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TOMMASO BEGGIO
(Università di Helsinki)

Note in tema di condanna *ad tempus*
nelle *damnationes ad metalla*

ABSTRACT

The paper deals with the problem of the *tempus* in the different kinds of condemnations *ad metalla* (to forced labour in the mines). A rescript by Hadrian that we can read in D. 48.19.28.6 (Call. 6 *de cogn.*) established a rule according to which the condemnations *ad metalla* and *in opus metalli* should be *in perpetuum* – they should last for the entire life of the convicted. Two later sources seem to oppose the provision set up by Hadrian though: I refer to D. 48.19.23 (Mod. 8 *reg.*) and to a constitution by Constantin the Great of 331 AD (CTh. 1.5.3). According to the two texts, condemnations to forced labour in the mines for a fixed period of time seemed to be actually allowed. This study intends to propose an interpretation of the ostensible antinomy between the rule established by Hadrian and the provisions emerging from the text by the jurist *Modestinus* and the constitution by Constantin the Great by offering an analysis of the problem from a diachronic perspective, based on the sources at our disposal. This kind of approach will allow to underline the evolution of the *damnatio ad metalla* over the centuries in Ancient Rome, from the Principate to Late Antiquity and to suggest a solution to the above-mentioned antinomy, not based on the idea that the rescript by Hadrian established a rule, whereas the other sources simply represented exceptions to that rule.

PAROLE CHIAVE

Damnati ad metalla; opus metalli perpetuum; rescritto adrianeo; damnatio ad metalla ad tempus; gradualità delle pene.

SARA LONGO
(Università di Catania)

*Sponsor, fidepromissor, fideiussor:
condicio 'similis' e condicio 'dissimilis'*

ABSTRACT

The majority of the Authors think that, in order to perform a valid guarantee-*sponsio* as well as a *fidepromissio*, it is required and enough the mere and formal performance of the main act regardless of its binding force, while the undertaking of a *fideiussio* implied an obligation of the main debtor. The paper criticizes this position by a close investigation of the *stipulatio-formulae* concerning these three kinds of personal guarantee and by a rigorous analysis of Gai 3.118-119a aiming at restoring the right importance of the dichotomy in Gaius between the *similis* status, in the *sponsor* and *fidepromissor* cases, and the *dissimilis* status of the *fideiussor*.

PAROLE CHIAVE

Garanzia; *accedere*; solidarietà passiva; *obligatio*; *verba stipulationis*.

ERIC POOL
(Vrije Universiteit Brussel)

Significati diversi di *causa*
in tema di *possessio* e di *usucapio*.
Interpretazioni di qualche testo chiave.
Parte II

ABSTRACT

(i) Before and after Savigny the content of D. 41.2.3.21 has been trivialised by connecting the titles *pro emptore* ecc. not only with *genera possessionum* but also with *causae acquirendi*. This error has prevented scholars from nailing down the legal essence of Paul's partly implicit argument: the number of *causae acquirendi* is not equal to that of the *genera possessionum* (an old opinion) but to the infinite number of *species possidendi*. (ii) The concept of *causae acquirendi* is broader than the comparable ones: *iustae causae traditionis / acquirendarum rerum / possidendi*.

PAROLE CHIAVE

Cause di acquisto; denominazioni del possesso qualificato; possesso *pro suo*; *actio Publiciana*; D. 6.2.13.

CARMELA RUSSO RUGGERI
(Università di Messina)

La rilevanza dell'*anteacta vita*
nell'esperienza processuale romana

ABSTRACT

This study examines the role that *anteacta vita* had in the Roman procedural law both in criminal and civil matters. The precedents of the individuals involved in various forms in the proceedings (defendants, accusers, witnesses, injured parties, and so on) were already theorised in the rhetoric treatises as *argumenta ex persona* to be used by the lawyers. Moreover, the precedents were constantly invoked in the legal practice, as shown – as far as the last century of Republic is concerned – particularly by Cicero's *orationes* and, in relation to the first imperial era, by Gell. 14.2. From the end of 2nd century a.C., this phenomenon also started drawing the attention of emperors and lawyers, who stressed the relevance of precedents in relation to both various offences and civil proceedings. Ultimately, departing from the prevailing literature, the author demonstrates on the basis of Cic., *pro Cluent.* 41.115-116 that, in the system of *quaestiones perpetuae* also, the reference to the offender's *anteacta vita* not only aimed at orienting the fact-finders towards the defendant's innocence or guilt but could also affect the decision-making regarding the amount and type of sentence.

PAROLE CHIAVE

Anteacta vita; retorica; pratica forense; *iurisprudentia*.

AGATINA STEFANIA SCARCELLA
(Università di Messina)

Adnotatiunculae su una costituzione greca
indirizzata da Giustiniano ai professori di diritto

ABSTRACT

The research moves from a Lokin's recent hypothesis, that has questioned the *communis opinio* about the reference of the constitutions *Tanta* and Δέδωκεν (§ 22) to a Greek version of the *const. Omnem*. By means of chronological and formal surveys about references to the Greek text and of considerations on times and recipients of Justinian's reform of law studies, the investigation supports the hypothesis of a temporary measure and suggests some new explanation regarding the specific needs for which it should be issued 'in answer' to the teachers. Further confirmations seem to come from some peculiar terminology and the use of transitional solutions in other particular moments of the Justinian's compilation.

PAROLE CHIAVE

Const. Omnem; misteriosa costituzione greca; riforma degli studi.

SALVATORE SCIORTINO
(Università di Palermo)

Sull'assenza dell'imputato
nel processo criminale romano

ABSTRACT

The paper deals with the condition of the *absens* in the various forms of criminal trials in roman law. In particular, the author looks for the reasons and the circumstances of the origin of the ban on the absentee's condemnation.

PAROLE CHIAVE

Absentia rei; iudicia populi; iudicia publica legitima; cognitiones extra ordinem.

FRANCESCA TERRANOVA
(Università di Palermo)

Tracce di ‘*improbis intestabilisque*’
nella Parafrasi di Teofilo e nei Basilici

ABSTRACT

The research is a part of a wider study on the *improbitas* and the so called *intestabilitas* in the Roman sources and focuses on analysis of a passage of the Theophilus'Paraphrase (2.10.6) and some σχόλια added to the Basilica [especially, Sch. 1 *ad* Bas. 39.1(Pb).6 e Sch. 3 *ad* Bas. 21.1(Pa).14] – texts that have not been taken into account (except for PT. 2.10.6 only) by the scholars who studied the implications associated with the *improbis intestabilisque esse*. The Author aims to verify the presence of traces of that institute in the aforementioned Byzantine sources, which may be useful for a more complete reconstruction of the historical evolution of the Roman formulaic *improbis intestabilisque* terminology.

PAROLE CHIAVE

‘*Improbis intestabilisque*’; *testamenti factio (cum testibus)*; testimonianza; uso della lingua latina nelle fonti giuridiche bizantine.

TOMMASO DALLA MASSARA
(Università di Verona)

In tema di *exceptio rei residuae*:
commisurazione dell'area dell'accertamento
e funzione di concentrazione processuale

ABSTRACT

In Roman classical law, under the '*iudicium per formulas*', the '*exceptio rei residuae*' is the tool specifically aimed to stop a claim not correctly dimensioned, because the claim appears connected with others. More in general, the essay is focused on the problems concerning the 'correct' boundaries of the civil judgement.

PAROLE CHIAVE

Estensione dell'accertamento; *exceptio rei residuae*; concentrazione processuale; connessione processuale.

GIACOMO D'ANGELO
(Università di Palermo)

Azioni nossali e clausola arbitraria

ABSTRACT

On the basis of I. 4.6.31 and other sources the author argues in contrast to the *communis opinio* that *actiones noxales* were already in classical Roman law *actiones arbitrariae*.

PAROLE CHIAVE

Azioni nossali; azioni arbitrarie; clausola arbitraria; *iusiurandum in litem*.

GIACOMO D'ANGELO
(Università di Palermo)

Sulla difesa del servo assente da parte del terzo
nel processo nossale classico.
A proposito di D. 9.4.21.1 (Ulp. 23 *ad ed.*)

ABSTRACT

The paper aims to revise the traditional opinion, based on D. 9.4.21.1 (Ulp. 23 *ad ed.*), that in the noxal proceeding a *non dominus* could never defend a slave absent *in iure*. According to the author no technical reason justifies this opinion and D. 9.4.39.1 (Iul. 9 *dig.*) contradicts it. Therefore D. 9.4.21.1 should be interpreted in a different way: a *non dominus* could defend a slave absent *in iure* by giving a positive answer to the *interrogatio* 'an servus in potestate eius sit'; otherwise he would have to produce the slave in court, if in possession of him, in order to allow the claimant the *ductio*.

PAROLE CHIAVE

Azioni nossali; *defendere servum*; *non dominus*; *interrogatio in iure*; *actio ad exhibendum*.

GIOVANNI LUCHETTI
(Università di Bologna)

La misericordia
nelle fonti giurisprudenziali romane

ABSTRACT

The essay focuses on the use of the term *misericordia* in jurisprudential sources. The numerous occurrences are all referable to human mercy, consisting in a compassionate behavior inspired by *humanitas* and without any connection with divine mercy. The distance with the use of the term in late antiquity sources is evident and certainly argues in favor of the substantial authenticity of the considered fragments.

PAROLE CHIAVE

Misericordia; linguaggio dei giuristi; interpolazioni.

FRANCESCO MUSUMECI
(Università di Catania)

In difesa della genuinità
di un testo di Giuliano (48 *dig.* D. 9.2.42)

ABSTRACT

The Author analyses D.9.2.42, concerning the actions that may be brought against him who had erased a document. He shows that this text expresses the real thought of Julian and that the arguments advanced by the scholars as a support to its non-authenticity cannot be shared.

PAROLE CHIAVE

Delere; tabulae testamenti; actio depositi; actio ad exhibendum; actio legis Aquiliae.

BERNARDO SANTALUCIA
(Università di Firenze)

Sulla legislazione criminale di Marco Antonio

ABSTRACT

The author discusses some problems related to the law of M. Antonius which allowed the *provocatio* against the decisions of the courts *de vi* and *de maiestate* and to the law which introduced a third *decuria*.

PAROLE CHIAVE

Marcus Antonius; lex Antonia de provocatione; lex Antonia de tertia decuria (Antonia iudiciaria).