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PER LUIGI LABRUNA OTTUAGENARIO

Quaderni camerti di studi romanistici
International Survey of Roman Law

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Quaderni camerti di studi romanistici
International Survey of Roman Law

Direttori Luigi Labruna, Cosimo Cascione

Sotto gli auspici
della Scuola di Giurisprudenza dell'Università di Camerino
e del «Consorzio interuniversitario Gérard Boulvert
per lo studio della civiltà giuridica europea e per la storia dei suoi ordinamenti».

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Scritti di:

Ulrico Agnati
Jean Andreau
Riccardo Astolfi
Okko Behrends
Fernando Bermejo-Rubio
Maria Luisa Biccari
Maria Vittoria Bramante
Hinnerk Bruhns
Giuseppe Camodeca
Silvia Capasso
Luigi Capogrossi Colognesi
Paola Luigia Carucci
Cosimo Cascione
Sergio Castagnetti
Amelia Castresana
Alessandro Corbino
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Jean Gascou
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Fausto Goria
Alessio Guasco
Luca Ingallina
Giulio Iovine
Rolf Knütel
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Abstracts

Ulrico Agnati, «L'unione paramatrimoniale di CTh. 4.12.3» (p. 257-274)

Constantine usually opposes, by means of his legislation, the sexual relationship between a free woman and a slave. The paper analyzes CTh. 4.12.3 which constitutes an exception. The emperor's chancery modifies the *senatus consultum Claudianum* and creates an entirely new species of family, formed by an *ingenua* and by an imperial slave; the offspring will share the legal condition of the *Latini Iuniani*. The a. aims to ensure the efficiency of the imperial estates and the emperor's control over his household. The constitution shows independence in lawmaking and a sound knowledge of classical Roman law.

Parole chiave: Constantine, family, imperial household, *senatus consultum Claudianum*, *Latini Iuniani*.
Costantino, famiglia, schiavi imperiali, *senatus consultum Claudianum*, *Latini Iuniani.*

* * *

Jean Andreau, «Réflexions sur la ville de consommation» (p. 762-770)

In his volume, *Max Webers historische Sozialökonomie. L'économie de Max Weber entre histoire et sociologie*, Hinnerk Bruhns has published a paper on the concept of consumer city. In the paper, the a. explains how that concept – which Moses I. Finley has borrowed from Max Weber's works – was often analysed and supported, during the Eighties and the Nineties, both by ancient historians and archaeologists, especially in the English-speaking countries, but in France as well. On the opposite, after the beginning of the 21st century, it disappeared rather rapidly from the bibliography about antiquity.

Parole chiave: Max Weber, town/country, Moses I. Finley, consumer city, history of Roman law scholarship.
Max Weber, ville/campagne, Moses I. Finley, ville de consommation, histoire de la tradition du droit romain.

* * *

Riccardo Astolfi, «Sul *legatum debiti*» (p. 329-338)

Review article of Giovanni Papa, *Per una storia del 'legatum debiti'*, «Pontificium Institutum Utriusque Iuris, Studia et Documenta, N.S. 3»

(Roma, Lateran University Press, 2014) p. 130. – Marcellus considers the *legatum debiti* valid if *per vindicationem*, void if *per damnationem*, unless, as Aristo had already taught, it is also *commodum* for the *creditor*. The *legatum debiti per vindicationem* is valid, because it has as its object the due and extinguishes the debt. In the contribution of these two jurists of the II[nd] century there is in the whole the substance of the conception that classical jurisprudence has had about *legatum debiti*. Julian is essentially climbing, in the *legatum debiti*, the pursuit of an economic *utilitas*, while the contribution of Papinian and his disciples consisted in making the *legatum debiti* the object of interpretation of the testamentary will. Justinian's law contrasted the bond with real effects to the one with compulsory effects and attributes to the former the classic regime of the *legatum debiti per vindicationem* and to the second the classic regime of the *legatum debiti per damnationem*.

Parole chiave: *legatum debiti per vindicationem*, *legatum debiti per damnationem*, *utilitas*, *commodum.*

* * *

Okko Behrends, «Die „Große" und die „kleine" *conventio*, die *ratio iuris* der skeptischen Akademie und der klassische Geldkauf» (p. 401-442)

In the teaching of the classical Roman law, as inspired by the Fourth Academy of Philon of Larissa, *conventio*, the peaceful 'coming together' is the natural foundation of all formal entitlements that the rational 'institution' of equal law (*institutio aequitatis*) can provide. In its 'great' or major form it is the founding event of civilized statehood bestowing free and active citizenship and property protecting possession. In its 'small' or minor form it is the natural precondition of all contracts that impart obligations as unilateral or bilateral abstract legal structures. As institutes of civil equity (*civilis aequitas*) these obligations define aims of civilized self-interest and expect precise and willingly granted performance. The actionable accountability of the debtor is based on the legal ethics of natural equity (*naturalis aequitas*) and – in bilateral contracts that require no form (e.g. sale) – is substantiated by *pacta conventa* that engage the contractual loyalty (*fides humana*) of the debtor in the form of good faith (*bona fides*).

Parole chiave: Fourth Academy, *institutio aequitatis*, *civilis* and *naturalis aequitas*, *conventio* and *pactum conventum.*
Vierte Akadamie, *institutio aequitatis*, *civilis* und *naturalis aequitas*, *conventio* und *pactum conventum.*

* * *

Okko Behrends, «Die Regel und die Religion im Recht» (p. 805-824)

Learning from Detlef Liebs about rules and religion in law: rules are to be appreciated as the immediate presence of law, entitling or prescribing behaviour, either in a hard and fast way ('all or nothing') or referring to substantial principles in need of being concretized on the case. Religion should, following the example set by Roman history, respect the intellectual and cultural independence of law.

Parole chiave: Rule of law and rules, historicity of legal dogmatics, legal nihilism, the legal action against Jesus, *institutum Neronianum*, Detlef Liebs.
Rechtsregel und Regeln, Historizität der juristischen Dogmatik, juristischer Nihilismus, die rechtliche Klage gegen Jesus, *institutum Neronianum*, Detlef Liebs.

* * *

Fernando Bermejo-Rubio, «I Manichei: problemi giuridici tra Diocleziano e Costantino» (p. 120-123)

Review article of Valerio Massimo Minale, *Legislazione imperiale e manicheismo da Diocleziano a Costantino. Genesi di un'eresia*, «Diáphora, 15» (Napoli, Jovene, 2013) p. xx, 279. – The monograph is a thorough investigation of the legal measures against Manichaeism taken from Diocletian and Constantine. It sets forth the thesis that, despite the significant changes which took place within a few decades, there existed a remarkable continuity in the legal procedures used by both emperors. The shift in the understanding of Manichaeism – from being viewed a foreign religion belonging to the Persian world, it becomes a Christian heresy – did not entail practical differences. Insofar as it was deemed alien, first to the Diocletian *Romanitas* and later to the Christian orthodoxy fostered by Constantine, it was always perceived as a serious threat to the internal cohesion of the Empire, which both rulers wished to repristinate. This is why two emperors with different ideological backgrounds resorted to similar legal procedures to ferociously persecute the Manichaean religion.

Parole chiave: Manichaeism, Diocletian, Constantine, legal procedures.
Manicheismo, Diocleziano, Costantino, legislazione.

* * *

Maria Luisa Biccari, «Piccole (grandi) tappe di storia antica nel percorso di emersione dei diritti umani» (p. 723-736)

The text aims to compare the technical details of human rights 'categories' in the modern and present world (from Francisco de Vitoria to

the Universal Declaration of Human Rights in 1948), with the awareness that the existence of such rights can be traced back to the oldest religious records, and specially to the historical records of Hammurabi Code, Cyrus Cylinder, Edicts of Ashoka.

Parole chiave: Historical meaning of human rights, protection of the person, values of civilization.
Storicità dei diritti umani, tutela della persona, valori di civiltà.

* * *

Maria Vittoria Bramante, «A proposito delle *Roman London's first voices* ovvero sulla necessità di una riedizione delle *tabulae* da *Londinium*» (p. 149-167)

Review article of Roger S.O. Tomlin, *Roman London's first voices. Writing tablets from the Bloomberg excavations, 2010-14*, «Museum of London Archaeology. Monograph, 72» (London, MOLA, 2016) p. xvi, 309. – The study examines the *editio princeps* of *tabulae ceratae* from the Roman Londinium (I AD). The paper highlights the opportunities of a *cura secunda*, particularly about legal documents, unique evidence of the activities of people beyond the representation of law as elaborated by jurists.

Parole chiave: Writing tablets, law practice, Londinium.
Tavolette cerate, prassi giuridica, Londra romana.

* * *

Hinnerk Bruhns, «Trois lecteurs, trois lectures, ou: 'l'autore lettore dei suoi lettori'» (p. 771-777)

In the paper the a. reacts briefly to the different comments made by Jean Andreau, Luigi Capogrossi Colognesi and Edoardo Massimilla on his book *Max Webers historische Sozialökonomie. L'économie de Max Weber entre histoire et sociologie* (Wiesbaden 2014) at the occasion of a public discussion in the University Federico II in Naples in January 2016. Three points are examined: 1. Weber's utilization of the idealtype (with the example of the ancient 'consumer city' vs. medieval 'producer city'); 2. Weber's epistemological position as an economist between, on the one side, the German Historical School, and the Austrian school of economics on the other. 3. The third point discussed concerns Wilhelm Hennis' interpretation of Max Weber's 'science of man' and Weber's understanding of the concept of Kulturmensch.

Parole chiave: Idealtype, Max Weber and economics, Max Weber's science of man.
Idealtipo, Max Weber e l'economia, la scienza dell'uomo di Max Weber.

* * *

Giuseppe Camodeca, Fara Nasti, «Riedizione di TLond. 55: *pecunia debita in stipulatum deducta*» (p. 138-148)

New edition of TLond. 55. A more careful reading of the text and of the formulary contained in the document – confirmed both by the praxis documents of Campania and the Dacia's tablets – makes it possible to discover a different meaning for the London tablet. In TLond. 55, in fact, we find a debt recognition and not a loan, as the first publisher believes. In addition, we may better understand the kind of *stipulatio* in which the debtor was engaged: the verb *curari* in the expression *dari curari*, which is not used in other documents of the practice so far known, comes back to the formulary of a *stipulatio* as is referred by Labeo, Celsus and Ulpian in two fragment of the Digest (Cels. 6 *dig.* D. 12.1.42; Ulp. 2 *ad ed.* D. 45.1.67.1).

Parole chiave: *Tabulae ceratae Londinenses*, debt recognition, *pecunia debita*, *stipulatio*.
Tabulae ceratae Londinenses, ricognizione di debito, *pecunia debita*, *stipulatio*.

* * *

Silvia Capasso, «Bibliografia di un ottuagenario. Gli scritti di Luigi Labruna: 2007-2017» (p. 846-877)

List of the scientific works of Luigi Labruna until 30 october 2017, following the one printed in *Fides Humanitas Ius. Studii in onore di L. Labruna*, cur. C. Cascione, C. Masi Doria I (Napoli 2007) xvii-lii.

Parole chiave: Bibliography, Luigi Labruna, history of Roman law studies.
Bibliografia, Luigi Labruna, storia della scienza romanistica.

* * *

Silvia Capasso, «*Magistratus*: partendo dalla tessera di Herrera de Pisuerga» (p. 91-106)

The paper analyzes the use of the term *magistratus* in the iberian provincial environment. The etymological research is based on the epi-

graphic findings of the hospitality and patronage *tesserae* or *tabulae* and aims to investigate the different degree of romanization. The reference to local magistrates, which ratify the covenant, through the latin form is the starting point for the emergence of the relationship between indigenous pre-civic structures, with its background characterized by personal relationships (*devotio* and *hospitium*) and family groups (*gentilitates*), and the Roman institutions.

Parole chiave: *Hospitium*, epigraphs, *magistratus*, iberian provinces.
Hospitium, epigrafi, *magistratus*, province iberiche.

* * *

Luigi Capogrossi Colognesi, «Un aristocratico dei nostri studi: Dieter Nörr» (p. 879-883)

Obituary of the late Professor in Munich, in which the a. puts in evidence the peculiarities of the character, an unique among the Romanists of his generation.

Parole chiave: Obituary, Dieter Nörr, Roman law.
Necrologio, Dieter Nörr, diritto romano.

* * *

Luigi Capogrossi Colognesi, «*De loco publico fruendo*» (p. 370-378)

Review article of Paola Santini, *«De loco publico fruendo». Sulle tracce di un interdetto*, «Pubblicazioni del Consorzio Interuniversitario Gérard Boulvert, 4» (Napoli, Jovene, 2016) p. xii, 193. – Through a broad review of the historiographical debate developed between the nineteenth and twentieth centuries, the volume explores juridical and socioeconomic dynamics to provide useful elements for reconstructing the history of the *interdictum de loco publico fruendo* (whose *formula* is handed down in Ulp. 68 *ad ed.* D. 43.9.1 pr.), granted to the *conductor* of public places.

Parole chiave: *Interdicta*, *locus publicus*, *utilitas*, *superficies*.

* * *

Luigi Capogrossi Colognesi, «Alle origini della specificità occidentale: il diritto romano nella riflessione weberiana sul diritto» (p. 677-692)

Review article of Max Weber, *Economia e società. Diritto*. Testo critico della Max Weber-Gesamtausgabe a cura di Werner Gephart e Siegfried Hermes, ed. it. a cura di Massimo Palma (Roma, Donzelli, 2016) p. cxxxviii, 454. – Reflections on the part dedicated to 'Law' of the We-

ber's work plan on 'Economy and Society', with renewed interpretation starting from the new italian translation of the book.

Parole chiave: Max Weber, legal rationality, Roman law tradition.
Max Weber, razionalità giuridica, tradizione romanistica.

* * *

Luigi Capogrossi Colognesi «La *Sozialökonomie* storica di Weber» (p. 751-761)

The a. is principally interested in Hinnerk Bruhns's discussion of the consequences of the crisis of the 'young' Nationalökonom, immediatly after Weber's death. Also considering the character and the theoretical Weberian (and Sombart's) assumptions in the discussion with Jaffè on the theoretical foundations of the economical sciences. The defeat ot Weber's ideas and, in general, of the German Nationalökonom had a serious consequences in the developments of economic theory during the second part of the 20th century, losing any interest for the historical context to which economic analysis should be referred.

Parole chiave: Max Weber, Sozialökonomie, economic theories.
Max Weber, Sozialökonomie, teorie economiche.

* * *

Paola Luigia Carucci, «Senatoconsulti normativi e *constitutiones principum*: i limiti dell'efficacia territoriale» (p. 56-71)

The study deals with the spatial effects, rather than chronological ones, of senatorial acts. Often, the normative acts had a limited geografical application, and then a diffused utility; so the theme of territorial efficacy concerning the *constitutiones principum* involves also the effects of *senatusconsulta*; in fact, as the *constitutiones principum*, the legislative acts of the senate riceived a larger diffusion in Roman empire over time. A significative case which seems to prove that, in Roman history, these normative acts followed *constitutiones* same evolution seems emerging in the progression of the discipline produced by *senatusconsultum de agnoscendis liberis* mentioned in letters between Pliny and Traian (Plin. *ep.* 10.72, 10.73); the senatorial act produced effects only in Bitiny till *senatusconsultum Plancianum* (D. 25.3.1 pr. ss.), which, in Justinian's Digest, was used all around the empire.

Parole chiave: Efficacia territoriale delle *constitutiones principum*, efficacia territoriale dei *senatusconsulta*, *senatusconsultum de agnoscendis liberis*, *senatusconsultum Plancianum.*
Territorial effects of *constitutiones principum*, territorial effects of *senatusconsulta*, *senatusconsultum de agnoscendis liberis*, *senatusconsultum Plancianum.*

* * *

Cosimo Cascione, «*In ordinem redigere.* Difesa di un 'umanista sciagurato' (tra filologia e diritto pubblico romano)» (p. 24-38)

A sort of mystery tale based on the Latin expression *in ordinem redigere* between history of classical philology and Roman public law, being this one the point of view that can explain the meaning of the phrase.

Parole chiave: *In ordinem redigere*, history of classical philology, Roman public law.
In ordinem redigere, storia della filologia classica, diritto pubblico romano.

* * *

Sergio Castagnetti, «Il *cursus* di un magistrato puteolano di IV secolo, *defensor pauperum*» (p. 107-119)

The a. presents an unpublished inscription that portrays the *cursus honorum* of a Puteolanus Demetrianus, who was *defensor paurer<or>um* in the second half of the 4th century AD. This new information is particularly interesting, since the epigraph is certainly the evidence of a career and therefore this type of *defensor* was a local charge (of Puteoli) up to now unknown.

Parole chiave: *Defensor pauperum*, Puteoli, Puteolanus Demetrianus, *cursus honorum*.

* * *

Sergio Castagnetti, «In margine al saggio giovanile di Francesco De Martino su *Lo Stato di Augusto*» (p. 693-706)

The paper compares two editions of *Lo stato di Augusto* by Francesco De Martino, which appeared with different subtitles (I. *La costituzione*, in 1935 and then *Introduzione*, in 1936) with several differences (in contents, bibliography, notes): the same arguments transformed again can be found in *Storia della costituzione romana*, vol. IV/1 (Napoli 1962). Some quotations (in particular of P. de Francisci and V. Arangio-Ruiz, who are praised in some cases), some references to classical political thought (Plato, for example) and also interpretations of the powers of Augustus compared to Roman tradition and contemporary history (ed. 1935, 21) make the two editions different. This last quotation contains an allusion to contemporary revolutionary movements that probably S. Solazzi crossed out in his copy of the 1st edition: this episode throws light upon the relations between the two scholars. In this early work, De Martino tries a scientific analysis of historical facts, limiting ideological or political

undertones and references to the minimum, although it was the period of greatest consent to Mussolini and of Augustus' bi-millenary.

Parole chiave: Roman law scholarship, Francesco De Martino, Principate of Augustus, fascism, Roman revolution.
Tradizione romanistica, Francesco De Martino, principato augusteo, fascismo, rivoluzione romana.

* * *

Alessandro Corbino, «*Mancipatio* e pesatura» (p. 379-400)

The a. reaffirms his own belief that *mancipatio* has been an 'abstract form' of transfer and not a 'buy-sell'. He analyzes in particular the gestural formalism of the act (*libripens*, *aes rude* and *libra*) to show that the weighting summed up in it was not a 'necessity' of the proceeding, but only a possible 'eventuality'.

Parole chiave: *Mancipatio*, legal procedings *per aes et libram*, *causa*, *emptio venditio*, archaic formalism.
Mancipatio, atti *per aes et libram*, *causa*, *emptio venditio*, formalismo arcaico.

* * *

Alessandro Corbino, «Il mio rito di passaggio, il vostro compito» (p. 842-845)

Turning his own regards and his own thanks on the occasion of the friendly celebration for his retirement, the a. remembers the fundamental role that, in his opinion, have had the historical studies of the legal experience. In addition, he remarks how useful could be, in the present, the observation of the Roman law.

Parole chiave: Legal experience and historical studies, continuity and discontinuity of the Roman legal order and Roman law tradition, history of Roman studies.
Esperienza giuridica e studi storici, continuità e discontinuità dell'ordine giuridico romano e tradizione romanistica, storia della scienza romanistica.

* * *

M. Floriana Cursi, «La *lex Pesolania de cane*: un fraintendimento o una previsione specifica sui cani pericolosi?» (p. 495-516)

The a. suggests that the *lex Pesolania* did not introduce a new remedy alongside the *actio de pauperie* and the *edictum de feris*, but only the

duty, for the owners, to have the dangerous dogs on a leash during the daylight in public places.

Parole chiave: *Lex Pesolania*, *actio de pauperie*, *edictum de feris*, *quadrupes*, *canis*, *Pauli Sententiae*.

* * *

Valeria Di Nisio, «Piccoli *Lesefrüchte*, giungendo in porto» (p. 181-186)

Short philological reflections on the various critical editions (and their eventual print errors) of D. 22.1.28.1 (Gai. 2 *rer. cott.*) and Fr. Vat. 148.

Parole chiave: Edition of Roman law sources, print errors, textual tradition.
Edizione delle fonti giuridiche romane, errori di stampa, tradizione testuale.

* * *

Alberto Filippi, «Per la storia critica del potere punitivo e la difesa dei 'giuridicamente vulnerati'» (p. 662-670)

Review article of Friedrich Spee, *Cautio Criminalis (Cautela Criminal).* Estudio preliminar de E. Raúl Zaffaroni (Buenos Aires, Ediar, 2017) p. 331. – About the masterpiece of Friedrich von Spee, concentrated on the legal protection of people weakened by the hardness of criminal trial in the praxis of XVIIth century.

Parole chiave: Friedrich von Spee, Roman law tradition, criminal trials (in early modern ages), *ius naturale*.
Friedrich von Spee, tradizione romanistica, processi criminali (nella prima età moderna), *ius naturale*.

* * *

Jean Gascou, «Nouveaux papyrus d'Arabie et de Syrie» (p. 125-137)

Here are published two papyri from the Roman Near East. The first is a fragmentary marriage contract from Provincia Arabia. It was once tentatively attributed to Bostra, but it originates most probably in the Dead Sea area. The second item, *P.Euphr*. 20, belongs to the famous Middle Euphrates dossier. It is a new petition to the governor of Syria, akin to the petitions *P.Euphr.* 1 and 2. In spite of its poor condition, one recognizes a mention of a police *beneficiarius*.

Parole chiave: Roman law (provincial), marriage contract, petitions to provincial governors.
Diritto romano (nelle provincie), contratto di matrimonio, istanze ai governatori provinciali.

* * *

Vincenzo Giuffrè, «'Si scrive per comunicare qualcosa …'. Noi e i civilisti» (p. 737-750)

On the relationship between Romanists and private law experts, explaining the evolution which has taken place in the last decades through tradition changes of methods (in particular the sociological turn of Italian civil law scholarship).

Parole chiave: Roman law tradition, modern private law, interdisciplinarity.
Tradizione romanistica, diritto privato moderno, interdisciplinarietà.

* * *

Fausto Goria, «Il diritto come *téchne* secondo l'autore del Tipucito» (p. 643-649)

At the end of the XIth century, the judge Patzós affirmed that law can be rightly qualified as téchne (i.e. as *ars*) because it consists in a whole of situations that are regulated, written and ordered under titles; thus, law is included in the definition of *téchne* that was widespread among philosophers. While in the same age Michele Psellos wanted to make law a part of philosophy, Patzós did nothing else as re-proposing the conception that jurists traditionally had of it, though using a philosophical language.

Parole chiave: Law, philosophy, *Basilica*, Patzós, Psellos.
Diritto, filosofia, *Basilici*, Patzós, Psellos.

* * *

Rolf Knütel, «Zur Haftung bei der *actio quod metus causa*» (p. 594-613)

Nel frammento di Ulp. 11 *ad ed.* (D. 4.2.14) appare contraddittorio che al § 5 il giurista faccia discendere la responsabilità per *actio quod metus causa* soltanto dal dolo del convenuto; mentre, al § 11, ritenga sufficiente anche la colpa. Si tratta tuttavia di casi differenti: il § 5 riguarda, infatti, il caso del possessore di buona fede di una cosa ottenuta dopo che un terzo abbia incusso timore, il quale è responsabile prima della *litis contestatio* solo nel caso in cui abbia cessato di possedere con dolo; il § 11 ri-

guarda invece la situazione successiva alla *litis contestatio*. Il caso piú rilevante è che lo schiavo ottenuto dal convenuto in seguito a violenza morale sia perito nel corso del processo per *metus* senza dolo o colpa del convenuto e che questi ciononostante sia da ritenersi responsabile. A partire dalla *litis contestatio* subentrava alla piú severa responsabilità nel ritardo il regime del piú lieve obbligo di restituzione. Il convenuto doveva rispondere fondamentalmente solo per dolo e colpa e per uno speciale motivo di responsabilità. Un motivo del genere risiedeva, secondo Ulpiano, nel caso in cui il convenuto si trovasse in mora già all'atto della *litis contestatio*. Che secondo il sistema del *restituere* fosse preso in considerazione anche il decorso ipotetico, per il caso in cui il convenuto all'atto della *litis contestatio* avesse restituito e che dunque lo schiavo fosse morto presso l'attore, emerge dalla variante al § 11.

Parole chiave: *Actio quod metus causa*, liability problems, *dolus*, *litis contestatio.*
Actio quod metus causa, questioni relative alla responsabilità, *dolus*, *litis contestatio.*

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Rolf Knütel, «Römisches Erbrecht: Verständnis- und Übersetzungsprobleme» (p. 295-307)

Review article of Ulrike Babusiaux, *Wege zur Rechtsgeschichte: Römisches Erbrecht*, «UTb, 4302» (Köln-Weimar-Wien, Böhlau, 2015) p. 360. – In her new textbook Babusieaux presents essentials of the Roman private law with a main focus on the Roman inheritance law, particularly with regard to the interaction of the different masses of law. In a significant way she reproduces the Digest texts – mostly shortened – offers translations and subsequently explains the meaning. Even though the a. makes widely use of the new German translation (though without adequate proofs) a surprisingly high number of mistakes and misunderstandings become evident in the texts, translations and explanations, for example regarding the *actio ex testamento*, *nova clausula Iuliani*, *falsa demonstratio et cetera*. This results in additional complications for all those students who are willing to understand this difficult subject.

Parole chiave: Roman law of successions, understanding problems, translation issues.
Diritto successorio romano, problemi di comprensione, questioni relative alla traduzione testuale.

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Luigi Labruna, «Gunter Wesener, sein 85. Geburtstag und unsere Aufgabe» (p. 802-804)

An outline of personality and works of Gunter Wesener, situated in the environment of Roman law scholarship, civil law and history of German law starting from the middle of XXth century.

Parole chiave: History of Roman law scholarship, German law tradition, Gunter Wesener.
Storia della tradizione romanistica, tradizione germanistica, Gunter Wesener.

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Orazio Licandro, «La transizione augustea tra legislazione e poteri» (p. 39-48)

The paper analyse J.-L. Ferrary's studies dedicate to the Augustan powers and statutes, rich of innovative ideas regarding the revision of the origin of the empire and the main constitutional reforms.

Parole chiave: Augustus, republic, empire, statutory law.
Augusto, repubblica, impero, diritto legislativo.

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Salvatore Marino, «Quando debitore e garante si riuniscono in una sola persona. L'approccio moderno sotto il diretto influsso del romano» (p. 466-494)

The paper describes the different paths followed by medieval and early modern jurists and then by French, German and Italian legislators in shaping the discipline of the 'improper confusion', i.e. the merge in the same person of the qualities of surety and principal debtor. The case is discussed in the Justinian's *Digesta*, but its regulation is not well harmonized, Roman jurists of different age used various arguments with distinct consequences. The swinging interpretation and legislation among the century reflect directly this variation in Roman sources.

Parole chiave: Improper confusion, 'unechte Konfusion', merge of debtor and guarantor.
Confusione impropria, 'unechte Konfusion', coincidenza di debitore e garante.

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Claudio Martyniuk, «Sobre derecho y verdad» (p. 636-642)

Review article of *Derecho y verdad* II. *Genealogía(s)*, Eds. Germán Sucar, Jorge Cerdio Herrán (Valencia, Tirant lo Blanch, 2015) p. 823. – The book is an international collective piece, consequence of the work made by research professors of the Instituto Tecnológico de México (ITAM), Germán Sucar and Jorge Cerdio Herrán, who are also the authors of the comprehensive and profound Introduction, which gives an accurate framework to the book's subsequent chapters. A meticulous historical approach to Roman law is emphasised.

Parole chiave: Legal history, Justice, Truth, Roman law.
Storia del diritto, giustizia, verità, diritto romano.

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Antonio Masi, «Fausto Goria bizantinista» (p. 835-841)

Review article of Fausto Goria, *Diritto romano d'Oriente. Scritti scelti*, a cura di Paolo Garbarino, Andrea Trisciuoglio, Enrico Sciandrello (Alessandria, Edizioni dell'Orso, 2016) p. xxii, 1179. – A scientific profile of the turinese scholar, focused on his works in the field of byzantine law.

Parole chiave: History of Roman law scholarship, Byzantine law, Fausto Goria.
Storia della tradizione romanistica, diritto bizantino, Gunter Wesener.

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Carla Masi Doria, «*Periculum rei publicae*» (p. 3-23)

A deep study on the locution *periculum rei publicae* (and similar expressions), linked with Roman constitutional law in the crise of the Republic, considered as a literary symptom of the 'state of exception' (specially in the works of Cicero).

Parole chiave: *Periculum rei publicae*, *senatus consultum ultimum*, crisis of the Republic, *maiestas*.
Periculum rei publica, *senatus consultum ultimum*, crisi della repubblica, *maiestas.*

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Thomas A.J. McGinn, «Noxal Surrender and the Paternal Power of Life and Death in the *Autun Fragments*» (p. 220-256)

La rielaborazione tardoantica delle *Institutiones* di Gaio nota come *Fragmenta Augustodunensia* o *Frammenti di Autun* (*Fr. Aug.*) ha vissuto, come è noto, una difficile ricezione da parte degli studiosi moderni. Una

delle conseguenze piú evidenti di questa reazione è stata la mancata considerazione, manifestata soprattutto in una tendenza a trascurare o ignorare informazioni fornite dai *Fragmenta* che erano sconosciute fino al momento della loro scoperta, nel 1898. Tra gli esempi piú rilevanti, le regole della riconsegna nossale e il 'potere di vita e di morte', la *vitae necisque potestas* in capo al *pater familias*. Il contributo esamina entrambi questi aspetti. Oltre a richiamare l'attenzione sull'importanza di questi «nuovi» dati, mira a dimostrare che, nonostante le forti similitudini nel trattamento dei figli e degli schiavi in questi ambiti giuridici, esistono importanti differenze che potrebbero in futuro ricevere maggiore attenzione nella riflessione storiografica.

Parole chiave: *Patria potestas*, *dare in noxam*, *vitae necisque potestas*, vendetta.
Patria potestas, *dare in noxam*, *vitae necisque potestas*, revenge.

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Felice Mercogliano, «Schiavitú, immigrazione e lavoro in Roma antica. Brevi note» (p. 281-294)

At first, the a. suggests some meditations about slaves immigrated in the ancient Rome and about legal disciplines which apply to them, with particular reference to *peculium* and *actiones adiecticiae qualitatis*. Then, beginning with the recent collection on Roman employment by Marcone, the article contains hints on ideological influences in the field of slavery and critical sources as well as GIREA and other European openness in the Roman tradition in the '70s. The analysis is based on, therefore, the voluntary flows of slavish labour and focuses on case mango. Finally, the contribution ends with a brief consideration on the law of citizenship and social integration in the ancient Rome.

Parole chiave: *Servi*, *peculium*, *mango*, *civitas romana*.

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Elvira Migliario, «*Civitas*, *iura*, *arma*» (p. 49-55)

Review article of *Civitas, Iura, Arma. Organizzazioni militari, istituzioni giuridiche e strutture sociali alle origini dell'Europa (sec. III-VIII). Atti del Seminario internazionale, Cagliari 5-6 ottobre 2012*, a cura di Fabio Botta, Luca Loschiavo (Lecce, Edizioni Grifo, 2015) p. 302. – About a book on the relevant connections between citizenship, law and military organization in the late antiquity and early middle ages.

Parole chiave: *Civitas*, Roman law, military organizations.
Civitas, diritto romano, organizzazioni militari.

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Valerio Massimo Minale, «Il *Syntagma Alphabeticum* di Matteo Blastares e lo *Zakonik* di Stefan Dušan: nuove prospettive sul *Syntagma* cd. abrégé» (p. 187-211)

Review article of Viktor Alexandrov, *The Syntagma of Matthew Blastares. The Destiny of a Byzantine Legal Code among the Orthodox Slaves and Romanians 14-17 Centuries*, «Forschungen zur byzantinischen Rechtsgeschichte, 29» (Frankfurt am Main, Löwenklau, 2012) p. 247. – The *Syntagma Alphabeticum*, edited by Matthew Blastares in Thessaloniki in 1335, represents a mixed collection of ecclesiastical Byzantine law because of the presence also of several secular articles, called *politikoi nomoi*, remounting to the Justinian's tradition; a reduced translation in Serbian of the work, known as *Syntagma abrégé*, composed the tripartite codification issued by the car Stephan Dušan between 1349 and 1353-1354 together with the Zakonik and the *Lex Iustiniani*, taken from the *Nomos Gheorghikos*: the overturning of the ecclesiastical matter with the secular one, both civil law and criminal law, had of course an ideological character strongly connected with the idea of empire and embodies the survival of Roman legal sources in Balkans.

Parole chiave: *Syntagma Alphabeticum*, Dušan's codification, Justinian's tradition, Roman law.
Syntagma Alphabeticum, codificazione di Dušan, tradizione giustinianea, diritto romano.

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Francesco Musumeci, «Danneggiamento delle *tabulae testamenti* e applicabilità della tutela aquiliana» (p. 308-328)

Through the analysis of some texts – D. 9.2.41 pr. first of all, and also D. 9.2.42 and D. 4.3.35 – the a. considers the actions that, according to the actual circumstances, may be brought against him who has destroyed or erased the *tabulae testamenti*: namely the *actio legis Aquiliae*, an *actio in factum legis Aquiliae*, the *actio depositi* and the subsidiary *actio de dolo*.

Parole chiave: *Tabulae testamenti*, *actio legis Aquiliae*, *actio in factum legis Aquiliae*, *actio depositi*, *actio de dolo*.

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Giovanni Nicosia, «Celso e l'acquisto del possesso» (p. 364-369)

The article examines two different *species facti*. Concerning the first (the seller has brought and deposited the sold object in the house of the

consenting buyer), Celsus says: *certum est* that the buyer has acquired the possession of the sold object, despite that he has never physically touched it. Concerning the second (from the turris of the buyer, a plot for sale has been shown by the seller), Celsus is very cautious: it should be considered as the buyer had actually stepped into the plot.

Parole chiave: Purchase of possession, Celsus, *vacuam possessionem tradere*.
Acquisto del possesso, Celso, *vacuam possessionem tradere*.

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Carlo Pelloso, «L'ἔφεσις al tribunale popolare in diritto processuale ateniese: 'impugnazione', 'rimessione' o *tertium datur*?» (p. 517-556)

What is the origin of ἔφεσις εἰς τὸ δικαστήριον? What is its legal nature? What are its consequences under legal procedure? Both legal historians and historians of political institutions have proposed different explanations of this Solonian remedy. At the moment it is commonly held that ἔφεσις corresponds to the 'right of appeal', even if one often repeats uncritically the views of earlier scholars. In contrast, one has maintained – albeit with some doubts – that ἔφεσις is the 'transferral' of a case from a public authority to the popular court. A third view has practically received no attention in studies published in recent years: indeed, according to a few scholars, ἔφεσις would produce only 'negative effects', either halting the enforceability of a public decision, or even preventing the existence of such a decision. The present contribution will try to give some support to such neglected view, that reshapes, in terms of agreements, the relationships between citizens and pubic powers in archaic and classical Athens.

Parole chiave: ἔφεσις εἰς τὸ δικαστήριον, Athenian legal procedure, Solonian reforms.
ἔφεσις εἰς τὸ δικαστήριον, diritto processuale ateniese, riforme soloniche.

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Leo Peppe, «Betti-La Pira, Betti-Crifò: un maestro, due allievi» (p. 788-801)

Review article of *Omaggio a Giuliano Crifò. A proposito del carteggio Betti-La Pira*, a cura di Lucietta Di Paola Lo Castro, «Margaritae» (Firenze, Accademia Fiorentina di Papirologia, 2016) p. 119. – At first one analyses the context of the correspondence between Giorgio La Pira and Emilio Betti: Messina and the cultural environment of the city in the pe-

riod 1920-1930; some protagonists, as S. Pugliatti and S. Quasimodo, friends of La Pira. Which kind of scientific and academic relationship there was between La Pira and Betti? And between Betti and Giuliano Crifò, the editor of the correspondence? Individual human features and different scientific inclinations can help to explain connections, ruptures, devotion.

Parole chiave: Correspondence, Emilio Betti, Giorgio La Pira, Giuliano Crifò, history of Roman law scholarship.
Carteggio, Emilio Betti, Giorgio La Pira, Giuliano Crifò, storia della tradizione romanistica.

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Leo Peppe, «I diversi volti della famiglia romana» (p. 213-219)

Review article of Francesca Lamberti, *La famiglia romana e i suoi volti: pagine scelte su diritto e persone in Roma antica* (Torino, Giappichelli, 2014) p. x, 208. – The volume is a collection of already published studies, except the first one, that is an introduction to the juridical structure of the Roman family and to some fundamental institutions between the end of the Republic and the Empire: *patria potestas*, *emancipatio*, *successio*. The volume focuses on these items: different ages of children; the age for betrothal; marriage and feminine assets; the *praesumptio Muciana*; Piso's process and asset consequences. The most interesting items are highlighted and some reflections are presented about conclusions.

Parole chiave: *Familia*, *emancipatio*, prepubescent, marriage, women.
Familia, *emancipatio*, impubere, matrimonio, donne.

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Pascal Pichonnaz, «Plurilinguisme des juristes romains … et des romanistes: quelques réflexions» (p. 707-722)

Reflections on the multilinguism in the Roman empire, especially in the language of classical jurists, compared with the use of many languages in the contemporary Roman law scholarship (and in the experience of Boulvert Prize).

Parole chiave: multilinguisme, Roman jurists, Roman law scholarship, Gérard Boulvert Prize.
Multilinguismo, giurisprudenza romana, tradizione romanistica, Premio Gérard Boulvert.

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J. Michael Rainer, «Polybios und Montesquieu: Die Idee der Balance» (p. 671-676)

On the relationship between Polybios' and Montesquieu ideas of Roman constitution, in particular on the principle of balance.

Parole chiave: Polybius' theory of Roman State, Montesquieu, principle of balance.
Teoria di Polibio sullo 'stato romano', Montesquieu, principio di equilibrio.

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Francesca Reduzzi Merola, «I *servi Venerii*: tra schiavitú e libertà?» (p. 275-280)

The article investigates on the juridical condition of the *servi Venerii* and on the characteristics of their relationship with the Sanctuary of Venus Erycina in Sicily.

Parole chiave: *Servi Venerii*, public slaves, sacred slavery; Cicero's orations against Verres.
Servi Venerii, schiavi pubblici, schiavitú sacra, *Verrine* di Cicerone.

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José María Ribas Alba, «La participación política en la *lex Irnitana*: el principio democrático en un municipio latino» (p. 72-90)

The article examines the elements of political participation in the *lex Irnitana*. For the a., the regulations pertaining to electoral law included in the *lex Irnitana* can be seen as a continuation of the citizen participation that characterised Roman assemblies in the monarchic and republican periods. This continuity mainly affected imperial municipal legislation, in which the institution of the *curia* played a particularly important role. Genuine voting continued to take place in local assemblies right up until the 3rd century AD and, in some territories at least, even later.

Parole chiave: *Lex Irnitana*, *curia*, assemblies, Roman electoral law, political partecipation.
Lex Irnitana, *curia*, asambleas, derecho electoral Romano, participación política.

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Pierluigi Romanello, «*Vir bonus*, *actor veritatis*» (p. 632-635)

Review article of Anna Bellodi Ansaloni, *L'arte dell'avvocato, 'actor veritatis'. Studi di retorica e deontologia forense*, «Seminario giuridico della

Università di Bologna, 279» (Bologna, Bononia University Press, 2016) p. 275 + 3 n.n. – The volume describes the importance of rhetoric with precious comparisons between the Roman world and the modern one. Rhetoric, essentially, is among the fundamental disciplines of the legal practitioner. Its correct use, both in oral and written form, has contributed in a capital way to the formation of the stereotype of the jurist. The book also analyzes the ethics, it is strongly linked to moral and to the correct use of rhetoric as an instrument of truth and not only for vanity.

Parole chiave: Ethics, rhetoric, *patronus*, *veritas*.
Etica, retorica, *patronus*, *veritas*.

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Luigi Romano, «Tracce antiche nel garantismo moderno?» (p. 614-631)

Review article of *Regole e garanzie nel processo criminale romano*, a cura di Laura Solidoro (Torino, Giappichelli, 2016) p. vi, 190 (with contributions of Donato A. Centola, Francesco Fasolino, Pietro P. Onida, Carlo Pelloso, Federico Procchi, Margherita Scognamiglio). – The reviewed book is an *excursus* about the application of *regulae* in the Roman criminal trial, also considered in a diachronical perspective, so the papers contained in the work outline the Roman roots and the origin of the principles of the modern criminal systems.

Parole chiave: Principles of Roman criminal law, *quaestiones perpetuae*, *cognitiones extra ordinem*, criminal liability.
Principi del diritto penale romano, *quaestiones perpetuae*, *cognitiones extra ordinem*, responsabilità penale.

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Paola Santini, «Pacuvio Labeone: il giurista 'detective'» (p. 168-180)

Through the analysis of a Cicero's text (*ad Brut*. 2.5.3-4.), which describes the discussion about the authenticity of a letter sent to the Senate in 43 BC and attributed to Marcus Iunius Brutus, the article aims to offer some insights about the *modus interpretandi* of the jurist Pacuvius Antistius Labeo, father of the very well-known Marcus Antistius (who opposes the Augustan regime in the first imperial age, and appears as antagonist of Ateius Capito), finding a cultural and ideological link between father and son.

Parole chiave: Pacuvius Antistius Labeo, Cicero *ad Brutum*, untruth document.
Pacuvio Antistio Labeone, Cicerone *ad Brutum*, falsità documentale.

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Roberto Scevola, «Dissidi magistratuali e processi criminali nel 169 a.C.: riflessioni a margine di un anno turbolento» (p. 557-593)

The Roman events occurred in 169 BC, immediately before the final fight against Perseus and the definitive victory in the Macedonian wars, offer a problematic institutional framework, that is characterized by a large number of conflicts between constitutional powers: these disputes, *prima facie*, seem to foreshadow the struggles happened during the age of the civil wars. This essay aims to analyze the conflicts between the consuls and the praetors before, and among censors and plebeian tribunes then, pointing out that the solutions are still inspired by cooperative and non-divisive purposes. Although it gave rise to a trial against the censors charged with *perduellio* by a plebeian tribun, the behaviors of the magistrates involved tend to mantain – albeit operating from different points of view – the correct and consolidated application of the established rules on behalf of res publica. Finally, in the exercise of their powers, the constitutional authorities gave up to break the essentially harmonic framework concerning the age of Mediterranean expansion.

Parole chiave: Disputes between magistrates, military draft, public contracts, *perduellio*.
Conflitti magistratuali, leva militare, appalti pubblici, *perduellio*.

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Philipp Scheibelreiter, «Integration durch Abgrenzung? Vom Problem, das *depositum irregulare* zu ‚definieren'» (p. 443-465)

In D. 16.3.24 (Pap. 9 *quaest.*) the jurist is asked whether or not interest can be demanded on the basis of the text of a deposit that at least was inspired by Greek law. Papinianus consents to this and gives the *actio depositi*, but also bears in mind that this solution exceeds the 'well known limits of the deposit'. The example of the later so called *depositum irregulare* shows, how Roman jurists started to define the 'limits' for Roman contracts to integrate foreign agreements into their legal system.

Parole chiave: *Depositum*, *paratheke*, *termini contractus*, *fines contractus*.

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Martin J. Schermaier, «D. 41.1.38 (Alf. 4 *dig. a Paulo epit.*). Öffentliche und private Interessen in einem Fall der *alvei mutatio*» (p. 339-363)

D. 41.1.38 is one of those texts in which the decision of the Roman jurists (in that case: of Alfenus and Paulus) remains unclear. This is not due to a lack of arguments but because the facts of the case are reported

ambiguously. After having consumed private land and a public road a river has returned to its previous channel. Why and in which way does this affect the property of the neighbouring owners? Previous interpretations of the text neglected the interests of the abutting owner and therefore ended up with unsatisfying results. The article suggests that in Paulus' decision the fate of the public road is the decisive aspect: he wants to show that public interest only focuses the use of both the river and the road. This public interest should not compromise the restoration of private land to the previous owners. In that context even D. 41.1.7.5 has to be reconsidered.

Parole chiave: *Alluvio*, *avulsio*, *mutatio alvei*, public road on private land, Roman law and modern jurisprudence.
Alluvio, *avulsio*, *mutatio alvei*, öffentliche Straße auf privatem Land, Römisches Recht und moderne Jurisprudenz.

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Francesco Sitzia, «Fausto Goria e il diritto romano d'Oriente» (p. 825-834)

Through the reading of the essays republished in the volume *Diritto romano d'Oriente. Scritti scelti*, a cura di Paolo Garbarino, Andrea Trisciuoglio, Enrico Sciandrello (Alessandria, Edizioni dell'Orso, 2016) p. xxii, 1179, the a. outlines the scientific personality of Fausto Goria, certainly one of the worldwide top level experts in justinian and byzantine law. The reconstruction reveals a deep and sophisticated scholar with extraordinary analytical skills, always careful and accurate in the sources' analysis, whose researches gave a fundamental contribution to the knowledge of eastern Roman law.

Parole chiave: Fausto Goria, Justinian law, Byzantine law, Roman law scholarship.
Fausto Goria, diritto giustinianeo, diritto bizantino, tradizione romanistica.

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Fabiana Tuccillo, «Innocenzo III, D. 2.2 e un aspetto del principio romano di equità» (p. 650-661)

In two constitutions – the first one of 1198 and inserted in the title *De Constitutionibus* of *Corpus iuris canonici* (X. 1,2,6 *Quum omnes*) and the second one placed in 1204 and inserted in the title *De iudiciis* (X. 2,1,13 *Novit ille*) – Pope Innocent III recalls, without quoting the Roman source, the principle of equity that is contained in the title 2.2 of the

Digesta of Justinian. It seems therefore of great interest to analyze these constitutions in order to demonstrate how the pontifical monarchy between the 12th and 13th centuries borrowed from the Roman law, in our case from the *Digesta*, expressions to define itself.

Parole chiave: Constitutions of Pope Innocent III, Roman law, history of Canon law, *aequitas*, *edictum quod quisque iuris*.
Decretali di Papa Innocenzo III, diritto romano, storia del diritto canonico, *aequitas*, *edictum quod quisque iuris*.

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Witold Wołodkiewicz, «Edward Gintowt: un romanista polacco all'epoca del socialismo reale» (p. 779-787)

Edward Gintowt (born in Lviv in 1899, died in Warsaw in 1965) studied Roman law in Lviv and at italian and austrian universities. His academic career was delayed by world war I. From 1945 and until his death, he was a professor of Roman law at the Faculty of Law of the University of Warsaw. His main scholarly interests related to: protection of rights of private individuals in archaic Roman law; influence of Greek philosophy on Roman jurisprudence; political system of the early Roman republic. He published (in Polish) *Rzymskie prawo prywatne w okresie ustawy XII tablic* [*Roman Private Law under the Law of the Twelve Tables*]. The paper discusses also the situation of the Roman law in Poland under real socialism and the disputes between Edward Gintowt and Rafał Taubenschlag.

Parole chiave: Edward Gintowt, history of Polish Roman law scholarship, Roman law in Poland at the time of Real Socialism.
Edward Gintowt, storia della tradizione romanistica in Polonia, romanistica polacca durante il socialismo reale.