

## **Publicani**

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The economic activities of the *publicani* in ancient Rome are one of the most astonishing modern features of the Roman economy. During their heyday in the late Roman Republic the *publicani* ran large-scale companies all over Rome's growing territory. Their business activities included public works such as constructing streets and temples, the management of public property such as mines and lakes, the provision of "public" services and goods such as army supplies, and, most (in-) famously, the collection of taxes and other state revenues (see, e.g., Livy 23.48-50; 25.3.10; 27.10.13; 34.6.13; 44.16.4; Plin. 33.21.78; Polyb. 6.17; Strabo 3.2.10.147-8c; Val. Max.5.6.8). Yet, the *publicani* are relatively unknown compared to other players in ancient history, and what is known about them is often distorted. For example, where the Latin bible mentions *publicani* (e.g., Mark 2.16; Matthew 9.10-11; Luke 5.30; 19.2), it refers to local customs agents who collaborated with the Romans and were despised by their compatriots – hence the repeated reference to "publicans and sinners" (*publicani et peccatores*). Even in the most important source of Roman law, the *Corpus Iuris Civilis* (see *CORPUS IURIS CIVILIS*), we find a distorted description: The legal scholar Ulpian defines *publicani* in the Digest as "those who have obtained the right to collect public tributes" (*publicani autem dicuntur, qui publica vectigalia habent conducta*; D. 39.4.12.3; similarly D. 39.4.1.1). In other words, the *Corpus Iuris Civilis* mentions only one of the business activities of the *publicani*, tax franchising.

To solve the puzzle we need to turn to ancient writers such as Livy, Valerius Maximus, or Cicero, and to primary legal sources. These sources reveal that, starting from small origins, the *publicani* reached the height of their activities during the Roman Republic, especially during the last two centuries BCE, but that the Roman emperors started suppressing the businesses of the *publicani*. The *Corpus Iuris Civilis* captures only the reduced role they played during the first two centuries CE. Under Trajan, for example, the *publicani* only collected a few types of taxes, such as the *vicesima hereditatium* (inheritance tax).

What had happened?

During the Republican period, Rome did not have a stable administrative body and, hence, could not provide the above-mentioned services and goods publicly. As Rome grew from its small rural origins to a large empire, the government increasingly outsourced "public" tasks to private entrepreneurs. Dionysius of Halicarnassus mentions in his *Antiquities of Rome* (6.17.2) that such contracting took place as early as 493 BCE (for the construction of temples). In the third century BCE, Livy (25.3.9) and Valerius Maximus (5.6.8) describe the *publicani* as active in a broad range of public works. When Livy (23.48.10-49.4) discusses the contracts with the *publicani* for supplying the Roman army in Hispania in the year 216 BCE, his commentary on the conditions they demanded for their services – exemption from mandatory military service, a privilege normally granted only to Senators and priests, and indemnity by the state against loss of property – suggests that the *publicani* were quite comfortable with large-scale commercial projects

and negotiations with the state. Following its victory in the last Punic War, the expansion of Rome opened larger areas of activity and profit opportunities for the *publicani*. They were increasingly identified as a “class,” the *ordo publicanorum* (Livy 25.3.12).

With the end of the Roman Republic, however, the *equites* (see *EQUITES, REPUBLIC AND EMPIRE*), i.e., the class of knights that made up the majority of *publicani*, were subject to proscriptions (App. B Civ. 4.5; Dio Cass. 47.14). The Roman emperors started establishing a stable bureaucracy and their own imperial treasury. Increasingly, they withdrew public tasks from the *publicani* and assigned them to public officials, possibly to gain greater control of (and extract personal gain from) profitable activities such as tax collection.

Many ancient and modern historians have glorified the reversal of the Roman “privatization” as the emperors’ attempt to protect the population from the extortions of profit-hungry entrepreneurs – inspired by Livy’s comment (45.18.4) that “wherever there was a *publicanus*, there was no law and no freedom for the subjects” (*ubi publicanus ..., ibi aut ius publicum vanum aut libertatem sociis nullam*). However, the governors and state officials in charge of tax collection were known to be no less fraudulent and to enrich themselves (see, e.g., Cic. sec. in Verr. 3.71.165).

During their most active period towards the end of the Roman Republic, the *publicani* were organized in large-scale *societas*, which resembled more joint-stock companies than the classical partnerships (see *SOCIETAS*). Roman law developed a series of “special rules,” applicable only to the *societas publicanorum*. First, Roman law granted the *societas publicanorum* permanence, even after the death of a *socius*, or ‘member of the *societas*’ (Pomponius D. 17.2.59 pr.; Ulpian D. 17.2.63.8). Second, a so-called *actor* or *syndicus* could represent the *publicani* (Gaius D. 3.4.1.1), even though Roman law never adopted the legal concept of representation in general. Typically, the so-called *manceps* (see *MANCEPS*) bid for the contracts, which were let every five years, corresponding to the censors’ term of office (see, e.g., Livy 24.18.10 f.). The third crucial difference between *societas* and *societas publicanorum* – and maybe the most astonishing step in the evolution of this business organization – was the existence of shares and shareholders. Cicero mentions *partes* (shares) and *participes* (shareholders) in several speeches (e.g., pro lege Manila 2,6; pro Rab. Post. 2.4; see also Plut. Trin. 330-331 and Val. Max. 6.9.7). From Cicero’s second speech against Verres (1.55.143), we learn that shares were transferable and traded, and in P. Vat. 12.29 Cicero speaks of *partes illo tempore carissimae*, of ‘shares that had a very high price at that time,’ implying variable stock prices. Polybius (6.17.3-4) suggests that, by the 2<sup>nd</sup> century BCE, “almost every citizen” participated in the government leases in some form or another.

To what extent the *societas publicanorum* resembled a modern business organization remains debatable. Undeniably, though, their businesses embodied a rather advanced stage of financial and economic development, highlighting Rome’s powerful economic evolution during the Republic.

SEE ALSO: *Societas*.

REFERENCES AND SUGGESTED READINGS

Badian, Ernst. *Publicans and Sinners: Private Enterprise in the Service of the Roman Republic*. Cornell University Press, Ithaca, N.Y., 1983 (corrected reprint).

Duff, P. W. *Personality in Roman Private Law*, Cambridge 1938.

Földi, András. “Remarks on the legal structure of enterprises in Roman law,” *Revue Internationale des Droits de l’Antiquité*, 1996, vol. 43, pp. 179-211.

Hill, H. *The Roman middle class in the Republican period*, Blackwell, Oxford, 1952.

Malmendier, Ulrike. “Roman Shares.” In: W. Goetzmann and G. Rouwenhorst (eds.), *The Origins of Value. The Financial Innovations that Created Modern Capital Markets*. Oxford University Press, August 2005, pp. 31-42, 361-365.

Malmendier, Ulrike. “Law and Finance ‘at the Origin’,” *Journal of Economic Literature*, December 2009, vol. 47(4), pp. 1076-1108.

Malmendier, Ulrike. *Societas publicanorum. Staatliche Wirtschaftsaktivitäten in den Händen privater Unternehmer*. Böhlau Verlag, Cologne/Vienna 2002.

Milazzo, Francesco. *La realizzazione delle opere pubbliche in Roma arcaica e repubblicana. Munera e ultro tributa*. Pubblicazioni della Facoltà di Giurisprudenza di Catanzaro (Università degli Studi di Reggio Calabria) No. 23, Naples, 1993.