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# INDICE DEL VOLUME

## ARTICOLI

G. COSSA, Dare a Paolo quel che non è di Paolo: un controverso trattato in materia di <i>cognitio extra ordinem</i>	3
N. DONADIO, 'Sectores, sicarii, proditores'. L'accusa di complicità nelle proscrizioni sillane e i 'loci' dell'invettiva politica tardorepubblicana	73
G. PURPURA, Il PSI XIV, 1449 e l' <i>actio utilis ex lege Aquilia</i>	101
G. ROMANO, <i>Contrahere e animus contrahendi</i> in Salvio Giuliano	121
G. ROMANO, Tra patti dotali e spese di viaggio. A proposito dell' <i>actio utilis in factum</i> di Pap. 4 resp. D. 23.4.26.3	171
G. ROSSI, La ricezione della lettera di cambio nella <i>common law</i> tra Cinque e Seicento	199
F. TERRANOVA, Indagine su 'et ut quidam adiciunt' in Gai 2.104	223

## NOTE

R. GOUDJIL, Des <i>Lites immortales</i> à Byzance (X <sup>e</sup> -XV <sup>e</sup> siècle)? Quelques éléments de réflexion sur l'autorité de la chose jugée	243
R. LAMBERTINI, P.S. 4.1.6 e la libertà di forma del fedecompresso	263
D. PENNA, The <i>platos</i> and the <i>Basilica</i> . An attempt to master the chaos ...	277
S. SCIORTINO, Nota sull' <i>adrogatio libertorum</i>	291

## VARIE

F. BRANDSMA, Viele Schafe oder eine Herde? Die Vindikation einer Sachgesamtheit von byzantinischen Juristen erläutert	307
G. FALCONE, Pietro Cerami giurista e accademico	317
F. MAZZARELLA, Oltre la concezione volontaristica del contratto (a proposito di un recente libro)	327
B. STOLTE, Johannes Henricus Antonius (Jan) Lokin (21.2.1945-19.6.2022)	335



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ABSTRACTS

GIOVANNI COSSA

Dare a Paolo quel che non è di Paolo:  
un controverso trattato in materia di *cognitio extra ordinem*

The article examines the problem of the transmission of Roman legal science texts with reference to a specific work that Justinian's tradition attributes to Paul: the *liber singularis de cognitionibus*. The aim is to use the exegesis of the few fragments at our disposal – mainly about *tutela* – as a mean to make up a hypothesis about its authenticity, the events of its composition, the origin of materials included in it and, broadly, the consistence of the whole literary genre.

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NUNZIA DONADIO

‘*Sectores, sicarii, proditores*’.  
L'accusa di complicità nelle proscrizioni sillane  
e i ‘*loci*’ dell'invettiva politica tardorepubblicana

The purpose of this paper is to discuss some references of Cicero to the *proscriptiones* and to the proponents of ferocious executions, disposed by Silla in the aftermath of the victory over the Marians. They did not integrate simple occasions of moral disapproval against that period of barbarism (the dictatorship of Sulla and the *proscriptiones*), but they actually constitute typical arguments of the political invective in Rome at the end of the republican era, and realize the fundamental purpose of discrediting

the opponent of faction. Those references indeed help to represent the political opponent as an enemy of the Roman republic (*hostis publicus*) and of the *libertas* of Romans; as a person out-law; as a *pernicies*, who is feared in every human society like corsairs, brigands, robbers. Consequently, next to the tyrant and criminal monster model, another figure emerges in Cicero's speeches: the figure of the *sicarius et sector*, who is involved in the killing of the proscribed and in the looting of large fortunes.

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GIANFRANCO PURPURA

### Il PSI XIV, 1449 e l'*actio utilis ex lege Aquilia*

The PSI XIV, 1449 is examined, together with D. 19.2.13.4 and D. 9.2.5.3, to verify a reading hypothesis on the concession of the *actio utilis ex lege Aquilia* in the well-known case of liability of the *magister, qui eluscaverat discipulum in disciplina*. D. 9.2.52.1 is also used in order to reconstruct the disputed case.

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GIUSEPPE ROMANO

### *Contrahere e animus contrahendi* in Salvio Giuliano

The paper deals with the category of *negotium* in Salvius Iulianus. The author rejects the thesis according to which the jurist would have developed a concept of *negotium* as an objective relationship between two distinct assets. From the examination of Iul. 15 *dig.* D. 18.5.5 and Iul. 18 *dig.* D. 12.1.20 has rather taken shape the image of a jurist attentive to the will of the contracting parties, in the determination of *id quod actum est*.

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GIUSEPPE ROMANO

### Tra patti dotali e spese di viaggio. A proposito dell'*actio utilis in factum* di Pap. 4 *resp.* D. 23.4.26.3

This study deals with Pap. 4 *resp.* D. 23.4.26.3, interesting text of Papinian in which an *actio utilis in factum* is granted against the husband who, in violation

of what was agreed, had not reimbursed his wife for the travel expenses incurred to reach him. The author excludes it was a contractual action (*a. praescriptis verbis, a.c.i.*), believing rather that it was an *a. de dolo in factum*, in application of the principle that prohibited the exercise of infaming actions between spouses (C. 5.12.1.2; Ulp. 11 *ad ed.* D. 4.3.11.1).

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GUIDO ROSSI

La ricezione della lettera di cambio nella *common law*  
tra Cinque e Seicento

This work explores the way a specific mercantile custom, that of the bill of exchange, was received within the different and far more complex legal structure of the common law. It analyses the stages of this reception and especially the problems that emerged when some mercantile rules had to be incorporated into a different normative structure not fully compatible with them.

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FRANCESCA TERRANOVA

Indagine su 'et ut quidam adiciunt' in Gai 2.104

The A. questions the meaning of the two different variants handed down at the close of the *formula* of *familiae mancipatio* in Gai 2.104 trying to give more interpretative solutions also for the meaning of the parenthetic proposition "et ut quidam adiciunt".

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ROMAIN GOUDJIL

Des *Lites immortales* à Byzance (X<sup>e</sup>-XV<sup>e</sup> siècle)?  
Quelques éléments de réflexion sur l'autorité de la chose jugée

The judicial Byzantine documentation contains numerous lengthy litigations involving many courts within the Byzantine Justice System as if they were no regulating

principle able to enforce the incontestability of judicial rulings and thus give a permanent end to all litigation. However, the Justinianic codification contains such a principle, namely the authority of *Res Iudicata*, i.e. the idea of incontestability of a definitive judgment, and the *exceptio rei iudicatae*, i.e. the way to enforce it during a judicial procedure. This article aims to investigate the transmission of these principles in Byzantine Law during the middle and late Byzantine period, and above all their comprehension by the Byzantine jurists and litigants. It demonstrates, at least, some misunderstanding of such principles, if not their obsolescence.

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RENZO LAMBERTINI

#### P.S. 4.1.6 e la libertà di forma del fedecommissario

P.S. 4.1.6 does not admit the verbs *relinquo* and *commendo* in order to arrange a *fideicommissum*. It is a unique passage of its kind in the whole textual apparatus. Even in the light of the Visigothic *Interpretatio*, hitherto not considered by the doctrine, the essay investigates the reasons of such exclusions, which however have nothing to do with formalism.

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DAPHNE PENNA

#### The *Platos* and the *Basilica*. An attempt to master the chaos ...

The term *platos* in Byzantine legal sources has caused many headaches to legal historians. The present study examines the term *platos* in the *Basilica* scholia and focuses on some particular scholia that compare the *platos* with the *Basilica* text. It is clear from the examined material that the *Basilica* scholiasts are keen to point out differences between the *Platos* and the *Basilica*, differences which concern not only the translation of Latin terms into Greek (*exhellenismoi*) but also the content itself. It seems that the *Platos* was a reservoir of Greek texts of *antecessorian* origin that the Byzantine jurists of the end of the ninth century had at their disposal and that it was somehow related to the preparatory work for the *Basilica*. The hypothesis is brought that the *Platos* could be identified with the so-called sixty books of emperor Basil I.

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SALVATORE SCIORTINO

Nota sull' *adrogatio libertorum*

The author analyzes the inspiring reasons of the *adrogatio libertorum* classical discipline. In particular, he criticizes the idea according to which the limitations by jurists derived from the need to save the *iura patronatus*; furthermore, because the *adrogatio libertorum* could not compromise the *iura patronatus*, the consent of the patron was not required to perfect the act.

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FRITS BRANDSMA

Viele Schafe oder eine Herde?  
Die Vindikation einer Sachgesamtheit  
von byzantinischen Juristen erläutert

*Universitates rerum*, like a flock, raise legal questions, for example those concerning the vindication or the transfer of a flock, questions that have already occupied Roman lawyers, but are still being discussed. Must one see a flock as several sheep each with their own legal status, or can one see a flock as a unit to be dealt with as such? Byzantine lawyers give some answers to these questions. Stephanus states that the owner of the herd can vindicate even if none of the animals is his property, but he is only possessing them in good faith. Another scholion claims more categorically someone can be an owner of a herd, even if he does not own a single animal in the herd. In any case, according to the Basilica scholia, the owner of a flock can also claim animals owned by others, provided of course that the person who possesses them and who is sued is not the owner.

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GIUSEPPE FALCONE

Pietro Cerami giurista e accademico

A brief profile of the scientific and academic figure of Pietro Cerami.

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FERDINANDO MAZZARELLA

Oltre la concezione volontaristica del contratto  
(a proposito di un recente libro)

In 1876 Siegmund Schlossmann published in Leipzig his trilogy entitled *Der Vertrag*. In provocative tones he demolished the dogma of the will in the law of contract. In a refined book, published in 2022 for the new series "L'Atlante della cultura giuridica europea" (Il Mulino), Tommaso dalla Massara rereads the work of Schlossmann, giving us the opportunity to reflect on one of the most fascinating topics of civil law.

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BERNARD STOLTE

Johannes Henricus Antonius (Jan) Lokin  
(21.2.1945-19.6.2022)

A short commemoration of Jan Lokin.