



Trading of shares in the *Societates Publicanorum*? ☆



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Abstract

This paper demonstrates the often repeated modern claim of significant trading in ‘shares of the *societates publicanorum*’ (*partes*) during the late Roman Republic cannot be supported using the available ‘primary sources’. Building on recent contributions detailing the economy of the late Republic, in general, and the tax farming activities of the *publicani*, in particular, an alternative more plausible legal and commercial explanation of the ‘primary sources’ – especially *In Vatinius* [12.29] and *Pro C. Rabiro Postumo* [2.4] – is provided.

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It is well known that the study of commercial life in Roman times is hampered by the limited and fragmented evidence available. Roman ‘primary sources’ lack details surrounding commercial activities

due, at least partly, to the negative social attitudes to such activities by those contributors with writings that have survived as the ‘primary sources’ available in modern times.¹ Important ancient writers such as

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¹ The reference to ‘primary sources’ is somewhat misplaced. Almost all of the ‘original’ Roman sources examined here have long ago been destroyed, what survives in modern times are faded inscriptions, text fragments and not completely legible copies of copies of some ‘original’ text. Even sections of ‘original’ text could be suspect due to the habit in Roman times of ‘correcting’ the older source to conform to later practice. The core-business for philologists has been the restoration, as much as possible, of the original Latin texts. In this process, it is difficult to avoid some disagreement among philologists, Latinists and scholars of Roman history. In particular, there has been considerable discussion about the manuscript tradition for the essential sources, especially *In Vatinius*, Gaius *Institutes III* and *Digest* [3,4,1]. For example, Daube (1944, p.126) gives a number of reasons why the text of *Digest* [3,4,1] is “corrupt”. Much of the heavy lifting in Latin was done in the early 19th C. by the important German philologists such as Karl Lachman. Based on this work, translations of the ‘original’ Latin texts to English used by modern secondary sources are found mostly in the second half of the 19th C. and the first half of the 20th. In particular, there is general agreement that all surviving manuscripts (the oldest being from the 9th C.) for the *In Vatinius* – an essential source in the claim of share trading – derive from a single very imperfect archetype. All variants of the original ‘primary source’ are due to later scribal corrections or errors. This creates a semantic issue regarding what is an ancient ‘primary source’ and what is a ‘modern secondary source’. Except for a limited number of faded inscriptions and papyri fragments, the surviving texts from the Roman Republic available in modern times are, in some sense, all ‘secondary sources’. Hence, reference to ‘primary sources’ is only being used as a shorthand to distinguish the ‘modern’ recreations of the original Latin texts from the ‘secondary sources’ that are derivative, appearing in scholarly journals and books discussing these Latin texts. Oddly enough, this nomenclature has some ‘secondary sources’, e.g., Deloume (1890), appearing prior to key ‘primary sources’ in the English translations of the Loeb Classical Library that commences with titles in 1912.

Plutarch, Livy and Cicero deal almost exclusively with non-commercial activity, especially military campaigns and political debate, leaving little trace of many aspects of ancient commercial life: “the general inadequacies of the evidence accentuate the role of conceptualization in historical research” (Bang, 2008, p.3). Careful examination and scrutiny of available sources has to be supplemented by ‘artful’ interpretation. “sources are... not self-explanatory. They must be interpreted to bring us to the ancient reality” (ibid.). Given that the boundary dividing ‘artful’ interpretation from inaccurate inference is decidedly fuzzy, this paper demonstrates that the modern claim of trading in shares of the *societates publicanorum* lies well beyond this fuzzy boundary resulting in inaccurate inferences about commercial activities in the late Roman Republic.² This conclusion has relevance to the wider ongoing debate over the historical relevance of ‘the market economy’ in ancient times.

1. Supporting primary sources?

Seeking a reflection of modern times in Roman society, economic historians from Rostovtzeff (1902, 1957) to Temin (2001, 2004, 2006) and Malmendier (2005, 2009) “have gone their own way in creating models that describe how early civilizations might have developed if it had followed the lines of modern individualism at the outset” (Hudson, 2002, p.19). The debate over the role of commercial motives in the

² Recognizing the difficulties that can arise in Latin to English translation, clarification of some basic Latin terminology is helpful for the uninitiated to understand the following discussion. A *societas* (pl., *societates*) is a Roman partnership composed of *socii* (sing., *socius*). The *publicani* (publicans) were public contractors and the *societates publicanorum* were partnerships of public contractors. Due to the role of the *publicani* (sing., *publicanus*) in tax collection during New Testament times, it is common for modern English dictionaries to define publicans as tax collectors. While this was an important function of the *publicani* during the late Republic, public contractors were also involved in public works construction, working the mines, provisioning the army and other tasks. Roman society was a largely hereditary timocratic society that evolved considerably from the middle to late Republic, e.g., Scheidel et al. (2007). The controlling ‘aristocracy’ was composed of a small hereditary group of *patricii* (patricians) and *equites* (‘knights’, sing. *eques*), a larger class that was initially hereditary but gradually assumed entry by property classification. Circa the beginning of middle Republic, senior roles in the army were reserved for *equites*. The Roman legionary cavalry was initially composed of *equites* but the demands of Roman expansion meant the first class of commoners gradually came to dominate the cavalry with *equites* serving mainly as senior officers. The *Lex Claudia* of 218 BC restricted the role of senators in commercial activity, ceding participation in the public contracting process to the *equites*.

Roman expansion during the Republic has a long history that includes Halm (1845), Deloume (1890), Kniep (1896) and Frank (1914). Kay (2014) is an authoritative recent account. Against this backdrop, claims in modern secondary sources for trading of shares in the *societates publicanorum* give the appearance that there was an organized ‘stock market’ for such shares in tax farming ‘corporations’ during the late Roman Republic. The explicit reference to “*partes*” in modern sources to describe such ‘shares’ gives the impression there was Roman nomenclature, a ‘stock market jargon’, for such trading. Upon casual inspection, there appears to be sufficiently numerous references to primary sources supporting the specific claims that: there was trading in shares (*partes*); and, in turn, the *societates publicanorum* were akin to modern business corporations. Only a few modern scholars, e.g., Harris (1975), Silver (2007, n.3), recognize “difficult problems” with such claims.³

To benchmark the claimed support in primary sources, consider the following modern ‘maximalist’ perspective of share trading presented by Malmendier (2009, p.1089):⁴

Investors could provide capital and acquire shares (*partes*) without becoming a partner and without being liable for the company’s obligations. Several ancient authors refer to the shareholders of the *societates publicanorum* as *participes* or *adfines*. We also know that the shares were traded and had fluctuating prices. For instance, Cicero writes about

³ Included in those disputing or raising serious questions about the interpretation of the *societas publicanorum* in Badian (1972) is the ancient historian Harris (1975): “A more important question concerns the allegedly wide ownership of shares. It is quite a jump from *In Vat.* 29 to the view that virtually all senators had investments in the *societates publicanorum*, and as for investment by large numbers of sub-equestrian citizens (what number of them is really meant?), Polybius 6.17 does not establish it, and Cicero significantly claims no such thing in *De Imp. Cn. Pomp.* 17–19. Badian envisages a very large number of powerless shareholders, but for whatever reason they are not to be found in the sources.”

⁴ Malmendier (2009) summarizes the more detailed examination in Malmendier (2005) that, in turn, is an English variation of Malmendier (2002), in German. The more detailed treatment in Malmendier (2002, 2005) contains few additional interpretations and does not add substantively to the summary of share trading in Malmendier (2009). For example, Malmendier (2005, p.38) observes: “The next crucial difference between *societas* and *societas publicanorum* – and maybe the most astonishing step forward in the evolution of this business organization—was the existence of shares and shareholders. Cicero mentions the *partes* (shares) numerous times in speeches. For instance, he refers to private citizens possessing *partes societatum publicanorum*...shares of *different* companies came in different nominal values.”

“shares that had a very high price at that time.”

The statement also implies that the shares could be bought either from another shareholder or directly from the company, suggesting secondary offerings. Traders met on the *Forum Romanum*, supposedly near the Temple of Castor.

The following primary sources are given to support the various elements of this claim: for the organization of the *societates publicanorum*, Cicero *Pro lege Manilia* [2.6] and *Pro C. Rabirio Postumo* [2.4] (*Rab. Post.*), Plautus *Trinummus* [330–31] and, Livy *Ab urbe condita* [xlviii 16.2]; for the essential issue of trading shares, Cicero *In Vatinius* [12.29] (*Vat.*); and, for the location of trading, Plautus *Curculio* [78]. Malmendier (2009) also identifies references in Edward Chancellor (1999, p.4), even though this source does not add substantively to those already given. While the ‘maximalist’ perspective on share trading would appear to have substantial support in the primary sources, upon closer inspection there is only brief discussion of possible share trading in a few sources that, in turn, depend fundamentally on debatable interpretation of the commercial and legal context. The most widely referenced modern source on share trading of the *publicani* by an ancient historian, Badian (1972, n.98–104) also lists *Vat.* [12.29 plus 12.13 and 12.15] for the trading of shares and *Rab. Post.* for the organization of these *societates*. In addition to the strong claim that there was trading of unregistered shares by senators, Badian (1972, p.102) also claims that “the high stock prices Cicero mentions are consistent with a price reduction for tax collection rights in the same year.”⁵ An additional reference is provided by Badian to Valerius Maximus, *Facta et Dicta Memorabilia* [vi 9.7] (Val.Max.) as a criticism of the earlier ‘maximalist’ perspective of Rostovtzeff. These and various other secondary sources also claim Plutarch *Cato Maior* [21.6–21.7] recognizes the participation of Cato the Elder in a large *societas publicanorum*.

In addition to the most essential primary sources – Cicero’s orations against P. Vatinius (*Vat.*), in defense of Rabirius Postumus (*Rab. Post.*) and in favor of the Manilian law (*Pro lege Manilia* [2.6, 6.15, 7.19]) together with a section from ‘Memorable Deeds and

⁵ This view is inconsistent with the important German philologist K. Orelli (1835) where fluctuations in the value of a share in the Asian tithes and customs revenue was due to political decisions changing the burden on the citizens of the relevant provinces to maintain ‘serenity and stability’. Perhaps the reduction in tax collection rights that was negotiated in Rome is connected but there is no evidence of such a connection. Badian (1972, p.100) claims over-bidding on the contracts due to increased competition from “the influx of the Italians into recognized citizenship”.

Sayings’ by Valerius Maximus (Val. Max.) – other related sources are also provided for context to support modern claims of share trading. In particular, various secondary sources quote Polybius *Histories* [vi 17] to establish the context for the contract system in the economy of the Roman Republic (Shuckburgh, 1889, trans.):

The people on its part is far from being independent of the Senate, and is bound to take its wishes into account both collectively and individually. For contracts, too numerous to count, are given out by the censors in all parts of Italy for the repairs or construction of public buildings; there is also the collection of revenue from many rivers, harbours, gardens, mines, and land—everything, in a word, that comes under the control of the Roman government: and in all these the people at large are engaged; so that there is scarcely a man, so to speak, who is not interested either as a contractor or as being employed in the works.

In contrast to Brunt (1962), another ancient historian that is also an acknowledged expert on the *publicani*, Badian (1972, p.45) claims that Polybius “is chiefly interested in the *publicani* when he speaks about the People”. Brunt extends ‘the people’ to include all *equites*, not just those *socii* involved in the contract system. This is relevant because only a fraction of the *equites* were involved as *publicani* and many of those few were also money lenders (Nicolet, 1966, 1974).⁶

Significantly, the relevance of the next part of the section from Polybius [vi 17] is often ignored:

some purchase the contracts from the censors for themselves; and others go partners with them; while others again give security for these contractors, or actually pledge their property to the treasury for them.

⁶ The precise identification of *equites* and the relationship with the *publicani* is complicated. The prosopography by Nicolet (1966, 1974) deviates from the traditional position derived from Mommsen that identifies the “*ordo equester*, from the Gracchi onwards, to two groups of Romans: those who belonged to the 18 centuries and therefore had the public horse, and those whose wealth qualified them to receive the horse but who, in fact, did not receive it. The number of the latter soon came to be much larger than the former” (Sherk, 1968, p.251). Nicolet disagrees and reserves *equites* for those that had formally received the public horse. This identifies *equites* with a narrower, more distinct ‘noble class’, as opposed to the traditional, more loosely defined grouping. Using this narrower grouping, the prosopography reveals: “Out of a total of over 370 [*equites*] only 37 were *publicani* and only 46 were *negotiatores* or *foeneratores*. And many of the last group also belonged to the first, being engaged in multiple activities” (ibid., p.252).

This explicit statement about legal contracting methods of the *publicani* at the time of Polybius (no later than 146 BC) is revealing. There is no reference to trading of shares, though the ‘purchase’ of contracts suggests a possible need for capital. There is explicit recognition that partnerships were used by the contractors. That some contracts could be ‘purchased’ by individuals suggests that not all contracts were beyond the means of a single individual. This general description of the contract system by Polybius is reflected in secondary sources going back to Kniep (1896) where it is claimed that a lead *publicanus*, the *manceps*, takes up a contract and is joined by other partners (*socii*) who hold ‘shares’ and, possibly, undertake to provide the labor and organization needed to fulfill the contract. However, it is difficult to infer whether there was possible trading of registered or unregistered shares from such basic descriptions. Further details regarding Roman auction procedures and contract law are needed to interpret the commercial implications of essential actions such as ‘giving security’ and ‘pledging property’.

The *societates publicanorum* were formed to participate in the public contracts auctioned by the censors in Rome and other locations. Though no direct evidence has survived on the specifics of auctioning the important Asian tax farming contracts, information about auctions for hiring storage space within public warehouses indicates the use of consensual (likely not written) *locatio conductio* contracts (Du Plessis, 2006).⁷ As detailed in Rauh (1989a), reference to ‘giving security’ for contractors likely reflects the central role of financiers and money lenders in the private and

public auction process during the time of Cicero. Watson (1984) demonstrates that the Roman law on recording, securing and settling contracts used in the public auctions evolved considerably in the period between the middle and late Republic. The process of verbally pledging assets as security (*pignus*) that, in some cases, could include landed property, would legally require ownership of the pledge to reside with the treasury during the period of the hire. Whether and how such a transfer was done is unknown, but a ‘pledge of property to the treasury’ at a public auction (*ensoria locatio*) would involve a legally enforceable method of recording such pledges. Public auctions by the censors required participation of *praecones publici* (public auctioneers), one of the *apparitores* (official public servants) required of a censor, capable of serving as witnesses to a consensual contract (Rauh, 1989b). Written details could be recorded by another of the *apparitores*, the *scriba*, or in the account books of money lenders. Whether all *socii* involved in a contract had to be registered is unknown.⁸

The relevance of Plutarch *Cato Maior* [21.6–21.7] as a primary source in modern claims of share trading is captured by Malmendier (2009, p.1089):

Plutarch quotes Cato with the expectation that his readers in the early Roman Empire would understand his boasting. In other words, educated Romans knew about the possibility of buying shares in the *societates publicanorum*.

Written during the early Empire, Plutarch *Cato Maior* [21.6–21.7], states (B. Perrin, 1914, trans.):

[Cato] used to loan money also in the most disreputable of all ways, namely, on ships, and his method was as follows. He required his borrowers to form a large company, and when there were fifty partners and as many ships for his security, he took one share in the company himself, and was represented by Quintio, a freedman of his, who accompanied his clients in all their ventures. In this

⁷ More precisely, consensual contracts (*obligationes consensu*) involve four classes of non-delictual obligations. *Obligatio re*, which arise from a fact or an act such as *mutuum* (loan) with no formalities required, only the intention to impose or assume an obligation. *Obligatio verbis* which arise from verbal agreements, expressed in very formal terms (*stipulatio*). This was the most common form of contract in Roman law. The *stipulator* would ask a question such as: ‘do you solemnly promise to give/do ...?’ (*spondesne dari/facere ...*), to which the other party would answer: ‘I do promise’ (*spondeo*). *Obligatio litteris* were written agreements, but these were exceptional and used in cases such as when debts are transferred in the accounts of one debtor to another. Finally, *obligatio consensus* involved a consensus between contracting parties such as *emptio/venditio* (sale), *locatio conductio* (rent/hire), *mandatum* (commission, mandate), and *societas* (partnership). In all of these cases it was customary to write down the terms of the contracts in writing tablets that were then sealed, with a copy attached on the outside. These are *chirographa*, or *testationes*, or *cautiones*. These documents provided proof in court, but they did not create the obligations. If the documents were missing but the parties could find other proof to convince a judge in case of dispute (for instance through witnesses), the contract was just as valid.

⁸ There are hints that possibly all *socii* were registered in an early contract for the supply of clothing to the legions in Spain during the second Punic war at the end of the third century BC: “the contract was won by a syndicate of nineteen *publicani* and that therefore the capital contribution of each of them was just over 40,000 denarii (6.7 talents), an amount equivalent to 40% of the property qualification for equestrian status in the late Republic” (Kay, 2014, p.12). However, this contract is from a period long before the late Republic when share trading is claimed and evidence of registration is unavailable. The contract is also for provisioning of troops, not tax farming or public works.

way his entire security was not imperilled, but only a small part of it, and his profits were large.

There are a number of problems with interpreting this source as support for share trading during the late Republic. There is the problem of timing. Plutarch is discussing the consul and censor Marcus Porcius Cato (*Maior*, the Elder) (234 – 149 BC) while primary sources on trading of shares are silent until the time of Cicero and Cato the Younger, great grandson of Cato the Elder, about a century later.⁹ In addition, the commercial context is different. As a condition for a sea loan from Cato, borrowers in the loan are required to form a partnership in which Cato participates. This is substantively different, in both a legal and a commercial sense, from the tax farming and public works activities associated with the *societates publicanorum* of the late Republic. The source does reveal that senators, consuls and others of high Roman office during the middle Republic did conduct business through others, Quintio the freedman in the case at hand. As for share trading, ‘he took one share in the company’ does not support such a claim.

The modern claim for trading of ‘shares in the *societates publicanorum*’ (*partes*) suggests numerous substantive questions, in particular: what instrument or security was being traded? who was permitted to trade and what objectives motivated the purchase or sale of ‘shares’? where and when did the trading take place? how was trading conducted and ‘prices’ determined? could purchased ‘shares’ be re-sold? how active was the trading? how was payment made? and, how were the transactions and change of ownership recorded? Most of these questions are not addressed in primary sources. Significantly, the few sources detailing the organization of shareholdings in a *societas publicanorum* do not provide any direct evidence about the unregistered (!) shares that Badian and others infer were the source of

trading by senators.¹⁰ Given the role of the Senate and the censors in the awarding of public contracts during the late Republic, it was inappropriate and technically illegal for senators to be directly involved in a *societas publicanorum* bidding on public contracts; direct participation in the auctions was restricted to *equites*. If a record was kept of some (all?) *socii* involved in a contract, unregistered shares would be helpful if senators acquired an interest directly. The possible trading of registered shares by an *eques* seeking to join a *societas publicanorum* with a *publicanus* seeking to dispose of an interest in that *societas* receives no attention in modern sources claiming share trading.

Even where elements related to possible share trading can be identified in the primary sources, evidence is often vague or questionable. For example, the question of when and where trading took place is answered by the claim that the location was at the Forum near the Temple of Castor. Rostovtzeff (1957, p. 31) provides a romanticized description:

Business was daily transacted at the exchange, near the temple of Castor in the large public *place* of Rome, the Forum. Here crowds of men bought and sold shares and bonds of tax-farming companies, various goods for cash and on credit, farms and estates in Italy and in the provinces, houses and shops in Rome and elsewhere, ships and storehouses, slaves and cattle.

This seems innocuous but the primary source given in support is *Curculio*[78] by Plautus, a source that does not provide substantive evidence supporting share trading at this location. Frank and Stevens (1925, p. 79) detail what is available in the few primary sources that could apply, especially Cicero *Pro Quintio* [17] where there is an obscure reference to the use of the temple of Castor in deposit banking. Instead of a claim supporting the location of share trading, the temple of Castor and Pollux (initially dedicated in 484 BC and rebuilt in 117 BC) is described by Frank and Stevens as one of:

two temples in the Roman Forum which grew in importance despite the constant decline of the cults for which they had been built, those of Saturn and of Castor and Pollux. Saturn’s temple owed its prosperity to its situation near the Curia, which

⁹ The silence is due to claims for share trading being based largely on passages from Cicero. This is not a date for beginnings of the *publicani* involvement in tax farming, in general, and Asian tax farming, in particular. Kay (2014, p.74) observes: “the first mention in our sources of censors letting contracts for *portoria* is in 199 at Capua and Puteoli”. The role of the *publicani* in tax farming was aided considerably by the *Lex Sempronia de provincia Asia*, introduced by the tribune C. Gracchus in 123/2 BC, that required the use of *ensoria locatio* ‘in Rome for all the see’ in the auctioning of Asian tax farming contracts (Kay, 2014, esp. p.73–82). While done to deter extortion, this method of farming state revenues gave tremendous commercial advantage to wealthy Roman *equites* that also functioned as money lenders and traders in the Asian region.

¹⁰ Badian (1972, p.105) does recognize that “senators – like Pompey and Brutus – were also the principal money-lenders in the provinces, probably using *equites* as their agents”. However, it is also claimed: “By the end of the Republic, the principal business affairs of the *equites* must have been well on the way to being shared, if not taken over, by senators”.

occasioned its adoption by the senate as the depository of the state funds, while that of Castor grew with the ever-increasing political importance of the knights who employed it as a meeting place, and with the rapid increase of business in the Forum which created the need for some sacred precinct nearby where standard weights and measures could be kept readily accessible and an assay office established for the testing of foreign coins.

The evidence for the keeping of standard weights and measures is from imperial inscriptions, leaving only speculative conclusions about activities during the late Republic (Frank and Stevens, 1925, p.80). There is also evidence that the temple of Castor and Pollux was used during the early Republic as a meeting place for sessions of the Senate and, possibly, by the censors for the auctioning of tax farming contracts (*censoria locatio*). Perhaps there was trading of shares near the temple of Castor prior to or in conjunction with the letting of contracts? However, the reference in modern sources to *Curculio* as supporting the location of share trading does not capture such a possibility. Dating *Curculio* to circa 192/193 BC, the use of the parasite *Curculio* to fraudulently obtain funds from a money lender located at the ‘old shops’ in the Forum likely refers to the *Lex Sempronia* on usury of 193 BC (Slater, 1987).¹¹ This references the on-going struggle against usury in the middle Republic and has no connection to trading of shares.

2. Commercial and legal context

Modern claims for trading of ‘shares in the *societates publicanorum*’ (*partes*) fail to adequately recognize the differences in commercial and legal context across the various uses that the Roman state permitted for this method of ‘corporate’ organization. The basic point being made in this paper is that the context associated with tax-farming the public revenues during the late Republic, especially those in the conquered territories of Asia minor, is inconsistent with trading of shares in the *societates vectigalium*, a type of *societas publicanorum* given special legal status for the purposes

¹¹ Plautus, *Curculio* [78] observes: “There, at the old shops, are these who lend and those who borrow at interest. Behind the Temple of Castor there are those to whom unguardedly you may be lending to your cost.” The translation of Riley observes: “old shops probably alludes to the old shops in the Forum, which were the property of the state, and were let out to the bankers and money-lenders.”

of collecting different state revenues.¹² These *societates* were especially important during the late Republic, from the *Lex Sempronia* of C. Gracchus in 123/22 BC until the fiscal reforms of Augustus starting in 27 BC. In turn, the tax-farming context differs from that associated with the other essential activities involving the *societates publicanorum*: the erection of public works such as temples, roads and aqueducts; and, the operation of mines and quarries owned by the state.¹³ For example, in the case of public works construction, the activities involve an state expense, rather than generation of revenue as with tax-farming. Construction projects have a fixed endpoint while the tax-farming revenues were long-lived, though subject to periodic auctioning of contracts. Based on the primary sources used in support, the modern case for share trading is strongest for the *societates publicanorum* organized for tax-farming, i.e., the *societates vectigalium*.

To avoid semantic confusions, understanding the commercial and legal context for claims of share trading and other activities involving the *societates*

¹² *Vectigalia* has both a narrow sense, “dues levied on *ager publicus*” and, a wider sense, “all regular and ordinary sources of Roman revenue, as distinct from the extraordinary *tributum*” (Smith and Marindin, 1890). It is conventional in modern usage for *vectigalia* to be used in the wide sense. Narrow sense *vectigalia* are referred to directly as *decumae* (the tithe, a fixed percentage of crops) and the *scriptura* (grazing fees). Additional Roman state revenues that the *publicani* could collect include: rents for houses on public land (*solarium*); sale of timber on public land (*vectigal picarium*); customs duty, including revenue from public buildings and markets (*portorium*); revenue from salt works (*salinae*); revenue from mines (*metalla*); and, various taxes on goods sold. State control of salt works was in place long before the late Republic. Livy [ii 9] provides evidence of a state salt monopoly in the 6th century BC. The importance of salt in the ancient world finds a variety of methods and locations producing salt including: rock salt mines; brines; and, large scale drying of sea water. The type and variety of taxes collected varied by locale. For example, Reiter (2004) identifies taxes collected in Egypt during the Empire as including: poll taxes; land taxes; boat taxes; transfer fees; donkey licenses; and, weavers’ fees.

¹³ Kay (2014, ch.3) discusses the different perspectives on the role of the *publicani* in the Spanish mines (see n.21). Significantly, Daube (1944, p.126) also includes organizations of “bakers, shipowners and the like” as “association(s) with corporate capacity” during the Republic. These groups were not organized as *societates publicanorum* but, rather, were organized as *collegium*. It is possible that *societates* was substituted for *sodalitates* by the compilers of the *Digest*. This suggests a religious connection stressed by Daube (1943, p.86): “no history of personality in Roman private law can be deemed entirely satisfactory unless it contains a full discussion of personality in Roman religion, pagan as well as Christian.” Not all *collegium* had corporate capacity. Duff (1938, p.144) also suggests burial clubs could qualify. Buckland (1963, p.176) makes the telling observation: “There were numerous guilds or societies with diverse objects, trade guilds, burial clubs, etc. Many had corporate character, many had not, and it is not easy for early law to distinguish.”

publicanorum requires definition of important terms – shares, share trading, company, joint-stock company, corporation. Appropriate definition is essential to clarify various claims made in modern sources. It is often stated that, during the late Republic, the amount of capital needed in Asian tax farming and certain public works was in excess of the wealth of the richest Romans individually. Exploring the precise details of this claim, it is apparent that to satisfy the tax farming contracts some form of ‘capital association’ was required to provide sufficient coined money, capital and security, either by pledge (*pignus*), or stipulation or hypothecation, e.g., Watson (1984). By construction – whether a partnership, corporation or other legal form – such an association will have ‘shares’.¹⁴ The claim that shares are both ‘tradeable’ and were traded requires considerably more. As for tax farming in the provinces, funding the activities of the revolving Roman provincial administrations required: any initial coined money and capital obtained from contracts auctioned in Rome (and elsewhere) to the *publicani*; plus funds received from the settlement of accounts for the previous administration; and, the regular and possibly irregular collection of *vectigalia* and other state revenues (Richardson, 1994, p.585–9). Given that transportation of large amounts of coined money between Rome and the Asian provinces was risky and costly, a network of *socii* located in the provinces was essential for collecting the tithes, grazing and customs duties and for sourcing significant amounts of currency and credit locally, e.g., Harris (2006, p. 13–5). The ‘shares’ of such *socii* would be difficult to trade.

A number of substantial conditions need to be satisfied before a ‘share’ in a commercial venture can be ‘traded’. The precise conditions depend on the legal type of business organization. For a number of reasons, a ‘share’ in a private partnership is more than difficult to trade compared to an exchange traded ‘share’ in a limited liability corporation. As a consequence, many

¹⁴ Ireland (1996) makes strong claims about the importance of ‘shares’ in the emergence of the ‘corporation’: “In the eighteenth and early nineteenth centuries... the act of incorporation did *not* effect a *complete* separation of company and members. Such a separation *did* emerge during the course of the nineteenth century... and was *not* a product of incorporation per se. The origins of a reified conception of the company... are to be found elsewhere, in the emergence of the joint stock company share as an autonomous form of property.” In effect, the concept of a corporation is incomplete without ‘autonomous’ shares. This feature is essential for trading of shares. Alternatively, *Digest* [17.2.7] and [17.2.14.1] make reference to the possibility that a *societas* may not have shares, depending on the preferences of the partners, and detail how the property of such a *societas* would be divided at the end of the *societas*.

claims of trading in the shares of the *societates publicanorum* (*partes*) also propose ‘corporate’ or ‘joint stock’ organization. Legal and economic historians have long recognized differences between joint stock and modern ‘corporate’ organization, e.g., Poitras (2000, p.267–72; 2016). For example, Kessler and Temin (2007, p.318) recognize this distinction in making the weaker claim than the ‘maximalists’: Malmendier and Badian: “There is evidence showing that at least some Roman companies functioned similarly to the joint-stock companies of the English and the Dutch in the sixteenth and seventeenth centuries”. This may be intended to implicitly reference the initial appearance of an impersonal market for trading in shares of the *VOC* (Dutch East Indies Company), a joint stock company that commenced in 1602. This predates the historical emergence of the private, commercial limited liability ‘corporation’ in the first half of the 19th century, e.g., Taylor (2006), Ireland (1996).

Reference to the *societates publicanorum* as ‘joint stock’ companies requires careful historical and legal distinctions. For example, in the 16th century a ‘joint stock company’ could be an unincorporated company where a sizeable number of investors pooled capital for a risky commercial venture. Being little more than large partnerships, shares in such joint stock companies were often not tradeable and the capital stock lacked ‘permanence’. The early English slaving voyages of John Hawkins, in which Queen Elizabeth participated as an investor, were of this form – with a separation of ownership and control, without the ‘corporate’ identity provided by a charter and liability determined in the fashion of partnerships. The 16th century also featured chartered ‘joint stock’ companies – such as the Muscovy and Levant companies in England – that, in exchange for a substantial consideration to the Crown, were chartered with a monopoly on trade to a specific region. Such companies were formed as a ‘body politic’, with corporate personality and detailed governance rules to define the separation of ownership and control. However, due to the potential for additional calls on shareholders and other factors, liability was not limited in the modern sense. The contrast with the features of a modern ‘corporation’ – characterized by exchange traded autonomous shares, limited liability for shareholders, a separate ‘corporate’ identity and a separation of ownership and control – is obscured in a number of secondary sources.

An example of a confusing interpretation of the relationship between a joint stock company and the modern corporation is provided by the ancient historian

Verboven (2002, p.23): “The legal concept of the ‘corporation’ as a private enterprise with limited liability dates from the Early Modern period and was intended to facilitate long distance maritime trade, the Elizabethan ‘East India Company’ (1600) being the first of its kind.”¹⁵ The 200 joint stock partners were registered by name in the charter for the East India Company. Failure to satisfy a call for additional capital from shareholders to provision ships or perform other duties set out in the charter meant forfeiture of shares. This is not ‘limited liability’ in the modern sense. Though the East India Company was a ‘private enterprise’, obtaining a charter from the Crown involved a public purpose. Such companies were often instruments of state objectives and were required to perform further services to the Crown. The Dutch East Indies Company (*VOC*), formed in 1602, was similar to the Elizabethan East India Company, with additional features in the charter that facilitated the ready transfer of shares. Hence, by being able to readily transfer shares in the Amsterdam market, the liability of a *VOC* shareholder was more ‘limited’ than a shareholder in the 17th century East India Company.

Any capital association can be loosely defined as a ‘company’ or, where business involving the state is involved, a ‘state enterprise’. Such terms are generic and are not indicative of the organizational structure of the company or whether trading of ‘capital shares’ was possible. For example, the 15th to 17th century English ‘Company of Merchant Adventurers’ was a regulated company with ‘shares’ that were acquired by birthright and

¹⁵ As evidence, consider that the charter of the East Indies Company contains a list of 200 named individuals and the requirement that “they, at their own Adventures, Costs, and Charges” are required to satisfy the following: “[The] Company of Merchants of London, Trading into the East-Indies, and their Successors, that, in any Time of Restraint, Six good Ships and Six good Pinnaces, well furnished with Ordnance, and other Munition for their Defense, and Five Hundred Mariners, English Men, to guide and sail in the same Six Ships and Six Pinnaces, at all Times, during the said Term of Fifteen Years, shall quietly be permitted and suffered to depart, and go in the said Voyages.” This is not consistent with limited liability as there is a distinct possibility of calls for shareholders to provide more capital beyond the initial amount of the initial investment. The early joint stock companies often made additional calls on shareholders. As for separate corporate identity the charter is clear on registration as a condition of shareholding: “they and every of [the 200 named individuals] from henceforth be, and shall be one Body Corporate and Politick, in Deed and in Name, by the Name of The Governor and Company of Merchants of London, Trading into the East Indies...” The commencement of trading in Amsterdam of shares in the Dutch East India Company required specific conditions in the company charter relating to the method of transferring shares. Such conditions were not included in the (English) East India Company charter of 1600.

apprenticeship. The evolution of business organization, in general, and the concepts of limited liability and incorporation, in particular, have a long history. The Roman state (*Senatus populusque Romanus*) and, especially, the *municipia* and *coloniae* – towns with local autonomy – evolved as legal public entities separate from individual citizens. From this point, determining the status in Roman private law of corporate entities with “juristic personality” is “a vast and deep problem” (Duff, 1938), Daube (1944, p.128). A number of private arrangements that had achieved a level of corporate status during the late Republic were *collegia*, *universitates*, *decuriae* and *sodalicia*. In the general case of a *societas*, Verboven (2002, p.277) observes:

Roman *societas* was fundamentally different from modern corporations or trade companies, which are characterized by their corporate capacity. Outsiders doing business with *socii* could in no way acquire claims on or incur obligations toward the *societas* as such because the *societas* as a legal entity did not exist.

Against this backdrop, *societates publicanorum* with ‘corporate’ personality independent of the *socii* were established during the Republic. This ‘corporate’ personality originated by extending the public personality of the *populus Romanus*. In effect, the *societates publicanorum* were private partnerships with ‘corporate’ features needed to fulfill public duties, i.e., tax-farmers were contractors providing essential revenues for the state and public works contractors were building essential infrastructure.¹⁶ Beyond this, there is no evidence that the *societates publicanorum* had a ‘private’ corporate personality independent of that extended by the Roman state. This is an essential issue for the claim of trading in shares.

Specific organizational details of the *societates publicanorum* are scant and scattered through a number of primary sources. Despite a paucity of details, the ancient historian Balsdon (1962, p.135–6) provides a conventional modern description of a *societas publicanorum* that can be found in earlier secondary sources, including Deloume (1890) and Kniep (1896):

The only tax-farming company (*societas*) at Rome of whose organization we have a detailed description is

¹⁶ This position is captured by Thomas (1976, p.472); “being the means of tax collection in the Republic, the *societas publicanorum* had links with the state which gave it several peculiarities as against the ordinary *societas*... These peculiarities, however, were deviations of convenience from the normal principles of *societas* rather than symptoms of conscious thought in terms of corporate personality”.

the company which farmed the ‘*scriptura et sex publica*’ of Sicily; it had a Chairman (*Manceps*), a Managing Director (*Magister*), a Board of Directors (*Decumani*), and there were Shareholders (*Socii*). In the province the staff of this as of all tax-farming companies consisted of a Local Manager (*Pro Magistro*) and of minor officials (*Qui operas dabant*).

The primary sources for this detailed description are scattered and numerous. Of these sources, only *In Verrem* [ii 2.169–2.175; ii 3.167] deals directly with tax farming in Sicily. Sources that provide further clues include: *Ad Atticum* [xi 10.i]; *Ad familiares* [xiii 9.2–9.3]; Val. Max. [vi 9.8]; Livy [xxxix 44.7–44.9]; and, Polybius [vi 17]. On balance, these primary sources are insufficient to support the detailed description given. Has artful interpretation or incorrect inference taken place? Basing inferences about the organization of the *societas publicanorum* involved in Sicilian tax farming described by Cicero *In Verrem II* seems somewhat incongruent given that recognition of the *Lex Hieronica* meant contracts for the tithe (*decumae*) were auctioned in Sicily, not Rome. The *scriptura* and the lucrative *portoria* were auctioned in Rome, though Scramuzza (1937) indicates only one, possibly two, *societates* were farming those taxes. Traditional Sicilian methods of *decumae* collection attract modern attention because of claims this practice was adopted by the Romans in other conquered territories. Sherwin-White (1977) and Cotton (1986) demonstrate the organization of tax-farming in Anatolia was also dependent on local traditions, given the discretionary authority of the governors.

A ‘trade’ of a ‘share in a *societas publicanorum*’ (*partes*) is an inherently legal operation. The rights and obligations associated with ownership of a share has to be legally defined; the transfer of ownership legally recorded; an accurate legal receipt provided for funds exchanged. Perhaps verbal agreements with witnesses involving only *familiares* and other *amicii* were used? In any event, certain legal details relevant to the claims of share trading attracted attention from Roman jurists and are captured in the essential sources of Roman law: the *Institutes* of Gaius (Gordon and Robinson, 1988); and, the *Digest* of Justinian (Watson, 1985). It is well known that the manuscript tradition for these sources originates well after the end of the Republic. These sources also suffer, to varying degrees, from philological difficulties. In addition, legal sources are not always indicative of actual commercial activities. However, to ignore legal sources surviving from the imperial period

presumes an absence of reliable continuity in key features of Roman commercial law.¹⁷ Given this, a number of sections are relevant: *Institutes* [III, 148–52] and *Digest* [17,2] on the organization of partnerships; *Digest* [3,4] on actions for and against corporate bodies; *Digest* [39,4] on actions against tax farmers; *Digest* [50,10] on public works; *Digest* [19,2] on lease and hire; *Digest* [6,3] on actions for *vectigalian* land; *Digest* [10,3] on actions dividing common property; and, *Digest* [50,11] on markets. If claims of share trading are correct, the absence of any legal interpretations in the *Institutes* and *Digest* directly relevant to possible disputes arising from the ‘trading’ of shares is, presumably, because this was only a practice during the (late?) Republic and, for some opaque reason, received no interest from the jurists of the Empire.

Given the absence of any reference to share trading, attention focuses on relevant legal features of ‘corporate’ status. The most significant legal description of the *societas publicanorum* is found in *Digest* [3,4,1] where private ‘corporate bodies’ are described:

Partnerships, *collegia* and bodies of this sort may not be formed by everybody at will; for this right is restricted by statute, *senatus consulta*, and imperial *constitutiones*. In a few cases only are bodies of this sort permitted. For example, partners in tax farming, gold mines, silver mines and saltworks are allowed to form corporations... Those permitted to form a corporate body consisting of a *collegium* or partnership or specifically one or the other of these have the right on the pattern of the state to have common property, a common treasury, and an attorney or syndic through whom, as in a state, what should be transacted and done in common is transacted and done.

Significantly, there is considerable debate over the textual validity of this “corrupted” source (Daube, 1944, p.126). In addition to ‘bad Latin’: the source is identified in Watson (1985) as Gaius, ‘Commentary on the Provincial Edict’, Book 3, not the more influential *Institutes*; and, the reference to imperial *constitutiones* involves a method of organizing these activities appearing during the Empire. Given such qualifications, *Digest* [3,4,1] can be claimed as support for the position

¹⁷ Reliance on the *Digest* and *Institutes* is complicated because Roman law evolved over time and the period from the Gracchan law (*Lex Sempronia Agraria*) to the end of the Republic was an especially active period of legal change and evolution. It is well known that the dating of legal opinions listed in the *Digest* is not transparent. The *Institutes*, likely written during the early Empire and largely concerned with Roman ‘old private law’, lacks detail on specific issues associated with the *societates publicanorum*.

of the ancient historian Verboven (2002, p.278) and others¹⁸:

In some exceptional cases a *societas* was granted corporate capacity by a law, a senatorial decree or (later) an imperial *constitutio*. The most famous example is the large *societas vectigalium* formed to collect taxes on behalf of the state. Under the Republic, they were no doubt the only ‘incorporated’ *societates*.

The precise meaning of ‘incorporated’ in this case is elusive. Property held in common is a feature of partnerships that can be found in the origins of Roman law (*societas ercto non cito*). Common property ‘on the pattern of the state’ indicates that a partner does not have the traditional right of *socii* to bring an *actio pro socio* to dissolve the partnership (*Institutes* III, 151). Similarly, this *societas* survives the death or bankruptcy of a *socius* (*Institutes* III, 152). As such, the *societates publicanorum* had a ‘corporate’ identity separate from the *socii*. This was exceptional in the Roman law of *societas* at the time of the late Republic and provides indirect support for a limited claim of possible share trading, e.g., if a partner dies a ‘share’ may become available for sale. However, the ‘corporate’ features granted were only those necessary to ensure that the essential state activities of revenue collection and public works construction were not disrupted.

The two other features for the *societates publicanorum* described by Gaius as ‘on the pattern of the state’ are decidedly more elusive to clarify. For the *municipia* having a common treasury was essential for the provision of common services and maintenance of public works. In the Greek and Roman eras, the ‘treasury’ was typically a building of importance, reflecting the independent corporate status of a *municipium* or city state. Having a common treasury in the sense of the *collegia* that, say, emerged among soldiers during the early Empire often meant a common fund that would be used to pay burial expenses and, possibly, provide a rudimentary form of ‘social insurance’, e.g., Lewin (2003). The need for a *societas publicanorum* to have a ‘common treasury’ is likely related to the *publicani* providing essential funds for provincial administration and, where appropriate, making payments in Rome. The ‘common treasury’ would provide a fixed location where the tax collection business of the *societas* could be conducted and revenues collected and disbursed. If the *publicani* employed municipal

authorities in the Asian provinces to collect taxes within their scope of influence, then the ‘common treasury’ of the local authorities could be used to collect state revenues and disburse funds to the Roman administration for purposes such as provisioning the troops and compensating a variety of officials on governor’s staff. *Digest* [3,4,7.1] suggests a common treasury of a *societas publicanorum* would also provide a legal method for those “put to some expense” in collecting taxes or erecting public works to seek redress without having to take action against *socii* individually.

The final feature identified by Gaius in *Digest* [3,4,1] – having an attorney or syndic act in the common interest – implicitly requires some method for the *socii* to select and replace such an individual. This feature also extends the traditional limited liability of a *socius* in, say, a *peculium* beyond initial funds invested (plus any profit earned) if not directly involved in the management of the venture, e.g., *Digest* [17,2,25]. Further detail on the liability of the *socii* is provided in *Digest* [39,4,1]: “If a tax farmer or his *familia* takes anything by force in the name of the public revenue and it is not returned, I will grant a *judicium* against them...”. It is observed that ‘*familia*’ in this context includes all *familiares* who work for the tax farmer collecting *vectigalia*. This includes slaves owned by the tax farmer, freedmen and slaves belonging to others. *Digest* [39,4,6] provides detail on liability when tax farmers act in concert: “If a number of tax farmers has been involved in making an illegal exaction... all shall pay their share and anything that one cannot pay will be exacted from another.” Finally, *Digest* [39,4,9.4] observes that: “Where partners in *vectigal*-collection administer their shares of the contract separately, one of them can legally petition to have the share of another who is of doubtful solvency transferred to himself”.

Digest [39,4] and other sections demonstrate that *socii* in the *societates publicanorum* did not have the limited liability of a modern corporation. Most legal actions were taken against a *socius*, not the *societas*. Those *familiares* responsible for the collection of taxes were responsible to the *socius* and not the *societas*. Even when acting in concert, the liability was individual and would be shared according to the partnership agreement. Because partners could ‘administer shares separately’ the role of the syndic or attorney acting in the common interest is, again, likely related to conducting tax-farming business in a number of locations, e.g., in Rome and the Asian province associated with the contract, and the need to disburse funds for Roman administration. This allows the syndic or attorney to act in place of a *socius* who is in another location or is otherwise unavailable. Is the associated liability of the *socii* consistent with the broader liability of

¹⁸ In referencing ‘the large *societas vectigalium*’, Verboven appears to be claiming there was only one large *societas* involved in the tax collection, as opposed to there being a number of *societates*. This position is at odds with the accepted interpretation that different taxes, such as the *scriptura* and *portia*, were auctioned separately and involved different *societates*.

a shareholder in a 16th to 18th century joint-stock company? Such a comparison is complicated due to differences in the commercial context between late Republic tax-farming and long-distance seaborne trade of the early joint-stock companies. The presence of an attorney or syndic, somehow selected, creates a liability for the *socii* similar to that of shareholders in the *VOC* with respect to the assembly of ‘Seventeen Masters’, e.g., Poitras (2000, p.273). However, resources of the *societas* used to collect taxes were owned individually unlike the joint-stock companies where ships, cargoes, outposts and the like were owned by the company.

3. Tax farming in the late Republic

Modern secondary sources typically identify two general types of commercial activities involving the *societates publicanorum* during the Republic: tax farming and public works. Yet, based on contributions going back to Orelli (1835), claims for trading of shares are overwhelmingly associated with tax farming, little or no mention is made of share trading associated with public works activities or supplying the armies or working the Spanish mines. That *societates publicanorum* involved in public works had elements of ‘corporate’ status is detailed in Du Plessis (2004) where a contract for renovating the second Temple of Castor survived the death of the main *socius*. Some modern sources claim large construction projects such as building large aqueducts required a ‘permanent’ capital stock and, as such, also satisfy a precondition for share trading, e.g., Kiser and Kane (2007). However, this is not supported in the primary sources that focus on legal protections provided for contractors and often identify temple construction by wealthy, status seeking Romans as the objective of the public works contract. Shares of *socii* in contracts for public works projects providing construction expertise and equipment would be particularly difficult to trade.¹⁹ Limited scope for sizable and continuing profits

¹⁹ Under the Principate, public works construction by the *societas publicanorum* was diminished to the point where by the time of Justinian, the *Digest* makes no reference to the *societas publicanorum*, only to the *societas vectigalia* (the society of tax collectors). Modern interpretations of the *societates publicanorum* are aided by starting the historical record with Polybius, *Histories* [I 6.17] where the activities of the contract system during the middle Republic are recognized. Considerably less attention is given to factors leading to the demise of the late Republic contract system under the Empire. In turn, the contract system for tax farming and public works construction spans the dramatic economic, political and military changes that took place from the early to late Republic. As Brunt (1962) recognizes, these changes were such that practices for the *societas publicanorum* in the early and middle Republic could, possibly, differ substantively from the late Republic.

undermines the social demand for share trading in such projects.

The practice of farming state revenues to private collectors likely predates the appearance of cuneiform writing; it was not unique to the Romans. The Egyptian, Sumerian, Babylonian empires and the Greek city states all farmed state revenues, though the precise methods employed varied over time and location. The practice continued into the 17th century in England (Ashton, 1956), the 18th century in France (White, 2004) and the 20th century in S.E. Asia (Butcher and Dick, 1993). Tax-farming during the late Republic was unusual in ceding control of the tax farms to a narrow ‘class’ of middlemen located in Rome – the *equites* involved as *publicani* – not in the locations where taxes were collected. Under the reforms of Augustus, tax-farming was decentralized by giving increasing authority to provincial governors and cities, at the expense of the *publicani* in Rome, e.g., Macmullen (1959), Burton (2004). The political motivation underpinning this evolution was tactically facilitated by the likely use of local administration in the actual collecting of certain state revenues by the *publicani* of the late Republic. To what extent the Augustan fiscal reforms altered the money-lending and credit sourcing role of *publicani* in the provinces is difficult to determine, though the ancient historian Andreau (1999) does provide some insights.

Identification of the type of contracting method employed is essential to the commercial context. The potential for share trading in the late Republic is enhanced when the initial capital provided to undertake the contracts is substantial and an important source of capital is provided by “sleeping partners”, e.g., Buckland (1963, p.513), Monro (1902, p.79).²⁰ Tax-farming could be legally organized as a *societas* of capital, provided by the sleeping partner, and ‘labor’, provided by the *socii* responsible for overseeing the actual collection of taxes. ‘Shares’ of the contracts held by a *societas publicanorum* could be ‘created’ by a sleeping partner undertaking a ‘new’

²⁰ The supporting secondary source provided by Buckland for the presence of sleeping partners is Monro (1902). Mitteis (1908) which deals with tax-farming practices in the later Empire makes reference to the “financial groups of a permanent character” that found capital for the *societas publicanorum* which “usually had but a short existence” (Buckland 1963, p.513). This suggests a more complicated legal structure for tax-farming than envisioned in modern claims of share trading.

partnership with an *equus* (or senator? or freedman?) seeking to make an equity capital investment. Buckland (1963, p.510) deals with the legalities of the situation:

A *socius* could not, by taking a partner, add him to the *societas*. If he took such a partner, and allowed him to deal with firm business, he was responsible for his acts, and could not get rid of liability by ceding his actions against him. As between its parties, the subpartnership was valid. An *actio pro socio* on it would not affect the main *societas*, but so far as the subpartnership was formed merely in respect of the concerns of the principal firm, it necessarily ended if that did.

This provides a legal basis in Roman private law for the ‘sale’ of shares in the *societates publicanorum*. Whether selling or gifting of shares in a sub-partnership alone qualifies as ‘trading’ of shares is debatable. Presumably, ‘trading’ would allow a buyer of shares to then sell the same shares, as in a modern stock market. What if the buyer could only sell back to the original seller, does this qualify as ‘share trading’? Liability from a network of sub-partnerships generated by such ‘trade’ in ‘shares’ would not be limited and the ‘shares’ would have a finite life dependent on the term to maturity (*lustrum*) of the contract that the main *societas* had with the censors.²¹

Precisely how much ‘up front’ capital was required to undertake the contracts is relevant to the ‘supply’ of ‘shares’ available for trade. The wider financial and credit implications of tax farming activities of the *societas publicanorum* during the late Republic are described in *Pro lege Manila* [vii.19](Hodge, 1927, trans.): ‘this system of credit and finance which operates at Rome, in the Forum, is bound up and depends on

capital invested in Asia’.²² Precisely how ‘this system of credit and finance’ impacted economic and commercial activity during the late Republic is a source of debate, e.g., Harris (2006). One extreme in this debate is represented by Badian (1972, p.104) where it is claimed the contract system encompassed the senatorial class: “the public contracts were a regular part – how large we cannot tell – of many senatorial incomes”. In contrast, the prominent Roman historian Frank (1927, p.279–80) attributes limited economic impact to the contract system:

In the last century of the Republic... not a little capital found new outlets, especially in the management of state contracts, in money lending and banking, and in trade. The activities and importance of the state contracts are apt to be overestimated because, having a general interest, and being the concern of every citizen, they form the topic of the political harangues and letters of the day... the actual capital engaged in public contracts probably did not reach one per cent. of the amount invested in real estate in the city of Rome. Of the tens of millions of state income that we have estimated for Cicero’s day two-thirds at least did not pass through the hands of the publicans. Asia was the only province that had been wholly abandoned to them, and in the other provinces like Sicily, Spain, Africa and Gaul, they collected only the less lucrative revenues. The construction of public works like aqueducts, roads, and harbors brought profit at times, but such works were subject to precise estimates of cost and close supervision; the work was almost always well done and without the odor of dishonest spoils.

Is it possible for the initial amount of liquid capital required to take up the contracts to be small, as claimed by Frank, while the revenues, and possible profit, generated by the tax-farming contracts in Asia are substantial?

Despite the considerable attention given to the ‘contract system’ in numerous secondary sources, specific detail of the ‘contracts’ used in the late Republic is lacking. As Kay (2014, p.80) observes: “The specific arrangements and obligations of the *publicani* under the contracts to collect Asian taxes are not known.” Artful interpretation of available sources is required. Consistent with the *ensoria locatio* method of auctioning public contracts during the late Republic,

²¹ If a network of partnerships was employed, such practice was not unique to the late Republic. Detailed primary sources for this method of organizing a capital association are present in the appearance of notarial records that appear starting from the middle of the 12th century in Genoa. Prior to this time, primary sources with commercial details of capital associations, other than the material in the Cairo Geniza and Islamic juristic decisions, are scarce. The almost complete business records of Francesco Dantini, ‘The Merchant of Prato’ examined by Origo (1957) replicate such a network of partnerships. There was no trading of shares in these networks. The *societas maris* evidenced in 12th century Genoan notarial records for use in long-distance seaborne trade has similar features, again with no trading of shares.

²² The original Latin is given in the Loeb Classical Library as: “*haec fides atque haec ratio pecuniarum, quae Romae, quae in foro versatur, implicata est. cum illis pecuniis Asiaticis et cohaeret*”.

Malmendier (2005, p.32–3) recognizes “the contracts” were legally executed as leases (*locatio conductio*)²³:

The publicans were ‘government leaseholders’ or contractors with the Roman government.... The most (in)famous leases are those [for]... the collection of taxes, tolls, and other dues. The publicani ‘leased’ the right to collect direct (poll or land) taxes from the inhabitants of the provinces and indirect taxes (customs or dues). Cicero lists the three most important types of dues: the port tax (*portorium*), the tithe (often referred to as the *decuma*), and the *agistment* (*scriptura*).

Giving attention to the commercial implications of this legal structure reveals *locatio conductio* was a contract of lease or hire for a price, a double name is used because the rights and duties of the parties are different, e.g., Buckland (1963, p.498). As reflected in the size and complexity of *Digest* [19.2], use of *locatio conductio* was a central feature of Roman commerce, e.g., hiring of day laborers, leasing of land, renting of dwellings. Various types of *locatio conductio* could be used, e.g., *locatio operis* was used to contract for a completed piece of work and would apply to public works construction by the *societates publicanorum*. Legal implications of such contracts differ across *locatio* types.

Kay (2014, p.80–1) correctly recognizes that the contracts were ‘fixed price’ but does not identify how and when payments were made. More precisely, what amount of initial ‘money’ (*pecunia*) contribution was required to undertake a lease contract? Hollander (2007, ch.1) demonstrates the widespread use of credit to make payments and the broad definition of late Republic Roman *pecunia*, e.g., *Digest* [50,178]. It is possible, with the use of verbal pledging of substantial fixed assets to secure the contracts in Rome by some *socii*, capital investment in the fixed assets of the company in

²³ Smith and Marindin (1890) describes the contract system: “The system was simply that of the purchase or lease by a publicanus of a prospective source of revenue, which he farmed at his own risk and for his own profit.” This suggests that purchase and sale contracts were also used, likely resulting in a much larger initial payment by the purchaser to acquire rights to farm the revenue source for a set period of years. If required due, say, to the local administration having a higher than normal need for funds, e.g., Sulla in 84 BC, a large up-front payment would likely be financed on credit. In this case, *socii* able to source credit in the provinces would be essential. Legally, however, a lease contract would be applicable for almost all *vectigalia* because the *ager publicus* could not be ‘sold’ even for a period of years (*Digest*[3,1]). Ownership of most revenue producing assets would reside with the state and could not be alienated by sale. However, as with the alienation of the *ager publicus* that concerned Tiberius Gracchus, it is possible that the Spanish mines were, somehow, privatized by the different Roman administrators (Kay, 2014, ch.3).

Asia could be low because the assets needed for tax collection in the provinces were already ‘owned’ by other *socii* or the cities collecting revenues, not by the company.²⁴ Jones (1974, p.163) hints at this possibility. Allowing for the ability of some *socii* (or equestrian financiers) to provide credit at the auction and to facilitate transactions by the provincial administration, a small initial payment upon success at the auction could be sufficient to take up a tax farming ‘contract’. Capital paid in Rome required to obtain a lease contract could be ‘small’ compared to the regular ‘rent’ payments made by the *publicani* to sustain provincial administration as *vectigalia* and other revenues were collected. In other words, the initial ‘capital’ required for the ‘capital association’ to obtain the lease contract may not have been substantial, undermining the pecuniary incentives for *socii* to enter into sub-partnerships to obtain capital.

In addition to fixed prices, under the *Lex Sempronia de provincia Asia* (122/3 BC) a fixed contract length (*lustrum*) of five years was used. Based on the recent discovery near Ephesus of the ‘Customs Law of Asia’, Kay (2014, p.80) suggests an annual payment by the *publicani* of the *portoria* in Asia.²⁵ It is also likely that the agricultural revenues in Asia, the *scriptura* and especially the tithes (*decumae*), would be paid annually. Recognizing that the Romans may have based some tax

²⁴ The Roman practice of adopting the tax-collection practices already in place in conquered territories meant that, in such cases, the bulk of fixed assets and labor required for tax collection would already be available. This reduces the need for large fixed capital investments in revenue collecting assets. Brunt (1956) hints at the details in the imposition of a large direct assessment, approximately five years regular *vectigal*, on the Asian cities by Sulla in 84 BC. Sulla required these funds “principally to finance the impending civil war”. This assessment was to be paid in advance. In the collection of this assessment, “the cities were left to find the sums required for themselves and that Roman publicans were not used. This need not surprise us. During Mithradates’ invasion of Asia most of the local agents of the Roman companies must have been killed or fled... [the cities] employed publicans as publicans, not as money lenders. These publicans were not Romans but Greeks”. Brunt observes that Cassius in 43 BC and Antony in 41 BC also demanded taxes in advance. There is the distinct possibility based on the overlap of *equites* that were both *publicani* and money-lenders, if and when sizable taxes were due in advance, the *publicani* would lend these funds to the cities responsible, earning interest in the process.

²⁵ Cottier et al. (2008) provides a detailed examination in Greek, Latin and English of text of the inscription discovered in the Church of St. John, near Ephesus, in 1976. The stone bearing the inscription is now housed in the Archeological Museum of Ephesus. Though the inscription dates from the time of Nero in 62 AD, the text is an accumulation and aggregation of decisions making reference to tax farming practices dating to before the reforms of C. Gracchus that transferred authority for leasing the taxes from the governors to the censors in Rome.

farming methods in Asia on practice from Sicily, Jones (1974, p.162–3) summarizes that system:

The Romans found the tithe already in operation in Sicily... in the kingdom of Syracuse, annexed in 212 BC... The tithe was sold annually at Syracuse, city by city and crop by crop (wheat, barley, fruit), and the contracts therefore normally went to Sicilians or resident Romans, sometimes to city governments themselves. The key operation was the *pactio*, the agreement on the amount of the crop between the contractor and the cultivator... The law envisaged the contractors making a separate *pactio* with each cultivator, but in practice the contractors preferred, except in the case of a few important landowners, to make a block *pactio* with the city authorities, who then assessed the tithe in detail and collected it themselves.

If as Jones (1974, p.163) and Kay (2014, p.76) suggest the Asian *decumae* introduced by C. Gracchus was based on practices in Sicily, then there is a distinct possibility that methods of managing contracts were also adopted. In particular, the *publicani* could make ‘block *pactio*’ with individual city authorities in Asia, allowing the cities to then directly collect taxes. In addition, there may be different incentives in the contracting system for ‘important landowners’.

This interpretation of the possible working of the *ensoria locatio* system uncovers other important, if unrecognized, features of the contract system for tax-farming in both the Republic and the Empire relevant to the claim of trading in shares. One such feature is recognized by Smith and Marindin (1890):

we can distinguish two methods of tax-farming, which were regarded as distinct both in law and in fact. In one of these the *publicanus* is not directly employed in working the source of revenue, in the other he is; in the one case, therefore, the *publicanus* is not the *possessor* or occupant of the land, or other source of wealth, from which the revenue is derived: in the other case the *possessor* and *publicanus* are identical. It is only to the first of these two classes of tax-farmers – to those, that is, who are regarded as collecting *vectigal* from *possessores* other than themselves – that the name *publicanus* is strictly applied; the latter class are regarded in law not as *publicani*, but as *publicanorum loco* (Dig. 39, 4, 12, 13), although, in the current literature of Rome, they were, equally with the former class, called *publicani*.

The modern interpretation of the contract system becomes decidedly more complicated where the *societates* bidding on the tax-farming contracts involved *socii* that were also owners (*possessores*) or leasers (*conductores*) of revenue producing property. Alternatively, the *publicani* could ‘sub-let’ the right to collect taxes to local authorities, many of which were also property owners. In both cases, those *socii* bidding on the tax farming contracts in Rome would not require extensive fixed assets for the collection of state revenue, only the substantial fixed assets needed to pledge or other access to sufficient security. Another relevant feature important to the commercial context is identified by Brunt (1956, p.20), Nicolet (1966, 1974) and Andreau (1999) where *publicani* involved in tax collection also acted in money-lending (*foeneratores*) and trade (*negotiatores*). This suggests a fundamental connection between those centrally involved in ‘this system of credit and finance’ in Rome and the *socii* directly involved in Asian trade, tax collection and money lending, e.g., Jones (1974, p.118–9), Kay (2014, p.192–3).

Given that specific details of the tax-farming contracts and contracting system in the late Republic are lacking in the available primary sources and that artful interpretation is required, some indirect assistance is provided by secondary sources on taxes in the Roman Empire, including Roman Egypt (Wallace, 1938; MacMullen, 1962; Reiter, 2004) and in later, more detailed and largely juristic, records from the Asian and North African territories that came under control of the Caliphate.²⁶ Use of such later legal sources is complicated by the Islamic juristic view, advanced in the 7th and 8th centuries, “which typically characterize *qabāla* (tax-farming) as *ribā* and as a heinous, corrupt practice which ought to be forbidden” (Haque, 1975, p.219). Precisely how *qabāla* was reconciled with the ancient licit system of *metayage* is carefully examined by Lokkegaard (1950, p.108) where *qabāla* in the provinces of the previous Byzantine empire is equated with the *locatio conductio* system used by the Romans, e.g., el Fadl (1992, p.8). “*Qabāla* was a necessary extension of *metayage*, by which, in general, the element of third party or middlemen tended to be introduced between the peasantry and the state. These middlemen often were rich landlords and influential men” (Haque, 1975, p.221).

²⁶ Caution is required for a number of reasons. By the end of the Empire tax collection practices were well established, both in Rome and the territories. This situation differed substantially from the late Republic where control of the conquered territories was being established and the political situation in Rome was ‘fluid’. In addition: “One cannot, of course, place too much emphasis on legal texts as a true reflection of actual practices in society” (el Fadl, 1992, p.7).

Contracting methods employed were “used in different combinations” depending on the ownership of the land. Again, those responsible for supervising the estates, as owners or lease holders, were also often involved in collecting rent and taxes from the peasant cultivators.

What of the claim that senators directly or indirectly obtained revenues from the contracts? If correct, this could be accomplished indirectly by entering sub-partnerships that provided assets to *familiares* and any other *amici* that such *socii* could use as security for the contracts. However, if senators such as Caesar and Vatinius possessed (and traded?) unregistered shares or, alternatively, were indirectly invested in (and traded?) ‘shares’ through proxies, then what were the motivations for such taking positions? In the economy of friends of the late Republic, wealth for senators and most *equites* was intimately connected to landed estates. Whether such estates in the late Republic were sufficiently profitable to support the lavish lifestyles of the Roman upper class has been an on-going debates among ancient historians, e.g., [Rosenstein \(2008\)](#). Perhaps the profits generated from ‘shares’ in the *societates publicanorum* would be a tempting pecuniary inducement, even if public shaming for such investment by a senator was a possibility. However, in the context of *amicitia* and *gratia* in the Roman economy of friends, profit from a sublease of a tax farming contract, or a ‘commission’ to supervise tax collecting in the provinces, could be considered as a ‘gift’, useful to the establishment and extension of patrimony, as reflected in *Rab. Post.*: “he never ceased enriching his friends”. Even if there was rudimentary ‘share trading’ through gifts of shares in sub-partnerships, the non-pecuniary motivation for such trade was distinct from the impersonal, profit oriented trading of modern stock markets.

In addition to tax farming of the *vectigalia* (*decumae* and *scriptura*) on the *ager publicus*, the *publicani* were also responsible for collection of the *portoria* (customs duty). [Bang \(2008, p.213\)](#) provides some insight about the taxation process for *portoria* during the Empire²⁷:

If legal regulations were heavily tilted in favour of the customs officials, it was because the interests of

the imperial state had more in common with those of the tax collectors than of the merchants. Customs duties were not, as they later became in mercantilist strategies, an important tool which the government used to shape and promote economic activity in the empire. The main interest of the state in the extraction of customs was fiscal. Trade was to a large extent viewed as a flow of resources which could be tapped for the sake of revenue... Customs were not something mainly charged on exports, and especially imports... the imperial systems taxed the internal movement of goods as well as of those crossing their boundaries almost indiscriminately.

As the Republic evolved, agricultural production from the landed estates increasingly aimed at inter-regional export trade, rather than local consumption – especially the bulk goods, wine and olive oil. Senators and wealthy *equites* were also substantial consumers of the imported goods that were obtained in exchange for these bulk goods and specie generated by territorial expansion, e.g., [Fitzpatrick \(2011\)](#). As such, through independent proxies or slaves and children *in potestate*, endowed with a *peculium*, senators and wealthy *equites* in the late Republic acted as *negotiatores*, heavily involved in the movement and trade of goods. Direct or indirect participation in *societates* responsible for assessing and collecting customs and other taxes on the movement of goods would be of considerable value in assisting this trade.

The final essential element of the commercial context to consider is the size, type, location and timing of public expenditures. Given the uncertainties of revenue collection in largely agrarian societies subject to the vagaries of weather, war and pestilence, tax farming contracts with fixed prices provided an assurance to the state that revenues would be available when needed for required expenditures, e.g., [Kay \(2014, p.80–1\)](#). The different types of public expenditures varied in size and timing. Regular payments were required to sustain the Roman provincial administration and, where applicable, the associated non-Roman ‘city’ administration. There were also regular and irregular payments to sustain the military; and, irregular, often sizable, expenditures for the construction of public works. The commercial connection between revenue collection, trade, money lending and public works construction activities of *equites* and other “classes” involved directly and indirectly with the *societates publicanorum* is undeveloped in modern claims of share trading. The *publicani* that played a significant functional role in funding public expenditures during the late Republic were difficult to displace and had little

²⁷ As [Kay \(2014, ch.3\)](#) demonstrates, there are a number of diverse opinions on the role of the *publicani* in the exploitation of the Spanish mines. Any such participation would be earlier, Livy indicates, perhaps as early as 214 BC, more likely in 195 BC when “Cato instituted *vectigalia magna*, and some kind of process for collecting them must have been introduced at the same time.” In contrast to Frank, [Richardson \(1976\)](#) argues that the *societas publicanorum* played a limited role in exploitation of the Spanish mines. In any event, there is no reference to mining activities of the *societas publicanorum* in the primary sources relevant to claims of share trading.

incentive to trade ‘shares’ to raise equity capital. Under the Empire, local authorities assumed increased responsibility for tax collection and public expenditures (MacMullen, 1959, p.207):

Of the many things that separate the Roman Empire from the Republic, the most obvious physically is the building activity of Augustus and his successors in the provinces. The Republic had embellished its capital at the expense of the conquered; the Empire redressed the balance; and the political and psychological significance of this change, by which the wealth of Rome’s subjects was in part, and sometimes very magnificently, restored to them, is sufficient to mark an era.

The process of funding public works construction under the Empire was facilitated by fundamental changes in the method of collecting revenues under Augustus that curtailed the control of the provincial *fiscus* by the *publicani*.²⁸ Claims for share trading after these changes are muted.

4. Modern claims for trading of *Societates Publicanorum* shares

Given the commercial and legal context, what are the implications for the claim that there was trading of shares in the *societates publicanorum*? This depends on the strength, timing and details of the claim. There is a long lineage to claims of share trading, starting with the initial interpretation of *Vat.* by the important German philologist Karl Orelli (1835), expanded in Halm (1845). Ancient historians that later adopted and embellished this interpretation include Deloume (1890), Kniep (1896) and Rostovtzeff (1902). In contrast to largely undisputed modern claims that have been inspired by the ‘maximalist’ position of Badian

²⁸ Brunt (1956) discusses the development of the *fiscus* and the different meanings for this word. Under the Principate, the *fiscus* could mean ‘the private funds of the emperor’ or, more broadly, ‘the whole financial administration controlled by the emperor’. Such a meaning was not possible during the late Republic. As for funding public expenditures during the Empire (MacMullen, 1959, p.210): “Every possible kind of arrangement was made to see that funds or credit were transferred. No doubt the easiest was a warrant to draw from the *fiscus* of the province as it was filled up with taxes... Aside from outright grants [from the imperial treasury], money for building was made available in the provinces through the juggling of taxes, sometimes by crediting taxes to municipalities, sometimes by authorizing new taxes on their behalf.” This ‘juggling’ of taxes would have been difficult under the contracting system used in the late Republic.

(1972), there were a number of earlier scholars that disputed claims of share trading originating with Orelli’s interpretation of *Vat.*, e.g., Long (1858). Significantly, in identifying ‘*partes*’ with the French *actions* of the early 19th century, Orelli is referencing shares in joint stock companies prior to the emergence of the general limited liability corporation. The contributions of Deloume, Kniep and Rostovtzeff appear after the emergence of widespread exchange trading of shares in limited liability corporations.

Modern ‘maximalist’ claims of trading in shares receive essential support from the additional claim that: “The *societas publicanorum* had thus assumed the most important features of the modern corporation” (Malmendier, 2009, p.1089). This support is reflected in the claims of Malmendier (2009, p.1079) about:

how an early economy could be sophisticated enough to generate a business form as advanced as the *societas publicanorum*.... Rome’s economic institutions during the Early Empire were more market-oriented than even in the medieval economy many centuries later.

Similarly: “From a practical, economic perspective, the historical sources paint a compelling picture of the *societas publicanorum* as the first business corporation” (*ibid.*, p.1090). In contrast, ancient historians such as Badian (1972) are more cautious, referring to ‘public companies’ instead of ‘corporations’. In turn, Hollander (2007, p.49) states: “corporations involved in the state contracts... raised capital not through traditional borrowing but through the sale of *partes* (shares)”. While claiming corporate status for the *societates*, this perspective only identifies the “sale” of shares associated with an initial raising of capital.

The strong, maximalist views of Badian and Malmendier on share trading are tempered by disagreement over corporate status. Much discussion by legal and economic historians is dedicated to the claim that the *societates publicanorum* functioned as ‘corporations’. While the issue of corporate status does not deal directly with share trading, the modern ‘corporate’ properties of limited liability and legal ‘personality’ independent of the shareholders are beneficial complements to share trading. As Silver (2007, p.49–50) claims: “There would be no insuperable institutional or cultural barrier to a functioning stock market... The structure of the market for government contracts offers testimony...corporations were commonplace (not rare) and may well have dominated this market”. Such claims give support to exaggerated statements by

the influential legal historians Hansmann et al. (2006, p.1361): “By the first century B.C., the largest *societates publicanorum* appear to have resembled the modern public company in both size and structure, with ‘multitudes’ - presumably hundreds - of limited partners who could trade their shares on a market similar to a modern stock exchange”.

Maximalist claims for trading of shares are not restricted to ‘modernists’. Exploring the ‘Ancient Capitalism’ of Max Weber, Love (1991, p.140) observes:

Apparently, shares (*partes*) existed for which there was a kind of market value; such shares could be acquired either directly from the company or from one who already owned them, and there was even a kind of stock exchange jargon in use. What is more, it seems to have been a matter of course for senators, including such eminent individuals as Caesar and Cassius, to trade in this unregistered ‘stock’ without their ever becoming actual *socii*.

Being an ancient historian, Love refers to ‘the company’ instead of ‘the corporation’. Working largely from secondary sources, the widely cited economic historian Chancellor (1999, p.4–5) takes a maximalist perspective on share trading and finds the *societates* to be ‘modern joint-stock companies’:

Like modern joint-stock companies, the *publicani* were legal bodies independent of their members whose ownership was divided into *partes*, or shares... Shares came in two sorts: larger executive shareholdings of the great capitalists, known as *socii*, and smaller shares called *particulae*. The manner of dealing in unregistered *particulae* was informal, resembling the modern over-the-counter stock markets.

While Chancellor does reference some primary sources – Polybius [vi 17] and *Curculio* by Plautus – as with Love, primary support is by reference to Badian (1972), which is identified as the definitive work on the *publicani*.²⁹ Despite the strong claim for trading of shares, Chancellor (1999, p.5) is careful enough to recognize: “No evidence remains of the prices for which *partes* were sold, and there are no descriptions of stock market behavior”.

Given the repeated references to Badian as support for the strong maximalist claims, the situation is made more confusing by the actual position taken in Badian (1972, p.102):

²⁹ ‘Definitive’ is due to the singular attention to the *publicani*. Broadening the subject matter to *equites*, with significant sections dealing with the *publicani*, admits ‘definitive’ sources such as the two volume Nicolet (1966, 1974).

We have one cardinal reference... which is so important it must be quoted in full: ‘Did you extort shares, which were at their dearest at that time, partly from Caesar, partly from the *publicani*?’ [Cic. *Vat.* 29] This shows us various things, none of which we could have suspected from any other evidence I know: that there were shares (*partes*) in the companies, which appear to have had a kind of market quotation (there were high in value in 59 [BC], because the tax-farmers’ request for a remission of one third was granted in that year); that such shares could be bought either directly from the company or from one who already held them; finally, and most surprisingly, that both Caesar and (later) Vatinius held such shares.

Addressing earlier contributions on share trading, Badian (1972, p.102) explicitly states that Rostovtzeff “exaggerated” claims of stock market trading and questions the support for such practices in the primary literature. Badian also questions the time frame used by Rostovtzeff: “that this developed in the second and first centuries B.C., although in fact [the primary source] only refers to 59 [BC] and we have nothing earlier”. Presumably, Rostovtzeff is confounding information from Polybius with that from Cicero almost a century later. Making numerous references to “the extreme dearth of information” in the primary sources, Badian is careful to only make reference to “the public companies”, without delving into whether these companies approximated modern corporations.

Despite making a number of qualifications, on the issue of trading shares Badian (1972, p.103) does concur with Rostovtzeff on key points:

The shares owned by Caesar and Vatinius seem to have been in a different category. The fact that they had a variable quotation and the fact the Vatinius extorted them from Caesar suggest that they were not the regular subscriptions of a *socius*, but shares traded ‘over the counter’ as Rostovtzeff thought... I would suggest that the shares traded in 59, about which we get our incidental information, were *unregistered* shares... technically very convenient (as in certain modern analogues) where the maximum freedom of trading is wanted both by the company itself and by those buying a financial interest in it.

These inferences – not “facts” – are, again, deduced from *Vat.* This begs the question: what other sources does Badian provide for these claims? Badian (1972, p. 7) explicitly acknowledges an intellectual debt to the “short, but stimulating and scholarly paper” by the

ancient historian Brunt (1962) on the *equites* in the late Republic. This reference raises subtle and complicated issues surrounding differences between *equites*, the *publicani* and the ‘officer class’ that are relevant to the political and judicial aspects of the contract system during the late Republic. On the activities of the publicans, Brunt (1962, p.123–4) observes:

The importance of the publicans is easy to understand. They performed functions that were vital to the State and from which senators were debarred by law. Senators had to take account of their interests, but did not share them. The large profits naturally attracted the richest of the non-senators and the capital required was so great that the co-operation of many such men was indispensable. The publicans also formed joint-stock companies in which numerous investors could take shares and though these companies were not permanent in law but subsisted only to fulfill contracts let every five years, much the same group of *socii* may usually have obtained renewals of the right to farm taxes... The Equites as such had no effective corporate organization, and it was these companies which were deemed to express the common sentiments of the order as a whole.

Instead of trade in shares, Brunt indicates that there was stability in the shareholder base, implying a limited scope for trading, at best. No mention is made of the participation of senators or trading in shares but there is the common claim that: the capital required was ‘great’ and required the cooperation of “many such men”; and, ‘the publicans formed joint-stock companies’.³⁰

5. Translations and interpretations of primary sources

A claim for better understanding of the commercial and legal context requires validation in the primary sources. The most important primary source from which Badian, Malmendier and others draw strong inferences about share trading is *Vat.* Secondly, *Rab. Post.* and *Val. Max.* are given to support the interpretation of *Vat.* and the availability of traded shares in small denominations, i.e., *particulae*.³¹ In addition to these sources, *Pro lege Manilia* is also examined for detail on the

³⁰ Richardson (1994, p.584) also observes: “the *societates publicanorum*... made up of a number of stockholders, and in many ways similar to modern joint-stock companies”.

³¹ The other two parts of *Vat.* referenced by Badian, *Vat.*[12.13] and [12.15], are not concerned with share trading. *Vat.*[12.13] references the insidious collection activities of the *publicani* of the late Republic. *Vat.*[12.15] deals with Cicero seeking to attack Vatinius without also bringing shame on Caesar, his sponsor.

importance and methods of tax-farming. The main questions to be addressed in examining these primary sources are: what were the legal and commercial characteristics of shares in the *societates publicanorum*? And, were shares ‘traded’, in some sense? That there were ‘shares’ is not in dispute, there is ample ancient evidence on this point. In addition, there is no direct evidence on whether and how shares were registered, though claims by Badian and others of senators trading unregistered shares implies some shares were registered. The practice of pledging assets to ensure fulfillment of consensual contracts, identified as early as Polybius [vi 17], strongly suggests some method of registration, though there is no evidence on the process involved.

Any examination of primary sources has to recognize the philological processes that led to the modern editions of the ancient texts. A variety of opinions and interpretations over several centuries have impacted the translations that have become generally accepted in modern times. Where there is ‘corruption’ in the sources used to recreate the ancient texts, divergence of opinion is difficult to avoid. As evidenced in the various available Latin sources and translations, this appears to be the case with *Vat.*, reducing the strength of this essential primary source for claims of share trading. In addition to philological issues associated with the imperfect text, the strength of *Vat.* as a primary source for modern claims of ‘share trading’ is diminished because, among the various orations of Cicero that deal in some sense with issues related to commercial activities, *Vat.* is not well situated. The attack on Vatinius is a complicated political interplay between Cicero and Caesar arising out of Cicero’s defense of Sestius. The very brief possible reference to ‘share trading’ relates to a specific claim in a more general charge of extortion and corruption against Vatinius. In essence, the historical context for the claim of share trading given in *Vat.* is indirect and weak, at best.

Repeated references to *Vat.*, central to the claims of sharing trading made by Badian, Malmendier and others, employ the English translation provided in the Loeb Classical Library by Gardiner (1958), e.g., Hollander (2007, p.49). In turn, this translation draws heavily on Pocock (1926), a source also used by Badian. The Halm (1845) edition of *In Vatinius* is referenced by Pocock as the source of the original Latin. Without referencing the specific work of the important early 19th century philologist K. Orelli, Pocock (1926, p.116) claims: “Orelli’s view that *partes* = ‘partes publicorum’, shares in the joint stock of the publicani, is alone satisfactory, and is generally accepted (cf. Rab.

Post. 2.4; Val. Max. 6.9.7)". Gardiner (1958, p.279, n.h) adapts this position and expands:

Partes = shares in the capital of a tax-farming company. Vatinius secured a remission to the *publicani* of one-third of the original purchase price of the Asian tax-contract. His commission for this service was paid in gifts of shares in the favoured company, greatly appreciated in value, from Caesar and the company. See Pocock (1926, Appendix iv.C)".

This translation for *partes* suggests a specific commercial context, i.e., that the contracts required significant amounts of "capital", that shares in the capital could be 'paid as gifts', and that shares could 'appreciate in value'. However, 'shares in the revenue of a tax-farming *societas*' could be a more consistent interpretation of the commercial context if initial capital needed to take up the *locatio conductio* contracts (for hire) was not large. Even if significant capital was required, a 'gift of *partes*' could mean a 'gift of shares in a (sub-) partnership with a *socius* participating in a *societas vectigalium*'. In any event, there is no direct support in either the Pocock or Gardiner translations for 'trading' of such shares.

Is it possible that both Pocock and Gardiner are indirectly suggesting that there was trading in shares by making reference to "joint stock" and "shares in the capital"? Such a suggestion is not supported by the "summary of the argument" in *Vat.* given by Pocock (1926, p.50):³²

You boast of your great wealth. How did you get it? As tribune of the people you made great treaties with the peoples of the East; you drafted vast sums of money from the treasury by your laws; you extorted shares, very valuable at that time, from Caesar and from the Publicani.

The 'extorted shares' in this case could be for sub-partnerships or for revenues from the *vectigalia*; this gives no indication of tradeable shares. The shares from Caesar, instead of tradeable unregistered shares, could refer to state revenues to be paid to his administration or otherwise under his control as *possessor*. These shares

³² Pocock (1926, p.v) claims, incorrectly, to be the first "English edition of the 'In Vatinius'" since G.W. Long (1858), "a much larger work" that "is not exhaustive". In addition, Pocock (1926, Appendix iv.C) is subtitled "*eripuerisne partes illo tempore carissimas partim a Caesare, partim a publicanis?*" However, no discussion or reference is given in Appendix iv.C to the trading of shares or why '*partes*' is used in lieu of '*partis*' so the reference in Gardiner is insufficient.

could be "very valuable" because the revenues from the contracts at the time could have been significant due to a period of 'serenity and stability' and favorable harvests or, as often stated, because of remission of certain contracts by the Senate. An interpretation that there was senatorial trading of unregistered shares with 'high prices' based on this brief passage in *Vat.* is questionable, at best.

To appreciate the translation and interpretation issues involved in *Vat.*, consider the English translation of *Vat.* by Gardiner given as:³³

XII. And since you so despise the wealth of others, while you boast immoderately of your own, I wish you to answer me this question. During your tribunate of the commons, did you not make treaties with states, with kings, with tetrarchs? Did you disperse sums from the treasury by your laws? Did you not at the same time filch shares when they were at their highest, in part from Caesar, in part from the tax-farmers themselves?[*] This being so, I ask you whether, after being so poor man, you became rich in that same very year in which a most severe law was passed against extortion? that all may understand that you treated with contempt not only the acts of us you call tyrants, but also the law of your best friend, to whom you are in the habit of slandering even to us, who are his greatest friends, and whom you grievously insult whenever you boast of being connected with him.

At [*], Gardiner provides the note given previously about the definition of *partes* adapted from Pocock. The key section from the original Latin is given as: "*eripuerisne partis illo tempore carissimas partim a Caesare, partim a publicanis*" (Did you not at the same time filch shares when they were at their highest, in part from Caesar, in part from the tax-farmers themselves?). In translating this key section as shares in the capital of a (joint stock) company, Pocock (1926) and Gardiner (1958) do not concur with the stated view of the

³³ The Latin version given by Gardiner (1958):XII. *Et quoniam pecunias aliorum despicias, de tuis divitiis intolerantissime gloriaris, volo, uti mihi respondeas, fecerisne foedera tribunus pl. cum civitatibus, cum regibus, cum tetrarchis,[?] erogarisne pecunias ex aerario tuis legibus,[?] eripuerisne partes illo tempore carissimas partim a Caesare, partim a publicanis.[?] Quae cum ita sint, quaero ex te, sisne ex pauperrimo dives factus illo ipso anno, quo lex lata est. de pecuniis repetundis acerrima, ut omnes intellegere possent a te non modo nostra acta, quos tyrannos vocas, sed etiam amicissimi tui legem esse contemptam; apud quem tu etiam nos criminari soles, qui illi sumus amicissimi, cum tu ei contumeliosissime totiens male dicas, quotiens te illi adfinem esse dicis.*

eminent Latin scholar Long (1858, p.24) on this most essential part of the *Vat.* translation:

partes... carissimas] This is obscure; and if it is the genuine text, we must be content not to understand it. The only attempt at explanation worth notice is Orelli's, but we want historical evidence to support it. Halm concludes that Orelli is at least so far right in interpreting 'partes' to be 'partes publicanorum', 'partes' of the 'vectigalia', which the Publicani farmed; and he refers to Pro Rabirio Post c.2; and to Valerius Maximus vi.9.7 Orelli takes 'partes' to be shares (the French, 'actions', the Italian 'azioni'), and these shares would be higher at some times than at others. The general meaning of Cicero's charge is that Vatinius cheated Caesar and the Publicani; and that is all that we can conclude.

Similar cautious conclusions can also be found in later sources, e.g., Monro (1902), Buckland (1963). In addition to not agreeing with the precise interpretation of the translation by Pocock, Long suggests the original text for this essential phase may be corrupted. Halm (1845, p.22) and Orelli (1835, p.20) also provide evidence of differences in medieval manuscripts providing the different Latin sources for *Vat.*, lending further support for the possibility of corrupted text.

Context is also fundamental to the translation of *Rab. Post.* and Val. Max. that are provided as supporting primary sources for the translations in Halm (1845), Long (1858) and Pocock (1926). Kay (2014, p.193) recognizes that C. Rabirius Curtius Postumus was an agent of Pompey, engaged in money-lending and "in overseas commerce with his own cargo fleet... and produced wine and oil for export from his own estates." Given this, the English translations of *Rab. Post.* by Watts (1931) in the Loeb edition provides:

My client was his son; and although he had never seen his father, under the potent guidance of nature and the influence of constant talks in the household circle he was led to model himself after the parental pattern. His business interests and contracts were extensive; he held many shares in state enterprises; nations had him for a creditor; his transactions covered many provinces; he put himself at the disposal even of kings. He had previously lent large sums of money to this very king of Alexandria; but in the midst of all this he never ceased enriching his friends; sending them upon commissions, bestowing shares upon them, advancing them by his wealth and supporting them by his credit. In short, by his

generosity as well as by his magnanimity he reproduced the life and habits of his father.

Comparing the key section of this translation with the somewhat different earlier translation by Yonge (1886):

... He engaged in extensive business. He entered into many contracts. He took a great share of the public revenues. He trusted different nations. His transactions spread over many provinces. He devoted himself also to the service of kings. He had already previously lent a large sum of money to this very king of Alexandria; and in the meantime he never ceased enriching his friends; sending them on commissions; giving them a share in his contracts; increasing their estates or supporting them with his credit...

Despite the subtle differences in translation, e.g., "shares in state enterprises" versus "share of the public revenues", the essential commercial context is provided by "he never ceased enriching his friends" by "giving them a share in his contracts"/"bestowing shares upon them", e.g., Rauh (1986). Though precisely how 'a share in his contracts' was given or 'shares were bestowed' is not known, yet again, there is nothing substantive in *Rab. Post.* to support the trading of shares. Employing a 'sub-partnership' legal context for bestowing or giving shares by C. Rabirius Curtius Postumus – which is done on his own authority without the apparent approval of other *socii* in the *societas publicanorum* – is consistent with both translations of the Latin text. In addition, this section confirms that *publicani* involved in tax collection also acted in money-lending (*foeneratores*) and trade (*negotiatores*).

In contrast to *Rab. Post.* and *Vat.* that were contributed by Cicero, Val. Max. is from a different author and a somewhat later time period.³⁴ However, Valerius Maximus was known to borrow from Cicero and did construct historical anecdotes to support rhetorical style, so there is no a priori reason to doubt the veracity of the relevant discussion briefly given in Val. Max.: "*T. Aufidius, cum Asiatici publici exiguum admodum particulam habuisset, postea totam Asiam proconsulari imperio obtinuit*". This text is referenced to support the trading of shares in small denominations (*particulae*). The Bailey (2000, p.87) translation in the

³⁴ Valerius Maximus (c.20 BC–c.AD 50) was a Roman rhetorician and historian, known in modern times for a collection of historical anecdotes that was popular in teaching rhetoric in the Middle Ages. Though little is known about the personal life of Valerius, there is evidence he was best known during the reign of Tiberius (14 AD to 37 AD) placing his contributions after the late Republic.

Loeb Classical Library edition is: “T. Aufidius, who had shared in a very small way in the Asian tax contracts later governed the whole of Asia with proconsular authority”. An interpretation as ‘tradeable shares with small denominations’ seems misplaced compared to other possible plausible alternatives. One such alternative is reflected in the English-Latin dictionary of Young (1810) which provides the following definition for ‘*partes*’: “a division or district wherein customs was taken by the public farmers”. Based on this definition, ‘shares’ (*partes*) corresponded to locations where revenue was collected. In this case, “giving them a share in his contracts” would mean allocating a location for collection of revenue, possibly through a sub-partnership, though this is not stated. As such, a small area allocated or sub-let to collect taxes would involve T. Aufidius ‘sharing in a very small way’ in the tax contracts.

If the commercial context did involve tradeable *partes* in the capital of a joint stock company, this seems to imply that the ‘company’ collected state revenues from tithes, customs or grazing, deducting the required payments to the state and distributing the remaining profit pro rata to shareholders, similar to dividend payments of modern corporations. In contrast, *socii* could be individually responsible for collection of tax within a certain area and making state payments required for that area. Allocations of tax collection areas to individual *socii* could be determined when the *societas* was formed or determined through the method of auctioning contracts, as in Sicily. This general interpretation conforms with the basic description of 9th century tax farming in Egypt by Lokkegaard (1950) and el Fadl (1992, p.9):

In Egypt, the tax farms were distributed at regular auctions... Large areas of land, often constituting of several villages or provinces, were delegated to the tax management of an individual who paid a sort of quit claim due to the state. The state would renounce most interests in administering the province or district.

In this fashion, each shareholder could act independently of the other shareholders and ‘selling’ a share would not directly involve the company. ‘Trading’ of shares would reflect the gifting or subletting of an individualized tax revenue stream that had to be collected. The liability for non-collection or extortionate collection in this transaction would be with the *socius*, not the *societas*, an interpretation that is much different than the ‘stock exchange trading’ interpretation found in maximalist sources. In any event, no direct evidence for

trading of shares, large or small, is provided in the brief Val. Max. passage.

There are other primary sources, especially from Cicero, that provide detail on the workings of the *societates publicanorum* without dealing directly with shares and shareholding. In particular, *M. Tulli Ciceronis de Imperio. Pompei Ad Quirites Oration (Pro lege Manilia)* has detailed discussion on the importance and methods of tax-farming. *Pro lege Manilia* [6.16] describes the extent of tax-farming activities in Asia: “cum publicani familias maximas, quas in saltibus habient, quas in agri, quas in portibus atque custodiis, magno periculo se habere arbitrentur?” The Hodge (1927) translation for this passage in the Loeb Classical Library is: “when the tax-farmers feel that there is the gravest risk in keeping large staffs which they maintain on the pastures and the corn lands, at the harbors and the coastguard stations”. Whether the ‘large staffs’ were composed of salaried freedmen or other sub-contractors paid by ‘the company’ or, alternatively, ‘great retinues’ were composed of slaves owned individually or jointly by *socii* is relevant to the claim that the *societates publicanorum* functioned as modern ‘corporations’ with tradeable shares. Relevant sections of the *Digest*, e.g., [39,4], strongly suggest individual, not company, ownership of assets.

Another insight into the workings of the *societates publicanorum* provided by *Pro lege Manilia* [7.17] is the description of the *publicani*. The various English translations for this passage are in general agreement³⁵:

‘For in the first place the honourable and distinguished men who farm our revenues have transferred their business and their resources to that province, and their interests and fortunes ought to be your concern. For if we have always held that our revenues are the sinew of the commonwealth, then we shall assuredly be right in saying that the class which farms the revenues is the mainstay of the other classes.’

This is followed by a revealing passage, *Pro lege Manilia* [vii.18]: “Deinde ex ceteris ordinibus homines gnavi atque industrii partim in Asia negotiantur, quibus vos absentibus consulere debetis, partim eorum in ea provincia pecunias magnas collocatas habent.” (Moreover, of those other classes there are men of energy and

³⁵ The Latin version is: *Nam et publicani, homines honestissimi atque ornatissimi, suas rationes et copias in illam provinciam contulerunt, quorum ipsorum per se res et fortunae vobis curae esse debent. Eteium, si vectigalia nervos esse rei publicae semper duximus, cum certe ordinem, qui exercet illa, firmamentum ceterorum odinum recte esse dicemus.*

industry who are some of them personally engaged in business in Asia, and you ought to consult their interests in their absence; while others of them have vast sums invested in that province.) Either Cicero is being disingenuous, or it is only a particular ‘class’, i.e., *equites*, that farm the tax revenue. Those that have ‘vast sums invested in that province’ belong to one of ‘those other classes’, especially senators and, possibly, *mercatores* and money lenders that were not *equites*. As such, trading of ‘unregistered’ shares by senators such as Caesar and Vatinius, as claimed by Badian and others, is inconsistent with this passage.

6. Conclusions

This paper examines the specific question: was there trading in shares of the *societates publicanorum* (*partes*) during the late Republic? All but a few modern sources that explicitly consider this question answer in the affirmative, with the strongest claims further maintaining the *societas publicanorum* was “the first modern business corporation”. Recognizing the need for ‘artful’ interpretation of primary sources to approximate ‘the ancient reality’, closer inspection of the surprisingly few relevant sources for tax farming in the late Republic reveals only ‘fanciful’ interpretation of ‘share trading’ that does not adequately address the commercial and legal context. For example, the assumption that massive amounts of capital were needed to ‘purchase’ tax farming contracts at the auctions loses validity if the contracts were structured as leases with small up-front payment. When capital was required, a network of sub-partnerships involving *socii* in the main *societas* was the appropriate legal approach. The use of such private partnerships does not support claims of share trading similar to a modern stock market. As for the fixed (not liquid) assets needed to secure contracts at the auction, ‘shares’ for those *socii* verbally pledging Roman assets or otherwise providing security to ensure contract fulfillment would be difficult to trade, if only because contracts would require such *socii* to be legally identified.

The primary sources confirm that, over time, significant capital investment in the Asian provinces was necessary to maintain and secure an organization to collect the various rents, tithes, customs duties and other state revenue that the *publicani* could be tasked to collect during the late Republic. The Asian taxes are of central interest because these provinces were most ‘profitable’. Though some joint ownership of organizational assets by *socii* is evident – including slaves used as tax collectors – the individual *socii* were owners of

such resources, not the corporate ‘personality’ of the *societas*. Instead of buying and selling of ‘shares in a *societas publicanorum*’ (*partes*), the commercial and legal context suggests that individual *socii* in the main *societas* would effectively gift or ‘sublet’ (share) the *vectigalia* associated with a given tax farming contract to *familiares* and other *amici* using a network of sub-partnerships. As such, shares of *socii* that had substantial provincial assets needed for local tax collection and money lending would be more than difficult to trade. The requirement that *socii* bidding at *ensoria locatio* auctions be Roman citizens and *equites* further restricts those eligible to legally participate in the consensual *locatio conductio* contracts. Perhaps, as Brunt observes, there was some reorganization of a particular *societas* when a contract was up for renewal at the end of the *lustrum*; however, any such ‘share trading’ in the main *societas* would be highly restricted and contrary to the claims of share trading found in modern sources. If shares were available ‘for sale’ through sub-partnerships, the essential commercial context motivating the supply of ‘shares’ is revealed by Cicero in *Pro C. Rabirio Postumo* [2.4]: “he never ceased enriching his friends”.

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