Roman Shares
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Which company was the first “shareholder company?”

• Definition of “shareholder company” (or: “business corporation”)
  – Limited liability
  – “Permanence” (or even legal personality)
  – Separation of ownership and control
  – Fungibility of ownership

• Traditional answer:
  – English East India Company
  – (Dutch East India Company, West India Companies)
  – Before 1600: only religious / “administrative” corporations
“Theory”
Why in the 17th century?

• Geographic expansion, trade expansion
  ➔ Need for financial capital
  ➔ Efficiency: Capital needs “force” corporation into existence.

• Developed legal system
  ➔ Innovation of juristic *persona* with rights and duties like natural *persona* and whose existence is independent of owners/managers.
But:
Why not before 17\textsuperscript{th} century?

- “Sharply increased need for financial capital”
- Developed legal system

In particular
- Expansion, colonies of the \textit{Imperium Romanum}
- Highly developed legal system: Roman law was unique achievement in its abstraction, fundament of modern civil law
This paper …

… claims that there was an earlier predecessor in ancient Rome, the *societas publicanorum*.

… explains why the *societas publicanorum* did not catch historians attention (so much).

… describes the organizational and legal framework of the *societas publicanorum*.

→ Roman “shares” and “shareholders.”

… points to parallels between the emergence of corporations during the Roman Republic and during the 17th century.
The Roman Shareholder Company – Outline

1. Textual Sources: Law versus Literature
2. The Rise and Fall of the *Societas publicanorum*
   - Roman Republic versus Roman Empire
   - The Scope of the *Societas Publicanorum*
3. Legal / Organizational Structure
4. The Historical Judgment on the *Societas Publicanorum*
The Sources

• *Corpus iuris civilis* (Institutes, Digest)
  = Justinian’s compilation of law, mostly based on statues and legal writings from classical period, 533/534 AD
  – No reference to *societas publicanorum*.
  – Reference to *societas vectigalium*, i.e. the association of tax collectors.
The Sources

- *Corpus iuris civilis* (cont’d)
  - Some reference to *publicani*
    - Mostly as tax collectors, e.g. ULPIAN D.39,4,12,3 *Publicani autem dicuntur, qui publica vectigalia habent conducta.* (“Those are called *publicani* who collect public taxes.”)
    - Few passages more general, e.g. ULPIAN in D. 43,14,1,7 *Publicano plane, qui lacum vel stagnum conduxit, si piscari prohibeatur, ... Sabinus consentit.* (“That a *publicanus*, who has leased a lake or a pond and is prevented from fishing, ... ...[this] Sabinus approves.”)
The Sources

• Literary sources: broader meaning of *publicani*, closer to etymological meaning “something to do with the *publicum*”
  – LIVY: earliest mention for 215 B.C. (Livy 23,48,12): three *societates* provide troops’ supplies; also grant government credit.
  – VALERIUS MAXIMUS (5,6,8): *publicani* as entrepreneurs in charge of the construction of public buildings.

• Where does this discrepancy come from?
Rise and Fall of the *Societas Publicanorum*

- Monarchy
  - Some evidence on taxes: *scriptura* (agistment payment), *portorium* (port taxes) since *plebs* “freed from it” in early Republic (Plutarch, Dionysius of Halicarnassus; Livy).
  - No evidence on “outsourcing” of tax collection.
Rise and Fall of the
Societas Publicanorum

• Republic
  – Almost no governmental bureaucracy.
  – Numerous literary sources report contracting / leasing of government with private entrepreneurs
  – Early examples (*conductores*, small *publicani*)
    • 493 B.C.: Consul Postumius Conimus leased out building contracts for several temples (Dionysius of Halicarnassus): … … καὶ ναῶν κατασκευὰς ἔξεμίσθωσε Δήμητρι καὶ Διονύσῳ καὶ Κόρη
Rise and Fall of the *Societas Publicanorum*

- More early examples
  - geese-feeding on the Capitol → since 390 B.C.?
  - Delivery of *equi curules* (horses for the *circus*) → since 4\(^{th}\) century B.C.? (because senators not excluded)

- Later examples (*societates; ordo publicanorum*)
  - Supply to army in Hispania 216 B.C. (Livy)
  - Restoration temples and other public buildings
The state treasury was empty, and the *censores* wanted to abstain from giving out contracts for the restoration of the temples and for the circus horses and similar duties. But those who would usually participate in the auctions for such contracts assembled in large numbers and encouraged the *censores* to act as they were accustomed to and to sell the contracts as though the treasury were filled, and not one would ask for repayment before the end of the war.

*Cum censores ob inopiam aerarii se iam locationibus abstinerint aedium sacrarum tuendarum curuliumque equorum praebendorumac similium his rerum, convenire ad eos frequentes qui hastae huius generis adsueverant, hortarique censores ut omnia perinde agerent locarent ac si pecunia in aerario esset: neminem nisi bello confecto pecuniam ab aerario petiturum esse.*
Rise and Fall of the *Societas Publicanorum*

• More examples
  – Construction, renovation, and maintenance of streets, city walls, temples, *fora, porticus, basilicae*, theatres, circus, aqueducts, public sewers
  – Coin minting
  – Religious services: statues, painting the face of the statue of Jupiter on festival days (Plinius, nat. hist. 33, 36, 111 f.), *funus publicum*
  – Public service: assembling the *centurion* committee with the proper signal (the *classicum*) (Varro, de ling. Lat. 4,92)
Rise and Fall of the *Societas Publicanorum*

- Roman Empire
  - *Equestri* (knights) subject to proscriptions.
  - Legal reforms restricts domain of *publicani*’s activities bit by bit.
    
    Government lease limited to collection of (some) taxes
    
    For example, under Augustus, all tax collection contracts in Gaul, Asia, and finally in all of the imperial provinces were handed over to a *procurator Augusti*, designated by the emperor.
  - Back to “small *conductores*.”
Rise and Fall of the *Societas Publicanorum*

- In summary, Republican time of most interest.
- But: *Corpus Iuris Civilis* from classical / post-classical period (Roman Empire).
  - Literary sources (Livy, Cicero, Ovid, ..)
  - Primary legal sources, e.g. *lex portorii Asiae*
Lex Portorii Asiae

• Inscription, a.k.a. Monumentum Ephesenum, summing up the tax laws of the province Asia.
• Found 1976 in Ephesus.
• Former ambo of St. John’s Basilica in Ephesus, (reused as a step); one side hid a Greek translation of a Latin lex portorii Asiae from 62 AD.
• The nucleus of this Νόμος τέλους Ἄσιας (§§ 1-36) originates in the late Republic, 75 or 74 B.C.
Lex Portorii Asiae

• General function of such a lex: The individual agreements of a contract between government (censor) and private entrepreneur – such as the governmental lease – were laid down in the so-called leges locationem (or, lex censoria).

• The contract had to be renewed with every new lease. (Auction!) In most cases, however, a basic stock of set clauses was developed for the leges which were used for each new lease.
Lex Portorii Asiae

- Three areas:
  1. object of the lease, i.e. the right of utilization bought or leased by the publicani or the services to be supplied by them
  2. terms of payment
  3. the collaterals provided and the required dues by the associates and partners of the association.

- The lex portorii Asiae is one – especially good – example for such a stock of pre-set contractual clauses, in this case for the lease of tax collection rights in the province of Asia.
Legal / organizational aspects

• Representation
  *Manceps* acts on behalf of *socii*, at least in auction.
  (How developed during Republic?)

• Permanence
  – Generally: *Qui societatem contrahit, certam personam sibi eligit.* (GAI 3, 152)
  – But: *In societate vectigalium nihilo minus manet societas et post mortem alicuius* (Pomponius, 17,2,59 pr.)
    (How developed during Republic?)

• Juristic personality?
  (Who cares …?)
Legal / organizational aspects: Shares and Shareholders

• *Partes* and *participes* (or *adfines*): financially limited participation.

• Main source: Cicero

  – Describes private citizens possessing “share certificates (*partes societatum publicanorum*) in speech pro lege Manila (2,6)

  – Implies their transferability when quoting a *lex censoria*: Qui de L. Marcio M. Perpena censoribus redemerit... socium non admittito neve partem dato neve redimito. (sec. in Verrem, 1,55,143)

  – Implies trade at varying stock prices: *partes illo tempore carissimae* (in P. Vat 12,29)
Legal / organizational aspects: Shares and Shareholders

Polybios (6,17): in the 2nd century “almost every citizen” participated, in one form or another, in government leases:

οἱ δ’ ἐγγυῶνται τοὺς ἡγορακότας, οἱ δὲ τὰς οὐσίας διδόσαιν ὑπὲρ τούτων εἰς τὸ δημόσιαν.
What do the historians say?

• “Private entrepreneurs who are primarily concerned with their own gains.” And that’s a negative tone!

• Cujaz *De publicanis et vectigalibus et commissis* (D. 39,4): “*Hi quam fraude, avaritia, immodestia, audacia superent ceteros homines nemo est qui nesciat... .”*

• Same tone in 18th-20th century history literature: “revenue-hungry exploiters”, politically scheming “capitalists.”
What do the historians say?

• Theodor Mommsen: the gradual development of a class of profit-oriented entrepreneurs was one of the reasons behind the emerging social tensions in the Roman Republic \( \rightarrow \) disintegration of the Roman Empire.

• Accordingly, Augustus’ measures to limit the activities of the *publicani* praised as (temporarily) saving the Roman state.

• But: why did the emperors do it?
Parallels to East India Company

• “Theory” of economic / geographic expansion, with sharp increase in capital needs & developed legal system → Corporation

• **But also:** Political economy. Private entrepreneurs (partly) assume role of government / privatization and contracting-out at a time when government was not able to assume it but wanted it to be done