

## SHIPS AND CREW. HISTORICAL PROFILE

### ABSTRACT

The organization of the ship was connected to the organization of the board, according to the type of ship. It concerned the crew's composition, the division of roles and responsibilities, the recruitments procedures and orders. The employment relationship was peculiar, governed by a specific regulation. There was a separation of duties and therefore there were different contracts of recruitment for the crew members. As to the ship, the roles of *magister navis* were different from the one of the crew, since the former signed a contract comparable to modern self-employment contracts and the latter signed a contract of subordinate employment similar to modern contracts.

The paper examines, through the analysis of sources and of literature, the organization of the merchant ship and the recruitments procedures.

**KEYWORDS:** *nautae, recruitment, munera, onera, Roman law.*

### INTRODUCTION

The present essay moves from the observation of the renewed attention of the doctrine on the theme of the regulation and the organization of the navigation of ships<sup>12</sup>.

For the Roman jurists, navigation was an object of public interest (D. 14.1.1.20, Ulp. *l. 28 ad ed.: ... quia ad summam rem publicam navium exercitio pertinet*).

It is therefore natural that the dangers of the sea drew the attention of jurists, who, to make sailing safer, laid down some rules which were mostly accepted by Giustiniano in his code.

As a matter of fact, the employment relationship with the crew was the object of a particular discipline which differed from the general scheme of employment and was adapted to the sailors' needs (according to the modern terminology of employment relationship).

As to the idea of work the Romans had, it is significant that there is the lack of an expression which expresses the meaning inherent in our word "lavoro": *labour*, in which there is the sense of toil; *opus* and *opera*, in which there is the idea of the result, *negotium* (*nec otium*) which recalls every aspect of human activity, they do not answer adequately to the concept of today's work, in which together with the sense of toil and pain, there is strength and pride, which exalt individual value and social consideration (so, see De Robertis, 1946, pp. 13 ff.; De Roberti 1963, pp. 9 ff. and 47 ff.).

As to the ship, the roles of *magister navis* were different from the one of the crew, since the former signed a contract comparable to modern self-employment contracts and, the latter, signed a contract of subordinate employment similar to modern contracts.

Both roles were governed within the *locatio*. In the classical Age, the *locatio conductio* represents the legal institution, in whose scheme, the Roman Jurists included most conventions concerning employment. A convention in which someone committed himself to work for others for payment (*merces*). Therefore, the *locator* was the one who provided the thing the *conductor* was the person who recruited the worker or the job, respectively in the two assumptions of *locatio operarum* and *locatio operis* (De Robertis, 1946, pp. 122 ff.).

## THE ORGANIZATION BOTH OF THE SHIPS AND OF CREW

This applies, in particular, to the recruitment of the crew. It was for the *magister navis*, mostly a contract of *locatio operis*, while for the rest of the crew there was a contract of *locatio operarum*. However the role and the tasks of the *magister navis* could also be governed by a *mandatum*.

In order to better understand a ship's operation, it is important to remember that navigation was part of the enterprising activities implemented by an *esercitor navis* (the shipowner), who took over the management of the whole organization and of all the resulting risks.

The shipowner with an act of *prepositio*, designated a captain (*magister navis*), to whom he gave the powers and the weight of navigation. The function of *prepositio* of a *magister* was often underlined by the jurists, in D. 14.1.1.7, Ulp. *l. 28 ad ed* and D.14.1.3, Ulp. *l. 28 ad ed.*, in order to determine the powers and the responsibilities of the shipowner (cfr. Cerami, Di Porto, Petrucci, 2004, Parte III, chapter I and chapter II).

Consequently, the *exercitor* was directly liable for what the *magister navis* had done under the powers he had been granted by the act of preposition towards the third parties (cfr. Wacke, 1994, pp. 295 ff.; 1997, pp. 596 ff.; Miceli, 2001, pp. 193 ff.).

On these profiles see:

D. 14.1.1.4. (Ulp. *l. 28 ad ed.*): *Cuius autem condicionis sit magistri iste, nihili interest, utrum liber an servus, et utrum exercitoris an alienus: sed nec cuius aetatis sit, intererit, sibi imputaturo qui praeposuit*; D. 14.1.1.18 (Ulp. *l. 28 ad ed.*): *Sed ex contrario exercenti navem adversus eos, qui cum magistro contraxerunt, actionem non pollicetur, quia non eodem auxilio indigebat, sed aut ex locato cum magistro, si mercede operam ei exhibet, aut si gratuitam, mandati agere potest. Solent plane praefecti propter ministerium annonae, item in provinciis praesides orovinciarum extra ordinem eos iuvare ex contractu magistrorum.*

As to the commercial activities see D. 14.3.1 (Ulp. *l. 28 ad ed.*): *Aequum praetori visum est, sicut commoda sentimus ex actu institorum, ita etiam obligari nos ex contractibus ipsorum et conveniri. Sed non idem facit circa eum qui institorem praeposuit, ut experiri possit: sed si quidem servum proprium institorem habuit, potest esse securus adquisitis sibi actionibus: si autem vel alienum servum vel etiam hominem liberum, actione deficietur: ipsum tamen institorem vel dominum eius convenire poterit vel mandati vel negotiorum gestorum. Marcellus autem ait debere dari actionem ei qui institorem praeposuit in eos, qui cum eo contraxerint.*

Everything is confirmed by the Severian jurists who, in their commentaries, provided a synthesis of the previous law (Tafaro 1980; Tafaro, 1984. The author already develops observations offered by Honoré, 1982, with examination of the bibliography) as it is evident in D. 4.9.6.4 (Paul. *l. 22 ad. ed.*) and in D. 14.1.1.7 (Ulp. *l. 28 ad ed.*).

From the excerpts from the Severian jurists, it is evident that, as to navigation and vessels, the guidelines of the subordinates' work were included in the general scheme regarding the provision of *operae*, which, until the III Century crisis, was part of private law relationships and involved the *servi alieni* or *homines liberi* (Casola, 2015, pp. 3 ff.).

Such a scheme was based on the practice of private autonomy and governed by a type of lease contract or consensual contract, which is a contract based on a mutual commitment, even to accept or to refuse the working conditions proposed by the "employers".

All this was a consequence of the "family's" crisis and revolution, since the latter was no longer able to run working activities alone, because of the social changes and of the ever-growing development of enterprising activities. It is well known (Tafaro, 2009, pp. 62 ff., *ivi* bibliography) that, in the classical age, the *familia* was more responsible for production activities than strangers.

Actually, until agriculture was the only source of wealth, and until the commercial exchanges were limited in the city, where necessary, *pater familias* provided to the family's needs. As a consequence everything was done inside the family and it was the *patres'* duty to provide anything necessary for the family. It was thanks to the *familiae* activities that the economy of the *Civitas* flourished. The fathers took care of the production and coordinated the work of the subordinates and of the *liberti* in a relationship of dependency. Indeed, the *edictum praetoris* used the term *familia* to indicate the productive organization, made thanks to the *pater*.

The *familiae* were made up of several people, mostly of the servant branch (D. 50.16.195, Ulp. *l. 46 ad ed.*) among the latter there were also the *mercenarii* who could be equated slaved labourers, but could never be chosen for executive and supervisory functions (De Robertis, 1963, pp. 117 ff.).

According to the historical sources the supervisors of menial condition (*vilici*) were entrusted (*domino concedente*) with the power of organizing and leading (*imperium*) all the member of the *familiae*, company staff, including free workers (De Robertis, 1963, pp. 147 ff.).

Between the end of the Republic and of the Principality there were so many business activities both in the fields of commerce and of maritime transport that the role of the *pater familias* changed.

He was no longer the only point of reference of the patriarchal family but the head of a mercantile-business oriented family (Cerami, P., 2004, p. 26); it was the task of the *pater familias* to recruit people for a shipping company. On this basis, the *praetores* modified their *edicta* and allocated responsibilities for the contracts signed by the subordinates to an authorized person. These amendments did not imply the transfer of responsibilities from the contracting party to the *dominus negotii*, but the latter's responsibilities were added to the direct (material or civil) responsibilities of the contractor. Therefore measures concerning the *nautae* complied with the new family group where the role of the *pater* was no longer the same, since shipping companies were continuously evolving. In this respect there was the *edictum pratoris* concerning the *receptum* which might be placed in a general context of the several dispositions of the 2<sup>nd</sup>-1<sup>th</sup> centuries B.C.: *de exercitoria actione* and *de institoria actione*. In addition to the *actio recepticia*, the *praetor* had granted several other *actiones* to the *nautae*: *actio furti adversus nautas caupones stabularios* and an *actio in factum* against the *naute* themselves due to the *damnum iniuria datum*. At that point it was necessary to find a more complex legislation which should not discourage maritime service but should correct the failures of civil law. Such a transaction was due to the *praetores* and to the *iurisprudentiae*.

See Stolfi, (2009, p. 34, nt. 52, 35 nt 55), which considers the jurisprudence of the 2nd century AC as real "ethics of merchants" (36 nt. 57).

Besides the needs the family had previously faced, now it was necessary for the family to be supported by special associations, which were very important in maritime business.

As a consequence there was a rise in the *collegia naviculariorum*<sup>3</sup>, which assumed the responsibilities to provide for general interests, such as the supplying of food for the city and the army as well as of maritime connection within the *imperium*<sup>4</sup>.

Indeed, there was a great interest in encouraging shipping companies because of the need of supplying both the armed forces at that time overseas and urban areas and Rome in particular (De Robertis, 1965, pp. 94-95).

As a consequence of this, the fitting-out of the ships and navigation became more and more professional and were regulated by agreements

between private partners, but often, under the higher control of the Civitas and the Empire.

On this basis, the *praefectus annonae*, the *praefectus urbi* and other minor officials were a control bodies of the associations (cfr. Pavis D'Escurac, 1976; Chastagnol, 1960, De Salvo, 1992, pp. 552 ff. See, De Robertis, F.M., 1971, p. 181). According to the author, the constitutions contained in C.Th. 1.6.5 and 1.6.7 show a willingness to keep their respective competences distinct. The officials who were often in conflict, with reference to the issues that arose at the arrival of the provisions in Rome, were in fact the *praefectus annonae* and the *praefectus urbi*, jurisdiction of the *praefectus praetorio* for overseas transport. According to Pavis D'Escurac (1976, p. 286), the revocation of the *praefectus annonae* of the function of superintendent for marine transport, to the advantage of the *praefectus praetorio*, seems to date back to the tetrarchy age. De Salvo (1992, p. 554), argues that the subordination of the former to the second official is also evidenced by CIL XIV 185, containing a dedication of the *codicarii navicularii infra pontem Sublicium* to the *praefectus praetorio* of Italy. According to the scholar, this source is certainly after the renewal of the land registry offices by Constantine, when the skills of the prefect of the *annona* were gradually absorbed.

Regarding the question of the conflict of competences between the *praefectus annonae* and *praefectus urbi*, part of the doctrine proposed two different solutions: according to Chastagnol (1960, p. 299 ff.), starting from 331/333 d.C., there would have been the subordination of the first official to the second, since his autonomy up to 328 would be proven by the confirmation of some constitutions addressed to him. Therefore, at the beginning of the 4th century, the *praefectus urbi* was entitled, among other things, to financial responsibility, jurisdiction over the members of the *corpora* as well as the adoption of exceptional measures in case of famine.

This thesis has been questioned however by Giardina (1977, pp. 65-74), which, on the basis of the epigraph of *Pancharius praefectus annonae* in 357 (cfr. Mazzarino, 1969-1970, pp. 604 ss.) and of the testimony of Simmaco (*Symm.*, 9, 58), hypothesizes the autonomy of the *praefectus annonae* still at the end of the fourth century. According to the scholar, in fact, it is clear

that if the administration of the oil canon was dependent exclusively on the *praefectus urbi*, Simmaco would certainly have turned to that official, who by that time was his friend *Florentinus*.

However, the question that concerns us is knowing that the general organization of the ships and navigation were regulated by free negotiation, as shown by D. 50.6.6.3-12, Call. l. 1 *de cognit.* (cfr. De Robertis, 1938, pp. 403-409; De Salvo, 1992, pp. 518 ff.), and, only in exceptional circumstances (during wars), could be integrated and regulated by legally binding conditions, such as the requisition or the compulsory destination to see transport (De Robertis, 1937, p. 7 and *ivi* ntt 3-4).

Such a situation went on until the late Roman Empire, since from the second half of the III Century and on a permanent basis in the IV Century, the *collegia naviculariorum* were converted into closed, compulsory and hereditary corporations. The latter were more similar to military organizations (De Robertis, 1938, pp. 418 ff. e pp. 457 ff. and *ivi* bibliography) than to the commercial ones.

With this transformation there was, also, the semantic evolution of the original meaning of *collegium*, which had been established with purposes of private cultural and economic nature. Towards the end of the 2nd Century the word *collegium* meant a professional and economically important association in its complex and not with the single members. There was now a conceptual similarity between *collegium* and *corpus*. *Collegium* was not important as an association but as a category able to fulfil a public function (cfr. Rostovtzev, M., 1976, p. 185; Cracco Ruggini, 1976, pp. 92-94).

Consequently all members were bound (*obnoxius*) to the *collegium*, with their assets, their families and themselves such ties with the *collegium* were compulsory and the members could not withdraw from the contract.

The evolution must have been gradual. At the beginning (De Robertis, 1963, 257 f.; pp. 263 ntt. 26 e 27, pp. 289-290) public service was based on the decisions of the single member. Later on when the service became heavier and the gain lower, firstly, the assets and then the people were confiscated and declare *obnoxia functioni* (De Robertis, 1963, pp. 288 ff. Of different opinion was Waltzing, 1895-1900, pp. 329-330), in order to ensure public service in the name of the long-standing *antiquitas*.

As to the *navicularii* it was a question of the whole patrimony (*integra patrimonio*) allocated to the public services which were by then compulsory (C.Th. 13.5.5; 14.4.7).

This is a plausible assumption: such obligations were necessary since there were both fewer and fewer shipowners and a lack of people recruited, but at the same time there were also a few assumptions according to which there might be the chance, even for the *obnoxii* to carry out their business activities freely.

One of the reasons to justify the existence of free *navicularii*, *vacui*, *vacantes* (see De Salvo, 1984, pp. 1645-1657), was that they owned ships of such a low tonnage level that they could not be taken into consideration for the *annonarium* service; the *navicularii* instead of building large ships, built a large number of ships with low tonnage since they could be free from annonian taxes. In that regard, on constitution of Onorius (C.Th 13.5.28) states that all the *obnoxii* to the *functio navicularia* are forced to build ships with the capacity expected to fulfill their obligation.

It was thanks to the institution of professional armies that there was, above all, the division between labour and its specialisation in a specific sector. As far as Quintilian says the *militēs* became one of the *genera hominum*, together with the *genus* of the ex-slaves (*liberti*). In the late Roman Republic, Sallustio used the term *homo militaris* since previously *civis* and *miles* were considered synonyms: the soldier was actually a citizen by definition, and citizen was a potential soldier. (so, Giuffrè, 1983, pp. 13 and 23). The problems concerning the acquisition and distribution of the annona that is the ones linked to the retrieval of young people to recruit, in the IV and V centuries, led to a change in the nature of the military organism, coming to the heredity of the militia and therefore people were directly recruited in a hereditary way. Such a terminology did not only reflect the professional nature of the military's service or the divisions among the soldiers, but the beginning of an authentic caste, *castrensium stirps* and *militaris prosapia*.

In fact, in this period, however, the relationship of the crew on board during navigation underwent a fundamental transformation. The latter was affected by the amendments in the working relationships in every field, and above all in the military field.



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There was no longer the free recruitment of the crew since people became members of the *collegium* automatically and for legacy reasons (De Robertis, 1963, pp. 319 ff.).

## THE EQUIPPING OF SHIPS

If we consider the phases of the maritime organization, and its terminology, we can say that, in ancient Rome, the economical and legal activities of shipowners were characterized by the organization *res ET homines*, allocated by the shipowners to the transport of cargoes and passengers by sea.

This is a peculiar feature of the shipping business which was, actually, been dealt with marginally by the Roman historical doctrine *exercitio navis* (cfr. Rougé, 1966, pp. 11 ff. Ligios, 2013; Giomaro, 2011, pp. 45-104; Cerami, 2004, pp. 8 and 27; Campanella, 2009, pp. 1-25).

It should be stressed that the verb *exercere* (D. 4.9.1.2, Ulp. *l. 14 ad ed.*, D. 4.9.7.5-6, Ulp. *l. 18 ad ed.*, D.14.1.1.16, Ulp. *l. 28 ad ed.*, D. 14.1.5.1, Paul. *l. 29 ad ed.*, D. 14.1.6 pr-1, Paul. *l. 6 brev.*) is used to indicate maritime activities. The employment of men and means and the assumption of serious entrepreneurial risks can lead to productivity and more profits: "actually the term *exercere* by itself refers to the means more than to the result since the

technical difficulties of the organization are taken into account more than the profits” (so, see Giomaro, 2011, pp. 107 ff., nt. 8. Otherwise Lazo, 2009, pp. 641 ff.).

Consequently the goods necessary for commercial activities were destined to the service of the ship and so they were part of the *instrumentum navis* (Richichi, 2001, p. 23; Giomaro, 2011, pp. 114; Ligios, 1996, p. 5).

In that regard the sources speak of *instrumentum navis e/o* of a ship *cum instrumento*:

D. 14.2.3 (Pap. . 19 *respons.*): *Cum arbor aut aliud navis instrumentum removendi comunis periculi causa deiectum est, contributio debetur;*

D. 33.7.29 (Lab. 1 *πιθανῶν*): *Si navem cum instrumento emisti, praestari tibi debet scapha navis. Paulus: immo contra. Etenim scapha navis non est instrumentum navis: etinim mediocritate, non genere ab ea differt, instrumentum autem cuiusque rei necesse est alterius generis esse atque ea quaequae sit: quod Pomponio libro septimo epistularum placuit.*

It is important to consider the relationship between *instrumentum* and *negotiatio*, in order to understand better the meaning of the terms used by the sources and to grasp the difference between functionality and the object of *negotiatio* at sea.

We might say that the use of the means and of the people making up the *instrumentum* (Giomaro, 2011, pp. 105 ff. and *ivi* nt 1) should aim at facilitating navigation. In this way it was possible firstly to pursue maritime and commercial activities and secondly to get good financial profits; *exercere* could produce all this, thanks to a permanent organization of men and things.

At this point, the expression *taberna instructa* used by Ulpiano in a passage of his comments on the *actio institoria*:

D. 50.16.185 (Ulp. *l 28 ad ed.*): *‘instructam’ autem tabernam sic accipiemus, quae et rebus et hominibus ad negotiationem paratis constat.*

The passage, according to Lenel, was part of the *actio institoria* to which the last part of the 28th book of Ulpiano’s commentaries *ad edictum* should be dedicated. At this point perhaps we may find the presence of the expression *taberna instructa* in the expression *actio institoria* and consequently set its origin when the *praetor* introduced the important instrument of protection (Mantovani, 1999 pp. 79 ff.; Miceli, 2001, pp. 354 ff.; Miceli, 2008, p. 344, nt 29).

The Severian jurist underlined the meaning of the adjective *instructa* referring to things and men *ad negotiationes paratis*.

The word *taberna* might have a neutral meaning corresponding to a place in general but, regarded as *instructa*, might suggest the place equipped by the business man) for his commercial enterprise. (Ortu, 2003, pp. 3 ff.; Ortu, 2014, p. 152 s.; Ortu, 2018/1, p. 204).

D. 14.3.18 (Paul. *l. sing. de var. lect.*): *Institor est, qui tabernae locove ad emendum vendendumve praeponitur quique sine loco ad eundem actum praeponitur.*

In the Hendiadys the adjective *instructa* was related to a complex of goods, works and services (Ligios, 2011, pp. 112 ff.) organized by the *negotiator* for a specific *negotiatio* (Fadda, 1987, p. 52; Buckland, 1908, p. 234; Manfredini, 1988, p. 328; Serrao, 2000, p. 34; Serrao, 1989, p. 22; Gallo, 1992 = 1999, pp. 823, pp. 133 ff.; Chiusi, 1993, pp. 284 ff. and 314 ff.; Wacke, 1994, pp. 280 ff.; Di Porto, 1997, p. 440; Ligios, 2001, pp. 65 ff.; Navarrini, 1901, pp. 10 ff.) and, consequently, took a specific legal-economic form.

In particular, to the category *homines*, Ulpiano states that the latter, together with *res* should be useful for *negotiation*. As we will say later on, it will be possible to include not only people with leading positions such as the *magister navis*, but also other people regardless of their jobs and their positions within the organization hierarchy of the specific *negotiatio*. What is important is that these people were obliged to perform their *ministerium* in favour of a specific business activity, as we can desume from Ulpiano's words in D. 39.4.1.5 (Ulp. 55 ad ed.): *Familiae nomen non tantum ad servos publicanorum referemus, verum et qui in numero familiarum sunt publicani: sive igitur liberi sint sive servi alieni, qui publicani in eo vectigali ministrant, hoc edicto continebuntur.*

The staff might be made up of free men as well as of serfs (*sive igitur liberi sint sive servi alieni*), as we can desume from another of Ulpiano's texts in D.14.1.14 (Ulp. 28 ad ed.).

Both Pedio and Ulpiano in the concept *res* also included the word *merces*. In Ulpiano's fragment D.14.4.1.1 (Ulp. 29 ad ed.), it is evident that the word *res* was used for commercial activities.

Such an assumption is strengthened by Papiniano when he deals with the term *domus instructa*, according to Ulpiano's report.

D. 33.7.12.43 (Ulp. 20 ad Sab.): ... *sed et ipse Papinianus eodem libro responsorum ait patrem mercatorem ac faeneratorem, qui duos filios totidemque filias heredes instituerat, ita legasse: 'filiis maribus domum meam instructam do lego darique iubeo', merces et pignora an contineantur, quaeri posse, sed facilem iudici voluntatis coniecturam fore ceteris patris facultatibus examinatis.*

In conclusion, Ulpiano stressed a close relation between *taberna instructa* and *negotiator*. Ulpiano must have been aware of the concept *navis instructa* corresponding to the organisational structure of a shipping company.

Such a concept must have been the basis of the Roman sources speaking of *instruere vel armare* or simply *instruere navem*, which should be equivalent to *parare negotiationem* used by Ulpiano in D.50.16.185 to define *taberna instructa* (cfr. Cerami, 2004, pp. 18-27; Giomaro, 2011, p. 114. Of different opinion were Campanella, 2009, pp. 11 ff.; Petrucci, 2007, p. 57; Ligios, 2013, p. 128 nt 93).

According to the sources (D. 14.1.1.8, Ulp., *l 28 ad ed.*; D. 14.2.6, Iulian., *l 86 dig.*; D. 45.5.26, Paul., *16 brevis ed.*; D. 4.9.7.4, Ulp., *l 18 ad ed.*) we might assume that the expression *instruere* involved everything necessary for navigation, including the sailors' recruitment, as evidenced by Ulpiano's commentary in D.4.9.7.4 when the jurist referred to referred *adhibere qualesquales (nautas) ad instruendum navem*.

Roman jurists must have adopted a functional criterion of *navis instructa* including both the *armamenta* (Richichi, 2001, pp. 21 ff.) and the *instrumenta*, referred both to the outfitting of the ship and to all the activities on board which implied the use of the *nautae* (cfr. D. 33.7.13 *pr.*, Paul. *l 4 ad Sab.*).

Consequently it is important to examine the organizational structure of the shipping activities.

## THE RECRUITMENT OF THE CREW

the management of a shipping company, regarded as a complex of *res et homines ad negotiationem parati* required a constant commitment not only in the purchase and in the use of the equipment of the ship but above all in the recruitment of the staff suited to specific working tasks, necessary for the different navigation phases.

To this end, it is worth remembering that the organization of a shipping company (*societas exercitorum*) could, actually, take three important forms.

The first was the one in which the *exercitor* (the shipowner) was not replaced by another person but took command of the operations of the ship assuming the roles of *magister* and of *gubernator*, probably helped by his own slaves (see, De Robertis, 1952, p. 49).

The second form was related to important companies dealing exclusively with the loading and unloading of a certain type of cargoes (D. 14.1.1.12, Ulp. *l. 28 ad ed.* See De Robertis, 1952, p. 71 nt 3), taken into consideration according to their weight and size; in such a situation the *exercitor* did not board the ship but entrusted the task of taking and delivering the goods to a substitute in the dual role of *gubernator* (helmsman) and *magister* (Cerami, Di Porto, Petrucci, 2004, pp. 54 ff.; Di Porto, 1984, p. 169 ff.; Coppola Bisazza, 2006, p. 189 f.).

The third form was related to important companies dealing with a wide range of activities, requiring several operations. According to the latter's importance, it was necessary to entrust the economic activities linked to navigation to a *magister*, economic and commercial manager (Moschetti, 1964, pp. 50-113; Moschetti, 1966, pp. 13 ff.; Moschetti, 1969, pp. 388, 391 ff.), with the assistance of a *gubernator*, master of the ship (cfr. Rocco, 1898, pp. 4301 ff.; Ghionda, 1935, p. 327 ff.; Moschetti, 1964, pp. 80 ff.; Guarino, 1965, pp. 36 ff.), only for the nautical/technical management.

Both the *magister* and the *gubernator* were helped by employees such as the *nautae* (sailors), the *mesonautae* (the sailors working below deck), the *nautaepibatai* (passengers who paid for their voyage by working on board), the *custodes navium* (surveillance staffs), the *diaetarii* (accountants for commercial transactions), the *naupegi* (carpenters), the *proreta* or *ducator* (lookouts signaling dangers, spotting cliffs or obstacles), the *urinatores*, divers, (Moschetti, 1977, pp. 565 ff. and *ivi* bibl.).

It is not difficult to understand that the performance of the working activities on board involved several people.

As a consequence the more complex the organization of working time and supervision was, the more numerous the *nautae* were. So there was a separation of duties (De Robertis, 1946, pp. 130 ff.) and therefore there were different contracts of recruitment for the crew members. The supervisors played a great role and were named according to their role: *exercitor* or *magister navis*.

As to the role of the *magister navis*, Ulpiano writes that the latter was entrusted with the control of the whole voyage.

D. 14.1.1.1 (Ulp. l. 28 ad ed.): *Magistrum navis accipere debemus, cui totius navis cura mandata est.*

The *magister navis* therefore presided over the life of the ship (according to Moschetti, 1964, p. 90; Moschetti, 1966, p. 65 and *ivi* nt 168). He was in charge of supplies and passengers; he had the task of arming and outfitting the ship (D. 14.1.1.3, Ulp. l. 28 ad ed.), through a right/duty to command during the voyage and supervise the crew.

He was allowed to borrow money with a mortgage in order to face the needs of the ship.

D. 14.1.1.8 (Ulp., l 28 ad ed.): *Quid si mutuam pecuniam sumpserit, an eius rei nomine videatur gestum? et Pegasus existimat, si ad usum eius rei, in quam praepositus est, fuerit mutuatus, dandam actionem, quam sentetiam puto veram: quid enim si ad armandam instruendamve navem vel nautas exhibendos mutuatus est?*<sup>5</sup>

These supervisors employed subordinates to supervise the works of the other crew members including the *gubernatores*<sup>6</sup>.

The *gubernator's* engagement like the *magister's* was signed through a *locatio operis faciendi* (Moschetti, 1966, pp. 58 ff.) or through a *mandatum*, depending on whether he worked against payment or for free.

The request of recruitment should be made by a *dominus navis* or *exercitor* and more often by Augustus himself, by the *corpora naviculariorum* that met the increasing needs of the public *annona* since it was not easy to perform such business in an individually (De Robertis, 1937, pp. 189 ff.).

If the *exercitor* had entrusted the economic management of the ship to a *magister navis* the latter was obliged to recruit both the sailors and the *gubernator* himself, accordingly.

D. 19.2.13.2 (Ulp. l. 32 ad ed.): *Si magister navis sine gubernatore in flumen navem immiserit et tempestate orta temperare non potuerit et navem perdidit, vectores habebunt adversus eum ex locato actionem.*

The other members of the crew, were recruited through *locatio operarum* (D. 4.9.6.4, Paul. l. 22 ad ed.) since they were subjected to the *gubernator* (Cfr. Moschetti, 1966, p. 42 f.).

If other people's slaves were recruited, it was the case of a *locatio conductio rei*.

The recruitment of other people's slaves was not a rare case according to what emerges from D.4.96.1 (... *si servo meo in nave utaris* ...) and from D.4.9.7.4 (... *cum alienos adhibet* ...). In both cases the *exercitor* or the *magister* supervised the *operae* of the free sailors and in this case of the slaves recruited as *nauta*.

Such a passage was, also, the confirmation of what stated above:

D. 14.1.1.2 (Ulp. l. 28 *ad ed.*): *Sed si cum quolibet nautarum sit contractum, non datur actio in exercitorem: quamquam ex delicto cuiusvi eorum, qui navis navigandae causa in nave sunt, datur actio in exercitorem: alia enim est contrahendi causa, alia delinquendi: si quidem qui magistrum praeponit, contrahi cu meo permittit; qui nautas adhibet, non contrahi cum eis permittit, sed culpa et dolo carere eos curare debet.*

The passage dealt with the matters relating to the shipowner's responsibilities. The jurist underlined that the *exercitor*, once got his position, was responsible for the contracts signed by the *magister navis* but was not responsible for the contracts signed by other crew members (sailors) who were not authorized by the shipowner himself. The latter, anyway, was responsible for the former's behaviour in case of loss, theft or breakdowns.

The sailors' positions were completely different since they depended both on the *exercitor* and on the *magister navis*. The latter, during the voyage, had several powers. He could use either fraudulent means or to take disciplinary measures. The sailors, so, were in a situation of dependence until the expiry date of the contract (as a rule contracts were signed *ad certum tempus* usually a year).

All scholars agree (See De Robertis, 1946, pp. 132 ff.) that the main object of the *locatio operarum* was the worker himself, at least in the early Classical age. Consequently, the duty to work was not related to the contract itself but to the state of dependence in which the employees were *mercedes conductus*. D. 7.1.23.1 (Ulp. l. 17 *ad Sab.*): *Quoniam autem diximus quod ex operis acquiritur ad fructuarium pertinere, sciendum est etiam cogendum eum operari: etenim modicam quoque castigationem fructuario competere Sabinus respondit et Cassius libro octavo iuris civilis scripsit, ut neque flagellis caedat.*

All this was balanced by a clause for the supply of food and clothes which was frequently needed in their contracts. In the recruitment contract remuneration (*merces*) was normally fixed in a single amount and could be received at the end of the voyage (De Robertis, 1946, p. 263).

From the information received on this discipline in the following years and in particular from the statutes concerning the maritime sector, it is evident that sailors could be hired with a fixed amount (*ire, navigare o vadere ad marinaritium*) according to the recruitment contracts. The salary was calculated according to the sea routes to be sailed and to the duration of the working relationship.

There was, as well, the expression *ire ad partem* which meant recruitment in partnership either for the profits or for any possible losses (Robertis, 1932; Anecchino, 1934; Zeno, 1939, pp. 310 ff.; Zeno, 1946, pp. 270-275; Anselmi, 1981, pp. 609-624 = 1991, pp. 43-52).

Such a discipline was constant and lasted even when the shipping industry became compulsory (*munus navicularium*) in the IV century. In this way the *navicularii* and their colleges, from free and independent, became bound by a condition of subjection (De Salvo, 1988, pp. 333-334; Herz, 1988, p. 153) As we have already said, navigation, during the IV century, was no longer free but became a compulsory service towards the Empire and/or the *civitates*.

Also, we wonder if all the *navicularii* of the Empire were in the conditions above mentioned or if there were some of them who could be free from the *functio*. There were some members of the corporation who were not subject to the *functio* (Rougé, 1966, pp. 263 ff., 482 ff.; Cracco Ruggini, 1976, p. 80; De Martino, 1979, pp. 426 ff.; otherwise Waltzing, 1895-1900, pp. 54 s. In particular, De Robertis (1937, pp. 196 ff.; De Robertis, 1971, pp. 2, 187 ff., 205 ff., 216-223) had stressed the existence of *navicularii vacui* o *privati* together with those defined *obnoxii*, in legal texts dated between the IV and the V centuries.

He had deduced that there were no absolute restrictions in those years; during the V century every free shipowner was subject to restrictions; in the end, between the V and the VI centuries, these restrictions gradually disappeared until a complete independence was achieved.



## CONCLUSIONS

In the fight of this finding, as a consequence, a condition of subjection was often balanced by an exemption granted to the *navicularii* by the *onera* and *munera*:

C. Th. 13.5.5: *Navicularios omnes per orbem terrarum per omne aevum ab omnibus oneribus et muneribus, cuiuscumque fuerint loci vel dignitatis, secures, vacuos, immunes esse praecipimus, sive decuriones sint, sive plebei, seu potioris alterius dignitatis, ut a conlationibus et omnibus oblationibus liberati, integris patrimoniis, navicularium munus exerçant;*

C. Th. 13.5.17: *Omnes navicularii per omne aevum ab omnibus oneribus et muneribus et collationibus et oblationibus sublevantur, cuiuscumque loci fuerint vel dignitatis. Et quicumque contra istam fecerit legem, seu custos litorum seu vectigalium praepositus seu exactor vel decurio seu rationalis vel iudex cuiuscumque provinciae, exhibitus sublatis universis facultatibus suis capitali sententiae subiugetur;*

C. Th. 13.5.7: *Pro commoditate urbis, quam aeterno nomine iubente deo donavimus, haec vobis privilegia credidimus deferenda, ut navicularii omnes a civilibus muneribus et oneribus et obsequiis habeantur immunes et ne honores quidem civicos, ex quibus aliquod incommodum sentiant, subire cogantur. Ab administratione etiam tutelae, sive legitimae sive eius, quam magistratus aut provinciae rectores iniungunt, habeantur immunes. Et vacatione legis Iuliae et Papiae potiantur, ut etiam nullis intervenientibus liberis et viri ex testamento uxorum solidum capiant et ad uxores integra voluntas perveniat maritorum. De proprietate etiam vel hereditate vel qualibet alia civili causa pulsati ne ex rescripto quidem nostro ad extraordinarium iudicium evocentur, sed agentibus in suo foro respondeant. Et ad exemplum Alexandrini stoli quaternas in frumento centesimas consequantur ac praeterea per singula milia singulos solidos, ut his omnibus animati et nihil paene de suis facultatibus expedentes cura sua frequentent maritimos commeatus.* In particular, this text constitutes a true catalog of the types of exemptions recognized as well as of the guaranteed economic measures: in the first part of the *lex*, in fact, the exemption from the discharge of the public *munera* to the shipowners who provided the public service was ordered; in the second part, moreover, it is established that the shipowners, this time of the East, will obtain *quaternas in frumento centesima*

as well as a *solidus* every thousand measures of loading, in accordance with the precedent established for the case of the Alexandrian fleet.

C. Th. 13.5.16 *pr.*: *Delatam vobis a divo Constantino et Iuliano principibus aeternis equestris ordinis dignitatem nos firmamus. Quod cum ita sit, si quis contra interdicta innumerabilium sanctionum corporali vos iniuria pulsare audeat, digna expiatione est luiturus ausum inmanis admissi, apparitione quoque sua ultimo supplicio deputanda, cuius monitio hanc debet sollicitudinem sustinere, ut iudices prava forsitan indignatione succensos ab illicitis tempestiva suggestione deducat.1. Huic illud additur, ne, qui certum ordinem ex nostra definitione retinetis, ulli vos alteri hominum generi haerere vereamini nec timeatis vos civitatum municipibus innecti. Ex nullo itaque nexu, nulla causa, nulla persona decurionum vos obsequia contingent, cum praesertim priscis constitutionibus, quarum series orationis paginis antelata est, magis illud invaluisse perhibeatis, ut plerumque et ordinarios curiales naviculariorum sibi necessitas vindicaret.*

Instead as an example of the exemption from *vectigal*, see:

C. Th. 13.5.23: *Solos navicularios a vectigali praestatione immunes esse praecipimus. Omnes vero mercatores teneri ad supra dictam praestationem in solvendis vectigalibus absque aliqua exceptione decernimus; 24: Ne qua causatio vectigalium nomine relinquatur, hoc observari decernimus, ut nulla omnino exactio naviculariis ingeratur, cum sibi rem gerere probabuntur, sed a praestatione vectigalium habeantur immunes* (On this point, see De Robertis, 1937, pp. 8 ff.; De Salvo, 1992, pp. 538 ff. and 575 nt 410).

The measures linked to this exemption were directed to the *navicularii*.

At this point we wonder who its true beneficiaries were. As far as we know the *navicularii* were the people who organized navigation, which is the shipowners. So the exemption *de quo* might only have involved shipowners.

In reality, such a question is not answered by the sources that is why there might be some speculation: either, in this case, the word *navicularius* was extended to all the crew members or the *onera* and *munera* were above all economical and so the crew members could not be charged for the payment since they were not rich.

The Sailors were, however, disadvantaged, which is stressed by the fact they had no guarantees and in particular they had no lien over the ship in case of non-payment of the salary<sup>7</sup> on board (Gandolfo, 1883, pp. 288 ff.).

This discrimination was an object of attention in the following ages. There were, actually, some improvements in the Byzantine period. In *Nómos Podíon Nautikós* (Ashburner, 1909; Biscardi, 1983, p. 13; Marcou, 1995, p. 609) which were a series of Laws probably collected during the reign of Leone III The Wise. There were some instructions concerning the legal and economic position of the *nautae* during the voyage. In cc. 46 it was written that a sailor, hired for a year, in case of partial or total deterioration of the ship, did not lose his entitlement to payment and if he died in a shipwreck, his salary was donated to his heirs for the whole year. Deriving from the Roman Law there was the figure of the sailor recruited only for a specific period of time and consequently with a fixed salary, a figure we find in the *Nómos Podíon Nautikós* (cc. 5 and 64: μιστὸς). The salary was determined and equally distributed among all the crew members according to the hierarchy on board.

In the *Nómos* all the technical functions of the ancient *magister navis* were assumed by the *naukleros* since the latter's duty was to verify the efficiency and the equipment of the ship before a voyage (cc 34/ III).

The *nautai* made up the crew and were subject to the authority of the *naukleros* and as a result of this subordinate relationship, the *naukleros* were liable for the damages caused by the sailors during the loading of the goods.

In the collections following the *Nómos* the sailor's economic and legal position was safer.

It is not possible here to explain the instructions contained in the Italian Statutes for maritime transport.

All these complex topics are widely documented in literature (see above all Debarbieri, 1893; Corrieri, 2005; A. Lefebvre D'Ovidio, G. Pescatore, L. Tullio, 2011, p. 15 *ivi* bibliography).

The main topic of interest is now the sailors' treatment, testified by chapter 33 of the *Consolato del mare: Se la nave, o altro vasello doppo che habbia fatto alcun viaggio, sarà venduta a instatia delli creditori, del pretio habbuto per il tal vaso sono pagati prima li servitori, et marinari del detto vaso della lor mercede, et questo senza fidejussione de restitutione, et sono anziani ad ogni altra sorta di credito*. In such a collection the sailor's condition was given a leading role.

The *Consolato*, established in the second half of the IV century in Barcelona (cfr above all Pardessus, 1828-1845, rist., II, Torino, 1959, pp. 1 ff.), unified the

maritime law of the Mediterranean peoples and influenced the legislation of the countries and of the cities on the sea as it is evident in its own *incipit*: “*açi comencen les bones costumes de la mar*”. *Aquests son los bonos stabliments ò los bones costumes que son de fet de mar, que los savis homens qui van perlomon ne començaren à donar als nostres antecessors* (chapter 46). On the privileges in favor of the sailors, see chapter 135: *Padrone di nave è tenuto a' marinari, che del nolo che li sarà pagato, lui debba pagare a' detti marinari, et se il nolo non basta, lui se ne debbi fare imprestare, et se non troverà chi ne gli presti la nave si debba vendere, et che si paghino li marinari inanzi che persona vi sia, né prestatore, né altra persona. Perché il marinaio non ci fusse se non un chiodo di che si potesse pagare, si debba pagare*.

## References:

- AA.VV., *Manuale di diritto della navigazione*, 12 ed., Milano, Giuffrè, 2011; 14 ed., 2016.
- Annechino, A., “Il contratto di arruolamento nella Tabula di Amalfi”, in *Atti del Convegno Internazionale di diritto marittimo medioevale*, Comitato Regionale Associazione Italiana di Diritto Marittimo, Napoli, 1934
- Anselmi, S., “Disciplina e salari marittimi in Adriatico: due casi della costa italiana, XIV-XV sec.”, *Le genti del mare Mediterraneo*, I (R. Ragosta, ed.), Napoli, L. Pironti, 1981, pp. 609 ff. (= Anselmi, S., “Arruolamento, disciplina e salario dei marittimi: il caso di Ancona nei secoli XIV-XV”, *Adriatico. Studi di storia, secoli XIV-XIX* (R. Ragosta, ed.), Ancona, 1991, pp. 43 ff.).
- Ashburner, *The Rhodian Sea-Law edited from the manuscript*, Oxford, 1909.
- Basilio, G., *Origini e sviluppo del nostro diritto marittimo*, C.U. Trani, Trieste, 1914.
- Biscardi, *Continuità della tradizione ed esigenze di rinnovamento nella compilazione bizantina del “Nomos Rhodion Nautihos”*, in AA.VV., *La legge del mare in Italia dell'èvo antico alle moderne codificazioni*, Bari, 1983, p. 13
- Bognetti, G.P., *La funzione di Amalfi nella formazione di un diritto comunale nel Medioevo*, in *Atti del Convegno Internazionale di diritto marittimo medioevale*, Comitato Regionale Associazione Italiana di Diritto Marittimo, Napoli, 1934
- Bonolis, G., *Il diritto marittimo medioevale*, Pisa, 1921
- Bonolis, G., *L'associazione fra caricatori, armatori e marinai nel Diritto marittimo medioevale* in *Atti del convegno internazionale di studi storici del Diritto marittimo medioevale*, Comitato Regionale Associazione Italiana di Diritto Marittimo, Napoli, 1934

- Buckland, W.W., *The Roman Law of Slavery. The Condition of the Slave in Private Law from Augustus to Justinian*, Cambridge, University Press, 1908.
- Campanella, A., “Brevi riflessioni su D. 50.16.185 (Ulp., 28 ad ed.). Profili terminologico-concettuali della definizione ulpiana di *taberna instructa* e locuzioni sostanzialmente equivalenti nella riflessione giurisprudenziale romana tra il I sec. a.C. e il III d.C.”; *Diritto@Storia*, tradizione romana 8 (2009), pp. 1-25.
- Carro, D., *Nascita ed affermazione del potere marittimo di Roma*, in AA.VV., *Il Mediterraneo quale elemento del potere marittimo – Acta del Convegno di Storia Militare tenuto a Venezia nella sede dell’antico Arsenal dal 16 al 18 settembre 1996*, P. Alberini (ed.), Ufficio Storico della Marina Militare – Commissione Italiana di Storia Militare, Roma 1998, pp. 55-88;
- Casola, M., “Armatrici e marinaie nel diritto romano”, *La donna nel diritto nella politica e nelle istituzioni* (R. Pagano, F. Mastroberti, eds.), Quaderni del Dipartimento Jonico, 1, 2015, pp. 3-18.
- Casola, M., Roma ed il Mediterraneo: sicurezza e circolazione, in *Revista General de Derecho Romano*, 26, 2016, p. 1 ff.
- Casola, M., *Lequipaggio delle navi nell’antico Mediterraneo: Reclutamento e Disciplina*, Annali del Dipartimento Jonico, anno IV, 2016.
- Chastagnol, A., *La Préfecture urbaine à Rome sous le Bas-Empire*, Paris, 1960, De Salvo, *Economia privata*, pp. 552 ff.
- Cracco Ruggini, L. *Lannona di Roma nell’età imperiale*, in AA. VV., *Misurare la terra: centuriazione e coloni nel mondo romano. Città, agricoltura, commercio, i materiali di Roma e del suburbio*, Roma, 1985, pp. 224-236.
- Casson, L., *Illustrated History of Ships and Boats*, New York, Doubleday & Company, 1964.
- Casson, L., *Ships and Seamanship in the Ancient World*, Princeton-New Jersey, Princeton legacy Library, 1971.
- Casson, L., *Navi e marinai dell’antichità*, Milano, Mursia, 2004 (titolo originale: *The Ancient Mariners*, trad. di C. Boero Piga).
- Cerami, P., “Terminologia, oggetto e periodi storici del diritto commerciale romano”, *Diritto commerciale Romano. Profilo Storico*, II ed. (P. Cerami, A. Di Porto, P. Petrucci, eds.), Torino, Giappichelli, 2004, pp. 3-33.
- Cerami, P., Di Porto, A., Petrucci, P. (eds.), *Diritto commerciale Romano. Profilo Storico*, II ed., Torino, Giappichelli, 2004.

- Cerami, P., *Impresa e societas nei primi due secoli d'impero*, in AA.VV. Affari finanza e diritto nei primi due secoli dell'Impero. Atti del Convegno Internazionale di diritto romano. Copanello 5-8 giugno 2004, (F. Milazzo ed.) Milano, Giuffrè, p. 193 nt. 79.
- Chiusi, T.J., "Contributo allo studio dell'editto de «*tributoria actione*»", *Atti dell'Accademia Nazionale dei Lincei* vol. 3, fasc. 4, Roma, Accademia Nazionale dei Lincei, 1993, pp. 284 ff.
- Coppola Bisazza, G., *Alcune riflessioni in ema di exercitor e di actio exercitoria*, in AA.VV., *Studi in memoria di Elio Fonara*, (La Torre U., Moschella G., Pellegrino F. Rizzo M.P., Vermiglio G. eds), tomo I, Milano, Giuffrè, 2006, p. 189 f.
- Corrieri., S., *Il Consolato del mare*, Associazione Nazionale del Consolato del Mare, Roma, 2005.
- Cracco Ruggini, L., "Le associazioni professionali nel mondo romano-bizantino", *Artigianato e tecnica nella società dell'Alto Medioevo occidentale*, XVIII (AA.VV., eds.), Settimana di Studio del Centro Italiano sull'Alto Medioevo (Spoleto 1970), Spoleto, CISAM, 1971.
- Cracco Ruggini, L., "Collegium e corpus: la politica economica nella legislazione e nella prassi", *Istituzioni giuridiche e realtà politiche nel tardo impero (III-V sec. d.C.). Atti di un incontro tra storici e giuristi* (Firenze 2-4 maggio 1974) (G.G. Archi, ed.), Milano, Giuffrè, 1976, pp. 63-94.
- DeBarbieri, R.G., *I marinai negli Statuti Marittimi Italiani del MedioEvo*. Contributo alla Storia del Diritto Marittimo Privato, Genova, Tipografia del R. Istituto Sordo-Muto, 1893.
- De Robertis, F.M., "Il *corpus naviculariorum*, nella stratificazione sociale del basso impero. Contributo alla critica del Codice Teodosiano", *RDN*, Anno III, n. 2 (1937), pp. 3 ff.
- De Robertis, F.M., *Il Diritto Associativo Romano Dai Collegi Della Repubblica Alle Corporazioni Del Basso Impero*, Vol. I, Bari, Laterza, 1938.
- De Robertis, F.M., *I rapporti di lavoro nel diritto romano*, Milano, Giuffrè, 1946.
- De Robertis, F.M., "'Receptum nautarum'. Studio sulla responsabilità dell'armatore in diritto romano, con riferimento alla disciplina particolare concernente il *caupo* e lo *stabularius*", *Annali Bari* 12 (1952).
- De Robertis, F.M., *Lavoro e lavoratori nel mondo romano*, Bari, Adriatica Editrice, 1963.
- De Robertis, F.M., "D. 19.2.31 e il regime dei trasporti marittimi nell'ultima età repubblicana", *SDHI* 31 (1965), pp. 94 ff.

- De Robertis, F.M., *Storia delle corporazioni e del regime associativo nel mondo romano*, 1, Bari, Adriatica, 1971.
- De Robertis, F.M., *Il fenomeno associativo nel mondo romano. Dai collegi della Repubblica alle Corporazioni del Basso Impero*, Napoli, 1955. Rist. Roma, L'Erma di Bretschneider, 1981.
- De Martino, F., *Storia economica di Roma antica*, 1, Firenze, La Nuova Italia, voll. 1-2, 1979.
- De Martino, F., *Diritto economia e società nel mondo romano. III Economia e società*, Napoli, Jovene, 1997.
- De Salvo, L., "Sul problema della *vacatio dei navicularii*", *Sodalitas: "Scritti in onore di Antonio Gurarino"*, 4 (V. Giuffrè, ed.), Napoli, Jovene, 1984, pp. 1645-1657.
- De Salvo, L., *Economia privata e pubblici servizi nell'impero romano. I corpora naviculariorum*, Messina, Samperi, 1992.
- De Salvo, L., *Pubblico e privato in età severiana: il caso del trasporto dell'olio betico e l'epigrafia anforaria*, in *Navires et commerces de la Méditerranée antique, Hommage à j. Rougé*, CH 33, 1988, pp. 333-334; Herz, *Wirtschaftsgesetzgebung*, p. 15e f.
- De Visscher, F., "La notion de "corpus" et le regime des associations privées à Rome", *Scritti in onore di Contardo Ferrini*, 4 (AA.VV., eds.), Milano, Pubblicazioni dell'Università Cattolica del Sacro Cuore, 1966, pp. 43 ff.
- Di Porto, A., "Il diritto commerciale romano. Una «zona d'ombra», nella storiografia romanistica e nelle riflessioni storico-comparative dei commercialisti", *Nozione, formazione e interpretazione del diritto dall'età romana alle esperienze moderne*. Ricerche dedicate al prof. F. Gallo, 3 (AA.VV., eds.), Napoli, Jovene, 1997, pp. 413-452.
- Di Porto A., *Impresa collettiva e schiavo manager «Manager» in Roma antica (II sec. a. C. -II sec. d. C.)*. Università di Roma, Pubblicazioni dell'Istituto di diritto romano e dei diritti dell'Oriente Mediterraneo LXIV). Milano, Giuffrè, 1984.
- Fadda, C., *Istituti commerciali del diritto romano. Introduzione*. II ed., Napoli, Jovene, 1987.
- Fiori, R., *La definizione della 'locatio conductio'. Giurisprudenza romana e tradizione romanistica*, Napoli, Jovene, 1999.
- Flamigni, A., *Evoluzione del potere marittimo nella storia*, Ufficio Storico della Marina Militare, Roma 2011.
- Frézouls Ed, *Sur l'historiographie de l'impérialisme romain*, in *Ktéma* 8 (1983), pp. 141 ff.

- Gallo, F., “*Negotiatio* e mutamenti giuridici nel mondo romano”, *Imprenditorialità e diritto nell’esperienza storica. Atti del Congresso della Società italiana di Storia del diritto*, Erice 22-25 Novembre 1988 (M. Marrone, ed.), Palermo, 1992, pp. 133 ff. (= *Opuscula selecta* (F. Bona, M. Miglietta, eds.), Padova, Cedam, 1999, pp.823 ff.).
- Gandolfo, E., *La Nave nel Diritto romano*, Genova, Tip. Edit. e Lit. di Gio. Sambolino, 1883.
- Garnsey, P., *Grain for Rome*, in GarnseyHopkins-Whittaker, *Trade in the Ancient Economy*, 1983, pp. 118-130; 201-203.
- Ghionda, F., Sul “*magister navis*”, *RDN* 1 (1935), p. 327 ff..
- Giardina, A., *Sulla concorrenza tra prefettura urbana e prefettura dell’annona*, *SicGymn*, 30, 1977, pp. 65-74
- Giomaro, A.M., “Dall’*instruere* all’*instrumentum* e viceversa nell’economia della Roma antica”, *Studi urbinati di scienze giuridiche politiche ed economiche*. Nuova serie 78 (2011), pp. 45-104.
- Giuffrè, V., *Il ‘diritto militare’ dei Romani*. Seconda edizione riveduta ed integrata, Bologna, Pàtron Editore, 1983.
- Guarino, A., “‘*Magister*’ e ‘*gubernator navis*’”, *Labeo* XI (1965), pp. 36 ff.
- Lazo, P., “Emprendimiento en Roma antigua: de la política al derecho”, *Revista de Derecho de la Pontificia Universidad Católica de Valparaíso* 33 (2009), pp. 641 ff.
- Honoré T. (1982), *Ulpian*. California: Clarendon Press.
- Harris , *The Imperialism of MidRepublican Rome*, Roma 1984.
- Herz, P., *Studien zur römischen Wirtschaftsgesetzgebung. Die Lebensmittelversorgung*, *Historia Einzelschr. Heft 55*, Stuttgart, 1988.
- Huvelin, *Etudes d’histoire du droit commercial romain*, Paris, 1929.
- Ilari, V., *Roman Sea Power. L’emersione di un tema storiografico*, in *Rivista Marittima*, CXLV (2012) = *Collana Sism*, 2014
- Ligos, M.A., *Interpretazione giuridica e realtà economica dell’“instrumentum fundi” tra il I sec. a.C. e il III sec. d.C.*, Napoli, Jovene, 1996.
- Ligos, M.A., “‘*Taberna*’, ‘*negotiatio*’, ‘*taberna cum instrumento*’ e ‘*taberna*’ nella riflessione giurisprudenziale classica”, “*Antecessori oblata*”. *Cinque studi dedicati a A. Dell’Oro* (AA.VV., eds.), Padova, Cedam, 2001, 35 ff.
- Ligos, M.A., *Nomen negotiationis. Profili di continuità e di autonomia della negotiatio nell’esperienza giuridica romana*, Torino, Giappichelli, 2013.



- Lo Cascio, E., *L'organizzazione annonaria*, in AA.VV., *Civiltà dei Romani. La città, il territorio, l'impero*, Torino, 1990, pp. 229-248.
- Lo Cascio, E., "I caratteri dell'economia imperiale", in AA.VV., *Introduzione alla storia di Roma* (I Manuali), I ed., Milano, Edizioni Universitarie di Lettere Economiche e Giuridiche, 1999, pp. 368 ff.
- Manfredini, A.D., "Costantino la tabernaria il vino", *Atti del VII Convegno internazionale dell'Accademia Romanistica Costantiniana* (Spello-Perugia-Norcia, 16-19 ottobre 1985), Napoli, Esi, 1988, pp. 328 ss.
- Mantovani, D., *Le formule del processo privato romano*. Per la didattica delle istituzioni di diritto romano, Padova, Cedam, 1999.
- Marcou, *Nomos Rhodion Nautikos e la scoperta a Rodi di una colonna di marmo con l'iscrizione di Paolo (D. 14.2)*, in AA.VV., *Studi per Lefebvre d'Ovidio*, Milano, 1995, p. 609.
- Mazzarino S., *Intorno alla carriera di un nuovo corrector Lucaniae et Brittii e all'adventus di Costanzo II a Roma*, Helikon 9-10, 1969-1970.
- Miceli M. (2001), *Sulla struttura formulare delle actiones adiecticiae qualitatis*. Torino: Giappichelli
- Miceli, M., *Studi sulla «rappresentanza» nel diritto romano*, I vol., Milano, Giuffrè, 2008.
- Moschetti, C.M., "Il 'gubernator navis'", *SDHI* 30 (1964), pp. 50-113.
- Moschetti, C.M., *Gubernare navem gubernare rem publicam. Contributo alla storia del diritto marittimo e del diritto pubblico*, Milano, Giuffrè, 1966.
- Moschetti, C.M., "Aspetti organizzativi dell'attività commerciale marittima nel bacino del Mediterraneo durante l'impero romano", *SDHI* 35 (1969), pp. 388 ff.
- Moschetti, C.M., "Nave (dir. Romano)", *Enc. dir.* XXVII, Milano, Giuffrè, 1977, pp. 565 ss.
- Navarrini, U., *Studi sull'azienda commerciale (vendita, usufrutto, pegno, locazione)*, Modena, Direzione Archivio giuridico, 1901.
- Nicolet, C., "Economy and Society, 133-43 B.C.", *The Cambridge Ancient History*, 9, II ed. (J.A. Crook, A. Lintott, E. Rawson, eds.), Cambridge, University Press, 1994, pp. 622 ff.
- Olivercroma, K., "Corpus and collegium in D.3.4.1", *Iura* 5 (1954), pp. 181-189.
- Ortu, R., Note in tema di organizzazione e attività dei *venaliciarii*. *Diritto@Storia*, Tradizione romana 2 (2003), 1-25.

- Ortu, R., Brevi note in tema di *societas venaliciaria*, in *Archivio storico e giuridico Sardo di Sassari*, vol. 19, 2014, p. 152 s.
- Ortu, R. Note in tema di *societas venaliciaria*, in *Vita e pensiero*, IusOnline, 2018/1, p. 204.
- Pardessus, J.M., *Collection de lois maritimes antérieurs au XVIII siècle*, Paris, 1828-1845, rist., II, Torino, Giappichelli, 1959.
- Pavis D'Escurac, H., *La Préfecture de l'annone. Service administratif imperial d'Auguste à Costantin*, Rome, 1976;
- Petrucci, A., *Per una storia della protezione dei contraenti con gli imprenditori*. Vol. 1, Torino, Giappichelli, 2007.
- Purpura, G., *Studi romanistici in tema di diritto commerciale marittimo*, Messina, Rubettino, 1996.
- Racioppi, G., *La Tabula e le Consuetudini di Amalfi*, in *Archivio Storico delle Province Napoletane*, vol. IV, Società Napoletana di Storia Patria, 1879.
- Reddé, M., *Mare Nostrum- Les infrastructures, le dispositif et l'histoire de la Marine Militaire sous l'Empire Romain*, Roma, Écoles françaises de Rome, 1986.
- Richichi, R., "L'inquadramento della nave nelle categorie delle "res" in diritto romano", *Rivista di Diritto Romano* 1 (2001), pp. 1 ss.
- Rickman G., *Roman granaries and Store Buildings*, Cambridge, 1971.
- Rickman, G., *The grain Trade under the Roman Empire*, in *The Seaborne Commerce*, Rome, 1980.
- Rickman, G., *The corn Supply of ancient Rome*, Oxford, 1980
- Roberti, M., "Il contratto di lavoro negli statuti medievali", *Rivista internazionale di scienze sociali e discipline ausiliari* XL (1932), p. 48.
- Rocco, A., "La responsabilità degli armatori nel diritto romano", *Giur. it.* (1898), pp. 4301 ss.
- Rostovtzev, M., *Storia economica e sociale dell'impero romano*, Firenze, La Nuova Italia, 1976.
- Rougé, J., *Recherches sur l'Organisation du commerce maritime en Méditerranée sous l'Empire Romain*, Paris, S.V.P.E.N, 1966.
- Rougé, J., *La Marine dans l'antiquité*, Paris, 1975 (tr. it. *La navigazione antica*, Roma, 1990; già Firenze, 1977).
- Scialoja, *Saggi di storia del diritto marittimo*, Roma, 1946

- Serrao, F., *Impresa e responsabilità a Roma nell'età commerciale*, Pisa, Pacini Editore, 1989.
- Serrao, F., "Impresa, mercato, diritto",  *Mercati permanenti e mercati periodici nel mondo romano. Atti degli incontri capresi di Storia dell'economia antica* (13-17 Ottobre 1997) (E. Lo Cascio, ed.), Bari, Edipuglia, 2000, pp. 34.
- Sirks, B., *Food for Rome. The Legal structure of the transportation and processing of supplies for the imperial distributions in Rome and Constantinople*, in *Studia Amstelodamensia ad Epigraphicam, Ius Antiquum et Papyrologicam pertinentia*, Amsterdam, 1991, p.13.
- Spaul, J., *Classes imperii romani: an epigraphic examination of the men of the imperial Roman navy*, Andover, 2002
- Stolfi, E., "La soggettività commerciale dello schiavo nel mondo antico: soluzioni greche e romane", *TSDP*, p. 34 ff.
- Tafaro, S., *La interpretatio ai verba 'quanti ea res est' nella giurisprudenza romana. Lanalisi di Ulpiano*, Napoli, Jovene, 1980.
- Tafaro, S., *Regula e ius antiquum in D. 50.17.23. Ricerche sulla responsabilità contrattuale*, Bari, Cacucci, 1984.
- Tafaro, S., *Ius hominum causa constitutum, Un diritto a misura d'uomo*, Napoli, Esi, 2009.
- Tafaro, S., *Roma e la Pirateria*, in AA.VV., *Nuove piraterie e ordinamenti giuridici interni e internazionali*, A.F. Uricchio (ed.), Bari, Cacucci, 2011.
- Tëngstrom, E., *Bread for the people. Studies of the Corn Supply of Rome during the Late Empire*, Stockholm, 1974.
- Tocci, *Sintesi storica delle fonti del diritto marittimo dall'antichità al medioevo*, in *Dir. trasp.*, 2002, p. 349 f.
- Vismara, *Il diritto del mare e la navigazione mediterranea nell'Alto Medioevo*, Spoleto, 1978.
- Wacke A. (1994), *Die adjektivischen Klagen im Überblick. Erster Teil: von der Reederund der Betriebsleiterklage zur direkten Stellvertretung*, I, ZSS 111, pp. 280 ss. = trad. it. "Alle origini della rappresentanza diretta: le azioni adiettizie", in AA.VV., *Nozione formazione e interpretazione del diritto dall'età romana alle esperienze moderne*. Ricerche dedicate al Prof. Filippo Gallo, II, Napoli, Esi (1997), pp. 596 ff.
- Waltzing, J.P., *Étude historique sur les corporations professionnelles chez les Romains depuis les origines jusqu'à la chute de l'Empire d'Occident*, 2, 4, Louvain, C. Peeters, 1895-1900.

- Werner R., *Das Problem des Imperialismus und die römische Ostpolitik in zweiten Jahrhundert v. Chr.*, in *Aufstieg und Niedergang der römischen Welt*, I.1, Berlin-New York 1972, pp. 501 ff.
- Veyne P., *Y a-t-il eu un imperialisme romain?*, in *Mélanges de École Française de Rome* 87 (1975), pp. 793 ff.
- Zeno, R., “*L’arruolamento nel diritto marittimo medioevale*”, *Riv. st. dir. it.* XII (1939), pp. 310 ff.
- Zeno, R., *Storia del diritto marittimo italiano nel Mediterraneo*, Milano, Giuffrè, 1946.

## Endnotes

- <sup>1</sup> There are many studies concerning the organizational structure of the shipping companies, see, among all: Huvelin, Paris, 1929; Rougé, 1966; Rougé, 1975 (tr. it. *La navigazione antica*, Roma, 1990; già Firenze, 1977); Reddè, 1986; e Casson, 1964; Casson, 1971; Spaul, 2002; Purpura, 1996; Casson, 2004 ( *The Ancient Mariners*, translation of C. Boero Piga); Cerami, P., Di Porto, A., Petrucci, P. (eds.), 2004, part I, chapters I and II, part III, chapter I; lastly, Cfr. Casola, 2016, to which rafferall. For ‘organization of the military ship referral to Casola, 2016, p. 4 nt 9.
- <sup>2</sup> It must be kept in mind that Rome had become the only reference centre of the economic and legal commerce of the time. See Serrao, 1989, p. 300 and *ivi* ntt. 46-47, for this period uses the word “world economy” coined by the French Historian F. Braudel making references to other ages; Such a word was replaced by “world imperialism”, by A. Carandini with reference to the Roman world. Maritime trade was essential to the transformation and the development of Roman economy. See De Salvo, 1992, pp. 23 ff.; Nicolet, 1994, pp. 622 ff.; Lo Cascio, E., 1999, pp. 368-390; De Martino, 1979, vol. I, pp. 130 ff.; vol. II, 330 ff. e De Martino, F., 1997, pp. 408 ff. The progressive predominance on the Mediterranean by the Romans also found its justification in the need to face the quiet development of commercial traffic (freedom of navigation) between the various lands that overlooked the Mediterranean even in the face of the spread of pirate raids. Cfr. Tafaro, 2011, p. 43 ff. On this point, also for a historical reconstruction of the events, see Carro, 1998, pp. 55-88; A. Flamigni, 2011. On the domain of the sea, see Ilari, V., 2012 = Collana Sism, 2014) and *ivi* bibliography. On the more general questions related to Roman “imperialism” are to be seen, instead, R. Werner, 1972, pp. 501 ff. (*ivi* bibliography); P. Veyne, 1975), pp. 793 ff.; Frézouls, 1983, pp. 141 ff.; W.V. Harris, 1984 (with with essay by D. Musti, E.S. Gruen, E. Gabba, J. Linderski, G. Clemente).
- <sup>3</sup> De Robertis, 1937, p. 5 nt. 1 e 2. The first point under discussion (De Visscher, 1966, pp. 43-54; Olivercroma, 1954, pp. 181-189; De Robertis, 1971, pp. 10 ff.; 2, 386 ff.;

Cracco Ruggini, 1971, pp. 140 ff.; Cracco Ruggini, 1976, pp. 63-94), involved the concepts of *collegium* and *corpus* used to indicate an association (see Waltzing, 1895-1900, II, pp. 236-242; De Robertis, 1971, pp. 10 ff. and ntt 34-35). Their interchangeability was recognized, starting from the II century, based both on epigraphic sources and on the ones evidences of Digesto and of the *Codex Theodosianus*. According to De Robertis, (1981; De Robertis, 1971 nt 21) **there was only a difference of technical nature**. The first term referred to voluntary associations, free from the State, the second term referred to associations in the service of the state and under the latter's control. Even according Cracco Ruggini, "*Collegium e corpus*"; pp. 63-94, and in particular for references to the Digesto, cfr. p. 91 and nt 81.

- <sup>4</sup> On frequent recourse to shipowners and merchants for public transport, among the authors who have dealt with this topic, cfr.: G. Rickman, 1971; Rickman, 1980, p. 269; 271; Rickman, *The corn Supply*, 1980; Tëngstrom, 1974; Garnsey, 1983, pp. 118-130; 201-203. On the aspects that are not strictly legal in the supply of *annona*: Cracco Ruggini, 1985, pp. 224-236; Lo Cascio, 1990, pp. 229-248; Herz, 1988; Sirks, B., 1991, p.13.
- <sup>5</sup> The opinions of Pegasus and Ulpiano are logical. Since the commander was responsible for the organization of the ship, it goes without saying that he had the capabilities needed for his mandate. The latter would fail to be fulfilled if the *magister navis* was not allowed to have the means to meet the urgent needs of the ship. As to the conditions according to which the *privilegium* on the credits during the voyage were recognized we make reference to Gandolfo, 1883, pp. 264 ff. It must be pointed out that the loan was directly granted either to the shipowner or to the *magister navis* for the needs of the ship; in this way the lender acquired a *privilegium* on the ship in the event of insolvency. The role of the *dominus navis* or of the *magister navis* in the outfitting of the ship was stressed by the regulations concerning both maritime credits and the people who should be privileged. Such privileges were recognized either for the lenders of money or for the people, who armed, outfitted, repaired the ship or provided supplies for the crew. D. 42.5.26 (Paul. l. 26 *brevis edicti*): *Qui in navem extruendam, vel instruendam credidit, vel etiam emendam: privilegium habet*; D. 42.5.34 (Marc. l. 5 *regularum*): *Quod quis navis fabricandae, vel emendae, vel armandae, vel instruendae causa: vel quoque modo crediderit, vel ob navem venditam petat, habet privilegium post fiscum*; Nov. 97.3: *Novimus et antiquioribus creditoribus aliquas hypothecas praepone re juniores existentes, ex privilegiis a legibus datis: quale est quando aliquis propriis pecuniis procuraverit navem comparare, aut fabricare ... in his enim omnibus priores existunt posteriores creditores, quorum pecuniis empta aut renovata res est, iis etiam multo antiquiores sunt*. The reason of these privileges was to encourage and facilitate navigation.

- <sup>6</sup> The Romans, instead, had always considered the *magister* as a Commander or a Captain of the ship; cfr. Moschetti, 1966, pp. 15 ff. In Guarino's opinion (Guarino, 1965, pp. 36-42), the role of the *magister navis* who was in command of the ship, coincided with the role of the *gubernator*. The latter might be in command but only as a helmsman or a pilot subject to the *magister*.
- <sup>7</sup> On the medieval maritime law the bibliography is exterminated. Among all, see: Racioppi, 1879; Basilio, 1914; Bonolis, 1921; Bognetti, 1934; Bonolis, G., 1934; Zeno, 1939; Zeno, 1946 p. 89 ff.; Scialoja, 1946; Azuni, 1975; Vismara, 1978; Ferraro, 1983; Tocci, 2002, p. 349 f.; AA.VV., 2005; Camarda, Corrieri, Scovazzi, 2010.