

Institor

JEAN-JACQUES AUBERT

An *institor* was a Roman business manager whose legal transactions, in so far as they were connected with his regular professional activities, entailed the civil liability of the principal who appointed him to this position, on the basis of a remedy (*actio institoria*, Dig. 14.3) granted by the praetorian edict. *Institores* could be male or female, adults or minors, and were originally dependents of the principal, slaves or sons in power, but the remedy eventually applied to non-dependents. The area of competence of the agent was defined in a charter (*lex praepositionis*) or by custom or common sense; it could be restricted by posting at the workplace a written sign (*proscriptio*) in any language, or extended to specific activities by a special invitation (*iussus/-um*) addressed by the principal to third contracting parties.

Institores were likely to be found in any kind of activity, under various titles exempt from the negative connotation of the generic term evoking greed, deception, and alleged lewdness. In agriculture, mostly, and in other fields, managers were called *vilici* (Greek *oikonomoi*), and are well attested in Latin (and Greek) inscriptions. In crafts and manufactures, they were referred to as *officinatores*, although it is often difficult to distinguish managers/agents from independent entrepreneurs. Indeed, any trade could harbor an *institor*, for extant sources tend to obliterate the link (*praepositio*) between principal and agent, undoubtedly to protect, at times, the identity of the former who, as a member of the elite, was expected to abstain from involvement in economic pursuits.

A prosopographical approach to *institores*, *vilici*, *actores*, *officinatores*, and their like in literary, legal, papyrological, and mostly epigraphical sources suggests that the “institorian” arrangement was mostly applied within private companies (*societates*) contracting with state or municipal government, and in the context of public administration (tax collection, water

supply, etc.). Managers were at times part of a chain of command, subordinated to local and general supervisors (*actores*, *procuratores*, etc.), with a distant principal.

The legal arrangement between principal and agent rested on status or contract: dependents acted within the *potestas* (*patria, dominica*) of the principal, while independents (*sui iuris, alieni iuris*) worked under contract (hire, mandate), for free or in exchange for some kind of reciprocal benefit. The principal’s liability for the transactions carried out by the agent derived less from the nature of the relationship between them than from their shared willingness, explicit or implied, to establish such a relationship and to advertise it with potential third (contracting) parties.

The *actio institoria* belonged to a set of remedies created by the praetor in the Late Republican period dealing with various forms of indirect agency. Usually called *actiones adiecticiae qualitatatis*, they include, in what could be the chronological order of their creation, the *actio quod iussu, a. institoria*, *a. exercitoria* (for shipping), *a. de in rem verso* (on the principal’s enrichment from his agent’s transactions), and *a. de peculio* (on the special account administered by the dependent agent with the permission of his master). These remedies seem to have retained their usefulness throughout Antiquity, consequently precluding the introduction of direct agency in Roman law.

SEE ALSO: *Actio*; Law, epigraphical sources for (Greek and Roman); *Oikonomos*; *Peculium*; Trade, Roman; *Vilicus*.

REFERENCES AND SUGGESTED READINGS

- Aubert, J.-J. (1994) *Business managers in ancient Rome: a social and economic history of institores*. Leiden.
- Cerami, P. et al. (2004) *Diritto commerciale romano: profilo storico*. Turin.
- Correa, L. F. (2001) “La survivance des actiones adiecticiae qualitatatis.” *Revue internationale des droits de l’Antiquité* 48: 31–40.

Miceli, M. (2001) *Sulla struttura formulare delle actiones adiecticiae qualitatis*. Turin.

Petrucci, A. (2002) "Ulteriori osservazioni sulla protezione dei contraenti con gli institores e gli magistri navis nel diritto romana dell'età commerciale." *Iura* 53: 17–56.

Wacke, A. (1994) "Die adjektizischen Klagen im Überblick. I. Von der Reeder- und der Betriebsleiterklage zur direkten Stellvertretung." *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung* 111: 280–362.