

J.-J. AUBERT, *Business Managers in Ancient Rome. A social and economic study of institores*, 200 B.C. – A.D. 250. Columbia Studies in the Classical Tradition, Band 21. E.J. Brill Verlag, Leiden/New York/Köln 1994. XV, 520 Seiten.

In the debate about the nature of the Roman Imperial economy those who argue that it was essentially different from and more primitive than that of later preindustrial Europe adduce various phenomena: a substantially less productive agriculture, characterized by an annual fallow, a low technological level, i. e. lower than that of the alleged technological revolution of the Middle Ages, underdeveloped interregional trade and the concomitant absence of important production-cities which derived substantial income from structural export to distant markets, and the predominance of small, self-centered consumption-cities, to mention only a few characteristics. As to trade, one element is emphasized in particular: the absence of the so-called ‚law of agency‘ by which an authorized agent could conduct a transaction with a third party on behalf of his principal and the rights and liabilities created by that transaction could take effect between the principal and the third party. In Roman law the rule is said to prevail that „no one can make a contract on behalf of another“. Needless to say, if that had been the iron-clad law, the development of long-distance trade would have been seriously hampered. It would have necessitated the presence of the principal (merchant, business-man) whenever and wherever a contract was to be drawn up, and it would have slowed down the development of business.

It cannot be denied that the phenomenon of the agent was far from unknown in the Roman world. Agents were sometimes stationed far away from their principal and as a result the question is unavoidable whether and, if so, how the Romans circumvented the rule that agents could not draw up contracts and do business on behalf of their principal. The answer to that question is affirmative and the device through which the absence of a law of direct agency could be remedied was that of the *actio institoria*. The latter enabled third parties to enforce claims derived from a contract drawn up by an agent (*institor*) against the principal, insofar as the principal had commissioned his agent through a *iussum* or a detailed *praepositio*. Aubert shows that this legal device was probably introduced in the late second century B. C., and argues that it was widely used during the Principate; it reflected the increasing use of *institores* around the Mediterranean in the context of expanding interregional business-activities financed by wealthy members of the elite but run by agents.

Ulpian gives a list of occupations in which *institores* usually engaged (DIG. 14.3.5.1–15; pp. 7–8 and 172): superintendents of apartment buildings, food-dealers, money-lenders and bankers, farm-managers, traders and (public) contractors, muleteers, launderers, tailors, peddlers etc. The problem, however, is that the documentary sources mention only very few *institores*.

The author (p. 361) simply postulates widespread activities of *institores*, because the owners of the means of production were not prepared to involve themselves directly in running their businesses. He relates the scarcity of explicit references to *institores* in our sources (literary, epigraphical) to the negative connotations of this dependent function. This may be correct in the case of successful, ambitious freedmen, who try hard to make money, acquire respectability and lay the foundations for the careers of their free-born descendants. But why should slaves tend to omit the title of *institor*, which admittedly implies a certain dependence on the master – but slaves were dependent anyhow and, nevertheless, did not omit reference to their slave status – but on the other hand indicates that the slave in question enjoyed his master’s trust and belonged to a rather privileged group? The author’s answer is that *institor* smells of trade and commerce, in addition to dependence, and that it was those two branches of the economy which in particular suffered from strong social prejudice. As a result, the title of *vilicus* was preferred by and for all those appointed as head of a managerial unit ‚because of (the) connection with the land‘.

The author’s Appendices A and B (pp. 444–462) seem to confirm his hypothesis: against five examples of *institores*, all active in trade (Appendix A), there are 201 *vilici* (Appendix B) active in agriculture (chapter 3), production and administration of clay artefacts (bricks, tiles, amphoras, lamps, terra sigillata; chapter 4) and in public administration (tax collection, entertainment, communication and coinage; chapter 5). Some, though not all, of the occupations listed in the above-mentioned *Digesta*-passage as being exercised by *institores* do in fact recur among the *vilici* of Appendix B. Agriculture not only gave the term *vilicus* a certain respectability, but it also actually created this function, from which it spread



to other economic activities, partly connected with agriculture (cf. in particular the production of clay artefacts). The author argues that the agricultural *vilicus* in fact was an *institor* and not just a person responsible for the collection of the harvest (cf. pp. 7–8 with notes 30–31 and 169–171 with note 75, a duplicate of note 30 on p. 8). On p. 170 he lists a series of managerial tasks which the *vilicus* was supposed to perform. It cannot be denied that among these there were business-transactions like the buying of farm equipment and letting of contracts for work to be done, e.g. the construction and assembling of mills, wine- and oil-presses etc. But the fact that Pliny the Younger personally seems to negotiate with *negotiatores* about the sale of his wine should give us pause. Admittedly, Columella's warning that a *vilicus* should remain an *agricola* and not become a *negotiator* (p. 172) implies that in actual practice *vilici* acted as merchants and thus as *institores*, but I think that in many cases we simply cannot know whether *vilici* actually functioned as *institores* / traders or were *agricolae*, i. e. simply were in charge of the organization of the agricultural work, for which permission to draw up commercial sales-contracts in the context of an official *praepositio* and with the distinct possibility of an *actio institoria* being granted against him (implying that the principal would incur full liability for the contracts negotiated by the *institor*), was not necessary.

In his learned and competent chapters about the activities of slaves and freedmen in the clay artefacts industry the author is fully aware of the fact that the relative importance of agents, contractors and independent businessmen is hard to establish. In other words, we often do not and cannot know in which capacity a slave operated in a manufacturing unit. It seems wise to extend the author's caution also to the realm of the agricultural *vilicus* who either functioned as *institor* / *negotiator* or worked as supervisor and organizer of the agricultural workforce with only limited power to handle transactions.

The author throughout his study distinguishes the *institor* as business-manager from the owners-entrepreneurs. He advances a rather modern definition of manager: he is the person who rationally organizes the unit(s) of production and uses the capital in an efficient way (p. 5). As far as I can see, the sources discussed by the author do not tell us much about rationality and efficiency. For these values one better turns to books like Dominique Rathbone's recent monograph about estate-management in Roman Egypt. The distinction itself is theoretically probably correct but fortunately the author himself questions the applicability of the two notions in economic reality. On pp. 36–37 he writes about „the degree of practical independence that business-managers were likely to achieve in the course of their career“ and which may serve to explain the restraint agents affected in recording their links to their patrons; and on the same pages he is aware of the concept of the independent freedman who manages to enrich himself considerably, but eludes attempts to categorize him as independent businessman or as manager. The fact of the matter seems to be that those who officially should be regarded as managers / *institores*, in practice developed entrepreneurial behaviour; on the other hand the owners behaved like rentiers rather than as entrepreneurs. A passage in the *DIGESTA* (40.9.10), adduced by the author twice (pp. 14–15 and 217 note 5) but for different reasons, clearly shows that owners of *transmarinae negotiationes* often were ignorant about the way their businesses developed, were deceived by their *institores* (slaves, freedmen) but, nevertheless, manumitted them. A. Tchernia rightly pointed out that those whom Aubert categorizes as entrepreneurs in fact behaved like „rentiers“ who „attend[ent] un profit financier fixé d'avance et se désintéresse[nt] de la gestion de l'affaire“ rather than as entrepreneurs „qui participe[nt] aux profits et aux pertes, s'intéresse[nt] à la marche des opérations et influence[nt] les choix du gestionnaire“ (A. TCHERNIA in: W. V. HARRIS [ed.], *The Inscribed Economy*. *Journal Roman Arch.*, Suppl. 6 [1993] 183–185, especially 185). The author perhaps too rapidly tends to ignore such questions because they are unlikely to find a satisfactory answer due to the lack of evidence (p. 37). This may be true for isolated inscriptions about *institores* and *vilici* but the phenomenon of the freedman who enriched himself, whether as *institor* or as independent businessman supported by his patron, is widespread enough for us to believe that *institores* were not simply managers who worked for the benefit of their masters.

It is quite another matter whether successful slaves and freedmen behaved in the same way as and developed the same ‚capitalistic‘ mentality as freeborn entrepreneurs and merchants in later preindustrial Europe (cf. recently J. ANDREAU, *Annales* 50, 1995, 956–958). The author does not ask that question. I still prefer to believe that the different social background does not *a priori* turn the ‚entrepreneurial‘ slave / freedman into a sort of landowner manqué, with all the implications of a ‚rentier‘-mentality which is assumed to be characteristic of the landowning elite. The entrepreneurial mentality of un- or semi-free *arrivistes* is *grosso modo* the same as that of his freeborn equivalent. Both prided themselves on their enrichment, were positive about *lucrum*, tried to build up small ‚dynasties‘ of entrepreneurs by involving their descendants in the business, and in the end, preferably after three generations, wanted to assume respectability by investing their fortunes in land.

The author has written a very competent and exhaustive monograph about the role of *institores* in several branches of the Roman economy, both the private and the public; he has demonstrated at great length that the absence of a law of agency did not paralyze the development of trade in agrarian and

manufactured products. It is the same story as with the discussion about whether or not the ancients knew systems of double-bookkeeping. Their ignorance, if any, on this point does not necessarily turn the ancient economy into a more primitive, less rational phenomenon; the ‚rational‘ character of double-bookkeeping is itself questionable and the economy found ways to circumvent the absence of alleged ‚modern‘ techniques and concepts.

Oegstgeest

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