

УДК 34
ББК 67
А 23

Ответственный редактор к.ю.н. А.М. Ширвиндт

А 23 *Aequum ius*. От друзей и коллег к 50-летию профессора Д.В. Дождева /
Отв. ред. А.М. Ширвиндт. — М.: Статут, 2014. — 245 с.

ISBN 978-5-8354-0994-5 (в пер.)

Сборник включает статьи по истории и теории права, сравнительно-му правоведению и гражданскому праву. Авторы — итальянских и российских специалистов — объединило желание поздравить с 50-летием профессора Д.В. Дождева.

Для всех, кто интересуется юриспруденцией.

УДК 34
ББК 67

На первой странице обложки — инициал «I» и миниатюра «Обвиняемый склоняется перед императором Юстинианом I» (*Digestum Vetus cum glossa ordinaria Accursii. Ms. Barth. 9* (f.16v; Италия, 13/14 вв.)). Изображение любезно предоставлено Universitätsbibliothek Johann Christian Senckenberg (Германия) и Hill Museum and Manuscript Library (США)

ISBN 978-5-8354-0994-5

© Коллектив авторов, 2013
© Издательство «Статут», редподготовка, оформление, 2013

ROBERTO FIORI,
University of Rome 'Tor Vergata'

THE *VIR BONUS* IN CICERO'S *DE OFFICIIS*: GREEK PHILOSOPHY AND ROMAN LEGAL SCIENCE*

1. Introduction

Cicero's *de officiis* is a key text for the study of the Roman *vir bonus*¹. The work, formally dedicated to the orator's son², was actually written as a kind of manual for the good citizen, showing the appropriate behaviour in different spheres of society, and particularly in political and economic life.

The reasons why Cicero felt the need to point out to his fellow citizens the rules of conduct in public life are evident. After the Ides of March, he wanted to cast a shadow over the politics of Caesar's party, and to represent his rival as a tyrant that was not only lawful, but also right and proper to kill, even in contrast with the family *officia* that tied Brutus.

Less obvious are the reasons which led him to devote much of the work – especially in the third book, the more independent from Panaetius' model – to the issues of economic life, and therefore of private law. This choice may be understood if we consider that the work was primarily intended for that part of society that was more exposed to the charms of the democratic party, that is to those social strata that after the Social War were entering Roman public life. They moved from very different cultural contexts and were new to the traditional Roman values, largely drawn up by an élite minority – patrician at the beginning, then patrician-plebeian – who had inherited them from their *maiores* and reshaped them, in the light of Greek culture, from the second century BC onwards. The members of these new social classes, when not trying to climb up the *cursus honorum*, were inclined to reject active participation

* I am glad to dedicate this article on the *vir bonus* to my friend and colleague Dmitri Dozhdev, remembering his invitation to Moscow to hold a paper about *bona fides*.

¹ A more detailed analysis of the *vir bonus* in Cicero's *de officiis* can be found in Fiori R. *Bonus vir*. Politica filosofia retorica e diritto nel *de officiis* di Cicerone. Napoli, 2011.

² See Dyck A.R. A commentary on Cicero, *De officiis*. Ann Arbor, 1996. P. 10 ff.

in political life and to concentrate on more concrete economic interests, and were therefore closer to the economic policy of Caesar¹. Cicero felt therefore the need to make them understand that there is no substantial difference between proper conduct in trade and political participation: in both contexts the *vir bonus* must act in compliance with his *officia*.

The form taken by Cicero's treatise is the philosophical dissertation. Even though the problems he deals with are deeply rooted in his political present, he chooses to treat them in the light of Greek philosophy – and in particular of Stoicism – in accordance with the Hellenized aristocratic culture of his time. However, in order to make his arguments comprehensible to the widest readership, and to be truly effective in portraying the *officia* as consistent with the Roman tradition, he has to consider the specificity of the Roman development of these rules of conduct, that the Roman culture expressed mainly in the form of legal science. Such an approach in his eyes is not only appropriate for the efficacy of the discussion, but also scientifically correct, as it is intended not to juxtapose two different realities, but to make clear the implicit harmony of two visions of the same reality.

2. The Greek model

Within this overall design, to represent the ideal of *vir bonus* Cicero can rely on the Stoic concept of *kalokagathía*.

This term is a compound made up of two roots – *kalós* and *agathós* – which can be found, although separately, already in Homer², and express an idea of appropriateness, adequacy and well-being – physical and behavioural at the same time³ – but also a social condition, since they refer to the dominant élite in opposition to the lower class of the *kakoi*.

The two dimensions – social and ethical – coexist: in my opinion, it would be a mistake to read the antithesis 'good-bad' in one sense or the other⁴. If such an alternative is adopted, the sources appear contradictory: in

¹ Cf. Gabba E. Per un'interpretazione politica del de officiis // RAL. 1979. Vol. 34 (s. VIII). P. 136 f.

² Cf. Jüthner J. Kalokagathia // Charisteria A. Rzsch. Reichenberg, 1930. P. 99 ff., followed by Donlan W. The origin of καλός καγαθός // AJPh. 1973. Vol. 94. P. 365 ff.; Bourriot F. Kalos Kagathos – Kalokagathia. D'un terme de propagande de sophistes à une notion sociale et philosophique. Étude d'histoire athénienne. I. Hildesheim; Zürich; New York, 1995. P. 104 ff.

³ Cf. Wankel H. Kalos kai agathos: Diss. Würzburg, 1961. P. 20: «die Wertgebiete, das ästhetische und moralische, sind in der Frühzeit nicht genau geschieden, sie werden im griechischen Denken nie ganz getrennt».

⁴ As it is well known, it has been suggested that ἀγαθός expressed a social status deprived of ethical connotations, simply denoting men who are effective and successful fighters (Adkins A.W.H.

some passages *agathós* and *kakós* certainly denote a social condition¹, but in the others they express personal capabilities alone², even in opposition to the social status³. Behind these conceptions clearly lies the idea – undoubtedly aristocratic, but not denied by the lower classes – that, until otherwise proven, wealth and nobility are bound together with ethical virtues. In a society which bestows value on courage, wealth, and high birth, the condition of ‘positivity’ expressed by *agathós* can only convey all these things.

The sources of the sixth century – despite contextual diversity – continue to use the two adjectives in both the social and the behavioural meanings⁴. The same can be said of those of the fifth century where the binomial *kalòs kai agathós*⁵ appears for the first time, although the linguistic novelty does not seem to affect the meaning of the concept⁶.

Merit and responsibility. A study in Greek values. Oxford, 1960. P. 30 ff., followed, for example, by *Lengauer W.* La notion d'égalité chez Homère, in *Mélanges P. Lévêque*. V. Paris, 1990. P. 192). However, it is difficult to accept that in the Homeric world existed the idea of ‘shame culture’ regardless of moral judgements: the *ἀγαθός*, not to be criticized by the community and to avoid the shame (*αἰδώς*; on this notion in Homer see *Cairns D.L.* *Aidōs. The Psychology and Ethics of Honour and Shame in Ancient Greek Literature*. Oxford, 1993. P. 48 ff.) that may lower his τιμή, had to not just resist abuses, but also not to commit ignoble actions. Others have suggested that with *καλός* it was originally meant the simple physical beauty (cf. *Berlage J.* *De vi et usu vocum καλός κατ'αγαθός, καλοκάγαθία* // *Mnemosyne*. 1933. Vol. 60. P. 20 ff. and *Donlan W.* Op. cit. P. 367 ff.), but in the Homeric poems the words have a more nuanced field of meanings (cf. *Fiori R.* *Bonus vir. Politica filosofia retorica e diritto nel de officiis di Cicerone*. P. 75 ff.).

¹ As for *ἀγαθός* see *Hom.* Il. 21, 109; Od. 4, 611; 14, 441; 16, 324; 18, 276; 21, 335. As for *κακός* cf. Il. 14, 472; 24, 64 (Hera insults Apollon calling him *ἑταῖρος κακοί*); Od. 4, 64; 8, 554.

² As for *ἀγαθός* see *Hom.* Il. 13, 238 (referring to the warriors, in the sense of ‘strong’). As for *κακός*, Od. 10, 64, referring to the *ἑταῖροι*; 2, 270 and 278, with a comparison between fathers and sons; 21, 131, where Telemachos is speaking about himself.

³ Cf. the charges of cowardice in *Hom.* Il. 2, 190 e 365; 8, 153 e 164 (against Diomedes); 8, 94 (Odysseus); 17, 180 (Hektor); Od. 10, 64 (*ἑταῖροι*); 2, 270 and 278 (comparison between fathers and sons); 21, 131 (Telemachos).

⁴ For the social meaning cf. Theogn. 53–68 e 183–192. Cf. instead, for a dissociation of physical beauty and moral virtue, Sapph. fr. 49 Diehl, on which *Fiori R.* *Bonus vir. Politica filosofia retorica e diritto nel de officiis di Cicerone*. P. 77 nt. 75.

⁵ *Herod.* 1, 30, 4; 2, 143, 4 (see also 4, 91, 1: *ἄριστόν τε καὶ κάλλιστον*); *Aristoph.* fr. 205, 8 (Kassel/Austin. II. P. 124 ss.), where can be found *καλοκάγαθία* (but on the problem of the manuscript tradition of the fragment see *Wankel H.* Op. cit. P. 43 nt. 1). In the first case, the word can not be referred to as marking a social status (cf. also *Wankel H.* Op. cit. P. 30; *Donlan W.* Op. cit. P. 374); more difficult is the interpretation of the other texts: on those sources where a social value can be detected, see for all *Wankel H.* Op. cit. P. 35 ff.

⁶ As proposed by *Bourriot F.* Op. cit. I. P. 104 ff. See the critics by *Cairns D.L.* *Review of Bourriot* // *CR*. 1997. Vol. 47. P. 74 ff.; *Colesanti G.* *Review of Bourriot* // *RFIC*. 1998. Vol. 126. P. 314 ff.; *Roscalla F.* *Kalokagathia e kaloi kagathoi in Senofonte* // *Xenophon and his world* /

At the end of the fifth century, however, with the arising of democratic ideals, the *kalokagathía* becomes a feature of the good citizen, regardless of nobility by birth¹ – perhaps being also taken as self-definition by a specific political party, the conservative moderates² and this new meaning is enhanced by Socrates' thought³, which overthrows the traditional paradigm and identifies the *kalokagathós* with the ethically virtuous man, rejecting not only the weight of noble birth, but also the interrelation of social, aesthetic and moral evaluation which were characteristic of the previous culture⁴.

Even if this new perspective does not completely cancel the traditional uses of the term in Greek culture, it is adopted by the Stoics. They use *agathón* to express both the external goods or the highest good, and the condition of those who conform themselves to the good; whereas *kalón* is used to denote both the characteristic of the highest good of being proportionate, and the human behaviour consistent with nature, that leads to the highest good⁵.

According to this radical shift in perspective, all the positive values of the traditional Greek culture are embodied in the figure of the Stoic sage: he is the only one who is handsome (*kalós*), good (*agathós*), noble, rich and

Chr. Tuplin (ed.). Stuttgart, 2004. P. 115 ff. I think that, taking into account the rules of irreversible binomials (see for all Malkiel Y. *Studies in Irreversible Binomials* // *Lingua*. 1959. Vol. 8. P. 113 ff., now, with revisions, in *Essays on Linguistic Themes* (Oxford, 1968. P. 311 ff.)), the form of the expression can be explained simply with linguistic usages, and particularly on the basis of its alliteration and of the tendency of the Indo-European languages to position the shorter word as first member.

¹ Jüthner J. Op. cit. P. 99 ff.; Adkins A.W.H. Op. cit. P. 197 f.; Wankel H. Op. cit. P. 51 ff.; Donlan W. Op. cit. P. 365 ff. (on the complex hypothesis by Bourriot F. Op. cit. I. P. 113 ff., see critically Cairns D.L. Review of Bourriot. P. 74 ff.; Colesanti G. Op. cit. P. 314 ff.; Roscalla F. Op. cit. P. 115 ff.).

² Roscalla F. Op. cit. P. 115 ff.

³ On the use of the word in Xenophon's and Plato's works where Socrates' thought is reported, see Berlage J. Op. cit., p. 24 ff.; Wankel H. Op. cit. P. 59 ff.

⁴ A connection whose premises are explained by Aristotle: the rich acquire the reputation of being *καλοὶ κάγαθοί* from their status, and therefore it is believed that the oligarchies are ruled by *καλοὶ κάγαθοί* (Arist. Pol. 1293b 39–42). On the passage (and on the problem) see Dover K.J. *Greek popular morality in the time of Plato and Aristotle*. Oxford, 1974 (reprinted with revisions, Indianapolis; Cambridge, 1994). P. 43 ff.

⁵ Cf. Diog. Laert. 7, 100, on which Long A.A. *The Harmonics of Stoic virtue* // OSAPH. Suppl. 1991. Vol. 106, now reprinted in *Stoic studies*. Berkeley; Los Angeles, 1996, 211. See also Clem. Alex. 1, 6, 34, 1 (Potter, 336 = Stählin, II 22) = SVF III 225 (*καλοὶ κάγαθοί*); Phil. Alex. Spec. leg. 1 (*de anim. sacrif. idon.*), 246 (Mangey, II, 249) = SVF III 559 (*καλοὶ κάγαθοί*); Stob. Ecl. 2, 7, 11s (Wachsmuth, 115) = SVF III 581 (*καλὸς κάγαθός*); Clem. Alex. Strom. 6, 17, 157, 3 (Potter, 82 = Stählin, II 512) = SVF III 673 (*ἀγαθοί*).

free. Therefore, he is not only called 'sage' (*sophós*), but also 'good man' (*agathòs anér*)¹.

3. The Roman model

The Roman culture had autonomously developed a notion of *bonus* as opposed to *malus*. It is possible that a Greek influence had been relevant already in the archaic period, but it can not be excluded that the Greek and Roman conceptions both descended from a hierarchical representation of society that was already Indo-European².

Most of the sources at our disposal refer of course to the late Republican period, when the expression *vir bonus* was inextricably tied to the political value of the epithets *boni*, *optimi* and *optimates*³. We have however elements to reconstruct the value of the oldest notion.

An analysis of the uses of the adjective *bonus* in Latin literature shows that it is related first of all to the idea of abundance, prosperity: when applied to things, it is a term of the language of agriculture, indicating productive assets; when applied to people, it denotes the quality of perfectly fulfilling one's function; not surprisingly, the superlative *optimus* is formed on *ops*⁴. However, these words do not simply express the 'wealth' of an individual, but the capacity of an asset or of a person to be effective and fruitful⁵, just like – in reverse – Lat. *pauper* (< **pau-per-os*) etymologically means 'providing little'⁶. In other words, 'wealth' is seen not as a static condition, but as a dynamic dimension of well-being which testifies, to a certain extent, also the divine favour – as shown by the semantic evolution of a term like *fēlix*, etymologically 'fruitful'⁷, – and therefore also implies an ethical judgment.

¹ *Stob. Ecl.* 2, 7, 11s (Wachsmuth, 115) = SVF III 581.

² On all this see *Fiori R.* *Bonus vir. Politica filosofia retorica e diritto nel de officiis di Cicerone*. P. 62 ff., 84 ff., 97 ff.

³ On the relationship among these words see for all *Hellegouarc'h J.* *Le vocabulaire latine des relations et des partis politiques sous la république*. Paris, 1972. P. 484 ff., and, with specific regard to Cicero, *Achard G.* *L'emploi de boni, boni viri, boni cives et de leurs formes superlatives dans l'action politique de Cicéron // Les Études Classiques*. 1973. Vol. 41. P. 207 ff.

⁴ *Fiori R.* *Bonus vir. Politica filosofia retorica e diritto nel de officiis di Cicerone*. P. 109 s.

⁵ Particularly incisive *Liv.* 4, 3, 16: *vir fortis ac strenuus, pace belloque bonus*.

⁶ *Walde A., Hofmann J.B.* *Lateinisches etymologisches Wörterbuch*. Bd. II. Heidelberg, 1954. P. 267 f.; *Ernout A., Meillet A.* *Dictionnaire étymologique de la langue latine. Histoire des mots*. Paris, 1959 (repr. 2001). P. 490; *Vaan M. de.* *Etymological Dictionary of Latin and the other Italic Languages*. Leiden; Boston, 2008. P. 451.

⁷ *Walde A., Hofmann J.B.* *Lateinisches etymologisches Wörterbuch*. Bd. I. Heidelberg, 1938. P. 474 f.; *Ernout A., Meillet A.* *Op. cit.* P. 224; *Vaan M. de.* *Op. cit.* P. 209.

From the semantic point of view, therefore, Lat. *bonus* has the same potential as Gr. *agathós* in expressing a judgement of positivity – or even of excellence in the superlative *optimus* – which is economic, social and ethical at the same time.

The terminological data, although significant, are not sufficient. We must verify, in addition to the potential of the word, that it was actually used in this plurality of meanings.

As to the evidence relating to the archaic period, the epigraphic sources do not appear to be fully decisive.

The opposition *boni-mali* is found already in the well-known Duenos vase of the seventh-sixth century, and a Faliscan inscription of the seventh century refers to a woman ‘*bona* among the *boni*’ (*duenom duena[s]*). Within the many interpretations proposed in literature¹ it seems to me that the most convincing is the one that explains the Latin usage by parallelism with, or even an influence of the Greek notion of *agathós*²: it is in fact very likely that in a society like that of Etruscan Rome, characterised by a strongly Hellenized *koiné*³, the Roman concept could come in contact with the Greek ideas – and perhaps influence Etr. *mlac*-⁴, a term at the basis of a family of words even more tied to Lat. and Fal. *duenos* than to Gr. *kalós*⁵.

We must acknowledge, however, that the epigraphical data have not provided, until now, a clear evidence, but only clues. More clarifying are the literary sources that deal with legal and religious issues.

First of all, in the archaic language and particularly in that of the XII Tables, the title *boni* is combined with adjectives like *validi*, *fortes* (perhaps an archaic form for *fortes*), *sanates*: all expressions that seem to indicate categories of *status* within the *cives* and which are related to Indo-European words pertaining to the sphere of power and wealth⁶.

¹ Cf. Fiori R. La gerarchia come criterio di verità: ‘boni’ e ‘mali’ nel processo romano arcaico // *Quid est veritas?* / C. Cascione, C. Masi Doria (eds.). Napoli, 2012. P. 185 ff.

² For the Duenos vase this is the interpretation by Colonna G. Duenos // SE. 1979. Vol. 47. P. 163 ff.

³ It is well known: see Menichetti M. Archeologia del potere. Re, immagini e miti a Roma e in Etruria in età arcaica. Milano, 1994. P. 44 ff. and the many contributions in Storia di Roma. I. Roma in Italia / A. Schiavone; A. Momigliano (dir.). Torino, 1988.

⁴ Agostiniani L. Duenom duenas : καλός καλῶ : mlax mlakas // SE. 1981. Vol. 49. P. 103 ff.; Maras D.F. La dea Thanr e le cerchie divine in Etruria: nuove acquisizioni // SE. 1998. Vol. 64. P. 173 ff. and esp. 185 ff.

⁵ Maras D.F. Op. cit. P. 185 and nt. 36.

⁶ Cf. Fiori R. Bonus vir. Politica filosofia retorica e diritto nel de officiis di Cicerone. P. 109 ff.; Idem. La gerarchia come criterio di verità. P. 187 f.

Moreover, evidence can be found in the most ancient theology¹. I'm referring, on the one hand, to the epithet of *Optimus* granted – no later than the seventh century BC – to Jupiter, beside that of *Maximus*. Since the latter refers to a condition of *maiestas*, i.e. to a position of hierarchy², it is likely that also *optimus* maintains its etymological sense, which highlights the original socio-economic meaning of the word. On the other hand, I refer to the attribution – to a deity whose name could not be pronounced – of the epithets of *Bona Dea*³ and *Maia*⁴, as well as *Ops*⁵ and (perhaps) *Fauna*⁶. The public worship of this goddess was very ancient⁷ and strictly aristocratic⁸, and it is probably to be understood in terms of opposition between *Iuppiter Optimus Maximus* and an anonymous goddess called *Bona* and *Maia*. She was in fact a sort of female 'pendant' of Jupiter, and her worship, according to well-known historical-religious patterns, was performed as a reversal of the ritual order of the City: in order to give room to the feminine element

¹ More details in Fiori R. La gerarchia come criterio di verità. P. 188 f.

² On the archaic concept of *maiestas* see Fiori R. Homo sacer. Dinamica politico-costituzionale di una sanzione giuridico-religiosa. Napoli, 1996. P. 107 ff.

³ On *Bona dea* as epithet see Brouwer H.H.J. Bona Dea. The sources and a description of the cult. Leiden, 1989. P. 231 ff.

⁴ On *Maia* as epithet see Sabbatucci D. La religione di Roma antica dal calendario festivo all'ordine cosmico. Milano, 1988. P. 161. The epithet is found in the *libri pontificum* remembered by Cornelius Labeo (*Macrob. Sat. I, 12, 21*); according to Calpurnius Piso, she was called instead *Maiesta* (*Macrob. Sat. I, 12, 18*). Cf. Mastandrea P. Un neoplatonico latino. Cornelio Labeone (testimonianze e frammenti). Leiden, 1979. P. 51 f.

⁵ On the etymology of *Ops* and its connection with *optimus* see Ernout A., Meillet A. Op. cit. P. 463 f.

⁶ The connection of *Fauna* with i.e. *b^hh₂u-n- 'favourable' (the same root of [*pro-*]/*bus*) and with Old Irish *búan* 'good, favourable; firm' has been suggested by Vaan M. de. Op. cit. P. 205 on the basis of Archive für keltische Lexikographie / W. Stokes; K. Meyer (hrsgs.). Halle, 1904. P. 232 (n. 220) and against Ernout A., Meillet A. Op. cit. P. 221 and Walde A., Hofmann J.B. Op. cit. Bd. I. P. 468. However, according to the *Dictionary of the Irish Language* (Dublin, 1983 (repr. 2007), 228 (= 89)), the proper meaning of *búan* is 'lasting, enduring; constant, firm, persevering', while 'good' is secondary and of a later period.

⁷ *Cic. Har. resp.* 37 places it in the royal period. Less specifically, the cult is said to be very ancient and linked to the mythical *Faunus* by *Propert. 4, 9, 21–70*; *Plut. Quaest. Rom.* 20; *Caes. 9, 4*; *Juven. Sat. 6, 335 (ritus veteres)*; *Arnob. Adv. nat. 1, 36*; *Lact. Div. inst. 1, 22, 9*; *Serv. Auct. Aen. 8, 314*. I don't see any evidence for holding the view that the cult was imported from Greece and that the name of the goddess was «eine unmittelbare Übersetzung des griechischen ἀγαθή θεός» (*Latte K. Römische Religionsgeschichte. München, 1960. P. 228*).

⁸ Brouwer H.H.J. Op. cit. P. 256. This aristocratic nature can of course be attributed only to the official cult, *pro populo*: private worship was accessible to members of any social class as well as to the males; cf. *Ibid.* P. 267 ss.

but also to control the alternative cosmos where women have preeminence¹. Therefore, since both the male and female apexes of the theological system receive epithets associated with the adjectives *bonus* and *maius*, and because of the strict relation between *bonus-optimus* and *maius-maximus*, we are led to ascribe the same socio-legal value to both pairs.

To all this we can add a fragment of Cato preserved by Gellius where it is recorded an archaic rule of the *maiores* about the criteria for judgment in the trial *per legis actiones*²: in the absence of witnesses, if the parties are equal, *boni* or *mali*, the judge had to give credit (*credere*) to the one against whom the action is brought³. Therefore, it seems that prior to the defendant's release due to the absence of evidence, the judge should verify the quality of *boni* or *mali* of the parties, including the different grades within each qualification. There could be in fact be at least five cases: that both the parties were *boni*, but one *melior*; (2) that both were *boni*, and in that *pares*; (3) that one was *bonus* and the other *malus*; (4) that both were *mali*, but one *melior*; (5) that both were *mali*, and in that *pares*. It is clear that a decision of this kind, which implies declaring the parties either *boni* or *mali*, could not withhold value only between them, but had an 'absolute' significance. Therefore, since it is hardly probable that the judge stated the moral virtues of the parties once and for all, it is more likely that the judgement was referred instead to their social status.

As to the Middle Republic, we have some very interesting sources.

In the third century BC, the title of '*vir optimus* among the *boni*' was bestowed on two members of the Scipios family: L. Cornelius Scipio (cos. 259 BC), who in his *elogium* is called *duonoro optumo viro*⁴, and his grandson P. Cornelius Scipio Nasica (cos. 191), who received the title from the Senate in 204 BC. The reasons behind the first attribution are unclear, but there are some hints regarding the second.

The epithet was awarded to Scipio Nasica on the occasion of the reception in Rome of the cult of Mater Idaea: the Delphic oracle had suggested that

¹ Sabbatucci D. Op. cit. P. 163.

² Cf. Albanese B. La sponsio processuale sulla qualifica di vir bonus // SDHI. 1994. Vol. 60. P. 145; Kaser M., Hackl K. Das römische Zivilprozessrecht². München, 1996. P. 118 nt. 29.

³ Cat. fr. 206 Malcovati = Gell. 14, 2, 26: *si quis quid alter ab altero peterent, si ambo pares essent, sive boni sive mali essent, quod duo res gessissent, uti testes non interessent, illi, unde petitur, ei potius credendum esse*. On the text see Fiori R. La gerarchia come criterio di verità. P. 169 ff.

⁴ CIL I², 9. On the date of the inscription see Flower H.I. Ancestor Maskes and Aristocratic Power in Roman Culture. Oxford, 1996. P. 177 ff.

the image of Cybele should be received by *vir optimus in civitate*¹, so the Senate decided to grant the title '*optimus* among the *boni*' to two members of the major political factions of the time – the Scipios and the *gens Claudia*. On the occasion, Nasica was accompanied by a woman, Claudia Quinta, referred to as '*bona* among the most eminent women of the city'². The overall examination of the evidence suggests that the qualifications were assigned on both social and behavioural grounds. The cult was immediately portrayed as aristocratic and opposed to the plebeian *ludi Ceriales*, in a time when the achievement of political equality induced by the *leges Liciniae Sextiae* had left serious aftermath in society and religion³.

In other words, it seems that in the Middle Republic the Roman ruling class still intended to represent itself as the champion of aristocratic ethics which identified 'excellence' with the pursuit of behavioural virtues relevant to the entire community. And it seems that such ethics was being expressed in legal and religious forms through the bestowing of the epithets of *bonus* / *optimus* on men and of *bona* on women.

The analysis of the use of the adjective *bonus* in the Middle Republic would however be incomplete without mentioning that during the third century BC the notion of *vir bonus* most likely underwent a relevant metamorphosis in coincidence with the affirmation of the power of Rome in the Mediterranean⁴.

In the archaic period, the majority of social and juridical relationships were limited to the narrow sphere of Roman community. They were therefore centered around the notion of *fides* – the 'credit' of each individual within the group, i.e. one's concrete and specific 'reliability'. This explains the connection, often found in Latin texts, between the term *fides* and concepts such as *honor*, *decus*, *dignitas*, *fama*, etc., all bound to an ethics of rank: *honestas* means the behaviour consistent with one's *honor*⁵, and *dignitas* the acknowledgement, by the community, of each member's merits according to

¹ All the sources have been collected by Schmidt E. *Kultübertragungen*. Giessen, 1909. S. I nt. 1.

² See my analysis in Fiori R. *La gerarchia come criterio di verità*. P. 197 ff.

³ See extensively Fiori R. *La gerarchia come criterio di verità*. P. 204 ff.

⁴ On what follows, see Fiori R. *Fides e bona fides. Gerarchia sociale e categorie giuridiche // Modelli teorici e metodologici nella storia del diritto private*. III. Napoli, 2008. P. 237 ff.

⁵ On the derivation of the word from *honor* see Prisc. *Inst. gramm.* 4, 20 (Keil, II, 128); Walde A., Hofmann J.B. *Op. cit.* Bd. I. P. 656; Ernout A., Meillet A. *Op. cit.* P. 298. On the meaning, Hellegouarc'h J. *Op. cit.* P. 387; Fiori R. *Materfamilias // BIDR*. 1993–1994. Vol. 96–97. P. 480 ff.

appropriateness and rank, while *decēre*, *decus* and *dignus* are etymologically linked to Gr. *dóxa* 'fame' and semantically to Lat. *fama*.

However, between the fourth and third centuries BC, as Rome opened itself to the confusing and ever-changing world of markets and international trade, the most relevant relations became those among members of different communities who had no awareness of each other's 'credit'. It is then likely that the commercial practice developed – and the Roman praetor adopted¹ – an objective and abstract parameter, derived from the Roman experience but imposed also to those foreigners who had asked for the protection offered by the *iurisdictio* of the Roman praetor. This parameter was found in a different *fides*, no more concrete and individual, but fictitious and conventional, as it was applied to parties whose actual reliability could not be verified. The new *fides* was based on a behavioural paradigm that, as we could see before, was shared by the Greeks and maybe by the Etruscans (though not necessarily understood in the same terms) and coincided with the *vir bonus*. Just as *fides* transformed into 'bona' *fides*, becoming an abstract criterion rather than personal quality, the title *bonus* changed its meaning, and instead of referring to single individuals, connoted the good citizen who follows aristocratic, i.e. traditional values. In contrast to the past, this good citizen did not necessarily belonged to *nobilitas*: relations protected by *iudicia bonae fidei* are perfectly egalitarian, and indeed their discipline is primarily intended at maintaining the balance between the parties' positions in the contract, regardless of their social status⁴ – as was the case in the archaic relations based on *fides*, e.g. clientship.

This does not mean, of course, that in this new context the social connotations of *fides* fail: we have seen that they still persist in the third-

¹ Cf. Walde A., Hofmann J.B. Op. cit. Bd. I. P. 330 f.; Pokorny J. Indogermanisches etymologisches Wörterbuch. Bern, 1959. P. 189 f.; Ernout A., Meillet A. Op. cit. P. 167; Vaan M. de. Op. cit. P. 164; Chantraine P. Dictionnaire étymologique de la langue grecque. Histoire des mots. Paris, 1999. P. 269 f. and 290 f.

² However, the opposite is also possible, as well as that the novelty was driven by the jurists.

³ Cf. in this sense already Pernice A. Labeo. Römisches Privatrecht im ersten Jahrhundert der Kaiserzeit. II.1. Halle, 1895. P. 80 f.; Krüger H. Zur Geschichte der Entstehung der bonae fidei iudicia // ZSS(RA). 1890. Vol. 11. P. 177; Lombardi L. Dalla fides alla bona fides. Milano, 1961. P. 181; Nörr D. Aspekte des römischen Völkerrecht. Die Bronzetafel von Alcántara. München, 1989. P. 153.

⁴ Fiori R. Bona fides. Formazione, esecuzione e interpretazione del contratto nella tradizione civilistica (Parte seconda) // Modelli teorici e metodologici nella storia del diritto privato. IV. Napoli, 2011. P. 111 and 240 f.

second century BC, and we know that they survive, at the end of the Republic, in the qualification *boni/optimi* bestowed on the *principes civitatis*. The concept of *vir bonus* becomes however more polysemic. This explains, in my opinion, the illusory ambiguity that can be found in the literary sources of the second century BC¹ – and particularly in Plautus, Terence and Cato – where, alongside passages in which the expression is undeniably used in an ethical-behavioural sense², there are texts where the adjectives *bonus* and *malus* clearly mark the social rank³.

In conclusion, it seems that the use of *bonus* and *optimus* in an aristocratic sense is not a peculiarity of the Late Republic, but is deeply rooted in the distant past of Roman culture. These adjectives express a condition of positivity – or, in the superlative form *optimus*, even of excellence – which involves the socio-economic position, the legal status and the behavioural duties of a person according to his rank. However, it is clear that the parallel separation of the 'abstract' notion of *bona fides* from the 'real' *fides* may cause a potential disappearance of the social value of *bonus* in favour of the extension of the model to all citizens.

It is within this context that Cicero's *de officiis* has to be evaluated.

4. The synthesis of Cicero

Cicero's translation of *agathón* with *bonum* has of course the effect to change the meaning of the Latin word, since it acquires a more philosophical sense. However, as it happened in Greek, the metamorphosis is not complete, and indeed in the Latin rendering the notions seem even closer to their original social meaning.

If we analyse the occurrences of the expression in the *de officiis*, one realizes that when Cicero draws from Greek sources, the *vir bonus* is identified with the *sapiens*. This happens not only when the source is probably earlier than Panaetius – like Diogenes of Babylon and Antipater of Tarsus – but even when it is certainly later – as in the case of Hecaton of Rhodes or

¹ We also have examples within the international relationships of Rome, where the expression *καλὸς καὶ ἀγαθός* is used with regard to populations and ambassadors: cf. *Fiori R.* La gerarchia come criterio di verità. P. 208 nt. 172.

² They have been collected and discussed by *Falcone G.* L'attribuzione della qualifica 'vir bonus' nella prassi giudiziaria d'età repubblicana (a proposito di Cato, or. frg. 186 Sblend. = 206 Malc.) // *AUPA*. 2011. Vol. 54. P. 68 ff. e 76 ff. (Plautus), 78 (Terence) and 78 ff. (Cato).

³ Cf. *Plaut.* Aul. 212–238; *Cistell.* 705; *Cas.* 724; *Capt.* 954; *Curc.* 610; *Pers.* 778; *Pseud.* 1145; *Ter.* Phorm. 115; *Cat.* Orat. fr. 58 Malcovati = *Gell.* 10, 3, 14. On all these texts see *Fiori R.* La gerarchia come criterio di verità. P. 209 f. nt. 174.

Posidonius of Apamea¹. It is true that there have been strong disagreements over interpreting the relationship between *sapiens* and *vir bonus*, particularly in the discussions between Diogenes and Antipater – with the former focusing solely on the sage² the latter taking into account also the average but virtuous man³. However, not even among Panaetius' pupils is to be found the clear separation between the two figures that it is usual to report to him on the basis of Cicero's *de officiis*. Instead, it is Cicero who programmatically lacks interest in the figure of the wise man: he refers to the *sapiens* only when he speaks in general of the Stoic doctrines⁴ or when he draws directly upon the Stoic sources⁵, in that latter case opposing it to the *vir bonus* as an unattainable ideal, completely beyond his concern⁶. The only cases when he seems to speak of the *sapiens* in proper sense is in connection with *fortitudo* and *magnitudo*, that is with those virtues that befit more to the sage than to the *vir bonus*⁷, whom instead refer primarily *modestia*⁸ and *iustitia*⁸.

¹ Cic. Off. 3, 29 e 31 (according to Dyck A.R. A commentary on Cicero, De officiis. P. 532, taken from Posidonius); 3, 38 (the tale of Gyges, probably taken from a Stoic source: Dyck A.R. A commentary on Cicero, De officiis. P. 541; Plat. Rep. 360b e 612c has δίκαιος); 3, 50 e 54 (for Hirzel R. Untersuchungen zu Ciceros philosophischen Schriften. II. Leipzig, 1898. P. 726; Holden H.A. M. Tulli Ciceronis de officiis libri tres, with Introduction Analysis and Commentary. Cambridge, 1899. P. xxix, taken from Hecaton of Rhodes; according to Pohlenz M. Cicero de officiis. III // NGWG (1934). P. 1 ss., now in Kleine Schriften, Bd. I (Hildesheim, 1965. P. 263 f. from Athenodorus); for Dyck A.R. Notes on composition, text and sources of Cicero's de officiis // Hermes. 1984. Vol. 112. P. 225 from Posidonius; for Annas J. Cicero on Stoic moral philosophy and private property // Philosophia togata. Essays on Philosophy and Roman Society / M. Griffin; J. Barnes (ed.). Oxford, 1989. P. 154 ff., from Diogenes of Babylon or Antipater of Tarsus); 3, 89, 91 e 92, taken from Hecaton of Rhodes.

² Fiori R. Bonus vir. Politica filosofia retorica e diritto nel de officiis di Cicerone. P. 270 ff.

³ Cic. Off. 1, 16; 1, 153. On 3, 62 see Fiori R. Bonus vir. Politica filosofia retorica e diritto nel de officiis di Cicerone. P. 127 nt. 312.

⁴ Cic. Off. 1, 114.

⁵ Cic. Off. 1, 46; 1, 120; 3, 13–17; 3, 45. Sometimes he uses the term in a non-philosophical sense, with reference to specific personalities: Cic. Off. 2, 46 (P. Mucius Scaevola, cos. 133 BC: cfr. 2, 47); 2, 83 (Aratus of Sycion); 3, 1 (P. Cornelius Scipio Africanus, cos. 205 BC); 3, 47 (L. Licinius Crassus and Q. Mucius Scaevola, coss. 95 BC).

⁶ Cic. Off. 1, 46. See also Cic. Off. 1, 65, 67 e 83.

⁷ Cic. Off. 1, 46 (cf. 1, 63).

⁸ Cic. Off. 1, 20; 1, 31 (synonym of *iustus homo*); 1, 41 (*a contrario*); 1, 46 (cf. 1, 63); 1, 48; 1, 55; 2, 33 (synonym of *iustus homo*); 2, 35 (where the *vir bonus* is opposed to the *fortis* and the *prudens*); 2, 38 (...*iustitia, ex qua una virtute viri boni appellantur*); 2, 39; 2, 42 (synonym of *iustus homo*); 3, 43; 3, 57 (in connection with *iustus*); 3, 61; 3, 62 (here the phrase *nemo est qui hoc viri boni fuisse neget; sapientis negant, ut si minoris quam potuisset vendidisset. haec igitur est illa perniciēs, quod alios bonos, alios sapientes existimant* does not identify *sapiens* and *bonus vir*, but

More generally, projecting an Aristotelic distinction¹ on the Stoic definition², Cicero is sometimes³ careful to distinguish, within the first of the cardinal virtues, between the knowledge of the wise man, *sapientia* (*sophía*), and that of the 'good man', *prudencia* (*phrónesis*): for him, the first coincides with the *divinarum et humanarum scientia*, while the second with the *rerum expetendarum fugiendarumque scientia*. At the same time, Cicero distinguishes between the duties of the *sapiens*, who has a perfect knowledge and can therefore fulfill *officia perfecta*, and those of the *vir bonus*, who knows nature through a *probabilis ratio*⁴ and, therefore, does not live in the fullness of virtues but follows the *simulacra virtutis*⁵, being able to perform only *officia media*⁶.

is an answer to the critics of Carneades who wanted to separate *sapientia* from *iustitia*); 3, 64; 3, 75; 3, 76; 3, 80; 3, 81; 3, 82.

¹ For the aristotelian distinction see *Arist. Eth. Nich.* 1140a 24 ss., 1141a 9 ss. On the gradual rise of the distinction in the works of Aristotle it is enough to refer to *Jaeger W. Über Ursprung und Kreislauf des philosophischen Lebensideal // Sitzungsberichte der preussischen Akademie der Wissenschaften. Phil-hist. Klasse*, 1928. P. 390 ff. = *Scripta minora*. I. Roma, 1960. P. 361 ff. (translated in English as an Appendix of *Aristotle. Fundamentals of the History of his Development*. Oxford, 1948. P. 436 ff.); *Aubenque P. La prudence chez Aristote*. Paris, 1963; *Gigon O. Phronesis and Sophia in der Nikomachischen Ethik des Aristoteles // Kephalaion. Studies in Greek Philosophy and its Continuation Offered to Professor C.J. de Vogel*. Assen, 1975. P. 91 ff. It has been noted that the definitions in Cicero are quite different from those found in Aristotle: *Aubenque P. La phronesis chez les Stoïciens // Actes du VII^e Congrès G. Budé*. Paris, 1964. P. 292; *Motte A. Cicerón et Aristote: A propos de la distinction entre la sophia et la phronesis // Aristotelica. Mélanges M. de Corte*. Brussels, 1985. P. 272 f. Within the Stoic doctrine, a *distinction* seems to be assumed only by Ariston of Chios (*Galen. Hipp. et Plat. Decr.* 7, 2 [208, 591 Müller] = SVF I 374; cf. *Ioppolo A.M. Aristone di Chio e lo stoicismo antico*. Napoli, 1980. P. 212 ff.), who possibly developed a dichotomy between φρόνησις in a wide sense and in a strict sense that could be found as early as Zeno of Citium (*Pohlenz M. La Stoa*. I p. 255 f. and nt. 7; *Kerferd G.B. What does the Wise Man Know? // The Stoics / J.M. Rist* (ed.). Berkeley, 1978. P. 132 ff.).

² A similar definition of σοφία can be found in *Aet.* 1 proem. 2 (Diels, 273) = SVF II 35: θείων τε καὶ ἀνθρωπίνων ἐπιστήμη (cf. *Sext. Adv. math.* 9, 13 = SVF II 36); on φρόνησις see *Stob. ecl.* 2, 7, 5b (Wachsmuth, 59) = SVF III 262: ἐπιστήμη ὧν ποιητέον καὶ οὐ ποιητέον καὶ οὐδετέρων ἢ ἐπιστήμη ἀγαθῶν καὶ κακῶν καὶ οὐδετέρων φύσει πολιτικοῦ ζῴου.

³ On the regular indistinction of these two concepts in Cicero, consistent with the Stoic doctrine, see *Aubenque P. La phronesis chez les Stoïciens*. P. 291; *Voelke A.-J. L'idée de volonté dans le stoïcisme*. Paris, 1973. P. 93 nt. 1 (speaks of «un certain flottement terminologique» also *Motte A. Op. cit.* P. 282 e 299, even if emphasizing the importance of *Cic. Off.* 1, 153).

⁴ On the meaning of *probabilis* in translating Gr. εὔλογος (cf. *Cic. Off.* 1, 8; 3, 17–18) cf. *Fiori R. Bonus vir. Politica filosofia retorica e diritto nel de officiis di Cicerone*. P. 44 f. nt. 176.

⁵ *Cic. Off.* 1, 46.

⁶ In this sense also *Motte A. Op. cit.* P. 290 ff. e 298 ff.

It can not be excluded that Cicero's assuming of the lesser model of the *vir bonus* as his primary concern, was induced by his adherence to the New Academy, with its skepticism and probabilism. But in my opinion, it is possible that he was also influenced by the Roman tradition of the *vir bonus*, that had not gone through the long metamorphosis of Greek *kalokagathía* and therefore retained to a greater extent its social, legal and political features. It is no coincidence that in some passages the expression retrieves an exclusively social value, indicating the most illustrious personalities of the City¹ – or the upper classes, however hostile to philosophy², as opposed to the *populus*³ – and only rarely seems to denote moral qualities in opposition to material wealth⁴.

What is certain is that the *vir bonus* of *de officiis* is neither a sage, nor a generic 'good man'. He is instead a citizen who lives properly, in accordance with the rules of the Roman *res publica*, and whose life is consistent with the universal values because the civic rules are themselves drawn from the *natura*. Just as the Roman religion is cosmic, but entirely aimed at the preservation of the *civitas*, the philosophy of the *de officiis* deals with universal themes in order to maintain the right balance among the elements of the *res publica*. By translating in Roman terms the philosophy of the Greeks – that is, the 'modern science' of his time – Cicero restates the importance of traditional values and claims as just and scientifically correct a hierarchical vision of society where the 'honestum' coincides with everyone respecting their roles.

This vision may be surprising for the modern interpreter, more familiar with the 'Kantian' and the Illuministic idea of a common ethics necessarily shared by all human beings, or at least by the members of the same society. But in ancient cultures – and in the European culture up until the XVIII century – ethics was not a general behavioural code; it varied depending on the social condition of the individuals⁵. This is particularly true of those Indo-European

¹ Cic. Off. 2, 57: *optimi viri*.

² Cic. Off. 2, 2. The reference to the *optimi viri ad Ianum medium sedentes*, who have more knowledge than philosophers when dealing with *pecunia* (2, 87), is clearly ironic.

³ Cic. Off. 2, 27 (the rich owners oppressed by Sulla); 2, 58 (in opposition to the *populus*); 3, 77 (on which see Fiori R. *Bonus vir. Politica filosofia retorica e diritto nel de officiis di Cicerone*. P. 343 ff.; *Idem*. La gerarchia come principio di verità).

⁴ It is possible in Cic. Off. 2, 63 (*bonus vir et gratus*); it is definite in 2, 69 (the opposition between the *vir inopis et optimus* and the *fortunatus et potens*) and in 2, 71 (the opposition between the *bonus vir pauper* and the *minus probatus dives*).

⁵ On all this see Fiori R. *Bonus vir. Politica filosofia retorica e diritto nel de officiis di Cicerone*. P. 141 ff.

cultures that show stronger legal and religious conservatism, like India, Ireland and Rome¹. We know that in Indian thought, from the Vedic *varṇa* system was developed the idea that each member of society has their proper rules of conduct (*svadharma*), according to stages of life and class², and that in Ireland the 'honour-price' (*lóg n-enech*) was the measure of the entire legal sphere of the individual³. In Roman law, social rank was the criterium for the evaluation of many institutes and remained essential in the most conservative spheres of law – from civil and criminal trial to private delicts⁴, marriage⁵, etc. As we have seen, it was only in that part of Roman law which was more affected by the new economic needs arising from the third century BC onwards – that is, mainly contract law – that the creation of the common yardstick of *bona fides* allowed to abstract the duties from personal status and link them to the objective bargain.

Within this complex framework, the use of these categories in the *de officiis* is ambiguous. *Honestas* 'ethically' coincides with a behaviour consistent with one's *honor*, but from a 'socio-juridical' point of view it requires the possession of high rank. In the same way, the *vir bonus* is 'ethically' the one who respects hierarchy, but in a 'socio-juridical' sense he is the one who belongs to the class of the *boni* or the *optimi*. The field of 'respectability' is extended to all good citizens, but with a different content: while the 'respectability' of the ruling class is expressed in receiving honors, the 'respectability' of the subordinates means recognizing the preeminence of the upper classes and adopting their values in everyday behaviour and in private law.

The political purpose of *de officiis* is thus clearly revealed: Cicero does not want to write just a book of philosophy, a purely intellectual work, but

¹ According to the well-known theory of Vendryes J. Les correspondances de vocabulaire entre l'indo-iranien et l'italo-celtique // MSL. 1918. Vol. 20. P. 3 ff. See also Benveniste E. Le vocabulaire des institutions indo-européennes. II. Paris, 1969. P. 9 ff.; Dumézil G. La religion romaine archaïque Paris, 1974, p. 34 f.

² On the *varṇāśramadharmā* see Hiltebeitel A. Dharma. Its Early History in Law, Religion, and Narrative. Oxford, 2011. P. 215 ff.; originally, *āśrama* meant 'modes', rather than 'stages' of life: see Olivelle P. The *āśrama* System. The History and Hermeneutics of a Religious Institution. Oxford, 1993. P. 19 ff.

³ Cf. the extensive bibliography collected in Fiori R. Bonus vir. Politica filosofia retorica e diritto nel *de officiis* di Cicerone. P. 84 ff.

⁴ Garnsey P. Social Status and Legal Privilege in the Roman Empire. Oxford, 1970. Passim.

⁵ Fiori R. La struttura del matrimonio romano // BIDR. 2011. Vol. 105. P. 197 ff. and esp. 228 ff.

intends to give new appearances to the values and principles that belong to the oldest aristocratic tradition. Reconciled with the categories of philosophy – which, as mentioned above, is the science of his time – these values receive a scientific demonstration and present themselves as the only certain, true and right reality, as opposed to the uncertainty, the probabilism, and the distortion of reality propounded by Epicureism and its political expression, the party of Caesar.