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The Germ of the Conception of Legal Person in Roman Law

The history of commercial associations takes us back to the oldest periods of human history. The notion, that human beings could cooperate, amass assets and thereby conduct their business activities, was present even among the very earliest of societies. Simultaneously, there was, in reality, no theoretical underpinning for such associations, nor aნ established conception of legal entity. Roman law too, in spite of its inarguable complexity and progressive institutions, did not recognize the notion of legal person, even if during the multiple centuries of its existence it did come close to it. Universitas and societas publicanorum are particularly important institutions. The former is interesting as the pinnacle of Roman legal ruminations on associations and the latter as a large-scale entity, which several modern authors even consider to be a precursor to a modern joint-stock company.

Aside from aforementioned two entities, other associations also existed, review of which as well as division and classification in types is significant to emphasize the point, that while Romans did not enjoy the honor of establishing the conception of legal entity, they did contribute greatly to formulating this notion and research of this contribution is necessary not only from the viewpoint of legal history, but also to better understand modern legal entity.

Key words: *Ancient Roman Law, legal person, conception, corporation, societas, universitas, societas publicanorum.*

1. Introduction

The history of commercial associations takes us back to the oldest periods of human history. The notion, that human beings could cooperate, amass assets and thereby conduct their business activities, was present even among the very earliest of societies.[1] In most cases, the organization of such entities was quite simple and they represented partnerships of various flavors. Several persons, often relatives, would simply gather capital and invest. The number of such persons rarely exceeded few people, even if several interesting exceptions throughout history did occur.[2]

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1 *Seymour E. B.,* Jr., The Historical Development of the Common-Law Conception of a Corporation, The American Law Register (1898-1907), Vol. 51, № 9, Vol. 42 New Series, September, 1903, 530-531.

2 E.g. Assyrian *Naruqum* (see: *Hawk B.,* Law in Commerce in Pre-Industrial Societies, Brill – Nijhoff, Leiden, 2015, 230-231. *Aubet M. A.,* Commerce and Colonization in the Ancient Near East, Cambridge University Press, Cambridge, 2013, 339) or ancient Hindu *Sreni* (see: *Khanna V.,* Business Organizations in India Prior to the British East India, in: Research Handbook on the History of Corporate and Company Law, *Wells H. (Ed.)* Edward Elgar Publishing, Cheltenham, 2018, 33-64.)

Simultaneously, it is also self-evident, that such earliest associations did not hold any sort of separate corporate personality, as on that stage of historical development even the idea of legal entity, at best, existed only in its nascent phase. Therefore, it would be more appropriate not to draw direct parallels between the initial proto-forms of capital associations and modern economical and developed corporate legal institutions, as the correspondence between these two can be considered only approximate.[3]

In general, the development history of associations and corporations can be broken down into several phases. For example, in German legal literature, the associations have been divided into ones before 1807 (of which: ancient associations before 600 AD; medieval corporations during 600-1600 AD; and New Age corporations in AD 1600-1807, when first modern capital associations, including first joint stock companies, are formed); second phase from 1807 and 1884, when joint stock companies are given final shape and firmly entrench themselves; and finally, the third phase from 1884 till modern age when a new innovative legal form joined capital associations – the limited liability company.[4]

Despite some beginnings of capital associations in many ancient cultures, it can be boldly asserted, that not a single one of such societies had such a profound and lasting impact on the development of such entities as the ancient Rome. Although notions of limited liability and corporate personality were foreign to it, Roman legal practice and jurists have bequeathed us a few undoubtedly important institutions, which represent the basis of modern corporate law. The aim of this paper shall be to study contours of the notion of legal person as they were present in Roman law.

Numerous times dispute arose in literature as to why exactly did it took so long for the notions of contemporary corporations and separate legal personality to form, considering that already in Roman law and possibly even before, relevant institutions already existed, granting separate personality and limited liability to which required merely a single theoretical step forward. Multiple factors have been named as possible reasons therefor, such as primitiveness of ancient accounting, cultural and other ramifications, inimical attitude towards trade especially from aristocracy or possible bias towards claimants in the Roman Praetorian law and litigation.[5]

The objective of the present paper shall be to review associations in Roman law and core important preconditions necessary for the formulation of the notion of the legal person, that can be already discerned in several of such entities. It must be noted, that such associations include both commercial and non-commercial entities. The second Chapter of the Article will contain a general conversation on issues at hand, while Chapters III and IV shall discuss Roman commercial and non-

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3 For instance, several authors glimpse corporate personality and transferable shares already in Assyrian *Naruqum*, which would approximate it not only to modern partnerships, but even to joint stock companies, which, of course, seems quite improbable. For this opinion, see: *Hawk B.,* Law in Commerce in Pre-Industrial Societies, Brill – Nijhoff, Leiden, 2015, 231.

4 *Fleckner A. M.,* Antike Kapitalvereinungen, Ein Beitrag zu den konzeptionellen und historischen Grundlagen der Aktiengesellschaft, Böhlau Verlag GmbH & Cie, Köln, 2010, 35.

5 *Abatino B., Dari-Mattiacci G., Perotti E. C.,* Depersonalization of Business in Ancient Rome, Oxford Journal of Legal Studies, Vol. 31, № 2, 2011, 381-387.

commercial entities, even though such strict separation was alien to Romans themselves. In the end, a conclusion shall be given succinctly summarising issues touched upon in this Article.

2. Contours of a Legal Entity in Roman Law

It is hard to overstate the impact of Roman law on modern private law. In both common and civil law countries, the basis for core private law institutions should be sought precisely in Roman equivalents. On the other hand, the same can not be said about Roman corporate law, which, if it can even be said that it existed at all, only in very embryonic, nascent stage. In legal literature, it has been emphasized, that the link between modern capital associations (especially joint stock companies) and ancient Roman associations is not firm and continuous at all.[6] Therefore, before drawing any parallels, a discussion should take place, whether or not in ancient Rome any institutions and organizations close to legal entities were even present.

The term "corporation" itself originates from Latin *corporatio*, which means "assumption of a body", "manifestation". Three major types of associations may be distinguished in ancient Rome: the state itself (*populus Romanus,* or the Roman people)[7] and particularly, the state treasury (*Fiscus*),[8] town and community municipalities and finally commercial and non-commercial associations.[9] While the Roman law did, strictly speaking, recognize these subjects, it considered them not persons, but amalgamations of individuals, which in certain cases could hold property and be present at trials. In

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6 *Lehmann K.,* Die Geschichtliche Entwicklung des Aktienrechts bis zum Code de Commerce, Carl Heymanns Verlag, Berlin, 1895, 3-4.

7 In the eye of Roman law, Roman people (*populus Romanus*) were neither a private, nor a legal entity and what belonged to Roman people could never be under anyone's private property or an object of commercial transactions.

8 The issue of property ownership by State Treasury and its conflation with Emperor's private property is quite interesting. Despite the fact, that during the Early Empire the assets of the Treasury were considered to be the personal property of the Emperor and the word *fiscus* itself likewise directly meant "purse", "basket" (of the Emperor), later, during the Late Empire, this property was often mentioned as State property. Given that the Treasury could file a lawsuit at court and own property, some authors believe that the first real prototype of a legal person with its own separate existence could have been the Roman *fiscus*. See: *Buckland W. W.,* A Text-book of Roman law from Augustus to Justinian, Cambridge University Press, Cambridge, 1921, 176-177. *Brunt P. A.,* The 'Fiscus' and Its Development, The Journal of Roman Studies, Vol. 56, 1966, 85. However, this conclusion is rejected by others, who see *fiscus* foremost as the private property of the Emperor with the proviso, that he would spend it for state purposes. In this case, some overlap can be seen with another Roman institution – *Patrimonium Caesaris*, which undoubtedly was the private property of the Emperor. Others do not directly equate *Fiscus* with the private property of the Emperor, but do remark that, factually, it was so. See: *Duff P. W.,* Personality in Roman Private Law, Cambridge, Cambridge University Press, 1938, 55-58. *Thomas J.,* Textbook of Roman Law, North Holland, Amsterdam, 1976, 470. Concerning disputations on the nature of Roman *Fiscus*, please also refer to: *Elyashevych V.,* Legal Person, Its Origin and Functions in Roman Private Law, Saint-Petersburg, Schredder Typolitogtaphy, 1910, 65-95 (in Russian).

9 *Buckland W. W.,* A Text-book of Roman law from Augustus to Justinian, Cambridge University Press, Cambridge, 1921, 176.

the eye of the law, only a physical person could be a *persona*, including, as paradoxical it may seem, even a slave.[10]

Roman personality, *persona*, was a multifaceted concept and laying down its uniform, comprehensive explication is wrought with difficulties.[11] It originated from an ancient Greek word, which meant "mask".[12] It should not be considered a coincidence, that, when one talks about piercing the corporate veil[13] today as the primary means for disregarding the legal personality of a corporate entity, such legal person is sometimes labelled a concealed instrument, behind which the constituents *mask* themselves and therefore, metaphor "pulling the mask off" is often used during such veil-piercing.[14]

In ancient Rome, aside from entrepreneurial partnerships, political clubs, burial associations and ancient Roman guilds also stood out from existing private legal entities, the rights and duties of which were determined by the permit issued by the Emperor himself.[15] Apart from burial associations, all other *collegia* and associations, especially during the Imperial age, required such permission to be established.[16]

Of Roman associations, several might be emphasized. Undoubtedly, the most interest is elicited by *universitas* which, as we will see later, stood closest to the modern notion of a legal entity. In addition to *universitas*, other *societas*, which may be considered as the Roman counterpart to modern partnerships created for business purposes, also existed. In general, it may be said that designations for entities were quite plentiful in Roman law and Roman jurists, who lacked commitment to systematization and categorization, so central to modern science and jurisprudence,[17]

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10 *Mousourakis G.,* Fundamentals of Roman Private Law, Springer Verlag, Berlin, 2012, 85. In spite of this, a slave had no rights at all and its legal personality was wholly subordinate to the will and command of his/her master.

11 On the term and definition of *persona* in general, see: *Duff P. W.,* Personality in Roman Private Law, Cambridge, Cambridge University Press, 1938, 1-25. Aside from *persona*, the word *caput* also existed, which was similarly close to modern conception of legal personality: id. 25

12 *Mauss M.,* A Category of the Human Mind: The Notion of Person; The Notion of Self, *Halls W. D. (Trans.),* in: The Category of the Person: Anthropology, Philosophy, History, *Carrithers M., Collins S., Lukes S. (Eds.),* Cambridge University Press, Cambridge, 1985, 14-15.

13 Eng. *Piercing (lifting) the corporate veil*. Germ. *Durchgriffshaftung*.

14 *Littlewoods Mail Order Stores v. Inland Revenue Commissioners*, [1969] 1 W.L.R. 1241 (A.C.) at 1254. cited in: *Tomasic R., Bottomley S., McQueen R.,* Corporations Law in Australia, The Federation Press, Sydney, 2002, 44.

15 *Berman H. J.,* Law and Revolution: The Formation of the Western Legal Tradition, Harvard University Press, Cambridge, 1983, 215-216.

16 See. *Digesta* 3.4.1.

17 In reality not only there was no concept of a legal entity in the Code of Justinian, but not even a general notion of a contract. As one author points out: „*Roman law consisted of an intrinsic network of rules; yet these were not presented as an intellectual system but rather as an elaborate mosaic of practical solutions to specific legal questions. Thus one may say that, although there were concepts in Roman law, there was no concept of a concept*"). See: *Berman H. J.,* Law and Revolution: The Formation of the Western Legal Tradition, Harvard University Press, Cambridge, 1983, 149-150.

had made no attempts at classifying these entities. *Collegia*, *sodalitates*, *sodalicia*, *corpora*[18] make up only an incomplete list of names for those mainly non-commercial entities, which were not legal entities in modern sense, but were still deemed to be subjects as they could submit a claim to the court or own property. Determining similarities and differences among them is one of the biggest conundrums for modern legal historians.

As was already mentioned, a concept of a legal entity did not actually exist in ancient Rome and it was generally completely alien to Antiquity.[19] There was not a single Latin term which corresponds to "legal person", although *universitas* probably comes the closest.[20] In pre-industrial Roman society, where modern business instruments such as credits, securities and bank transactions were pretty much non-existent,[21] presence of such central institutions of corporate law as separate legal entity, was hardly conceivable and put it otherwise, was simply unnecessary.

Despite previous certain opinions expressed in legal literature, that these corporations, in essence, were not much different from modern corporations,[22] Roman legal system recognized only that associations made up of certain persons could own property or be participants in legal relations.[23] Situation was also in a way exacerbated by the fact, that the institution of personal representation, at least as recognized in law, was also alien to Roman law – the Roman citizen empowered with rights had to take up obligations himself in person.[24] Therefore, even the most ambitious Roman *universitas*, as will be shown later, was still essentially closer to a "group" or "gathering" than to modern legal entity or corporation.[25]

Roman jurists did not take interest in the issue of what specific interrelation existed between the association itself and its constituent members. From modern viewpoint, as was already noted, Roman law lacked systematization and judging from sources extant today, Roman jurists did not devote much

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18 *Kaser M.,* Roman Private Law, 4th Ed., *Dannenbring R. (Trans.),* University of South Pretoria, Pretoria, 1984, 95-96.

19 Ibid, 93. *Sohm R.,* Institutionen des Romisches Recht, 17. Aufl., Duncker & Humblot, Berlin, 1949, 196.

20 *Duff P. W.,* Personality in Roman Private Law, Cambridge, Cambridge University Press, 1938, 50.

21 *Finley M. I.,* The Ancient Economy, University of California Press, Berkeley, 1999, 141.

22 For example, *Max Radin*, (1880 – 1950) remarked, that associations of musicians or firemen in ancient Rome were not much different from modern energy or railway companies, even if, of course, they did not regulate the minutest details regarding shares or rights. *Radin M.,* Fundamental Concepts of the Roman Law, California Law Review, Vol. 13, Issue 2, January 1925, 120. The main problem of this thesis is that, as we shall see later, these Roman associations, no matter how large and complex, were still considered to be collective entities made up of private individuals, while the association itself, unlike modern corporations, was never deemed to be a separate person and a legal subject. This was true even for the most organizationally complex Roman entities.

23 The fact itself that certain rights and obligations could be assigned to an organization, which, even if it was not seen as a "person", but was still considered to be as somewhat separate from its constituent members, is often thought to be an important step forward taken by Roman law. See: *Olivecrona K.,* Three Essays in Roman Law, Munksgaard, Copenhagen, 1949, 5.

24 *Kaser M.,* Das Römische Privatrecht, Erster Abschnitt, C.H. Beck'sche Verlagsbuchhandlung, München, 1971, 605.

25 *Duff P. W.,* Personality in Roman Private Law, Cambridge, Cambridge University Press, 1938, 36. fn.1.

time and particular attention to the issue of corporations. Interestingly, such attitude in general is also apparent from the members of such associations themselves, who used different terms for their own entities (majority of which quite general), which, most likely, indicates that members too did not fully grasp the nature of such associations or in most cases, considered them as simple amalgamations of individual persons.[26]

Therefore, the notion that the honor of inventing the corporation as a set institution belongs to Romans,[27] is fundamentally wrong, as Roman partnerships, *collegia* and associations were in essence different from modern corporations. Corporate law too in Ancient Rome, in modern sense, as noted above, existed only at a very primitive level and even the contours of a conception of limited liability were present only in their nascent form.[28] When discussion took place about Roman "corporations", an organized system was meant (and not a separate person) via which the members could realize their own rights.[29]

Certain commentators do see a notion of legal entity adumbrated in one of the entries of Roman Digests, where it looks like it talks about the establishment of corporations.[30] Others rightly indicate that, if the aforementioned paragraph truly signifies a corporation as a subject *independent* from its constituents through its personality, it seems quite odd, that such salient progress in legal abstraction left no trace with the exception of this one sentence.[31]

Remaining civil law scholars are far more critical and describe the Roman approach towards corporate law as "*ambiguous and unfortunate phrases*", which sow much confusion in modern law.[32] Others note, however, that Romans did have their own, special vision towards legal entities. It did not conform neither to modern fiction theory, according to which entities are merely fictions recognized

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26 For instance, on tombstones of association and *collegia* members words, such as "gathering", "settlement" or even "people" are used to designate such entities. Such general terms convey, that even for the members themselves such organizations represented merely conglomerations of individual persons and some separate abstract notion of a legal entity was entirely foreign to them. See: *Harland P.,* Greco-Roman Associations: Texts, Translations, and Commentary, Vol. II: North Coast of the Black Sea, Asia Minor, De Gruyter, Berlin, 2014, 97.

27 Such opinion was expressed by a famous English jurist and commentator *Sir William Blackstone* (1723-1780): „*The honor of originally inventing these political constitutions entirely belongs to the Romans.*" See: *Blackstone W.,* Commentaries on the Laws of England, Book I: Of the Rights of Persons, *Prest W. (Ed.),* Oxford University Press, Oxford, 2016, 304. Here it must be underlined, that in Blackstone's times, under the term of "corporation," a certain entity was meant, which was considered to be not a separate person, but a unity of constituent individuals (regardless of their number). Therefore, back then such parallels with Roman institutions were indeed possible, even if Roman law did not really have any equivalent to joint stock companies, more or less already established by 17th century in England (however in certain aspects, comparisons with Roman *Societas publicanorum* are indeed viable, which shall be discussed below.

28 *Crook J.,* Law and Life of Rome, Cornel University Press, Ithaca, New York, 1967, 206.

29 *Olivecrona K.,* Three Essays in Roman Law, Munksgaard, Copenhagen, 1949, 17.

30 See *Digesta* Book 3, Chapter 4 ("*societas neque Collegium neque huiusmodi Corpus passim omnibus habere Conceditur"...*).

31 *H. F. J.,* Review of Personality in Roman Private Law by P. W. Duff, The Cambridge Law Journal, Vol. 7, № 1, 1939, 160.

32 *Machen A. W.,* Corporate Personality, Harvard Law Review, Vol. 24, № 4, February, 1911, 255.

by state, nor to the theories of those for whom Roman associations were merely amalgamations of private individuals and nothing more. Like, for example, the Roman family, such entities were considered to be subjects, in which every constituent part (in this case – a constituent member) retained its individuality (*species*), while also simultaneously still forming something *else* by being a part thereof.[33] In this way, associations really did "exist" to Roman jurists in literal sense of the word. They were neither fictions, nor merely collections of individuals, even if their vision was closer to the latter rather than to the former.

As a conclusion, it might be said, that Roman attitude towards associations was engendered more by pragmatism and practical propriety and was not buttressed by any kind of theoretical foundation.[34] In spite of this, it would be sensible to offer a succinct overview of associations as was provided in Roman law as to better perceive the inception of the fundamental institutions of modern corporate law.

3. Roman Commercial (Capital) Entities

According to Roman law, if a person wanted to conduct business activities, he had only two actual choices organization-wise: *societas*[35] and *peculium*.[36] *Societas* itself could have been several types, of which, *societas publicanorum* undoubtedly is the most interesting.[37] However, separate discussion on each of these types is still in order.

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33 *Olivecrona K.,* Three Essays in Roman Law, Munksgaard, Copenhagen, 1949, 26-27. One must take into account the provisional division of subjects (*corpora* – may also be translated as "body", "material", "essence") into classes in the Roman law. The first class included private individuals, the second encompassed parts in the larger whole, which were subsumed to it, even if potentially still retaining their own essence (house window, wood pole) and the third category included those amalgamated subjects, which, while keeping their essence and individuality, still, in some sense, created, established other "subject" or to put it better, a certain new, distinct being. Roman associations too belonged to this last, third class. See Id. 18-31.

34 *Thomas J.,* Textbook of Roman Law. North Holland,Amsterdam, 1976, 475.

35 Can be translated as "partnership".

36 In spite of few other semantic significations, in case of business activities, *peculium* in general denoted such business conducted with property transferred to slaves by Roman master. See: *Berger A.,* Encyclopedic Dictionary of Roman Law, The American Philosophical Society, Philadelphia, 1953, 624. Others, however, see the beginnings of Roman corporate law exactly in *peculium*. See below.

37 *Fleckner A. M.,* Antike Kapitalvereinungen, Ein Beitrag zu den konzeptionellen und historischen Grundlagen der Aktiengesellschaft, Böhlau Verlag GmbH & Cie, Köln, 2010, 117 ff. If one takes Societas *publicanorum* as separate, then three forms will be the outcome. However, according to prevailing notions, *Societas publicanorum* constituted not a separate distinct form, but a drastically modified *Societas* as noted by the author above. Similarly, *Societas publicanorum* was more of an exceptional case that existed only during later stages of the Republic and first centuries of the Empire, while a standard *Societas* functioned from the beginning of Rome till its fall and even throughout Middle ages in an altered state. Therefore, it would be more appropriate to categorize *Societas publicanorum as* a special subtype of *Societas.*

3.1. *Societas* and Its Subtypes

Of Roman associations the most wide-spread and studied is undoubtedly *Societas*. Roman *Societas*, in essence, was a contract, under which members took upon themselves to achieve set goals[38] together.[39] *Societas* most like originated from ancient *consortium*,[40] which meant collective management of an inherited property by inheritors till its division. It is probable that this was one of the earliest forms of joint ownership, when property was not divided by shares, but was held in common for all inheritors.[41]

In Roman Law, two primary types of *societas* were distinguishable: *societas universalis* and *societas particularis*.[42] Essentially the first included transmission of private property of partners into joint ownership and carried a more permanent character, while the second was oriented towards accomplishing a single business activity and in actuality had characteristics more that of a joint venture in limited capacity.[43]

Roman *societas* had no real legal capacity to purchase goods or to hold any property in possession – all of this was available to its members only.[44] Each member could individually act to accomplish the aims of association, although he was obligated to share the profits with other partners.[45] For obligations taken partners themselves were directly responsible,[46] though one partner could demand compensation proportionate to the owned share from other partners as well.[47]

Societas could have been created for different reasons in almost any field, starting from cultivation of agricultural land and ending with offering grammar lessons.[48] Such association finished its existence easily, not only through the death of a partner or by his personal desire to leave the

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38 Naturally, this goal should not have been physically impossible, illegal or immoral, otherwise the contract would be considered null and void. *Zimmermann R.,* The Law of Obligations: Roman Foundations of Civil Tradition, Oxford University Press, Oxford, 1996, 454, fn. 21.

39 *Sohm R.,* Institutionen des Romisches Recht, 17. Aufl., Duncker & Humblot, Berlin 1949, 208.

40 This idea was expressed by Ancient Roman jurist *Gaius*. See: G 3.154a, Also: *Birks P.,* The Roman Law of Obligations, Oxford University Press, Oxford, 2014, 118, 260. *Laube D.,* Societas as Consensual Contract, The Cambridge Law Journal, Vol. 6, № 3, 1938, 382-383.

41 *Zimmermann R.,* The Law of Obligations: Roman Foundations of Civil Tradition, Oxford University Press, Oxford, 1996, 452.

42 *Coing H.,* Europäisches Provatrecht, Band I: Älteres Gemeines Recht, C.H. Beck'sche Verlagsbuchhandlung, München, 1985, 465.

43 Ibid.

44 *Sohm R.,* Institutionen des Romisches Recht, 17. Aufl., Duncker & Humblot, Berlin, 1949, 208.

45 *Schwind F.,* Römisches Recht. Teil 1: Geschichte. Rechtsgang. System des Privatrechtes, Springer Verlag, Wien, 1950, 323.

46 *Wieacker F.,* Haftungsformen des römischen Gesellschaftsrechts, Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Romanistische Abteilung (SZ), Band 54, Heft 1, Weimar, 1934, 35-79. *Hansmann H., Kraakmann R., Squire R.,* Incomplete Organizations: Legal Entities and Asset Partitioning in Roman Commerce, ECGI Working Paper Series in Law, Paper № 271/2014, October, 2014, 6, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2506334> [15.11.2020].

47 *Crook J.,* Law and Life of Rome, Cornel University Press, Ithaca, New York, 1967, 231.

48 *Fleckner A. M.,* Antike Kapitalvereinungen, Ein Beitrag zu den konzeptionellen und historischen Grundlagen der Aktiengesellschaft, Böhlau Verlag GmbH & Cie, Köln, 2010, 131.

association or partnership, but even in the case of simple alteration in the status of partners within such *societas*. "*No partnership can be formed for all time*" – as it is written in *Digest*.[49] Partnerships in general had an unstable character and was quite a risky endeavor – any partner could leave at any time. As *societas* was primarily thought of as a contract, Roman jurists were against automatic substitution when a partner died or left, as the old members had not concluded the contract with this new person. They had to draft a new contract. [50]

The issue of responsiblity should be also be accentuated – each partner's action, as long it was directed towards accomplishing objectives of the association, was extended to other partners as well and they were likewise liable for any responsibility. An exception was the case when the partner's action did not actually serve the purposes of the association and in such an instance, compensation of any loss could be demanded from other partners.[51]

Emphasized directly in literature is the fact, that in pre-industrial Roman society, *societas* was established mostly for non-financial purposes and much like modern partnerships, the stress was made not on contributions and other financial instruments and relations, but on collaboration and cooperation. [52] Here the temporary character of the partnerships must also be noted. With the exception of *societas publicanorum*, a normal *societas* could exist, at best, until the death of one of its partners. In actuality, it was far more probable, that after lapse of just a few years, the association (partnership) would cease to exist. However, even in spite of all this, these associations could achieve quite spectacular economic results when working together.[53] Simultaneously, certain instruments still existed, that allowed *societas* to have a more permanent footing and a continuous nature. In case of a family *societas*, the share could be transferred to a descendant of the passed-away partner and thereby, the establishment and continued operation of a legally new, but only slightly altered association was not excluded.[54]

Roman law recognized several types of *societas* without a strict classification and categorization thereof, complicating matters for modern civilists. Of other partnerships and associations, the Article shall temporarily touch upon the most wide-spread *societas omnium bonorum* and its subvarieties and probably the most distinctive and unique of them all – *societas publicanorum*.

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49 "*Nulla societatis in aeternum coitio est*". See: *Digesta* 17.2.70.

50 *Digesta* 17.2.65.11 (Paul. 32 ad ed.).

51 *Broekaert W.,* Joining Forces: Commercial Partnerships or Societates in the Early Roman Empire, Historia: Zeitschrift für Alte Geschichte, Band 61, Heft 2, Stuttgart, 2012, 228.

52 *Zwalve W. J.,* "Callistus's Case: Some Legal Aspects of Roman Business Activities, in: The Transformation of Economic Life under the Roman Empire, Proceedings of the Second Workshop of the International Network Impact of Empire (Roman Empire, c. 200 B.C. – A.D. 476), Nottingham, July 4-7, 2001, *Blois L., Rich J. (Eds.),* Amsterdam, 2001, 119.

53 A good example of this is *Monte Testaccio* ("pot montain" in Italian, *testae* was a kind of ancient Roman ceramics), an artificial mount consisting of discarded ancient Roman pottery. Judging from the names of the creators inscribed on the amphorae, majority were produced not by separate individuals, but by associations and partnerships. See: *Crook J.,* Law and Life of Rome, Cornel University Press, Ithaca, New York, 1967, 229.

54 *Broekaert W.,* Joining Forces: Commercial Partnerships or Societates in the Early Roman Empire, Historia: Zeitschrift für Alte Geschichte, Band 61, Heft 2, Stuttgart, 2012, 230.

A typical association in Roman law was *societas omnium bonorum.* It represented one of the foremost association types derived straight from the notion of *consortium*[55] and encompassed entire property of all constituent members at the moment of establishment.[56]

Other association types were essentially the same *societas omnium bonorum*, only their goals were different. For example, *societas negotiationis alicuius was* an entity created for a specific business sphere, while *societas rei unius* was intended for a single concrete business venture.[57] In the latter, after accomplishing the goal, the association ceased to exist automatically.[58]

Certain authors likewise distinguish between *societas omnium bonorum* and *societas universorum quae ex quaestu veniunt.* The latter did not include property conferred as a gift or inheritance. [59]

3.2. *Societas publicanorum* – Roman Joint Stock Company?

Among the subtypes of Roman *societas*, the *societas publicanorum,* which may be translated as an "association of public procurers",[60] elicits the most interest. Due to its drastically distinguishable properties, for some authors it constitutes one of the greatest accomplishments of Roman private law – a forerunner to a joint stock company. The truth, however, may be far more prosaic.

Societas publicanorum is still quite an intriguing institution in light of the fact, that it was intended to attract and manage wast sums of capital. The association was oriented towards participation in public procurement, encompassing mass-scale building projects (bridges, aqueducts, temples), collection and management of state receipts and taxes and other.[61] Certain authors here perceive a Roman prototype to a joint stock company, the capital of which was divided in shares, also representing a true legal entity, no less no more.[62]

In some respects such perception is understandable: much like 17th century joint stock companies, *societates publicanorum* were also established with state permission to further state

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55 *Thomas J.,* Textbook of Roman Law. North Holland, Amsterdam, 1976, 301. *Ankum H.,* Societas Omnium Bonorum and Dos in Classical Roman Law, Israel Law Review, Vol. 29, Issue 1-2, 1995, 106. *Laube D.,* Societas as Consensual Contract, The Cambridge Law Journal, Vol. 6, № 3, 1938, 390, fn 29.

56 *Buckland W. W.,* A Text-book of Roman law from Augustus to Justinian, Cambridge University Press, Cambridge, 1921, 504.

57 *Fleckner A. M.,* Antike Kapitalvereinungen, Ein Beitrag zu den konzeptionellen und historischen Grundlagen der Aktiengesellschaft, Böhlau Verlag GmbH & Cie, Köln, 2010, 127. In case of *societas rei unius* activities could be both commercial as well as non-commercial. See: *Buckland W. W.,* A Text-book of Roman law from Augustus to Justinian, Cambridge University Press, Cambridge, 1921, 505.

58 *Broekaert W.,* Joining Forces: Commercial Partnerships or Societates in the Early Roman Empire, Historia: Zeitschrift für Alte Geschichte, Band 61, Heft 2, Stuttgart, 2012, 230.

59 *Thomas J.,* Textbook of Roman Law. North Holland, Amsterdam, 1976, 301.

60 *Publicani* were public procurers, who belonged to Roman aristocracy, namely, the rank of Equites.

61 *Malmendier U.,* Societas Publicanorum: Staatliche Wirtschaftsaktivitäten in den Händen privater Unternehmer, Böhlau Verlag GmbH, Köln, 2002, 31.

62 *Malmendier U.,* Roman Shares, in: The Origins of Value: The Financial Innovations That Created Modern Capital Markets*, Goetzmann W. N., Rouwenhorts K. G. (Eds.),* Oxford University Press, Oxford, 2005, 36-40.

policies. This included public and administrative works, such as supplying Roman legions, aqueduct building and, probably the most important of them all – tax collection.[63] According to the supporters of this thesis, the *societas* had its stock divided into transferable shares,[64] had shareholders who held these shares,[65] had its very own manager,[66] limited liability[67] and even separate legal entity, even if the latter was theoretically inchoate and not fully thought-out.[68] Unlike other *societas*, the *societas publicanorum* did not cease to exist with the death of one of its members. Some authors even grant[69] it its own distinct board of directors[70] or bestow an ability to sell the "shares" to attract investments.[71] According to them, *societas publicanorum* is a veritable manifestation of what heights the Roman economy truly achieved at its apex and that already in the age of Early Empire it was oriented towards market economy, even more than the Middle Ages economy many centuries later.[72]

However, significant differences between *societas publicanorum* and modern joint stock companies must also be mentioned. First and foremost, *societas publicanorum* was intended for public procurement only[73] and existed only within a certain timeframe (3rd century BC-3rd century

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63 An association of tax and duty collectors was called *societas vectigalium* and was itself a variation on *societas publicanorum.*

64 In parts – *partes*. However, certain authors directly use the modern term "share". See: *Malmendier U.,* Societas Publicanorum: Staatliche Wirtschaftsaktivitäten in den Händen privater Unternehmer, Böhlau Verlag GmbH, Köln, 2002, 91-116.

65 The public procurers – *publicani*. They were considered members *(socii)* of the association.

66 *Manceps*. He was elected by members themselves and had the obligation to acquire rights to certain public projects at public "auctions" (in effect a precursor system to modern state tender).

67 Limited liability was a choice and was contingent on the member itself. It seems that, much like modern limited partnership (German *Kommanditgesselschaft*) today, the member could choose either unlimited liability and ability to participate in management or confine to only made contributions and refrain from managing the entity. See: *Malmendier U.,* Societas Publicanorum: Staatliche Wirtschaftsaktivitäten in den Händen Privater Unternehmer, Böhlau Verlag, Köln, 2002, 261-268.

68 For more details, see: *Hawk B.,* Law in Commerce in Pre-Industrial Societies, Brill – Nijhoff, Leiden, 2015, 231-233. *Malmendier U.,* Roman Shares, in: The Origins of Value: The Financial Innovations That Created Modern Capital Markets*, Goetzmann W. N., Rouwenhorts K. G. (Eds.),* Oxford University Press, Oxford, 2005, 36-40. *Malmendier U.,* Societas Publicanorum: Staatliche Wirtschaftsaktivitäten in den Händen privater Unternehmer, Böhlau Verlag GmbH, Köln, 2002, 251-259.

69 *Balsdon J.,* Roman History, 65-50 B.C.: Five Problems. Journal of Roman Studies, Vol. 52, Issue 1-2, November 1962, 135.

70 *Decumani*. Here most likely the collectors of a tithe *(decuma)* are meant. The purpose of these persons is contested. Some authors give them managerial, directorial or merely supervisory roles. See: *Badian E.,* Publicans and Sinners: Private Enterprise in the Service of the Roman Republic, Cornell University Press, Ithaca, New York, 1972, 73.

71 *Hollander D .B.,* Money in the Late Roman Republic, Brill, Leiden, 2007, 49.

72 *Malmendier U.,* Law and Finance "at the Origin", Journal of Economic Literature, Vol. 47, № 4, December, 2009, 1079.

73 According to commentators, the reason, as to why entities of such type were not established in private sphere must lie in the quite anti-commercial mentality of ancient Roman society, political climate or even in the simple fact that, majority of private enterprises in Rome did not require an organization as complex as *societas publicanorum*. *Hansmann H., Kraakman R., Squire R.,* Law and the Rise of the Firm, Harvard Law Review, Vol. 119, 2005, 1363-1364.

AD).[74] The death of *manceps* (manager) still meant the dissolution of the *societas* as getting access to public procurement contracts was still contingent on him.[75] As has already been noted even in the case of the more complex *societas publicanorum*, it was still not regarded as a separate legal entity, as this notion was simply foreign to Roman law.

The theory that *societas publicanorum* was a true Roman joint stock company, with its own shares and institutionalized limited liability, always occasioned healthy scepticism and today is subject to even more increasing criticism. For a myriad of authors, *societas publicanorum* was the forerunner not to modern joint stock company, but rather to open limited liability partnership.[76] The phrase uttered by Roman historians, that every citizen had a share (or, to put it better – parts) in such "companies" is labelled as, at the very least, as a "fantastic exaggeration" by some authors[77] and more likely, in spite of large-scale financial transactions at first glance, the number of partners did not much exceed those of a normal *societas*. [78] The only difference was that personal property and wealth of the members of *societas publicanorum* was disproportionately larger than those of members of standards associations. This is understandable – they had to undertake massive public projects and members themselves too were from the Roman aristocracy. Other critics indicate, that despite the usage of first-hand accounts, such bold statements are fundamentally predicated on controversial interpretation of texts, additionally exacerbated by dubious translation.[79]

To conclude, it can be said that such criticisms are not without merit and considering the ancient Roman social, cultural and most importantly economical conditions, it is more likely that even to Romans, *societas publicanorum* represented nothing more than a modified *societas* granted with specific properties due to its connection with the state. This was not a result of some cognized process, stemming from apprehension of the abstract concept of corporate legal personality.[80] Instead of drawing parallels with contemporary joint stock companies and corporations, certain writers deem it

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74 The precise timeframe of *Societas publicanorum*'s existence is unknown. In all likelihood, it began in third century BC (*Hansmann H., Kraakman R., Squire R.,* Law and the Rise of the Firm, Harvard Law Review, Vol. 119, 2005, 1360) and ceased to exist in third century AD, during or after the Crisis of the Third Century. By second century AD they were stripped of their right to collect taxes, but not completely and even then, they were a formidable force. See: *Crook J.,* Law and Life of Rome, Cornel University Press, Ithaca, New York, 1967, 234. *Malmendier U.,* Societas Publicanorum: Staatliche Wirtschaftsaktivitäten in den Händen privater Unternehmer, Böhlau Verlag GmbH, Köln, 2002, 61-64.

75 But in case of *societas publicanorum*, Roman government eventually allowed association members to replace their *manceps*.

76 *Hansmann H., Kraakman R., Squire R.,* Law and the Rise of the Firm, Harvard Law Review, Vol. 119, 2005, 1362, fn.72. Here these authors mean a limited partnership. In Georgian corporate law the closest, albeit not identical legal form of entrepreneurship would be the commandite society.

77 *Crook J.,* Law and Life of Rome, Cornel University Press, Ithaca, New York, 1967, 234-235.

78 *Fleckner A. M.,* Antike Kapitalvereinungen, Ein Beitrag zu den konzeptionellen und historischen Grundlagen der Aktiengesellschaft, Böhlau Verlag GmbH & Cie, Köln, 2010, 207-215.

79 *Poitras G., Geranio M.,* Trading of Shares in the Societates Publicanorum?, Explorations in Economic History, Vol. 61, July 2016, 97, 112-116.

80 *Thomas J.,* Textbook of Roman Law. North Holland, Amsterdam, 1976, 472.

more appropriate to present *societas publicanorum* mainly as an instrument for attracting capital,[81] with a mere appellation of a "capital association".[82]

3.3. *Peculium*

Peculium was property conveyed by Roman *pater familias* to someone else (usually to a slave, but it could have also been his son) for management purposes, as well as to conduct business.[83] As Roman *pater familias* in theory had absolute, near unrestricted power towards both his slaves and his children alike, in actuality we must consider both his son and the slave as mere instruments for furthering his own interests.

The function of *peculium* was quite simple. Due to antipathy towards trade from Romans (and especially the Roman aristocracy) as well as to generally ease workload through delegation, a Roman citizen could transfer his property to his slave,[84] who could have been quite competent and obtain large profits on behalf of the master.

From business standpoint, the importance of *peculium* should be considered as quite minor, as even in the case of richest Romans, it was not used to invest large sums of capital and the slave too, at best, represented his or her master in small or medium enterprises.[85] One might argue, whether or not it can even be considered as a *form* of entrepreneurship.

In spite of this, according to one of more interesting opinions in literature, it was through slaves that Roman law managed to depersonalize business ventures, as by delegating, via *peculium* to the slave, the latter could de-facto represent the master (direct representation, as was noted above was unknown to Roman law) and such activities could be continued even after the death of the owner or him leaving the association.

More importantly, the liability could be limited to the property given to the slave through *peculium* and creditors would have no claim the master's property. This is quite similar to the economical purposes of establishing modern corporations.[86] Of course, this should not be interpreted, as if though *peculium* was identical to modern corporate legal systems. It merely illustrates, that *de facto*, Roman citizens could resort to other, from modern perspective, wholly unethical and immoral

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81 Germ. *Kapitalvereinung*.

82 More in detail about *Societas publicanorum* see: *Fleckner A. M.,* Antike Kapitalvereinungen, Ein Beitrag zu den konzeptionellen und historischen Grundlagen der Aktiengesellschaft, Böhlau Verlag GmbH & Cie, Köln, 2010, 145-215.

83 *Kharaishvili A.,* Interrelation Between the Piercing the Corporate Veil and Limited Liability Principles in Corporate Law, Journal of Law, № 2, 2017, 123-128.

84 Hereinafter the paper shall limit discussion to slaves in particular, as a „classic" example of *peculium*. Conveying property to children (as a rule of thumb, to sons) for business purposes was more infrequent and generally, such property were amounts given out as expenses to children by fathers.

85 *Fleckner A. M.,* Antike Kapitalvereinungen, Ein Beitrag zu den konzeptionellen und historischen Grundlagen der Aktiengesellschaft, Böhlau Verlag GmbH & Cie, Köln, 2010, 235-237.

86 For more details, see: *Abatino B., Dari-Mattiacci G., Perotti E.C.,* Depersonalization of Business in Ancient Rome, Oxford Journal of Legal Studies, Vol. 31, № 2, 2011, 365-389.

methods to accomplish in essence same end goals, that today's capital associations with limited liability in modern corporate law are utilized for.

4. Roman Non-Capital (Non-Entrepreneurial) Entities

Apart from entrepreneurial activities, associations in Ancient Rome could also be created for non-business purposes as well. Discussing them here is important in light of the fact, that some of them (specifically the *universitas*) from institutional perspective were close to modern understanding of legal persons, but, of course, were not fully equivalent to it. There were a plethora of non-capital associations in Rome, of which several forms must be named here: *collegia*, *universitas* and *sodalitates (sodalicia).*

Here too, the issue of terminology must be underlined. In ancient Rome, a whole range of terms were applied to towns, communities and other municipalities in general, including *universitas*. Given that, oftentimes the town municipality represented one of the more complex organizations, acting on behalf of the town as a whole as well as owning property, for Roman jurists (or at least for those, whose works are extant), it represented a foremost example of a well-established *universitas*.[87] Others, such as *collegia* and *sodalitates (sodalicia)* were multiprofile non-business (non-entrepreneurial) entities.

4.1. *Collegia*

Roman *collegia*, evident from the very name itself, represented a collegial association of individuals, whether based on common professional grounds (approximating them with guilds of the Middle Ages) or simply to achieve common goals. *Collegia* could include quite a lot of people: several hundred or perhaps even thousands.[88]

Despite the fact that carrying out business was not an explicit goal of an association, sources do attest to trade done by *collegia*.[89] These *collegia* were such an everyday occurrence and wide-spread form of conducting business, that it had an unexpected adverse effect on modern legal science: as *collegia* were quite common and universally accepted for a long stretches of time, the Roman law

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87 Concerning the absence of "technical language" (*technologische Sprache*) and technical terminology in general in Roman law, see: *Duff P. W.,* Personality in Roman Private Law, Cambridge, Cambridge University Press, 1938, 37, fn.4.

88 *Ausbüttel F. M.,* Untersuchungen zu den Vereinen im Westen des Römischen Reiches, M. Laßleben, Kallmünz, 1982, 35.

89 *Plutarch* in his *Parallel Lives* notes, how the Roman king *Numa Pompilius* extended rights for professional associations to form, gather and conduct their business. See: *Plutarch,* Plutarch's Lives, Vol. I: Theseus and Romulus. Lycurgus and Numa. Solon and Publicola (Loeb Classical Library № 46), *Perrin B. (Trans.),* Harvard University Press, Cambridge, 1967, 365-367. For a critical assessment, where existence of *collegia* during such an early period is put under question, see: *Gabba E.,* The Collegia of Numa: Problems of Method and Political Ideas, The Journal of Roman Studies, Vol. 74, 1984, 81-86.

simply ignored them and did not even consider it necessary to regulate them in much detail.[90] Therefore, the discussion must inevitably proceed from scant records still extant today.

Collegium could have been granted the *corpus habere* privilege, which would allow it to own property, be represented by a representative and file a lawsuit in court. They, as a rule, needed state permission to be registered. This did not mean recognition of their legal personality and separateness, but rather a mere permit for the persons associated within *collegia* to gather.[91]

Professional *collegia* in ancient Rome could be of different kinds: of poets,[92] weavers,[93] bakers,[94] burial ones[95] and other.[96] Aside from professional *collegia*, religious ones were quite abundant in ancient Rome as well,[97] dedicated to a specific god of pagan Roman pantheon.[98] In the eye of the law, they were practically identical and differed only perhaps by their respective sphere of activities.[99]

As noted in the literature, in reality only a small part of these *collegia* had the powers somewhat approximate to that of corporate personality, meaning the right to own property and be present at the court and the Roman law conferred such privilege only to those handful that were sufficiently strong financially for them to even request it.[100]

For the purposes of the present Article, Roman *collegia* is of less importance, as there is not even a hint in ancient literature, that they were ever considered to be anything more than (mainly) a non-entrepreneurial association of private natural persons.

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90 *Duff P. W.,* Personality in Roman Private Law, Cambridge, Cambridge University Press, 1938, 107.

91 *Thomas J.,* Textbook of Roman Law. North Holland, Amsterdam, 1976, 473.

92 *Collegium poetarum*. See: *Crowther N. B.,* The Collegium Poetarum at Rome: Fact and Conjecture, Latomus, Vol. 32, Issue 3, 1973, 575-560.

93 *Collegia centonariorum*.

94 *Collegia pistorum.*

95 *Collegia funeraticia*. Concerning this in more detail, see: *Sano M.,* Collegia Through Their Funeral Activities: New Light on Sociability in the Early Roman Empire, Espacio Tiempo y Forma Serie II Historia Antigua, Issue 25, 2012, 393-414. What must also be mentioned here is, that there was no special form of a burial *collegia* and other associations took up such functions in general as well. *Liu J.,* The Guilds of Textile Dealers in the Roman West, Brill, Leiden, 2009, 265-266. *Perry J. S.,* The Roman Collegia: The Modern Evolution of Ancient Concept, Brill, Leiden, 2006, 23-60.

96 For an incomplete list, see: *Liu J.,* Professional Associations, in: The Cambridge Companion to Ancient Rome, *Erdkamp P. (Ed.),* Cambridge University Press, Cambridge, 2013, 356.

97 *Collegia sacerdotum*. See: *Rüpke J.,* Collegia sacerdotum – Religiose Vereine in der Oberschicht.' in: Antike Vereine: Studien und Texte zu Antike und Christentum*, Egelhaaf-Gaiser U., Schäfer A. (Eds.),* Mohr Siebeck, Tübingen, 2002, 41-68.

98 The activities of *collegia* can be roughly divided in four general areas: cult, religious and festive establishments; burial associations and state procurement; mutual assistance and probably the most important – political activity. See: *Ausbüttel F.M.,* Untersuchungen zu den Vereinen im Westen des Römischen Reiches, M. Laßleben, Kallmünz, 1982, 49-98.

99 *Duff P. W.,* Personality in Roman Private Law, Cambridge, Cambridge University Press, 1938, 129.

100 Ibid, 149-150.

4.2. *Universitas*

Of ancient Roman institutions incontrovertibly the most thought-provoking was *universitas*. It stood the closest to modern conception of legal entity. With time, Roman jurists began to refer to recognized legal right-bearing groups as *universitas*, as collective persons.[101] As an organizational form, it was used for various, mostly non-commercial, but especially for religious and state entities.[102]

The precise translation of *universitas* is a thorny issue. It was never a strictly defined technical term and only loosely denoted both a specific organization as well as unity, a group as a whole. The most correct approach would be to define it as something "entire", "universal" which contrasts and is juxtaposed with its own very parts or a unity (entity) which is different from its own constituent members.[103]

As mentioned above, this entity elicits the most interest, as it forms the basis for certain opinions, that Romans had already developed the notion of corporate personality, even if in a non-organized and informal fashion. However, those legal scholars, who believe that Romans still managed to arrive at the concept of a legal person, mainly base their arguments on a single phrase[104] made by *Ulpianus* in Roman Digests (Pandects), which due to translation difficulties is problematic.[105]

This Paper already touched upon the very specific Roman approach towards the nature of associations and this manifested itself the strongest in relation to *universitas*. For Romans, a legal entity, so to speak, was not a fiction, but represented a valid, genuinely existing composite being different from its constituent members. This conception is very close to the modern understanding of legal personalities, even if it is obvious that such a concept was wholly alien to ancient Romans. Therefore a troubling question emerges. If a legal entity was neither a fiction, nor a mechanical amalgamation of constituent members, *what* exactly was it?[106]

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101 Ibid, 37.

102 *Fleckner A. M.,* Antike Kapitalvereinungen, Ein Beitrag zu den konzeptionellen und historischen Grundlagen der Aktiengesellschaft, Böhlau Verlag GmbH & Cie, Köln, 2010, 336.

103 *Duff P. W.,* Personality in Roman Private Law, Cambridge, Cambridge University Press, 1938, 36-37.

104 Digesta 3, 4, 7.

105 "*Si quid universitati debetur, singulis non debetur, nec quod universitas singuli debet*". "*If something is owed to the whole, it is not owed each to each, nor do each individually owe what the whole owes."* See following English translation in: *Felmeth A. X., Horwitz M.,* Guide to Latin in International Law, Oxford University Press, Oxford, 2009, 262. In other translations, it does mention constituent members of an entity (*universitas*, as in German *Körperschaft*) not being held liable for its debts: *Hausmanniger H., Selb W.,* Römisches Privatrecht, 6. Aufl., Böhlau Verlag, Wien, 1991, 139. This last iteration leaves an impression as if Romans did indeed recognize limited liability, which, in turn, indicates that they arrived, even if indirectly and unsystematically, at a certain notion of a legal entity. Unfortunately, our inability to translate precisely impedes understanding of what exactly did *Ulpianus* meant in this sentence. The same *universitati* may be understood as "association" "corporation", but also as "collection", "unity". This formulation also does not say anything about internal relations and generally lacks details, See: *Fleckner A. M.,* Antike Kapitalvereinungen, Ein Beitrag zu den konzeptionellen und historischen Grundlagen der Aktiengesellschaft, Böhlau Verlag GmbH & Cie, Köln, 2010, 336.

106 *Spaak T.,* A Critical Appraisal of Karl Olivecrona's Legal Philosophy, Springer Verlag, Stockholm, 2014, 222.

Modern legal science does have an answer to this conundrum: a legal person is a genuine legal subject with its own distinct legal personality, separate of constituent individuals. Romans however, as it seems, did not formulate any ultimate answers to this question. As noted above, much like a Roman family, partnerships and entities were associated with a unity comprised of private individuals in a way that constituent individuals maintained their own "beingness". This, admittedly, does have similarities with the modern notion of a legal entity, but is still a different concept. It must be said, however, that *universitas* represented the pinnacle of existing (or rather spontaneously thought up in a highly non-systematic manner) theoretical ruminations (if any) concerning legal personality in ancient Roman law[107] and by this, of all ancient Roman associations it stood the closest to modern legal entity.

4.3. *Sodalitates (Sodalicia)*

Of all the ancient Roman associations, only the most scant information is available on *sodalitates* (i.e. *sodalicia*),[108] forcing us to reassemble the whole picture only based on these materials to draw necessary conclusions.

Due to lack of classification in Roman law, it is probable to think that much like *collegia* or *societas*, *sodalitates too* denoted a collection of persons working together towards a common goal. However, it should be emphasized, that unlike these aforementioned entities, *sodalitates* bore distinctively negative connotations and the government was definitely not disposed to it kindly. In any case, surviving texts certainly do allow for such an unfavorable conclusion.

In 55 BC, under the auspices of *Consul Marcus Licinius Crassus*,[109] Roman Senate adopted a law, that prohibited establishment of criminal groups for the avowed purpose of intimidating or bribing voters.[110] To designate such groups, precisely the term *sodalicia* was used and for the purposes of the Law, such *sodalicia* were named to be electoral combines,[111] bribing voters during elections.[112]

In the municipal law issued by Emperor Domitian[113] (*Lex Irnitana*), the *sodalicium* and *collegium* are distinguished from each other with the additional provision, that neither could be formed

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107 *Duff P. W.,* Personality in Roman Private Law, Cambridge, Cambridge University Press, 1938, 37.

108 In the *Encyclopedic Dictionary of Roman Law*, the *sodalitates* and *sodalicia* are placed under the same entry. In general, it is hard to find any real distinction between these two and it would be appropriate to discuss them together. See: *Berger A.,* Encyclopedic Dictionary of Roman Law, The American Philosophical Society, Philadelphia, 1953, 709-710.

109 *Marcus Licinius Crassus* (115-53 BC).

110 *Lex Licinia de sodaliciis.* See: *Gruen E. S.,* The Last Generation of the Roman Republic, University of California Press, Berkeley, 1995, 230-231.

111 For electoral combines, see: *Bauman R. A.,* Lawyers in Roman Transitional Politics: A Study of Relations between the Roman Jurists and the Emperors from Augustus to Hadrian, C.H. Beck'sche Verlags-buchhandlung, München, 1985, 32.

112 *Mouritsen H.,* Plebs and Politics in the Late Roman Republic, Cambridge University Press, Cambridge, 2001, 149-150. Other indicate, that under *sodaliciis* we should understand *sodalitas* members meaning that the law was directed against the members. See: *Cohn M.,* Zum Römischen Vereinsrecht: Abhandlungen aus der Rechtsgeschichte, Habilitationsschrift, Weidmannsche Buchhanglung, Berlin, 1873, 66-67.

113 *Domitianus* (51 AD-96 AD).

for the purposes of conspiracy.[114] Otherwise the conspirators would have to pay an astronomical fine.[115] Some authors presume, that this Law reflected quite well the suspicious attitude towards human associations by Roman legislation – the former, while not directly prohibited, were still subject to certain preconditions and requirements by the legislator to ensure, than no anti-state conspiracy would brew within such groups.[116] Therefore, these laws were aimed at maintaining order and preventing the emergence of illegal or dangerous associations. [117]

Taking aforementioned circumstances into account, it would be appropriate to consider *sodalitates (*i.e. *sodalicia*) as a group or grouping of people, created with more political or social cause rather than entrepreneurial, which forced Roman government to pay closer attention to them than to *collegia* or other associations. Concurrently, as was noted above, there was significant issue of terminological confusion in Roman law and it is quite possible than the *sodalitates was* not wholly different from *collegium* function-wise. Some authors, in fact, do treat them factually identical and *collegia* and *Sodalicia* as just synonyms.[118]

5. Conclusion

As a conclusion to present Article, the conception of legal entity of Roman law can be summarised in that, such notion, from purely legal standpoint, was foreign to Romans. Even the organizationally and structurally complex *societas publicanorum* or, more importantly, the *universitas*, recognized as the "other" by Roman jurists, the legal theory in ancient Rome simply did not achieve the point to make one small, but still important step – to divorce the individuals and associations, in the abstract sense, from each other. Ancient Roman private law, albeit it is widely recognized today as the precursor to both continental civil and common law, simply lacked systematization and abstract concepts. As to why the full formulation and systematization of legal persons did not occur, can be explained by a plethora of reasons: economical, social, historical, etc.

In spite of the foregoing, the Paper showed quite a few interesting aspects of Roman law: associations which, while were not considered as separate persons or subjects of law (strictly speaking), sill were thought of as something *else*, which was, however, inseparable from its constituent members. As to what was this "something else", Roman jurists did not have a straightforward answer. Despite the aforementioned, *societas* and *universitas* originating in Roman law spread widely in Middle Ages and influenced the formation of a fully-fledged legal entity.

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114 *González J., Crawford M. H.,* The Lex Irnitana: A New Copy of the Flavian Municipal Law, The Journal of Roman Studies, Vol. 76, 1986, 172, 223-224.

115 Namely 10 000 Roman *sestercia*. For comparison, the annual income of a Roman Legionnaire during time of Emperor Domitian was only 1200 *sestercia*. See: *Speidel M. A.,* Roman Army Pay Scales, The Journal of Roman Studies, Vol. 82, November 1992, 87.

116 An example would be the refusal of *Emperor Trajan* to Asia Minor Governor *Plinius the Younger* to permit the establishment of firemen *collegia*. The Emperor saw the danger of conspiracy even here: *Duff P. W.,* Personality in Roman Private Law, Cambridge, Cambridge University Press, 1938, 113-114.

117 *Venticinque P. F.,* Honor Among Thieves: Craftsmen, Merchants, and Associations in Roman and Late Roman Egypt, University of Michigan Press, Ann Harbor, 2016, 174-175.

118 *Duff P. W.,* Personality in Roman Private Law, Cambridge, Cambridge University Press, 1938, 112, 142.

Therefore, it is indisputable, that, certain, even if not direct parallels can be drawn between modern joint stock or limited liability companies, even if such comparisons can be accentuated due to general organizational and essential structural similarities rather than from theoretical underpinnings, with the literal meaning of the word.

Bibliography:

1. *Abatino B., Dari-Mattiacci G., Perotti E.C.,* Depersonalization of Business in Ancient Rome, Oxford Journal of Legal Studies, Vol. 31, № 2, 2011, 365-389.
2. *Ankum H.,* Societas Omnium Bonorum and Dos in Classical Roman Law, Israel Law Review, Vol. 29, Issue 1-2, 1995, 106.
3. *Aubet M. A.,* Commerce and Colonization in the Ancient Near East, Cambridge University Press, Cambridge, 2013, 339.
4. *Ausbüttel F. M.,* Untersuchungen zu den Vereinen im Westen des Römischen Reiches, M. Laßleben, Kallmünz, 1982, 35, 49-98.
5. *Badian E.,* Publicans and Sinners: Private Enterprise in the Service of the Roman Republic, Cornell University Press, Ithaca, New York, 1972, 73.
6. *Balsdon J.,* Roman History, 65-50 B.C.: Five Problems. Journal of Roman Studies, Vol. 52, Issue 1-2, November 1962, 135.
7. *Bauman R. A.,* Lawyers in Roman Transitional Politics: A Study of Relations between the Roman Jurists and the Emperors from Augustus to Hadrian, C.H. Beck‘sche Verlagsbuchhandlung, München, 1985, 32.
8. *Berger A.,* Encyclopedic Dictionary of Roman Law, The American Philosophical Society, Philadelphia, 1953, 624, 709-710.
9. *Berman H. J.,* Law and Revolution: The Formation of the Western Legal Tradition, Harvard University Press, Cambridge, 1983, 149-150, 215-216.
10. *Birks P.,* The Roman Law of Obligations, Oxford University Press, Oxford, 2014, 118, 260.
11. *Blackstone W.,* Commentaries on the Laws of England, Book I: Of the Rights of Persons, *Prest W. (Ed.),* Oxford University Press, Oxford, 2016, 304.
12. *Broekaert W.,* Joining Forces: Commercial Partnerships or Societates in the Early Roman Empire, Historia: Zeitschrift für Alte Geschichte, Band 61, Heft 2, Stuttgart, 2012, 228, 230.
13. *Brunt P. A.,* The 'Fiscus' and Its Development, The Journal of Roman Studies, Vol. 56, 1966, 85.
14. *Buckland W. W.,* A Text-book of Roman law from Augustus to Justinian, Cambridge University Press, Cambridge, 1921, 176-177, 504-505.
15. *Crook J.,* Law and Life of Rome, Cornel University Press, Ithaca, New York, 1967, 206, 229, 231, 234-235.
16. *Crowther N. B.,* The Collegium Poetarum at Rome: Fact and Conjecture, Latomus, Vol. 32, Issue 3, 1973, 575-560.
17. *Cohn M.,* Zum Römischen Vereinsrecht: Abhandlungen aus der Rechtsgeschichte, Habilitationsschrift, Weidmannsche Buchhanglung, Berlin, 1873, 66-67.
18. *Coing H.,* Europäisches Provatrecht, Band I: Älteres Gemeines Recht, C.H. Beck’sche Verlagsbuchhandlung, München, 1985, 465.

19. *Duff P. W.,* Personality in Roman Private Law, Cambridge, Cambridge University Press, 1938, 1-25, 36-37, 50, 55-58, 107, 112-114, 129, 142, 149-150.
20. *Elyashevych V.,* Legal Person, Its Origin and Functions in Roman Private Law, Saint-Petersburg, Schredder Typolitogtaphy, 1910, 65-95 (in Russian).
21. *Felmeth A. X., Horwitz M.,* Guide to Latin in International Law, Oxford University Press, Oxford, 2009, 262.
22. *Finley M. I.,* The Ancient Economy, University of California Press, Berkeley, 1999, 141.
23. *Fleckner A. M.,* Antike Kapitalvereinungen, Ein Beitrag zu den konzeptionellen und historischen Grundlagen der Aktiengesellschaft, Böhlau Verlag GmbH & Cie, Köln, 2010, 35, 117, 127, 131, 145-215, 235-237, 336.
24. *González J., Crawford M. H.,* The Lex Irnitana: A New Copy of the Flavian Municipal Law, The Journal of Roman Studies, Vol. 76, 1986, 172, 223-224.
25. *Gruen E. S.,* The Last Generation of the Roman Republic, University of California Press, Berkeley, 1995, 230-231.
26. *Hawk B.,* Law in Commerce in Pre-Industrial Societies, Brill – Nijhoff, Leiden, 2015, 230-233.
27. *Hansmann H., Kraakmann R., Squire R.,* Incomplete Organizations: Legal Entities and Asset Partitioning in Roman Commerce, ECGI Working Paper Series in Law, Paper № 271/2014, October, 2014, 6, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2506334> [15.11.2020].
28. *Hansmann H., Kraakman R., Squire R.,* Law and the Rise of the Firm, Harvard Law Review, Vol. 119, 2005, 1360, 1362-1364.
29. *Harland P.,* Greco-Roman Associations: Texts, Translations, and Commentary, Vol. II: North Coast of the Black Sea, Asia Minor, De Gruyter, Berlin, 2014, 97.
30. *Hausmanniger H., Selb W.,* Römisches Privatrecht, 6. Aufl., Böhlau Verlag, Wien, 1991, 139.
31. *H. F. J.,* Review of Personality in Roman Private Law by *P. W. Duff*, The Cambridge Law Journal, Vol. 7, № 1, 1939, 160.
32. *Hollander D. B.,* Money in the Late Roman Republic, Brill, Leiden, 2007, 49.
33. *Kaser M.,* Roman Private Law, 4th Ed., *Dannenbring R. (Trans.),* University of South Pretoria, Pretoria, 1984, 93, 95-96.
34. *Kaser M.,* Das Römische Privatrecht, Erster Abschnitt, C.H. Beck'sche Verlagsbuchhandlung, München, 1971, 605.
35. *Khanna V.,* Business Organizations in India Prior to the British East India, in: Research Handbook on the History of Corporate and Company Law*, Wells H. (Ed.),* Edward Elgar Publishing, Cheltenham, 2018, 33-64.
36. *Kharaishvili A.,* Interrelation Between the Piercing the Corporate Veil and Limited Liability Principles in Corporate Law, Journal of Law, №2, 2017, 123-128.
37. *Laube D.,* Societas as Consensual Contract, The Cambridge Law Journal, Vol. 6, № 3, 1938, 382-383, 390.
38. *Lehmann K.,* Die Geschichtliche Entwicklung des Aktienrechts bis zum Code de Commerce, Carl Heymanns Verlag, Berlin, 1895, 3-4.
39. *Liu J.,* The Guilds of Textile Dealers in the Roman West, Brill, Leiden, 2009, 265-266.
40. *Liu J.,* Professional Associations, in: The Cambridge Companion to Ancient Rome, *Erdkamp P. (Ed.)*, Cambridge University Press, Cambridge, 2013, 356.

41. *Machen A. W.,* Corporate Personality, Harvard Law Review, Vol. 24, №4, February, 1911, 255.
42. *Malmendier U.,* Roman Shares, in: The Origins of Value: The Financial Innovations That Created Modern Capital Markets*, Goetzmann W. N., Rouwenhorts K. G. (Eds.),* Oxford University Press, Oxford, 2005, 36-40.
43. *Malmendier U.,* Law and Finance "at the Origin", Journal of Economic Literature, Vol. 47, № 4, December 2009, 1079.
44. *Malmendier U.,* Societas Publicanorum: Staatliche Wirtschaftsaktivitäten in den Händen privater Unternehmer, Böhlau Verlag GmbH, Köln, 2002, 31, 61-64, 91-116, 251-259, 261-268.
45. *Mauss M.,* A Category of the Human Mind: The Notion of Person; The Notion of Self, *Halls W. D. (Trans.),* in: The Category of the Person: Anthropology, Philosophy, History, *Carrithers M., Collins S., Lukes S. (Eds.)*, Cambridge University Press, Cambridge, 1985, 14-15.
46. *Mouritsen H.,* Plebs and Politics in the Late Roman Republic, Cambridge University Press, Cambridge, 2001, 149-150.
47. *Mousourakis G.,* Fundamentals of Roman Private Law, Springer Verlag, Berlin, 2012, 85.
48. *Olivecrona K.,* Three Essays in Roman Law, Munksgaard, Copenhagen, 1949, 5, 17, 26-27.
49. *Perry J. S.,* The Roman Collegia: The Modern Evolution of Ancient Concept, Brill, Leiden, 2006, 23-60.
50. *Plutarch,* Plutarch's Lives, Vol. I: Theseus and Romulus. Lycurgus and Numa. Solon and Publicola (Loeb Classical Library № 46), *Perrin B. (Trans.)* Harvard University Press, Cambridge, 1967, 365-367.
51. *Poitras G., Geranio M.,* Trading of Shares in the Societates Publicanorum?, Explorations in Economic History, Vol. 61, July 2016, 97, 112-116.
52. *Radin M.,* Fundamental Concepts of the Roman Law, California Law Review, Vol. 13, Issue 2, January 1925, 120.
53. *Rüpke J.,* Collegia sacerdotum – Religiose Vereine in der Oberschicht.' in: Antike Vereine: Studien und Texte zu Antike und Christentum*, Egelhaaf-Gaiser U., Schäfer A. (Eds.),* Mohr Siebeck, Tübingen, 2002, 41-68.
54. *Sano M.,* Collegia Through Their Funeral Activities: New Light on Sociability in the Early Roman Empire, Espacio Tiempo y Forma Serie II Historia Antigua, Issue 25, 2012, 393-414.
55. *Schwind F.,* Römisches Recht. Teil 1: Geschichte. Rechtsgang. System des Privatrechtes, Springer Verlag, Wien, 1950, 323.
56. *Seymour E. B.,* Jr., The Historical Development of the Common-Law Conception of a Corporation, The American Law Register (1898-1907), Vol. 51, № 9, Vol. 42 New Series, September, 1903, 530-531.
57. *Sohm R.,* Institutionen des Romisches Recht, 17. Aufl., Duncker & Humblot, Berlin, 1949, 196, 208.
58. *Spaak T.,* A Critical Appraisal of Karl Olivecrona's Legal Philosophy, Springer Verlag, Stockholm, 2014, 222.
59. *Speidel M. A.,* Roman Army Pay Scales, The Journal of Roman Studies, Vol. 82, November 1992, 87.
60. *Thomas J.,* Textbook of Roman Law, North Holland, Amsterdam, 1976, 301, 470, 472-473, 475.
61. *Tomasic R., Bottomley S., McQueen R.,* Corporations Law in Australia, The Federation Press, Sydney, 2002, 44.

62. *Venticinque P. F.,* Honor Among Thieves: Craftsmen, Merchants, and Associations in Roman and Late Roman Egypt, University of Michigan Press, Ann Harbor, 2016, 174-175.
63. *Zimmermann R.,* The Law of Obligations: Roman Foundations of Civil Tradition, Oxford University Press, Oxford, 1996, 452, 454.
64. *Zwalve W. J.,* Callistus's Case: Some Legal Aspects of Roman Business Activities, in: The Transformation of Economic Life under the Roman Empire, Proceedings of the Second Workshop of the International Network Impact of Empire (Roman Empire, c. 200 B.C. – A.D. 476), Nottingham, July 4-7, 2001, *Blois L., Rich J. (Eds.),* Amsterdam, 2001, 119.
65. *Wieacker F.,* Haftungsformen des römischen Gesellschaftsrechts, Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Romanistische Abteilung (SZ), Band 54, Heft 1, Weimar, 1934, 35-79.
66. *Littlewoods Mail Order Stores v. Inland Revenue Commissioners*, [1969] 1 W.L.R. 1241 (A.C.) at 1254.