Reflections on the Roman papers

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Let me begin by noting a double blank in the papers collected in this volume: none of the authors has discussed the avowed bad reputation of money-lending at interest that we find in literary texts, and none have analysed the informal credit facilities available between friends and family. This is remarkable because both were long regarded as important and typical features of ancient credit systems. Dominic Rathbone briefly mentions them in passing only to question and reject them as being of little importance.

In a sense this is a pity, because personal networks were undoubtedly a powerful asset to obtain loans, either directly from close relations or indirectly through their influence and the security they offered. Solvency, prestige and moral credibility remained firmly interlinked throughout Roman history, from the Republic to Late Antiquity. Peter Temin hints at similar mechanisms in 18th c. England. However, the choice of the authors is also a sign of the times. The market economy is back in the heart of ancient economic history and so the dominant approach in these papers looks at credit markets, their institutions, organisations, actors and how they operated.

In due course, we will have to re-examine the financial system as a whole, rather than focus on its many facets and subsections. The role of social networks and ideology will then no doubt re-emerge. For the moment, however, too many parts of the system (the role of endowments

for instance) have only recently received attention. Too many questions remain and details need filling in.

The (relatively) recent discovery of important new data on ancient credit systems too requires more work. Many of the Roman papers in this book testify to the profound impact of Camodeca’s new edition of the tablets of the Agro Murecine. A re-edition of the Herculanean tablets by the same author is expected soon, which may well add more data to the fuel the debate.

The straightforward condemnation of money-lending at interest, common among elite authors, is in patent contradiction to the ubiquity, complexity and flexibility of interest bearing credit attested in all types of primary sources. Jean Andreau’s analysis of the Latin terminology to denote interest shows that there was no negative connotation attached even to *fenus*, the oldest Latin word for interest. The further evolution of the terminology shows that interest was seen as the ‘price’ paid in exchange for the service provided by the lender when he allowed the debtor to use his money. If so, the condemnation of money-lending is an ideological construct, premised on old Greek ‘classical’ thinking, not a genuine social norm capable of affecting public behaviour or policy.

This begs the question of what motivated imperial or (under the Republic) senatorial policy regarding loans and debts in general and interest rates in particular. It seems that if any policy existed, it was limited to preserving the public interest in times of crisis. In other words: what motivated policy-makers was not the ill odour surrounding *faeneratio*, but simply the *Res Publica* and – when called for – crisis-management.

The potential of endowments as a structural source of credit in the ancient world has been receiving attention from scholars since a few years. Jinyu Liu’s paper on the endowments given to private associations is a valuable contribution to this debate. Liu surveys various ways in which the *collegia* benefited from the endowments they received and how the management of the endowments changed the way *collegia* were organised and functioned. Over the course of second century AD (although occasional endowments are attested already in the first century) endowments to *collegia* increased, so that in time the *collegia* became major players in local credit markets.

Liu suggests that the appeal exerted by associations of craftsmen and tradesmen may be explained (at least in part) by the favourable conditions
under which they could borrow money from the endowments managed by the association. If this hypothesis is correct, it would imply that the *collegia* were a powerful generator of productive or commercial credit on a socially ‘low’ level.

There is still some disagreement on the legal status of private associations, regarding the question of whether any *collegium* licenced under the terms of the *lex Iulia de collegiis* enjoyed corporate capacity or not, but the *Digest* in any case shows increased imperial intervention in the 2nd century. This should be reconsidered in the light of Liu’s (and other scholars’) studies on the *collegia* as credit providers and endowment holders.

Similar suggestions have recently been made by Mrozek in connection with endowments entrusted to cities. Mrozek believes that these served primarily to finance the evergetism expected from civic elites. Municipal aristocrats had the landed estates to provide security and controlled the funds in questions, because they provided the cities’ financial magistrates and *curatores*, and they filled in the local senates.

Mrozek’s thesis hasn’t been discussed by any of the authors here, but it deserves to be linked to Liu’s thesis because together they would signify a revolutionary development in the credit economy in the second century AD. Even if the majority of the funds were not readily available for productive purposes (contrary to Liu’s idea), the endowment based credit facilities would have freed enormous sums that would otherwise not (or only in part) have been available for loans.

The growth of the ‘endowment-economy’ raises questions concerning the role of bankers and credit intermediaries. How did they react to the emergence of an alternative credit market? Were they involved in the management of the funds? Unfortunately, as Liu rightly notes, our sources are largely mute on this subject. But the questions have to be posed and if rightly formulated may shed some light on hitherto neglected data. For instance, from legal sources it appears that Septimius Severus and Caracalla introduced some fundamental reforms to the legal framework for money-lending concerning the enforcement of legal interest rates and the

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2 Mrozek 2000.
use of unenforceable *pacta conventa*. Are these in some way related to the growth of the endowments and the way they were managed?

Marta García Morcillo’s paper studies a hitherto mostly neglected function of Roman bankers: their contribution to the imperial tax system. The *lex metalli Vipascensis* and the tablets of Caecilius Lucundus show that the auction taxes instituted by Augustus – the *centesima auctionis* (1% on all auction sales) and the *quinta et vicesima venalium mancipiorum* (4% on the sale of slaves) – were deducted by the *coactor argentarius* from the sum he paid out to the seller, and paid out to the tax farmer who had bought the tax revenues. These taxes were vitally important because (since 6 AD) they constituted one of the main revenues for the *aerarium militare*.

Greek bankers (including in Ptolemaic Egypt) never appear to have been involved in the organisation of auctions or have provided short term credit at auctions. However, Egyptian papyri attest the appearance of *komaktores* in the time of Augustus, who were involved in the organisation of auctions and had to pay a tax called *komaktoria*. The idea that the institution of the *centesima auctionis* was inspired by Ptolemaic examples is not new, but García Morcillo shows that the introduction of *komaktores* – the equivalent of the Roman *coactores* – in Egypt and possibly elsewhere was inspired by Roman examples and reflected the key position assigned to *coactores* in the levy of the auction taxes.

Auctions are also the subject of Aldo Petrucci’s paper, but seen from a legal angle. Petrucci analyses the various contractual arrangements and obligations arising when an *argentarius* organizes an auction. At the heart of the arrangement are the *stipulatio* by which the *argentarius* promises the vendor (the *dominus auctionis*) to pay him/her the proceeds of the auction and the *stipulationes* by which the buyers promise the banker to pay him the price they had bid. The banker’s obligation towards the vendor is independent from the obligations incurred by the buyers. If the latter default, the banker may sue them on the grounds of their *stipulatio* to him, but his own liability to the *dominus auctionis* is not affected by this.

Petrucci argues that in addition to the *stipulatio* the *argentarius* also entered into a services contract (*locatio conductio operum*) with the vendor, for which he received a fee (*merces*) that was deducted from the sum he paid over to the latter.

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3 See Verboven 2003a.
There is an obvious advantage to this arrangement for the *dominus auctionis*, because the banker assumes both the practical burden of organizing the *auction* and the greater part of the risk involved in the operation. The banker is rewarded by the fee he receives from the *dominus auctionis* and the interest he charges to the purchasers if they prefer to buy on a credit basis rather than pay *pecunia praesenti*.

But there is also a risk for the *dominus auctionis*: what if the banker defaults? Will he then be able to sue the buyers for his money on the basis of the obligations resulting from the sales arrangement? Petrucci argues (persuasively in my view) against the idea that the *stipulatio* contracted between the *argentarius* and the buyer would extinguish the obligations attached to the contract of sale as such (*emptio venditio*). These only extinguished only when the purchaser has paid the agreed price or returned the object sold (if there are sufficient grounds for such a return). While only the *argentarius* can avail himself of the *actio ex stipulatu* against the purchaser to obtain redress in case of non-payment, only the *dominus auctionis*, as actual vendor, can avail himself of the *actio empti* against the purchaser.

The importance of Petrucci’s analysis is that its unravels the web of simultaneous contractual obligations surrounding the role of the *argentarius* in auctions. They show how Roman law was complex, flexible and – most important of all – effective in creating the necessary conditions for the auction-credit system to work.

Peter Gröschler shows the same refinement and flexibility for the contractual securities that Roman law provided to creditors. Depending on the specificities of each case, creditors could choose between a variety of personal and real securities. In addition to the securities *stricto sensu*, the creditor could demand a *stipulatio poenae* – establishing a fine for default – and/or an oath. Two types of oaths were current: an oath to the gods and the deified emperors (usually *per Iovem et numina divorum Augustorum*) and an oath to the *genius principis*. The latter oath made the perjurer criminally liable for *crimen laesae maiestatis*, the former carried only moral and religious sanctions. Gröschler studies how these possibilities were put in practice in the tablets of the Sulpician archive. He shows how personal securities – mostly by means of *fideiussiones* – were used when the amounts at stake were relatively modest, while real securities were preferred in the case of higher amounts. A combination of *stipulationes*...
poenae, oaths and personal securities were used when real securities were not available. Oaths could also be used to lend extra support to personal securities, as documented in the case of a fideiusser swearing that he has incurred no other obligations through fideiussio. The only instance of an oath per genium principis – in combination with a very high stipulatio poenae – relates to a ‘bad’ debt that had long been due.

Éva Jakab analyses one of the most complicated documents in the Sulpician archive, TPSulp. 48. The intention of the legal construct attested in this document is clear: C. Iulius Prudus wants to assume all liabilities arising from any financial assistance, under whatever form, that Cinnamus personally or through others, would give to Prudens’ agents. The difficulty is how to interpret the legal means with which the contracting parties attempt to achieve this objective.

The final clause of TPSulp. 48 contains a stipulatio, but the greater part of the text is formulated as a subject clause of a rogatum et mandatum. Most scholars believe that Prudens’ intention was to give a mandatum pecuniae credendae (a personal security given by mandatum) to Cinnamus. However the formulation of the text cannot legally support such an intention. The conclusion has generally been that the text was badly drafted by the scribe who was responsible for registering the cautio.

I have argued elsewhere (in an unpublished paper) that the mandatum in question was a legally valid mandatum pecuniae dandae⁴, useful to neutralize liabilities incurred by Prudens’ agents or third persons acting on behalf of his agents. By accepting the mandatum pecuniae dandae, Cinnamus (and his heirs) became bound by bona fides to sue (with an actio mandatii) only Prudens in case of default, not his agents. If Cinnamus would take legal action against Prudens’ agents or those acting on their behalf, he became liable himself under the terms of the mandatum, while Prudens’ agents could invoke an exceptio doli to defend themselves against Cinnamus (or his heirs). The arrangement would reinforce Prudens’ organization, because it significantly reduced the risks his partners, collaborators and agents incurred when working for Prudens. These effects could not be accomplished by the stipulatio alone.

Jakab offers an alternative explanation. In her view the words rogare et mandare should not be seen as technical terms referring to the contract of

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⁴ As already noted by Wolf 1993, but rejected by him as legally impotent.
mandate. They are merely an attractive but empty phrase to describe Prudens’ position and his intentions underlying his acceptance of the stipulatio. Although she does not cite it, Jakab’s interpretation reflects Elisabeth Meyer’s fascinating and in many ways ground breaking study of the role of tabulae and their highly formulaic and pseudo-archaic style in Roman legal practice. According to Meyer the tabulae and their peculiar style serve a semi-ritualistic function that adds legitimacy rather than legality to the ‘acts and facts’ recorded in the tabulae. If Jakab is right her analyses adds further weight to Meyer’s thesis.

The three previous contributions illustrate the still not wholly explored potential of law studies for the understanding of how the Roman economy worked. The past years many efforts have been made to bring the historically separated disciplines of Roman Law and Ancient History closer together. It is quite remarkable and sad that despite the enormous amounts of energy which have been spent on defining the ‘nature’ of ancient economies and on construing a theoretical framework fit for analyzing them, only a handful of scholars have been attentive to the crucial importance of a flexible and efficient legal system for the development of markets and market economies. Most economic historians stick to general assertions either confirming or rejecting the thesis that Roman law provided a useful framework for markets to develop beyond the basic level of village or local exchange settings. Happily, this situation is slowly changing and the number of economic historical studies relying on legal sources and insights of legal historians is increasing.

What is still lacking, however, is a general theoretical framework integrating economic, legal and historical research methods and results. One can argue endlessly over the practical importance of theoretical models in historical research, but in this case the challenge of integrating three widely different research fields (economy, law and history) requires that some common intellectual ground be found on which specialists from all three disciplines can meet and communicate. This will take time and more than likely any ‘common ground’ will prove to need timely updates as research results progress, but it is a necessary step if we want to progress beyond the level of ‘facet’ studies.

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5 Meyer 2004.
Taco Terpstra’s work is a contribution to creating such a common ground, using the theoretical framework of institutional economics. His study focuses on transaction costs; an economic concept which denotes the ‘cost’ involved to compensate the uncertainties inherent in the transaction process itself. There are ‘search costs’ (indicating the information deficit regarding opportunities for exchange), ‘negotiation costs’ (indicating the efforts needed to compensate uncertainties between the transaction partners), and ‘enforcement costs’ (indicating the efforts needed to force a recalcitrant transaction partner to deliver his part of the deal). Terpstra shows how the legal technicalities in the tablets of the Sulpicii archive may be analyzed from the perspective of institutional economics as effective means to lower transaction costs. The Sulpicii archive has the advantage of giving us an inside view of how ancient economic actors used legal means to cope with the high transaction costs typical of pre-industrial economies. If Terpstra’s analysis is correct (as I believe it is), then the Roman legal system must be accepted as a highly effective support system for a flourishing (albeit pre-modern) market economy, at least in the field of financial services.

Clearly one of the main results of the papers collected here is to give a powerful argument for the importance of credit to the Roman economy in general in the period from the late Republic to the 3rd century AD. Dominic Rathbone’s and Peter Temin’s contribution puts this in a fascinating comparative perspective with 18th century England. The authors use this perspective to investigate whether differences in scale and organisation of financial intermediation help to explain why the Roman economy never experienced an industrial revolution.

In terms of total turnover both in 1st c. AD Roman Italy and in 18th century England the scale of credit markets was enormous. Rathbone ‘guesstimates’ that Pliny the Younger had ca. 5 million sesterces out on loan; approximately a quarter to a third of his total fortune. Rathbone believes this is a plausible average ratio for senators in general. In my view this ratio is too high, but the basic approach of estimating the scale of credit markets by using the relatively sound data on senatorial fortunes is valid and Rathbone’s conclusions stand even when we downscale his figures considerably.

For instance, the senatorial census of 1,000,000 sesterces implies that the 600 senators owned patrimonies worth at least 600 million sesterces. Most
senators, however, owned substantially more (Cicero and Pliny each between 15 to 20 million sesterces) and some, like Seneca, owned vastly superior patrimonies worth several hundreds of million sesterces. Therefore the total value of senatorial fortunes must be reckoned as at least ten times this amount and probably even much more.

Tacitus informs us that many senators had invested more than a third of their wealth in loans. Even if this is exaggerated, it should now be admitted that senatorial fortunes typically consisted at least for a substantial part in loans. If we assume that the average senator invested only 10% of his fortune in interest bearing loans, we still arrive at a total of at least 600 – but probably much more – million sesterces out on loan for senators alone. To this should be added the debt claims held by knights, local elites, business men and others. However great the uncertainty entailed in such figures, clearly the total sum of outstanding debts at any moment in the Early Empire must be reckoned in terms of many billions of sesterces; no doubt more than double the total imperial budget and more than the 2,000 million sesterces suggested by Rathone for the aggregate value of the coinage in circulation. No matter how volatile such figures may be, no one can reasonably doubt the huge scale they indicate.

Who were the actors of this market? Rathbone carefully surveys the various kinds of credit mediation, ranging from one-to-one arrangements over merchants and associations, through public institutions and finally banks and bankers. The latter receive by far most attention. He argues that the financial services offered by bankers *stricto sensu* were numerous and covered very considerable sums.

Rathbone projects at least a thousand banks in 1st c. AD Rome and Italy, realising annual turnovers between 100,000 sesterces (Caecilius Iucundus) and 3.3 to 16 million sesterces (Sulpicius Cinnamus). I don’t believe the Sulpicii were *argentarii* and I think that even Rathbone’s lower figure for their annual turn-over is too high, but as financial specialists the Sulpicii certainly were as ‘professional’ (in an economic sense) as any *argentarius* and even the most pessimistic guesstimate won’t push the lower figure down to less than several hundred thousand sesterces – more likely between 500,000 and 1 million than between 100,000 and 500,000.

Clearly also the margins of error involved in Rathbone’s projected figure of 1000 banks are huge. For instance, we are informed primarily on Rome, Ostia-Portus, Puteoli and Pompeii. At the very best these few cities reflect
the situation in Latium and Campania. There is no reason to assume that
the situation in other regions of Italy was in any way comparable; just as
the situation in 18th c. London was incomparable to that elsewhere in
England, where banks for most of the 18th c. hardly existed.

Nevertheless, even so the total turn-over of the banking sector sensu
largo (i.e. including non-deposit related financial services as those offered
by the Sulpicii) in Italy alone must have been closer to 500 million
sesterces (or more) than to 100 million. Again, therefore, Rathbone’s
conclusions stand: “even if the modal Roman bank was small, Roman
banking was big business” and “this was culture of investment, not
hoarding”.

One of the major differences between the Roman-Italian credit system
and that of 18th c. England was that the English Crown – as all European
governments at the time – relied heavily on loans to finance its policies.
While government debts remained often dubious investments in the 17th
century, in the 18th c. they became a normal feature of credit markets,
which eventually (in 1752) led to the institution of consolidated annuities
(or ‘consols’), that circulated freely at fluctuating rates on financial
markets. The existence of this stable low risk perpetual national debt
profoundly influenced the credit market as a whole. Its absence in Roman
times, therefore, substantially differentiated the Roman credit market from
the 18th c. English market.

Another important feature of the 18 c. English credit market that was
missing in Rome, was the contribution made by the huge joint stock
companies that monopolised the Indian trade. Because their shares could
be bought and sold they could also be used as security for loans, which
profoundly influenced the credit market.

A further major difference lay in the availability of financial instruments.
Rathbone rightly argues that account and paper debt arrangements existed
and were important in Roman Italy, but there was no equivalent to the
impersonal bill of exchange in 18th c. England. Temin presents the
(international) bill of exchange and its variant, the inland bill (for
transactions within the country) as vital instruments to finance
international and national trade in 18th c. Europe.

Both in England and France brokers played an important role as
mediators for the arrangement of loans. They brought prospective creditors
and debtors together and negotiated loans and debts. Attorneys and
scriveners (in England) and notaries (in France) were the prime categories acting as brokers. Private bankers *stricto sensu* developed into major players on the credit market only in London (not in Paris, nor (except for a handful of exceptions) in the rest of England until the end of the 18th c.).

Interestingly the records of Hoare’s bank show that the interest rate at which a loan was extended was not recorded in the accounts and can only be deduced by comparing the recorded repayment of capital and interest when the loan came to an end. It appears that almost all loans were extended at the legal maximum rate.

Both bankers and intermediaries had to respect the usury limit of first 6%, later 5%, which consequently meant that they had very little bargaining margin to adjust interest rates to risks. The result of this was that neither brokers nor banks hardly ever financed business ventures because of the inevitable risks these involved. Traders had to look for their financial needs elsewhere, viz. in bills of exchange.

The Sulpicii archive – regardless of the discussion regarding their identity as bankers of brokers – as well as various data from literary sources show that this was not the case in ancient Rome, where even risky maritime business operations apparently had little difficulty in obtaining loans. The conclusion therefore is somewhat surprising: from a financial point of view, the Roman credit system – however profoundly different it was – was better able to generate loans financing business ventures, than the English system was.

Koenraad Verboven’s paper, although it disagrees with Rathbone’s views on many points, goes in the same direction. Many scholars still implicitly take for granted that technically advanced financial services were the exclusive domain of deposit bankers (*argentarii* and *nummularii*). *Faeneratores* are either seen as unscrupulous mafia-style ‘businessmen’ or as pitiable profiteers filling the niches left by professional bankers, stewards of aristocratic fortunes and informal credit arrangements by members of the elite.

Against this view, Verboven argues that credit mediation by businessmen – *faeneratores* – was much more professionalised and developed than is generally recognised. ‘Professional’ financial intermediation was readily available from brokers and intermediaries for small and (very) large amounts of money. The non- or minimal involvement of deposit bankers in the extension of loans to businessmen,
does not imply that the Roman financial system was inherently unsuitable to provide productive loans, it is merely a feature of the historically specific organisation of Roman credit markets.