a right for the creditor, an *actio in personam* enabled the creditor to exact that right from his debtor. Birks calls these “defendant ought” actions.⁶⁸⁸

Again, what is important for Roman tax law is the fundamental idea of obligation to perform something, for the types of obligation that Romans could contract by law could not be borrowed as an analogy for tax law.⁶⁸⁹ Tax law did, however, borrow from private law some of the ways to contract obligation. In private law obligations were contracted in four ways. First,

⁶⁸⁵ Watson ((1995), 42-56) notes that Gaius and the other jurists whose works are preserved in the Justinian’s *Digest* and *Institutes* deal in only a cursory way, if at all, with matters of public law, such as the lawmaking competences of public officials and institutions, public property, public religion, let alone any codified constitution describing the power of the most important public office, the emperor. As Roman law also lacked a tax code, the legal (and ideological) principles that underlain tax law throughout Roman history must be reconstructed from the fleeting treatment they received in existing legal sources.

⁶⁸⁶ Monson and Scheidel ((2015), 15) distinguish between regular and irregular taxes. Regular taxes are levied on individuals and land, and require both more coercion from the state and compliance from taxpayers, whereas irregular taxes are levied on trade and movement across administrative boundaries, and require less coercion and compliance. Roman tax law empowered the state to collect both regular and irregular taxes, but only regular taxes created the enduring contractual obligations I outline here. Irregular taxes created obligations, of course, but those obligations were satisfied by the one-off payment of a tax. Regular taxes created obligations that lasted as long as the taxpayer owned the land. Liturgies as taxes: Bagnall (1993), 136-137; Corbier (2005a), 365-367. The inclusion of liturgies in a discussion about Roman tax law may not be intuitive, but I maintain that the financial contribution required of many liturgists, whether as outright payments or as financial guarantees of the satisfactory performance of certain services, transform a compulsory service into a tax (*Dig.* 50.4). Moreover, there are important similarities between taxes and liturgies in how the obligation for each was contracted. Obligations for both regular taxes on land and liturgies were contracted through the census, which determined the owner and the value of the estate, just as it determined who owe taxes on a particular parcel. The owners of estates above a certain census value were required to perform liturgies. Thus, I contend that both the financial contribution required of liturgists and the contract obligation of liturgies transforms them into taxes.

⁶⁸⁷ Zimmermann (1996), 5. Zimmermann is paraphrasing the jurist Paulus (*Dig.* 44.7.3 pr.): *Obligationum substantia non in eo consistit, ut aliquod corpus nostrum aut servitutem nostram faciat, sed ut alium nobis obstringat ad dandum aliquid vel faciendum vel praestandum.* Since *nexum* was abolished in 326 BCE, only property was exposed to execution in our period. See also Birks and Descheemaeker (2014), 1-5.

⁶⁸⁸ Birks and Descheemaeker (2014), 8-13. Although the *actio in personam* could be for the delivery of a *res*, the plaintiff’s right was not on a *res* itself, but on his debtor’s performance of something.

⁶⁸⁹ Roman law allowed for *mutuum* (loan for consumption), *commodatum* (loan for use), *depositum* (deposit), *pignus* (pledge), *emptio venditio* (sale), *locatio conductio* (renting and hiring), *societas* (partnership), and *mandatum* (mandate) (Zimmermann (1996), 8; VerSteeg (2010), 212-216; Birks and Descheemaeker (2014), 26-156). These types of contractual obligation were not useful for thinking about taxation because they required the delivery of a *res* from the “creditor” to the “debtor”; the Roman state did not “deliver” a *res* to its taxpayers.

two parties could meet face-to-face and exchange a verbal formula called a *stipulatio*. Witnesses were not necessary in early manifestations of Roman law, but the parties did have to say the *stipulatio* in the legally demanded sequence in which the creditor to the contract (the stipulator) would ask the debtor to the contract (the promisor) if he promised to do something and the promisor would assent. This would signal that the content of the contract was “clear and indisputable” to both parties and that a consensus has been reached.⁶⁹⁰ Later, verbal contracts gave way to written contracts, which continued to preserve a written form of the *stipulatio*. Crucially for what comes below, in Greek papyri we find the written *stipulatio* attached to many types of documents, taking the form ἐπερωτηθεὶς ὠμολογήσα, “having been asked the formal questions I agreed.”⁶⁹¹ The final two ways of forming a contract were a non-formulaic agreement in good faith or the physical delivery of a *res* to someone.⁶⁹²

Before we address the similarities in contracting obligation between private law and tax law, we must clarify where obligation was located in tax law. In Roman tax law, lands, not people, were burdened with the regular land tax and some liturgies.⁶⁹³ People contracted the obligation for a parcel’s taxes and liturgies when they officially declared their possession of the land. Evidence for this comes from the jurist Papirius (*Dig.* 39.4.7). He says: “The emperors Antoninus and Verus stated in a rescript that in matters of *vectigal* it is the estates themselves and not individuals that are the object of legal proceedings and that, consequently, those in possession at any time have to pay any *vectigal* accumulated in the past, though, if they are ignorant of there being such an accumulation, they will be able to bring an action on sale.”⁶⁹⁴ A rescript of Decius (*CJ* 10.16.3 (249)) confirmed the ruling of Marcus Aurelius and Lucius Verus: “Emperor Decius to Citicius. The indictions are accustomed to be imposed on property, not persons. The president of the province, therefore, will take care that you are not called on to pay more than the amount imposed on the property which you possess.”⁶⁹⁵ The writings of the jurists and imperial constitutions make it clear that land also bore some liturgies, which Roman law called “patrimonial” liturgies (*munera or onera patrimoniorum*).⁶⁹⁶ Finally, the fiscal profile of a piece of land could not be modified by private contract⁶⁹⁷ or by an imperial administrator, except the emperor.⁶⁹⁸ Thus the principle was that taxes fell on land and whoever possessed the land was responsible for its taxes.⁶⁹⁹

The rescript of Decius quoted above highlights another principle of Roman tax law: that possessors only had the duty to pay taxes on the land they possessed. Possession of land could

⁶⁹⁰ Zimmermann (1996), 68-73, p. 68 for quote. See also VerSteege (2010), 212-216. Gaius (III.92) records the formula: “Verbis obligatio fit ex interrogatione et responsione, uelut DARI SPONDES? SPONDEO, DABIS? DABO, PROMITTIS? PROMITTO, FIDEIPROMITTIS? FIDEIPROMITTO, FIDEIVBES? FIDEIVBEO, FACIES? FACIAM.”

⁶⁹¹ Zimmermann (1996), 78-82.

⁶⁹² VerSteege (2010), 213-216

⁶⁹³ Of course, individuals were obligated to pay the poll tax, but it was legally the land, not the owner, that was bore the land tax.

⁶⁹⁴ Watson (1985) trans. Imperatores antoninus et verus rescripserunt in vectigalibus ipsa praedia, non personas conveniri et ideo possessores etiam praeteriti temporis vectigal solvere debere eoque exemplo actionem, si ignoraverint, habituros.

⁶⁹⁵ Blume trans. Indictiones non personis, sed rebus indici solent: et ideo, ne ultra modum earundem possessionum quas possides conveniaris, praeses provinciae prospiciet.

⁶⁹⁶ *Dig.* 50.4.1 and 50.4.6.5, *CJ* 10.42 (with Blume n. ad loc.)

⁶⁹⁷ *CJ* 4.47.2 (319, Constantine)

⁶⁹⁸ *CJ* 10.16.4 (315, Constantine), *CJ* 10.18.1 (382, Gratian, Valentinian and Theodosius).

⁶⁹⁹ See also *CJ* 4.47.3 (363, Julian).

be established through sale⁷⁰⁰, inheritance⁷⁰¹, or enjoyment of the fruits (*fructus*) of the land.⁷⁰² Romans also declared their possession of certain plots in the census and official declarations of land. The form of these documents suggests that in them taxpayers acknowledged the obligation that their possession had created on them for their lands' fiscal burdens. One way these documents did this was with phrases that seem to parallel the *stipulatio* of private contract law in both content and purpose. One prominent phrase was "I make clear to you that I possess X in the village."⁷⁰³ This phrase served the purpose of, to borrow Zimmermann's language concerning the *stipulatio*⁷⁰⁴, making "clear and indisputable" the declarer's possession of, and therefore obligation to, the land. Other common phrases accomplished the same thing.⁷⁰⁵ Thus, as with private law, the fictional oral performance of these phrases activated the legal framework that assigned duty to the utterer of the phrases for their lands' fiscal burdens.

Stronger evidence that Roman tax law borrowed mechanisms for creating obligation from private law comes from liturgical contexts. As we saw above, the transition from oral contracts to written ones preserved the *stipulatio* as an essential feature. In papyri that preserve private contracts the *stipulatio* was represented by the phrase ἐπερωτηθεὶς ὁμολογήσα. This phrase also appears in documents concerning the activities and nomination of *sitologoi*, such as the reports that *sitologoi* issued to *strategoï* and, later, *praepositi pagi*, after they received grain at the granaries.⁷⁰⁶ The preamble to these lists of taxpayers begin with the phrase ὁμολογοῦμεν ὁμνύντες τὴν τῶν κυρίων ἡμῶν Αὐτοκρατόρων Σεβαστῶν τύχην, acknowledging that they received grain taxes from the people listed below, deposited them in the granary, and measured them accordingly. Taubenschlag notes that in papyri the nominal form of the verb ὁμολογέω was often connected with legal obligations⁷⁰⁷ The preamble ends with ἐπερωτηθέντες ὁμολογήσαμεν, exactly the *stipulatio* of private law. The *stipulatio* also comes at the end of the preamble of *P.Sakaon* 51 (324), in which the komarchs submitted their nominations for *sitologoi* to the *praepositus pagi*, and in *P.Mich.* XI 604 (223), in which the phrase sealed a contract between *sitologoi* and someone they hired to act for them in discharging the duties of the *sitologia*.⁷⁰⁸ The use of elements of private legal contracts in *sitologoi* documents suggests that

⁷⁰⁰ *CJ* 4.47.2 (319, Constantine).

⁷⁰¹ *CJ* 10.16.2 (260, Valerian and Gallien and the Caesar Valerian).

⁷⁰² *CJ* 10.16.2 (260, Valerian and Gallien and the Caesar Valerian).

⁷⁰³ φανερόν σοι ποιῶ κεκτησθῆναι με περὶ κόμην (*P.Cair.Isid.* 2 (298), 3 (299), 4 (299), *P.Sakaon* 2 (300), 3 (300), 76 (298)).

⁷⁰⁴ Zimmermann (1996), 68

⁷⁰⁵ ἀπογράφομαι παρὰ σοὶ... γῆν... ἰδίας μου (*P.Corn.* 20 (302), *P.Ammon* II 52 col.III (303), *SB* XIV 11614 (303)). We also find this phrase in declarations of persons (*P.Sakaon* 1 (310) and *P.Cair.isid.* 8 (309)) and *P.Amh.* II 72 (246), an official acceptance of an inheritance. ἀπεγραψάμην τὰς προδηλουμένας ἀρούρας (*P.NYU* 1.1 (299-302) as well as *P.Cair.Isid.* 3, 4, *P.Corn.* 20, *P.Sakaon* 2, 3).

⁷⁰⁶ *P.Sakaon* 5 (312), 6 (313), 7 (320), *P.Cair.Isid.* 9 (309)

⁷⁰⁷ Taubenschlag (1955), 293, with n.6 for examples.

⁷⁰⁸ In modern parlance, the *sitologoi* of the last example hired a private contractor to undertake the *sitologia* for them. This text highlights the tenuous division between public and private sectors in the administration of the empire, especially at the local level, for what was a private arrangement between two parties had a public administrative function. The verb the *sitologoi* use, ἀποσυνεστακέναι, is often found in private contracts that appoint representatives, as in *P.Oxy.* X 1274 (3rd century), where Grenfell and Hunt note ἀποσυνίστημι is a "technical term for the appointment of representatives" (212). See also *P.Col.* VII 175 (339), line 70, for this usage. *P.Mich* IX 573 (316) provides additional complication to the public-private divide. In this document the *sitologoi* took out a private loan with the masters of the harbor where they were supposed to deliver the grain taxes they collected. The loan was for the amount of taxes they had yet to collect. Thus a private legal device gave the *sitologoi* more time to collect what they owed.

private contract law helped taxpayers (including liturgists) and state actors to understand, describe, and conduct fiscal affairs.⁷⁰⁹

Additional parallels exist. Just as in private contract law, so too in tax law, if the possessor (the promisor of the contract) failed to pay the taxes he owed through his possession of land, he opened himself up to legal action against him and his property by the state (the stipulator). This amounted to an *actio in personam* on the taxpayer for the taxes. For example, a rescript from the reign of Diocletian (*CJ* 4.15.4 (293)), states that *certissimi iuris est* that the treasury could seek what it is owed from its principle debtor, but if the debtor's property could not discharge the full sum, the treasury could demand the rest from its debtor's debtors.⁷¹⁰ This was nothing new.⁷¹¹ Moreover, the primary debtor could also be a decedent's heirs, who inherited the fiscal as well as private debt of the decedent's estate; however, the treasury was repaid first.⁷¹² Not only was the taxpayer liable to an *actio in personam*. The treasury also maintained a clear line of responsibility for the collection of taxes in order to insulate itself against the failure of the collectors to collect taxes and arrears or their sureties to provide adequate security.⁷¹³ Fiscal debt was to be collected first from the principle collectors, then their sponsors, and then finally from the associates of the collectors.⁷¹⁴

In sum, Roman tax law borrowed heavily from private contract law to describe and conceptualize the relationship that taxation created between the state and the taxpayer. This relationship was an *obligatio* in which the taxpayer promised to pay taxes on the lands he possessed by official means.

⁷⁰⁹ Other examples, *P.Cair.Isid.* 54, 57, 58, 80, 81, 82; *P.Mich.* XX 806, 811

⁷¹⁰ Non prius ad eos, qui debitoribus fisci nostri sunt obligati, actionem fiscalem extendi oportere, nisi patuerit principales reos idoneos non esse, certissimi iuris est. See also *CJ* 2.36.3 (294), *CJ* 4.9.1 (294), 6.37.15 (290)

⁷¹¹ *Dig.* 49.14.3.8 (Callistratus). Cf. *CJ* 4.15.2 (Antoninus, 205) and 4.15.3 (Gordian, 240)

⁷¹² *CJ* 6.37.15 (290): Si universae facultates, quas pater vester reliquit, debito fiscali aut privato absumuntur, nihil ex his, quae testamento eius adscripta sunt, valere potest. Quod si deducto debito in relictis bonis superfluum est, libertates impediri iuris ratio non permittit, quando etiam legata nec non fideicommissa salva lege falcidia praestanda sunt. The writings of the jurists supported Diocletian's ruling. (*Dig.* 44.7.12 (Pomponius), *Dig.* 49.14.33 (Ulpian), *Dig.* 49.14.35 (Pomponius)). However *Dig.* 49.14.11 (Iavolenus, *Non possunt ulla bona ad fiscum pertinere, nisi quae creditoribus superfutura sunt: id enim bonorum cuiusque esse intellegitur, quod aeri alieno superest*) appears to contradict this argument.

⁷¹³ *CJ* 10.2.3

⁷¹⁴ *CJ* 11.36.2 (Gordian); *Dig.* 50.1.11 (Papinian)

Appendix II – Lexicon of Tax Words

ἀναχώρησις: fiscal flight
ἄννωνα: annona
ἀπαίτησις: collection (of taxes)
ἀπαιτέω: to collect (taxes)
ἀποδέκτης: receiver (of taxes)
ἀποπληρώω: fulfill one's obligations
ἀργυρικά, τά: taxes paid in money
ἀτελής: untaxed, not paying the head tax
βοηθός: assistant
γεωμέτρης: surveyor
δημόσια, τά: public taxes
διαγράφω: to pay (one's taxes)
διαδότης: distributor (of tax revenues to soldiers)
εἴσπραξις: levy, exaction, collection of taxes
εἰσφέρω: contribute
εἰσφορά: contributions, taxes
ἐκατοστή: 1% tax
ἐκφόριον: payment assessed on produce
ἐμβολή: imposition, *annona*
ἐξοδιάζω: pay in full
ἐπιβολή: compulsory assignment of land
ἐπικεφάλιον: head tax
ἐπιμελητής: overseer (of tax collection)
ζυγοκεφαλή: *capitatio-iugatio*
κανών: regular tax
καταβολή: installment
καταπάτησις: official survey (for the census)
κῆνσος: census, census records
κηνσίτωρ: censor
κλῆρος: official allotment (of fiscal liability)
κουαδράριος: local tax official
μερισμός: allotment, official or unofficial, of fiscal liability
μέρος: share (of fiscal liability)
περιγραφή: fraud
πριμιπιλον: *primipilarius*, liturgical official charged with conveying supplies to soldiers
προστρίβω (with συντελείας): impose illegitimate fiscal burdens
συντελέω: pay one's taxes
ταμειῶν: treasury

ταμιακός: concerning the treasury
τέλεσμα: payment
τελῶ: to pay
τεσσεράριος: local tax official
τιμή: sum owed
ὑποδέκτης: receiver (of taxes)
ὑποτελής: taxed, paying the head tax
φορός: rent
χρῆμα: sum of money

Appendix III - List of Papyri

N.B.: this list excludes the edited volumes and archives cited specifically in the body of this work.

1. *CPR* 7 15 (330)
2. *CPR* 17.1 9 b (320) = *Chrest. Wilck.* 379 = *P. Cairo Preis.* 4
3. *CPR* 17.1 12 (320) = *P. Cairo Preis.* 13
4. *CPR* 17.1 18 (321)
5. *CPR* 17.1 35 (339)
6. *Chrest. Mitt.* 196 (307 CE)
7. *O.Kell.* 98 (301-302)
8. *O.Kell.* 108 (181-305)
9. *O.Kell.* 269 (201-399)
10. *P. Amh.* II 83 (c. 300) = *Chrest. Wilck.* 230
11. *P.Amh.* II 137 (288-9)
12. *P.Amh.* II 142 (second quarter of 4th):
13. *P.Harr.* II 207 (300):
14. *P.Hib.* II 219 (309):
15. *P. Lond.* VI 1915 (330-340) = *Sel. Pap.* I 160
16. *P.Merton* II 92 (324)
17. *P.Mich.* IX 573 (316)
18. *P.Mich.* X 594 (51)
19. *P.Mich.* XII 636 (302) = *P. NYU* 1 21 = *SB* 12 10880
20. *P.NYU* 1a (318-320)
21. *P.Oslo* III 119 (319)
22. *P.Oxy.* 1 41 (late 3rd, early 4th)
23. *P.Oxy.* 1 43r and v (295)
24. *P.Oxy.* 1 58 (288) = *Chrest. Wilck.* 378 = *Sel. Pap.* II 226
25. *P.Oxy.* 1 71 (303)
26. *P.Oxy.* VI 900 (322)
27. *P.Oxy.* VIII 1115 (284)
28. *P.Oxy.* IX 1200 (266)
29. *P.Oxy.* IX 1208 (291)
30. *P.Oxy.* IX 1194 (264-265)
31. *P.Oxy.* X 1255 (292)
32. *P.Oxy.* XII 1409 (278)
33. *P.Oxy.* XII 1415 (late 3rd)
34. *P.Oxy.* XII 1424 (318)
35. *P.Oxy.* XII 1469 (298)
36. *P.Oxy.* XII 1490 (late 3rd)

37. *P.Oxy.* XIV 1626 (325) = *Sel. Pap.* 2 361
38. *P.Oxy.* XIV 1653 (306)
39. *P.Oxy.* XVII 2106 (early 4th)
40. *P.Oxy.* XVII 2124 (316)
41. *P.Oxy.* 18 2187 (304)
42. *P. Oxy.* XXII 2343 (287) = *SB* 18 13932
43. *P.Oxy.* XXIV 2407 (late 3rd)
44. *P.Oxy.* XXVII 2476 (288)
45. *P.Oxy.* XXXIII 2665 (305-6)
46. *P.Oxy.* XXXIII 2666 (308/9)
47. *P. Oxy.* XXXIII 2668 (311)
48. *P. Oxy.* XXXIII 2674 (308)
49. *P.Oxy.* XXXIV 2713 (297)
50. *P.Oxy.* XXXVIII 2847 (early 3rd)
51. *P.Oxy.* XXXVIII 2849 (296)
52. *P. Oxy.* XLIII 3141 (300)
53. *P.Oxy.* XLVI 3302 (300/1)
54. *P.Oxy.* XLIX 3507 (late 3rd or early 4th)
55. *P.Oxy.* LIV 3757 (325)
56. *P.Oxy.* LIV 3758 (325)
57. *P.Oxy.* LIV 3759 (325)
58. *P.Oxy.* LXIII 4358 (c.316-8)
59. *P.Oxy. Hels.* 26 (296)
60. *P.Panop* 15 (308-9)
61. *P.Panop* 17-18 (329)
62. *P.Panop.* 19 (late 330s and early 340s)
63. *P.Panop.* 27 (323)
64. *P.Panop.* 31 (329)
65. *P.Princ.* III 119 (c. 325)
66. *P.Ross George* III 8 (4th)
67. *P.Ryl.* IV 617 (c. 317)
68. *P.Ryl.* IV 654 (c. 302-9)
69. *P.Vindob.Gr.* inv. 39757
70. *P.Wisc.* 1 32 = *Pap. Choix* 27 (305)
71. *P.Yadin* 7 (124)
72. *SB* V 7521 (4th)
73. *SB* VI 9253 (c. 307)
74. *SB* XVI 12646 (326)
75. *SB* XVIII 13260 (328)
76. *SB* XXII 15608 (324) = *P. Strasb. Gr.* VI 560

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