

# Constantine VII's *Peri ton stratioton*

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In memory of Professor Paul Lemerle  
whose modesty derived from wisdom

AFTER several decades of exploring the history of the Byzantine rural community, it has become clear to me that the problem of stratiotic land needs to be incorporated into these studies. Peasants' property and shares of stratiotic land were territorially integrated under the jurisdiction of the rural community and belonged to the same fiscal district. Many reasons exist to pursue this kind of study, but the strongest signal comes from Romanus Lecapenus. Troubled by the revival of aristocratic families during the ninth century and by their buying out of peasants' and soldiers' land, this emperor decided to curb their investments by the power of positive law. In his Novel of 922, he eloquently recapitulated the reasons that led him to prohibit the wealthy and powerful, the *dynatoi*, from acquiring land in the rural communities:

We do not lay down these laws out of hatred or jealousy of the more powerful, but we command it out of good will and protection of the [weak] and for the common salvation ... For the habitation of the multitude shows the great profit of its employment, the collective contribution of the taxes, the joint rendering of military services, which will be entirely lacking when the common people have perished.<sup>1</sup>

<sup>1</sup> Zepos, *Jus graecoromanum* I 205–214; transl. C. Brand, *Icon and Minaret: Sources of Byzantine and Islamic Civilization* (Englewood Cliffs 1969) 83–84. I have replaced Brand's "poor" with "weak" as interpreted by P. Lemerle, *The Agrarian History of Byzantium from the Origins to the Twelfth Century* (Galway 1979) 95–96, 98. See also Rosemary Morris, "The Powerful and the Poor in Tenth-Century Byzantium: Law and Reality," *P&P* 73 (1976) 3–27, esp. 11–17, who makes it possible to reconstruct the social stratification of the

In a 1989 paper on stratiotic land in the context of the Byzantine rural community,<sup>2</sup> I summarized the debate about the legal status of a *stratiotes* and stratiotic land, and the fiscal liability of civilian and stratiotic members of the rural community. I also suggested a philanthropic aspect of Constantine VII's agrarian policy which aimed to secure the economic prosperity of both groups. I challenged two conceptions current in the modern literature on the subject: the legal status of stratiotic land, and the interpretation of the term *adorea* in Constantine's Novel on stratiotic land. I also tried to comment on the cooperation between the civilian and military administrations of land with regard to their respective fiscal obligations. After the new edition of the Novels by Svoronos and Gounadiris in 1994, it is clear that my two theses and also my comments on the fiscal problem, based on material available in 1989, need to be revisited in the light of the scholarly environment created by that edition, its English translation by E. McGeer, my own re-study of the Macedonian novels, and P. Lemerle's analysis of this subject.<sup>3</sup>

In this paper I seek first to define the legal status of stratiotic land on the basis of the language used by the legislator. Then I scrutinize the individual provisions concerning management of this land in order to combine them into one consistent legal entity (denoted as a "code" in modern legal terminology: agrarian code, family code, etc.). As it stands, those provisions are distributed among three different works of Constantine: the Novel, *De administrando imperio*, and *De caerimoniis*. In his time such a code would have provided indispensable help for the judiciary, for judicial practice, and the public at large. It would also serve to express the legislator's effort to counteract sabotage of his goals by self-interested pursuits on the part of the

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poor and the wealthy on the basis of scrupulous interpretation of the Greek terms denoting their financial potential.

<sup>2</sup> D. Górecki, "The *Strateia* of Constantine VII: The Legal Status, Administration and Historical Background," *BZ* 82 (1989) 157–176.

<sup>3</sup> N. Svoronos, *Les Nouvelles des empereurs macédoniens concernant la terre et les stratiotes*, ed. P. Gounarides (Athens 1994); E. McGeer, *The Land Legislation of the Macedonian Emperors* (Toronto 2000); Lemerle, *Agrarian History* 114–141.

wealthy. For a modern historian, this code will reflect the unique ideas of Constantine VII for strengthening the military capacity of the state by elaborating and institutionalizing the concept of stratiotic land preserved in customary law.

The historical background is best seen in John Haldon's contributions. In 1993 he focused on three aspects:<sup>4</sup> heritability of the *strateia*, which can be understood as a correlate of the Republican *res extra commercium*; the problem of a soldier's maintenance, such as income produced by the soldier himself, his family (*oikos stratiotikos*),<sup>5</sup> and support of soldiers by the state organized mostly by the fisc; and protection of a soldier against both insolvency and outside abuses.<sup>6</sup> Haldon commented on various sources, especially those studied by Oikonomides: they show a gradual transformation of the late Roman establishment from the sixth to the eleventh century, under the pressure of political and economic circumstances.<sup>7</sup> The transformation included exempting soldiers from the heavy burden of corvees; and it is often repeated that no source from the eighth century or earlier suggests an obligation upon an *oikos stratiotikos* to support a military man. Instead, Haldon argued for an inversion of the stratiotic rights and duties during the tenth century: while originally a man's right to serve in the army resulted in the duty to cover the expenses of his military service from his property, from the middle of the tenth century onwards, his right to hold a share of stratiotic land resulted in his duty to supply a soldier. Thus this process shifted the stratiotic obligation from man to land. The practice of "commutation of personal service and the beginnings of the fiscalisation of the

<sup>4</sup> J. F. Haldon, "Military Service, Military Lands, and the Status of Soldiers," *DOP* 47 (1993) 1–89, with references especially to M. F. Hendy, *Studies in the Byzantine Monetary Economy c. 300–1450* (Cambridge 1985), and to papers by N. Oikonomides.

<sup>5</sup> Haldon, *DOP* 47 (1993) 1–89, and his *Byzantium in the Seventh Century* (Cambridge 1990) 245.

<sup>6</sup> Haldon, *Byzantium* 244–245, very eloquently illustrates this difficulty.

<sup>7</sup> Haldon, *DOP* 47 (1993) 5 and 42. See also N. Oikonomides, "Middle Byzantine Provincial Recruits: Salary and Armament," in J. Duffy and J. Peradotto (eds.), *Gonimos: Neoplatonic and Byzantine Studies presented to Leendert G. Westerink* (Buffalo 1988) 121–136.

*strateia* into a tax” that followed this inversion led to confusion. This is reflected in the often contradictory legislation of the transition period.<sup>8</sup>

Constantine VII's *Νεαρὰ νομοθεσία περὶ τῶν στρατιωτῶν* (*dictavit Theodore Decapolites*), of ca. 947–949,<sup>9</sup> was not a work of a single stroke of the pen. The text of the Novel, as the emperor himself informs us, was interpolated with provisions of customary law. But still there were gaps. For instance, it is surprising that in this Novel, the first legislation on the matter of stratiotic land, Constantine omitted the fiscal liability of that land and its holder. Some of those gaps were filled by the emperor's two other works, written at the time the Novel was promulgated. In *De cerimoniis* (2.49–50) he covered the matter of protecting a poor *stratiotes* from the fiscal consequences of insolvency. In *De administrando imperio* (51–52) he set down the conditions of military settlement of prisoners of war which included fiscal and managerial privileges allowing a settler to establish himself as a solvent *stratiotes*.<sup>10</sup> Some gaps nevertheless remained.

In analyzing these works of Constantine, Lemerle had to face serious impediments. He stated that Constantine did not realize the complexity of integrating the system of a time “when custom was king” with his understanding of contemporary problems of the stratiotic service. Furthermore, the ambiguity of key terms and phrases in the emperor's writings made it difficult for Lemerle to establish their linguistic and substantive meaning. Finally, as Lemerle observed, “awkward divisions and arrangements of the matter are known to be frequent in compilations such as this.” But despite these difficulties, many aspects of the subject discussed in those writings emerge clearly from Lemerle's painstaking linguistic and logical

<sup>8</sup> J. F. Haldon, *Recruitment and Conscription in the Byzantine Army c. 550–950: a Study on the Origins of the Stratiotika Ktemata* (SBWien 357 [1979]) 18 (quotation), 41–65; discussed in Górecki, *BZ* 82 (1989) 163–164.

<sup>9</sup> Zepos I 222–226. Some editions of this text give slightly differing dates.

<sup>10</sup> *De administrando imperio* I, ed. G. Moravcsik, transl. R. J. H. Jenkins (Washington 1967); *Constantini Porphyrogeniti imperatoris de cerimoniis aulae byzantinae*, ed. J. Reiske (Bonn 1829–1830).

scrutiny (*Agrarian History* 131–138).

Lemerle has identified this material as important elements of Byzantine stratiotic law and exposed the whole of that law to the eyes of socio-economic historians. However, it must not be forgotten that these laws arose from the initial efforts of Romanus Lecapenus, who first turned his attention to stratiotic land during the period still represented by custom. But despite some occasional claims that it may have been Romanus Lecapenus himself who promulgated the Novel on the *stratiotai*, Lemerle considers Constantine VII's authorship unquestionable. In this Novel, Constantine upgraded the *strateia* from a custom to an institution of positive law.

#### The Codification of Constantine's Law on Stratiotic Land

##### 1. *The legal status of stratiotic land*

In reading Constantine's Novel on stratiotic land, it is difficult not to associate its goals and its methods of implementation with those of the *ager publicus populi Romani* of Republican Rome. Both the Republican *ager publicus* and Constantine's stratiotic land served the common good of the nation by supporting fighting soldiers and landless peasants.<sup>11</sup> *Ager publicus* and stratiotic land were therefore excluded from commercial traffic: one could not acquire ownership either by contract of sale or by the lapse of time (prescription). In short, these lands could be an object of possession only.

From Republican times until the rule of Constantine VII, politicians, jurists, and lawgivers endeavored without success to protect *ager publicus populi Romani* from abuse by private interests. Already in the post-classical era, their efforts were im-

<sup>11</sup> Max Weber *on Law in Economy and Society* (Cambridge [Mass.] 1954) 150; also his *General Economic History* (New York 1966) 242–243: “The entire policy of antiquity was directed toward the prevention of such *proletarii* ... a policy directed to maintaining the κλήρος, the *fundus*, on which a man could live and fully equip himself as a soldier. The main aim was to guard against weakening the military power of the community. Hence the great reforms of the Gracchi must absolutely not be understood in the modern sense as measures pertaining to a class struggle; their objective is purely military; they represent the last attempt to maintain the citizen army and avoid the substitution of mercenaries.”

peded by the promulgation of the *Constitutio Antoniniana* of 212 whereby Caracalla granted Roman citizenship to the population of the provinces.

The subsequent surge and rapid spread of vulgar law, during post-classical times, became a menace to the integrity of the official Roman legal system. Mitteis claims that the vulgar law was a “spoiled” Roman law resulting from the general decadence of Roman jurisprudence and lack of well educated jurists.<sup>12</sup> Levy interprets the vulgar law as an expression of a popular need to replace the stiff tenor of classical legal norms with simple terminology.<sup>13</sup> Law and customs of peoples inhabiting the Roman provinces found their way into official legislation through judicial verdicts, which eventually became part of official law. The continuing accumulation of such verdicts, being in conflict with the philosophy and objectives of the official legal system, gradually distorted and degraded that system. Ultimately, Theodosius II undertook the task of cleansing the official legal system of the accretions of vulgar law (*purgatio legum*).<sup>14</sup> Nevertheless both the *Codex Theodosianus* and patristic literature continued to confuse possession with ownership. It is common knowledge that in his legal system, Justinian strove to achieve the classical clarity of *dominium* and *possessio*, yet because of the complex definition of classical Roman *possessio*, he failed to achieve a precise distinction between those two institutions. Only the bureaucrats of the Byzantine fiscal administration successfully accomplished what Justinian’s theoreticians failed to do.

Finally, the “purification of old law” (*anakatharsis ton palaion nomon*) initiated by Basil I and continued by Leo VI (the grandfather and the father of Constantine VII) created, not a classical, but a workable Byzantine legal system, known as the

<sup>12</sup> L. Mitteis, *Reichsrecht und Volksrecht in den östlichen Provinzen der römischen Kaiserreichs* (Leipzig 1891) 85–89.

<sup>13</sup> E. Levy, *West Roman Vulgar Law: the Law of Property* (Philadelphia 1951) 1–2 n.3, 4–6 n.12.

<sup>14</sup> W. E. Voss, *Recht und Rhetorik in den Kaisergesetzen der Spätantike: eine Untersuchung zum nachklassischen Kauf- und Übereignungsrecht* (Frankfurt am Main 1982) 70–72.

*Basilika*.<sup>15</sup> In the *Basilika*, ownership (*dominium*) and possession (*possessio*) became two distinct institutions. This distinction was also evident in the Macedonian novels on preemption.

Among those novels, only Constantine's on the *strateia* does not mention ownership and possession *sensu stricto*, concentrating exclusively on *res extra commercium* without indicating its legal status. Constantine only mentions the private land of a *stratiotes* that exceeds the standard size of his stratiotic share. However, the existence of *res extra commercium* indicates the existence of ownership. Ownership combines two elements: possession (*possessio corpore*) and proprietary rights to the object (*possessio lege*). If the owner loses possession of his object by contract or theft, he loses *possessio corpore*. *Possessio corpore* then passes to the person who acquired physical control over the object. In such a case, however, the owner retains legal control of this object. This situation is comprehensively discussed in the introductory parts of Constantine's Novel (Zepos I 224). While this terminology agrees with its classical Roman prototype, Constantine's concept of a *stratiotes*' private land shows significant deviation from that prototype. In his concept, this land is nothing more than a warranty of the *stratiotes*' fulfillment of his primary obligations: payment of land taxes and maintenance of the monetary value of his stratiotic share.

In another part of the Novel, he confirms the existence of ownership of stratiotic land when he grants the forty-year prescription to a *stratiotes* who *bona fide* occupied a piece of that land. In this way, Constantine upgraded the status of stratiotic land to the group of the most privileged land owners: the state, the fisc, and the church.

D. Daube warned that “[f]or several decades ... Romanists have done their best to demonstrate ... that even the mature Roman ownership must be interpreted against a background of all sorts of extra-legal restraints such as tradition, ethics, state

<sup>15</sup> J. A. B. Morteuil, *Histoire du droit byzantin, ou du droit romain dans l'empire d'orient* (Paris 1843–1846) II 19–72; P. Pieler, “Ανακάθαρσις τῶν παλαιῶν νόμων und makedonische Renaissance,” *Subseciva Groningana* 3 (1989) 61–77, and “Byzantinische Rechtsliteratur,” in H. Hunger, *Die hochsprachliche profane Literatur der Byzantiner* II (Munich 1978) 343–480, at 354–355 n.48.

interest.”<sup>16</sup> Daube’s contention is also reflected in Greek political philosophy. In case of debt, the laws of the Greek city-state gave a creditor “a right to levy execution against not only the common property of the city as a whole, but also against the private property of its citizens”; the city “had no hesitation in times of stress in treating their property as its own.”<sup>17</sup> Since Constantine states that his Novel includes elements of customary law, we can easily recognize the roots of the two usages described by Daube and Jones. Let us assume that subjugation of a landowner’s private interests to the state permeated into Roman customary law of this time either directly from Republican law or indirectly, from the Greek peoples of the empire, via vulgar law. Whichever source of influence we choose, we can detect the echo of the *ager publicus populi Romani* and *res extra commercium* (Zepos I 224; 225 line 29).

### 2. *Who was a stratiotes?*

After lengthy debate over the meaning of the term *stratiotes*, Byzantine historians have come to agree that in Constantine’s Novel, this term applied not only to a person who actually served in the army and took part in campaigns, but also to one who held a share of stratiotic land and produced income to equip and maintain a fighting soldier.<sup>18</sup>

### 3. *The making of a stratiotes*

A civilian member of the rural community could acquire stratiotic status by two kinds of transactions, described respectively by the Novel and by Constantine’s *De administrando imperio* 51–52. According to the Novel, an owner of private land becomes a *stratiotes* when he converts his property into a new

<sup>16</sup> D. Daube, “Fashions and Idiosyncracies in the Exposition of Roman Law of Property,” in A. Parel and T. Flanagan (eds.), *Theories of Property* (Waterloo 1979) 35–60, at 37.

<sup>17</sup> J. W. Jones, *The Law and Legal Theory of the Greeks* (Oxford 1956) 155–156.

<sup>18</sup> G. Ostrogorsky, *History of Byzantine State* (New Brunswick 1989) 42–43, 95–96, 133–134; Lemerle, *Agrarian History* 119–120, 124–149; Haldon, *Recruitment* 4–65; W. T. Treadgold, “The Military Lands and the Imperial Estates in the Middle Byzantine Empire,” *Harvard Ukrainian Studies* 7 (1983) 619–631, at 625–626.



share of stratiotic land by officially recording it in the stratiotic land register. That act turned the previous owner of the newly-registered land into a holder of military property with the status of *stratiotes*, subject to the privileges, rights, and duties of his new status.

The other transaction reflected the policy of repopulating existing shares of stratiotic land whose holders had died, been killed in war, or fled. Such assignments of abandoned stratiotic shares could be applied to a group of persons or to individuals.

Constantine's *De caerimoniis* (p.696.1–9 Reiske) describes the fate of Saracen prisoners of war who received the fiscal and managerial status of *stratiotai* after their conversion to Christianity and marriage into local stratiotic households. The Saracen settlers were granted numerous privileges for a number of years, on condition that under their tenure the productivity of the deserted land was restored. The chapter ends with a provision that the settlers' land cannot be sold either by a *stratiotes* or by the fisc. The ban on alienating the *stratiotes*' land derives from the legislator's optimistic assumption that all these privileges would result in establishing the settler as a solvent holder of the *strateia*. Since the settlement of the Saracens took place during the times of Leo VI and Romanus Lecapenus, these provisions still represented customary law. It is interesting to note that they were also incorporated into Constantine VII's Novel as it concerns the *adoreia* (Zepos I 224, lines 23–26). The Novel mentions the *adoreia* in the context of explaining which categories of persons are entitled to be called *stratiotai* (lines 20–23): “we prescribe that not only should those who are assigned to the sacred legions ... be regarded as *stratiotai* but also those who, appearing (economically) lacking ..., have rightfully received the ἀδωρεία” (transl. Lemerle 119).

In his search for the meaning of the term *adoreia*, Lemerle found his explanation in the *Peira*:<sup>19</sup> this source, “having defined the fiscal property or the state property (δημόσια), laconically adds ὁμοίως καὶ τὰ κλάσματα καὶ τὰ ἐξ ἀδοριῶν.” It is important to emphasize that in the context of the *Peira*, Lemerle insightfully interpreted the term *adoreia* as “abandoned

<sup>19</sup> *Peira* 36.2 (Zepos IV 143).

military land,” whose legal status was analogous to *klasma* (state property). Nevertheless he insisted that in Constantine’s Novel on stratiotic land the *adoreia* denoted an “exemption from the [financial] dues for which the holder of the *strateia* is formally liable.”<sup>20</sup>

In my 1989 article, I challenged Lemerle’s interpretation of the term *adoreia* as ἀδορεύονται (*Caer.* 696.3), claiming instead that it denoted a share of abandoned stratiotic land. In the context of the Novel’s provision quoted above, I concluded that, in order to secure the productivity of abandoned stratiotic land, a share of that land could be granted to a destitute civilian peasant by an official administrative decision.

I have offered some arguments supporting my view in previous articles. However, the later version of Constantine’s Novel, published by Svoronos, now represents the most recent and so far the strongest proof of my interpretation. This version modifies the content of the *adoreia* provision by shifting the point of its impact from persons to land:<sup>21</sup>

We prescribe that not only the lands of persons enrolled in the sacred legions of the *stratiotai* are deemed to be military, but also the lands of persons who, found to be in penury through some cruel stroke of fortune, have after legal decision received an exemption from their military obligations (ἀδωρείας ἐνδίκως τετείχασ).

Regrettably it is necessary to preface further comment with a correction of an error (typographical?) in McGeer’s translation of *adoreia*. While Lemerle left this in its singular Greek form, McGeer uses the plural, “exemption from military obligations.” As there were only two such obligations, to support a soldier and to serve in the army (if too poor to support a soldier), the plural deprives the paragraph of any sense. If a *stratiotes* was exempted from both of them, he would completely lose, not acquire, stratiotic status.

The shift in focus from persons to land, which had been the core of Constantine VII’s philosophy of the *strateia*, is lucidly

<sup>20</sup> Lemerle, *Agrarian History* 119–120 n.2.

<sup>21</sup> Svoronos, *Les Nouvelles* 121–122; transl. McGeer, *Land Legislation* section 9.1, p.74.

reflected in this later version. Without the slightest change in the legal content of the older text, it more precisely expounds the legislator's concept of the *adorea*: restoring the prosperity of a destitute civilian peasant by promoting him to the rank of a *stratiotes*, and at the same time enhancing the productivity of a share of abandoned stratiotic land. The upgrading of a destitute peasant to the status of *stratiotes* was neither an act of the emperor's grace nor an attempt to gain popularity. This new wording by no means changed the provision that the principal duty of a holder of stratiotic land was to produce income sufficient to maintain and equip a soldier. It did reflect the Republican Roman concept of land in the service of the public good. Nevertheless there also were practical reasons why a civilian peasant who had received a share of stratiotic land also had to receive the stratiotic status.

While land of a civilian community member was burdened only with the obligation to produce income to pay his land taxes, the holder of stratiotic land was burdened with two obligations: (1) to pay his land taxes and maintain a soldier; (2) in case of insolvency, to serve in the army. With respect to a civilian landowner, the alternative of military service in case of insolvency did not exist. Consequently, if a share of stratiotic land was to be held by a civilian member of the rural community, the institutional stratiotic obligation would remain "abandoned," whether or not the civilian taxpayer was solvent. In light of these observations, it becomes clear why a civilian peasant who received a piece of the *adorea* for permanent cultivation had to be simultaneously promoted to the status of *stratiotes*.<sup>22</sup>

#### 4. *Duties and protection of stratiotai and stratiotic land*

Constantine's stratiotic law includes some general rules, aimed at all *stratiotai*, that were to protect the stratiotic land against disintegration. The first declared stratiotic land as *res extra commercium* whose sale was prohibited by the norm of positive law. The second specified certain politically influential and

<sup>22</sup> D. Górecki, "Fiscal Control of Unproductive Land in Tenth Century Byzantium: Policies and Politics," *Fontes Minores* 10 (1998) 239–260, at 260, and *BZ* 82 (1989) 171.

intimidating dignitaries who are forbidden to purchase any stratiotic land in rural communities. The third endowed stratiotic land with the forty-year prescription (ownership after unchallenged possession for forty years), a privilege heretofore reserved for state, fiscal, and ecclesiastic land.

Furthermore, the stratiotic law also contained provisions addressed to three distinct groups of *stratiotai* determined by their social and economic standing: a *stratiotes* of good economic status, impoverished *stratiotai*, and poor *stratiotai* who lost their land because of abuse by *dynatoi*.

(a) A *stratiotes* of sound economic condition, if he failed to fulfill his obligations from his stratiotic land, had to fulfill them with income derived from any private land that he owned. Furthermore, he had to preserve the quality of his stratiotic share. If a sale or exchange jeopardized the value of the share, it had to be corrected or cancelled.

(b) With respect to poor *stratiotai*, *De caerimoniis* offers two paragraphs. The first provides the destitute *stratiotes* with the help of a “contributor” (*syndotes*), in order to restore productivity to his land. The second provides that in case of the *stratiotes*’ ultimate penury, his financial obligation was replaced by stratiotic service. In this case the *syndotai* had also to take over the financial obligations of the *strateia* under the supervision of the stratiotic administration.

These two paragraphs did not represent norms of positive law. They sound like excerpts from stratiotic administrative regulations simplified for practical use. Regrettably, these two provisions were not endowed with any procedural measures. Moreover, the provisions conflate four different legal issues: the duties of a *stratiotes*, the rights of a *stratiotes*, the protection of a *stratiotes*, and the protection of stratiotic land.

When we consider the two paragraphs from the point of view of stratiotic duties, we at once become aware of difficulties. For example, was it a *stratiotes*’ duty or his right to ask for help in case of insolvency? Was it his duty or his right to report that a helper (*syndotes*) is inefficient? The only conclusion that seems certain is that the *De caerimoniis* did not impose any new duties upon the poor *stratiotai*. It was only the stratiotic administration that was burdened with those duties.

(c) With respect to the third group, Constantine in his Novel

stated that under customary law the poor *stratiotai* who lost their land because of abuse by *dynatoi* were treated in a very cruel and unjust manner. They had been deprived of their stratiotic share, degraded to the status of rural worker or slave, and in many cases—if strong and healthy—incorporated into the private armies of the *dynatoi*. So the emperor became an uncompromising defender of the abused *stratiotai*, and sought to punish severely such mistreatment as a serious crime. The penalties he imposed on *dynatoi* guilty of those crimes were harsh: unconditional return, without payment, of stolen lands to their legitimate holders, financial reimbursement of the fisc for lost tax revenues, and additional financial assistance to the recovering *stratiotai*.

Since this behavior was a crime, the return to the *status quo ante* most likely demanded a judicial verdict. But in addition to these criminal provisions, Constantine also demanded that any exchange of stratiotic land between *stratiotai* of equal economic and social status must be to the benefit, or at least not to the detriment, of the poorer one. Oversight of this type of transaction must have been the prerogative of the stratiotic administration.

##### 5. *Syndotai and syntelestai: selection and liability*

This *capitulum* seeks to make clear the legislator's efforts to integrate the administration of stratiotic land and the administration of the rural community in order to increase income from the state's land. Two basic principles for addressing this problem are found in *De caerimoniis*. The stratiotic administration, first, offers a prescription for implementing this fiscal objective; however, it says what to do, but fails to suggest how to do it. It is the peasant community that offers an elaborate system to achieve this objective, based on millennium-long experience of the Ptolemaic, Roman, and Byzantine institution of the rural community with its methods of preserving and managing the land.

*De caerimoniis* gives a list of persons authorized to inherit stratiotic land. This list also served as a guideline for designating *syndotai* for poor *stratiotai*. The process of choosing a *syndotes* began with an official evaluation of the extent of help needed by the poor *stratiotes*, and by the potential of the candidate,

secured by his *poros*, to supply what was required. Upon consideration, it makes most sense to conclude that the assignment of a *syndotes* was, *mutatis mutandis*, a liturgy. In Roman Egypt the liturgy was a compulsory service assigned for a definite time, which could be prolonged as needed, without pay, but with personal liability on the part of the liturgist for failure to discharge the service.<sup>23</sup> Persons without *poros* did exist and their service would be entirely in the form of labor,<sup>24</sup> which in some cases might be all that was needed.

Lemerle (135) suggested that if the poor *stratiotes* who was sent to the ranks of the *apelatai* was a member of an *oikos stratiotikos*, his family was to perform the duty of *syndotes*. However, Lemerle declined to analyze this problem further because, as he stated, there is a total lack of relevant sources to resolve it.

If the *syndotes* was a civilian peasant, most of the foregoing applied. One exception was that the process of selecting a candidate would have to involve representatives of both the stratiotic administration and the civilian. Another exception was the fact that all liabilities of an insolvent civilian *syndotes* were covered *ex lege* by his rural community.

Constantine's stratiotic law addressed only land under cultivation. There was no provision in the Novel for how abandoned stratiotic land was to be handled in terms of restoring its productivity. This kind of land, as Lemerle states, "had experienced the same crisis as civil property, no doubt for the same reason, and with the same abuses" (124). The Novel's only mention of abandoned stratiotic land is a very special case (Zepos I 225 lines 1–28): it addresses a situation in which this type of land had been extorted from its holders by fraudulent *dynatoi*, and subsequently abandoned. The Novel, as summarized by Lemerle (121–122), states:

The emperor decides that if there are heirs (of the stratiotes) in an ascending, descending or collateral line to the sixth degree, they will be authorised to lay claim to the properties wrongly

<sup>23</sup> N. Lewis, *Inventory of Compulsory Service in Ptolemaic and Roman Egypt* (New Haven 1968) 1.

<sup>24</sup> J. David Thomas, "Compulsory Services in Roman Egypt," in *Das römisch-byzantinische Ägypten* (Mainz am Rhein 1983) 35–39, at 36.

alienated by the stratiotes or usurped by the powerful; if not, other categories of persons having a claim will be called on as far as the poverty-stricken (ἀπορώτεροι) stratiotes of the same jurisdiction (συντελεσταί) who can thus reestablish themselves, or even, in default of these, to the πολιτικοὶ συντελεσταί, that is to say the civilians of the same jurisdiction, for a drop in the revenue of the census must be avoided.

Certainly, Constantine's intention was to restore this stratiotic land to its previous legitimate holder or his successors. In addition, he states an equally important goal recommended by the fiscal authorities, namely to resume collecting taxes on land which had not been paid for some unspecified period of time.<sup>25</sup>

Lemerle's scrupulous inquiry into the meaning of the term *syntelestai* was instrumental in reconstructing the civilian involvement in the support of the *stratiotes*.<sup>26</sup> To make progress on this subject, we need to remember the history of the rural community. To begin with Alexander's conquest of the east, as a young and idealistic disciple of Aristotle, he intended to organize his empire as a network of city-states based on principles of democracy and equity of socio-economic opportunities. His untimely death left the empire divided among three of his generals. Ptolemy in Egypt based his territorial administration on the institution of the *kome* (conventionally but not very precisely called rural community by Byzantinists) inherited from the pharaohs and controlled by a Greek administrative apparatus. In keeping with pharaonic tradition, Ptolemy as king became sole owner of land cultivated by Egyptian peasants under the supervision of Greek officials who were liable for collection of the royal income from the land. The Ptolemies abandoned the democratic ideas of Alexander

<sup>25</sup> Concerning the fiscal liabilities for abandoned stratiotic land, I see that I was incorrect to state (*BZ* 82 [1989] 169) that such land was subjected to the fiscal liability of the civilian community. This was by no means a rule—it could happen only in exceptional cases such as a request by the fiscal administration.

<sup>26</sup> Lemerle, *Agrarian History* 121–122; the term is also addressed by McGeer, *Land Legislation* 27, and Hélène Glykatzi Ahrweiler, "Recherches sur l'administration de l'empire byzantin aux IX<sup>e</sup>–XI<sup>e</sup> siècles," *BCH* 84 (1960) 1–111, at 21.

and turned the land into a “money-making machine.”<sup>27</sup> This situation lasted to the rule of Diocletian, who endowed the *kome* with a board of elders who took over those liabilities from the royal officials.<sup>28</sup> But even if Diocletian also endowed rural communities with some rights to land, the process of change that began to upgrade the legal status of the community took place only under Constantine, when the communities acquired possession of lands situated in their territory, and the community members acquired possession of the shares of land that they formerly occupied as tenants. Not much later, according to the imperial constitutions of the fourth century, both the rural communities and the former tenants were granted ownership of that land, and became collectively liable for their fiscal duties.<sup>29</sup>

The changes in the legal status of the rural community made it necessary to modify the content of the law concerning the peasant's landed property. The Roman institution of *res derelicta* was abandoned because, being nobody's property, the abandoned land became not taxable. Thus, in order to secure the fiscal solvency of the rural community as a whole, the proprietary rights of a peasant who left his land were extended to thirty years from the day of abandonment (*derelictio*). Consequently, the taxes on the land deserted by its owner were *ex lege* covered by the collective liability of community members. So (coming back to Lemerle's comment on abandoned stratiotic land) it is necessary to recall that all abandoned land, whether stratiotic or civilian, had the same economic status: both were unproductive. The difference between the two derived from their different legal status. Abandoned private land continued to be property of the absent owner for the next

<sup>27</sup> W. W. Tarn, *Hellenistic Civilization*<sup>3</sup> (London 1952) 156.

<sup>28</sup> A. Swiderek, “The Land Register of the Phernouphitou Toparchy in the Mendesian Nome,” *JJP* 16 (1971) 31–44. See also D. Górecki, “The Rural Community of the *Nomos Georgikos*: Governing Body (art. 81) and Fiscal Liability (art. 18),” *Byzantinoslavica* 62 (2004) 79–94.

<sup>29</sup> A. C. Johnson and L. C. West, *Byzantine Egypt: Economic Studies* (Princeton 1949) 20, 94–95: confusing and conflicting data about the legal status of lands granted in 322 to the community of Theadelphia and to the residents of Hermopolis.



thirty years, during which no transaction concerning this land could conflict with the absent owner's proprietary rights. Abandoned stratiotic land could be immediately allotted by the stratiotic administration to another *stratiotes*. It is interesting that the contemporary taxation treatises do contain many provisions on how to reactivate productivity on abandoned private peasant land without violating his proprietary rights.<sup>30</sup> Yet there is no trace in the Novel of such ingenuity concerning revitalization of stratiotic land, except for such singular cases as the provisions mentioned above concerning employment of the *syntelestai*, the *adoreia*, and military settlement of the Saracens.

Constantine VII's Novel on stratiotic land makes it clear that during that era the Byzantine rural community was a juristic person of public law and the basic unit of the Byzantine fiscal system. This situation reflected a horizontal and a vertical organization of the fiscal administration: Horizontal organization bound together individual rural communities within an administrative territory; vertical organization subsumed all the communities together under the authority of the fiscal district. This organizational duality is very clearly indicated in all the sources of Constantine's stratiotic law: in case of absence of stratiotic candidates for the functions of *syndotai* and *syntelestai*, those functions and liabilities can be vested in civilian members of another rural community belonging to the same fiscal district.

It must be emphasized that a global sum of land taxes was imposed on the fiscal district as a whole, and only then divided

<sup>30</sup> The Taxation Treatise, also called the Marcian Code, ed. F. Dölger, *Beiträge zur Geschichte des byzantinischen Finanzverwaltung* (Leipzig 1927) 119–155; the Zavorda Treatise, ed. J. Karayannopoulos, "Fragmente aus dem Vademecum eines byzantinischen Finanzbeamten," *Polychronion: Festschrift Franz Dölger* (Heidelberg 1966) 318–334. There is disagreement about when these treatises were issued. M. Kaplan, *Les hommes et la terre à Byzance du VI<sup>e</sup> au XI<sup>e</sup> siècle* (Paris 1992), esp. 388–391, places the Taxation Treatise just before Basil I (*dies a quo*), which I accept without reservation. Others prefer 11<sup>th</sup>/12<sup>th</sup> century. I am inclined to believe that the Zavorda Treatise appeared later than the Taxation Treatise. This problem will be discussed in my paper in preparation, "The Saga of Macedonian Legislation on Prescription and Preemption: *De lege lata* and *De lege ferenda*."

among the individual communities. Therefore a member of one community could discharge his obligations in another community as long as the fiscal obligations belonged to the same fiscal district. On these administrative grounds, the Novel makes clear that civilian *syndotai* or *syntelestai* must belong to the same fiscal district as the *stratiotai* whom they served.

This was the strongest point in the Novel regarding the coexistence of stratiotic and civilian administration of rural communities. Beyond this we face a most damaging gap. For instance: Does the Novel intend that shares of stratiotic land situated in the civilian community are also covered by its collective liability? How is one to categorize the situation when a single person owned both stratiotic and private land? Would article 18 of the *Nomos Georgikos* apply to his private land while at the same time the use of *syndotai* had to be applied to his stratiotic land?

The one sensible answer that emerges in this situation would be the thematic structure of the community, where civilian and stratiotic administration was combined in the hands of a *strategos*. But the sources on which Constantine based his stratiotic law fail to mention a theme or a *strategos*. Therefore, the dual administrative structure is the only cogent point for understanding the coexistence of civilian and stratiotic modes of producing income from land.

#### Conclusion

It has been necessary to use the term “stratiotic” instead of “military” in this article, with respect to both land and men. “Military” is a much broader term, and it is associated mostly with soldiers serving in “sacred legions” (Zepos I 224 line 21). While every man tilling a share of stratiotic land was military in the sense of working for the army, not every military man had also to be a *stratiotes* in this sense. He could be supported from many other sources. The opening provisions of the Novel establish the costs of maintaining a fighting soldier, but the rest of the Novel speaks only of a man who by tilling a piece of stratiotic land produces the income to cover these expenses. In the Novel itself this distinction between the military and stratiotic status is indicated, but spelled out very imprecisely, so that it is no surprise that socio-economic historians have not come

to agreement on the meaning of the word *stratiotes* as used in the Novel.

Lemerle defined the *strateia* as a service; so did Constantine VII. In his law, the emperor expressed his conviction that the *strateia* is a service for the common good. This service, which was binding for life and hereditary, demanded individual sacrifices in maintaining the quality of the military share, as well as in preventing other *stratiotai* from becoming insolvent. Unfortunately, his legislative pronouncements were not backed up by any executive provisions. If the emperor had not neglected to state these provisions to the judiciary, this might have safeguarded the implementation of his will.

As it was, his plans, as delineated in the Novel, were detached from political reality. Already Leo VI's *Taktikon* foreshadowed the blurring of the distinction between soldier and peasant, while Constantine's own *De administrando imperio* foreshadowed the progressive fiscalization of the *strateia*. This fiscalization came to its climax following the reforms of Nicephorus Phocas, who was forced to increase the standard value of stratiotic land from four to twelve pounds of gold.<sup>31</sup> Lemerle reported these developments in the context of Constantine's ill-advised Novel. Lemerle's thorough account illustrated why administrative solutions to the wide range of problems addressed in the Novel could be decided only on a case-by-case basis.<sup>32</sup>

As for the emperor's character, was Constantine VII a despotic ruler of Justinianic type (*quod principi placuit legis habet vigorem*, *Dig.* 1.4.1), who violated at his will the individual rights of his subjects established by property law? Or was he a benevolent reformer, who intended to combine his national military goals with his socio-economic concern for the rural populace? One can speculate that Constantine may have deliberately omitted more general executive backing for his laws.

<sup>31</sup> For details of this decision see D. Górecki, "Prescription in the Macedonian Novels on Pre-emption," *Byzantinoslavica* 58 (1997) 113–130, at 126–129, where I contest Svoronos' thesis that Basil II abolished Constantine VII's forty-year prescription on stratiotic land.

<sup>32</sup> So Lemerle, *Agrarian History* 126–131.

In keeping with his utopian expectations, he may have believed that the local administration of stratiotic land would, in conflicting cases, make equitable decisions in the spirit of the common good.

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