

Index

**Quaderni camerti di studi romanistici
International Survey of Roman Law**

46

2018

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Index

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JOVENE EDITORE NAPOLI

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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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Index

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Sommario

LE COSTITUZIONI

- 1 Umberto Laffi, «Perdere la cittadinanza romana»
- 30 Maurizio d'Orta, «Dalla 'potenza' al 'potere'. Rileggere i *Primordia civitatis* di Pietro De Francisci»
- 67 Rosaria Mazzola, «A proposito di Q. Varius Hybrida tr. pl. 90 a.C.»
- 81 Armando Torrent, «*Hispalis*, de César a Augusto»
- 94 Angelina Troiano, «*Auctoritas e solutio legibus*: configurazioni ideologiche e istituzionali del Principato tra Augusto e Vespasiano»
- 109 Luigi Capogrossi Colognesi, «Le *Tabulae Herculanaenses* di Camodeca e la storia della società romano-italica»
- 117 Santiago Castán, «Claves políticas en torno a la *cura aquarum*, Agripa y la administración de Roma en época augústea»

LE LEGGI

- 141 Donatella Monteverdi, «Il rilievo 'politico' della composizione numerica del Decemvirato (tra proposta ed esperienza)»
- 153 Johannes Platschek, «Nochmals zur *lex Pesolania de cane* in PS. 1.15.1: Systematik der römischen Tierhalterhaftung und humanistische Textkritik»
- 169 Ana Zaera, «*Leges sumptuariae*: un nuevo estudio»

LA GIURISPRUDENZA

- 173 Pia Starace, «Certeza e ordine del *ius civile* nell'*Enchiridion*»
- 201 Martin Pennitz, «Das *non reddere* als Deliktstatbestand – Juristendiskurse zu Besitz, Detention und Diebstahl»
- 226 Mario Varvaro, «*Favor dotis* e singolari interpretazioni in tema di *ius singulare*»

PERSONE

- 255 Pedro López Barja de Quiroga, «Independent freedmen in the *album* of Herculaneum»
- 279 Silvia Capasso, «Gli *Augustales* della Campania romana»
- 288 Riccardo Cardilli, «*Partus vel fructus*: economia, società, diritto»

DIRITTI REALI

- 301 Luigi Capogrossi Colognesi, «*Silvae* and *compascua* in Roman Legal Landscape»
- 309 Cosima Möller, «*Usus servitutis* e abuso, *non usus* e *usucapio libertatis*»
- 320 Mario Fiorentini, «Cloache e sanità urbana nello specchio del diritto»

OBBLIGAZIONI

- 345 Consuelo Carrasco García, «Impacto normativo y derecho romano: *ex ante/ex post*. A propósito de prescripciones edilicias»
- 371 Marek Sobczyk, «Performance for an evil purpose in classical Roman law»
- 395 Annamaria Salomone, «Alle origini dei titoli esecutivi stragiudiziali. Tra *fictio iuris* ed analogia»

PROCESSO

- 411 Alfonso Castro Sáenz, «*Greges togatorum: orator, togatus, advocatus*»
- 431 Vincenzo Giuffrè, «La ideologia del contrasto violento alla dissidenza politica»
- 437 Nunzia Donadio, «Dal *vocare in tributum* alla *datio actionis tributoriae*»
- 456 Gianni Santucci, «A proposito del cd. editto di ritorsione»

DIRITTO CRIMINALE

- 467 Cosimo Cascione, «*Ad elefantos (vel sub elefantos)*»

- 470 Vincenzo Giuffrè, «Le pene atroci dell'antichità fra storiografia e sociologia»

MEDITERRANEO

MARE GRECO, ELLENISTICO, ROMANO

- 483 Giulio Massimilla, «*Τυτθὸν γὰρ ὑπέκ θανάτοιο φέρονται*: i pericoli del mare nella poesia antica»
- 490 Laura Gutiérrez Masson, «Dall'aratro al remo: geodiritto e acculturazione nell'esperienza romana»
- 498 Alberto Dalla Rosa, «Note sui primi procuratori della provincia d'Asia sotto Augusto»
- 517 José-Domingo Rodríguez Martín, «Cláusulas 'terrestres' y cláusulas 'marítimas' en negocios documentados en papiro»

TRADIZIONE ROMANISTICA

- 539 Luca Loschiavo, «Legislazione e prassi nella Benevento longobarda»
- 559 Francesca Lamberti, «Il diritto romano 'oltre' il diritto romano: i suoi destini nella Russia zarista»
- 580 Felice Mercogliano, «Genovesi, la 'Diceosina' e la legislazione matrimoniale augustea»
- 589 Tommaso Beggio, «Un commento alla proposta di riforma degli studi romanistici di Paul Koschaker in un documento inedito di Ulrich von Lütbow»
- 623 Sabrina Di Maria, «Note minime sul 'buon uso' del diritto romano in una recente pronuncia della Cassazione»
- 650 Raffaele D'Alessio, «Sulle *regulae iuris*»
- 660 Alberto Filippi, «Francisco Delich y la cultura italiana: la sociología crítica de las transiciones democráticas»

DA ROMA ALLA TERZA ROMA

- 677 Paolo Siniscalco, «A proposito di *Gen. 1.28*: '*Crescite et multiplicamini*'»
- 679 Pierangelo Catalano, «A proposito di '*civitas augescens*' (D. 1.2.2) e '*civitas amplianda*' (C. 7.15.2)»

- 681 Caterina Trocini, «Dall'Accademia delle Scienze dell'URSS all'Accademia Teologica di Mosca (2017)»
- 698 Franco Vallocchia, «*Ius migrandi?* Migrazioni latine e cittadinanza romana»
- 706 Giorgio Vespignani, «Migranti greci tra Roma, l'Italia e Mosca nella seconda metà del XV secolo»
- 715 Samir Aličić, «La 'Grande migrazione dei Serbi' (1690) nel Sacro Romano Impero e le idee giuridiche»
- 721 Jurij Petrov, «Migrazioni nell'Impero russo, in URSS e nella Federazione Russa»
- 725 Cesare Alzati, «Sacerdozio e Impero: a proposito del modello costantiniano»
- 737 Raffaele Coppola, «Universalismo ed ecumenicità nella dottrina della Terza Roma»
- 743 Caterina Trocini, «Index per la Terza Roma. 1995-2016»

SESTA PAGINA

- 747 Cosimo Cascione, «No soy gringo, soy Cartaginés! (L'antropop e la triste storia di Bill Rule)»

RICORDI

- 751 Thomas Finkenauer, Fabian Klinck, «Hans Josef Wieling»
- 756 Luigi Labruna, «Francesco Fratto nel ricordo di un amico»

- 757 LIBRORUM INDEX, a cura di Fabiana Tuccillo

NOTIZIE

- 803 Sara Pilloni, «Formazione e trasmissione del sapere: diritto, letteratura, società», p. 803 - Giorgia Maragno, «La LXXI Sessione della SIHDA a Bologna e a Ravenna», p. 811 - Martina D'Onofrio, «*Causa contractus*: alla ricerca delle condizioni dell'efficacia della volontà contrattuale», p. 817 - Paola Santini, «Sui Bonfante», p. 821 - Silvia Capasso, «La giustizia di Traiano. Dalla realtà alla leg-

genda», p. 824 - Adelaide Caravaglios, «Le realtà della schiavitù: il XL GIREA», p. 826 - Sofia Sanfilippo, «Giustiniano: politica e legislazione nella transizione», p. 828 - Pia Starace, «Contesti, tecnica, recezione delle Declamazioni maggiori», p. 832 - Valerio Massimo Minale, «Diritto e magia a Belgrado», p. 840 - Valeria Di Nisio, «Le giornate del Cuius in Argentina: decima edizione», p. 841 - Rita Miranda, «*Ab initio bellorum civilium*: Seneca Padre e la storiografia riemersa», p. 842 - Valerio Massimo Minale, «Per una palingenesi dei *senatus consulta* nelle fonti giuridiche bizantine», p. 846 - Silvia Capasso, «Spello e l'Accademia Romanistica Costantiniana», p. 849 - Silvia Capasso, «*Studium erga populum. Studium erga sapientiam*. Una nuova epigrafe a Pompei», p. 851 - Pierangelo Buongiorno, «La forza e le regole: percorsi dell'espansionismo romano», p. 853 - Michele Pedone, «*Plus ratio quam vis*: la LXXII Sessione della SIHDA a Cracovia», p. 855 - Marco Auciello, «Popolazione, territorio, lavoro e strutture economiche nel mondo romano», p. 860 - Angelina Troiano, «I *Criminali* del Professore», p. 863 - Angelina Troiano, «La 'speciale' scoperta dei *Confronti testuali* di Chiazzese», p. 865 - Donato Greco, «A ottant'anni dalle leggi razziali», p. 869 - Cosimo Cascione, «Volterra, i suoi libri, le opere 'di una vita'», p. 875 - Valeria Di Nisio, «Online la traduzione italiana dei *Digesta Iustiniani*», p. 877.

879 ABSTRACTS

INDICE

901 «Libri discussi»

Abstracts

Samir Aličić, «La ‘Grande migrazione dei Serbi’ (1690) nel Sacro Romano Impero e le idee giuridiche» (p. 715-720)

Доклад прозвучал на XXXVI Международном семинаре исторических исследований «От Рима к Третьему Риму» по теме: Миграции, Империя и города, организованном в Риме, на Капитолии, 21-22 апреля 2016 года Исследовательским центром «Джорджо Ла Пира» Национального Совета по Научным Исследованиям Италии в сотрудничестве с ИРИ РАН. Название глав: 1. Исторический контекст миграции сербов из Османской империи в Габсбургскую монархию в 1690 году 2. Права и привилегии сербов в империи Габсбургов и их идея Империи. 3. «Иллиризм» сербов. Сербы как *Gens (Natio) Illirica* (Иллирская нация) 4. Итоги.

Parole chiave: Великое переселение, Сербы, Иллиры, Священная Римская империя.
Grande migrazione, Serbi, Illiri, Sacro Romano Impero.

* * *

Cesare Alzati, «Sacerdozio e Impero: a proposito del modello costantiniano» (p. 725-736)

Доклад прозвучал на Семинаре «Москва Третий Рим»: формула мира и единства до и после 1917 года, организованном Московской Духовной Академией Русской Православной Церкви в Сергиевом Посаде 17-18 октября 2017 года. Название глав: 1. Римское «*civitas augescens*» («ростущее гражданство»); 2. Мир и единство ойкумены по Константину; 3. Император и Церковь. 4. Церковь в отсутствии Императора. 5. «Универсальная публичная власть»: скрытая идея официальной мысли Католической церкви. 6. Два «святых» императора XX века.

Parole chiave: Священство, царство, мир, единство.
Sacerdozio, impero, pace, unità.

* * *

Tommaso Beggio, «Un commento alla proposta di riforma degli studi romanistici di Paul Koschaker in un documento inedito di Ulrich von Lübtow» (p. 589-622)

This essay deals with a so far unpublished document (a ‘Stellungnahme’) written by Ulrich von Lübtow in 1942. The document comments

the reform proposal for Roman law studies at the University in Germany sent by Paul Koschaker to the Ministry for Sciences and National Education in 1941. The two scholars agreed with the aim to adopt a systematic-dogmatic approach both to the study and the teaching of this subject. Von Lübtow also underlined the need for a new Roman law textbook, in which the above-mentioned dogmatic approach would be combined with the comparative legal history method (the so-called 'vergleichende Rechtsgeschichte'). Quite surprisingly, von Lübtow suggested Gerhard von Beseler as the scholar who could better write this textbook, even though Beseler was well known for his radical approach to the so-called Interpolationenforschung. After the description of Koschaker's reform proposal and von Lübtow's document related to that proposal, this article would eventually try to examine the reasons which led von Lübtow to suggest Beseler's name as author of a new Roman law textbook.

Parole chiave: Crisis of Roman law, 'Historisierung', interpolationism.
Crisi del diritto romano, 'Historisierung', interpolazionismo.

* * *

Silvia Capasso, «Gli *Augustales* della Campania romana» (p. 279-287)

Review article of Gemma Corazza, *Gli 'Augustales' della Campania romana*, «Università degli Studi di Napoli 'L'Orientale'» (Napoli, Il Torcoliere. Officine Grafico-Editoriali d'Ateneo, 2016) p. 510. – The monograph analyzes the diffusion and the structure of the board of *Augustales* in Roman Campania through a complete record of epigraphic findings.

Parole chiave: *Augustales*, epigraphs, *collegium*.
Augustales, epigrafi, *collegium*.

* * *

Luigi Capogrossi Colognesi, «*Silvae* and *compascua* in Roman Legal Landscape» (p. 301-308)

On the different ways of economic exploitation of forests and open fields in Roman Italy, examined with references to the legal institutions (substantial and procedural).

Parole chiave: *Silvae*, *compascua*, *dominium*.

* * *

Luigi Capogrossi Colognesi, «Le *Tabulae Herculanaenses* di Camodeca e la storia della società romano-italica» (p. 109-116)

Review article of Giuseppe Camodeca, *Tabulae Herculanaenses*. Edizione e Commento I «*Vetera*, 20» (Roma, Edizioni Quasar, 2017) p. 376. – The reviewer deals with Roman expansionism in Italy, starting from the point of view of the *album* of Herculaneum and the prosopography emerging from the new edited Campanian tablets, with suggestive remarks on legal and economic history.

Parole chiave: *Tabulae Herculanaenses*, *album* of Herculaneum, social/economic/legal history.
Tabulae Herculanaenses, *album* di Herculaneum, storia sociale/economica/giuridica.

* * *

Riccardo Cardilli, «*Partus vel fructus*: economia, società, diritto» (p. 288-299)

Review article of Valeria Di Nisio, '*Partus vel fructus*'. *Aspetti giuridici della filiazione 'ex ancilla'*, «RULeS. Research Upgrading in Legal Science, 4» (Napoli, Jovene, 2017) p. x, 214. – The reviewer retraces the path of the author of the book, reconsidering the texts and the most important literature on the theme, looking at legal and also economic aspects of *partus ancillae* and his relationship with the regulation of *fructus*.

Parole chiave: *Partus ancillae*, *fructus*, slavery.
Partus ancillae, *fructus*, schiavitù.

* * *

Consuelo Carrasco García, «Impacto normativo y derecho romano: *ex ante/ex post*. A propósito de prescripciones edilicias» (p. 345-370)

Following his paper at the seminar *Derecho romano y racionalidad normativa* (Gerona 2018), the a. aims to assess the use by the European Union and its Member States of the so-called 'normative impact *ex ante/ex post*' as a vehicle of rationality (fewer and technically better norms, created to provide real answers to societal issues). This approach will contrast continuities and discontinuities in Roman law in relationship with current normative trends. Taking the edilician prescriptions as a starting point, the article discusses: 1. The «informal» way Roman law developed, compared to the present formal ways («impact evaluation *ex ante*»). 2. The application and repercussions of these norms («impact evaluation *ex post*»). The a. then focuses on: a. The Romans' own perception of the normative process resorting to the work of historians, poets

and, in particular, the commentaries of case-law on the edilician Edict. b. The reception of these norms on a practical, day-to-day basis (edilician prescriptions on wax tablets and in papyri). c. Their historical continuity and persistence (edilician actions, codification and «recodification» in view of the EU directives).

Parole chiave: Normative rationality, evaluation of normative impact, liability based on edilician edicts, duty of conformity.
Racionalidad normativa, evaluación de impacto normativo, responsabilidad edilicia, deber de conformidad.

* * *

Cosimo Cascione, «*Ad elefantos (vel sub elefantos)*» (p. 467-469)

Breve considerazione su una particolare modalità di messa a morte utilizzata (anche) dai Romani: lo schiacciamento sotto gli elefanti.

Parole chiave: Capital punishment, animals and law, Roman criminal law.
Pena capitale, animali e diritto, diritto criminale romano.

* * *

Cosimo Cascione, «No soy gringo, soy Cartaginés! (L'antropop e la triste storia di Bill Rule)» (p. 747-750)

A critical comparison of ideas with a sort of politically correct anthropology, which deals also with ancient history and Roman law.

Parole chiave: Ancient history, anthropology, Roman law.
Storia antica, antropologia, diritto romano.

* * *

Santiago Castán, «Claves políticas en torno a la *cura aquarum*, Agrippa y la administración de Roma en época augústea» (p. 117-139)

During his political career, Marcus Agrippa was in charge of the Roman public waters without any formal legal power. The article focuses on Agrippa's *auctoritas* and his special relationship with the Principate regime in order to explain those powers.

Parole chiave: Marcus Agrippa, *cura aquarum*, *auctoritas*, Augustus, administrative reforms.
Marco Agrippa, *cura aquarum*, *auctoritas*, Augusto, reformas administrativas.

* * *

Alfonso Castro Sáenz, «*Grege togatorum: orator, togatus, advocatus*» (p. 411-430)

The article analyzes the relationship, tensions and differences between the figures of the jurist (*iurisconsultus*) and the *advocatus* (or *togatus*) in republican and imperial Rome, their different training and the gradual separation of their areas, with particular attention to their vision of literary sources, especially Cicero or Tacitus – who were also lawyers – and others, including poets of the period, such as Marcial or Juvenal.

Parole chiave: Lawyer, jurist, science and practice.
Abogado, jurisconsulto, ciencia y práctica.

* * *

Pierangelo Catalano, «A proposito di *civitas augescens* (D. 1.2.2) e *civitas amplianda* (C. 7.15.2)» (p. 679-680)

В своем кратком предисловии к публикации выбранных материалов XXXVI Международного семинара исторических исследований «От Рима к Третьему Риму» по теме «Миграция, Империи и города» (Рим и Москва, 2016 г.) и Семинара по теме «‘Москва Третий Рим’: формула мира и единства до и после 1917 г.» (Сергиев Посад, 2017) автор предлагает рассмотреть проблему миграции и приобретения гражданства с точки зрения Римского Права. В частности П. Каталано сосредотачивает свое внимание на понятии ‘*civitas augescens*’ (растущее гражданство) древнеримского юриста Помпония (Дигесты Юстиниана 1.2.2), которое вошло и в Кодекс Юстиниана под названием ‘*civitas amplianda*’ (увеличивающееся гражданство).

Parole chiave: ‘Растущее гражданство’, ‘увеличивающееся гражданство’, империя, миграция.
Civitas augescens, civitas amplianda, impero, migrazione.

* * *

Raffaele Coppola, «Universalismo ed ecumenicità nella dottrina della Terza Roma» (p. 737-742)

Доклад прозвучал на Семинаре «Москва Третий Рим»: формула мира и единства до и после 1917 года, организованном Московской Духовной Академией Русской Православной Церкви в Сергиевом Посаде 17-18 октября 2017 года. Название глав: 1. Официальная каноническая форма и склонность к экуменизму; 2. Рассмотрение вопроса со стороны католиков: язык знаков; 3. Основные этапы развития диалога и его противники; 4. Замечания касающиеся встречи

Святого Отца Франциска со Святейшим Патриархом Московским и Всея Руси Кириллом; 5. Из Базилики Святого Николая в Бари в Храм Христа Спасителя в Москве: значение исключительного события. иблиография.

Parole chiave: Универсализм, соборность, учение, Третий Рим.
Universalismo, ecumenicità, dottrina, Terza Roma.

* * *

Raffaele D'Alessio, «Sulle *regulae iuris*» (p. 650-659)

Review article of *Regulae iuris. Ipotesi di lavoro tra storia e teoria del diritto*, a cura di Valeria Di Nisio, «RULES. Research Upgrading in Legal Science, 1» (Napoli, Jovene, 2016) p. x, 230. – Review article of conference proceedings concerning notion and functions of rules from Roman jurisprudence to contemporary legal thought. The a. highlights that the book outlines a historicizing trace of rules through the Justinian's framework of the *diversae regulae veteris iuris*, going back, on the one hand, to the origins of the rules, and on the other hand, following the development and influence on the modern legal tradition as well as on the theoretical reflection. The a. also focuses on the lines of research developed by studies collected in the book and underlines the opportunity to undertake a new reflection on the relationship among *regulae*, *ius controversum* and regulatory measures used to thwart some legal rules.

Parole chiave: *Regulae*, *definitiones*, *ius controversum*.

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Alberto Dalla Rosa, «Note sui primi procuratori della provincia d'Asia sotto Augusto» (p. 498-516)

This paper focuses on the identity and the activities of the first Augustan procurators of the province of Asia. The recent new reading of an inscription of Aizanoi by Michael Wörrle revealed the existence of a procurator, Ofilius, active around 20/19 BC. With Vedius Pollio and Pompeius Macer, Ofilius is therefore the third agent of this type attested for the Augustan period. The study of the origin, business and family relations of these three *equites* shows that, at this early stage, imperial procurators acted chiefly as financial intermediaries and not as patrimonial administrators, as it is often believed. Moreover, interventions with some sort of official authority over local public finances are attested for both Vedius Pollio and Ofilius. This shows that extra-patrimonial competences were attached to imperial procurators in the public provinces from the very beginning of their existence.

Parole chiave: Augustus, procurators, city finances, public provinces.
Augusto, procuratori, finanze cittadine, province pubbliche.

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Sabrina Di Maria, «Note minime sul ‘buon uso’ del diritto romano in una recente pronuncia della Cassazione» (p. 623-649)

In the judgment n. 14188/2016, the Italian Supreme Court, in order to disconnect pre-contractual liability from extra-contractual liability, historically argues by recovering the notion of ‘*quasi contractus*’. The present work aims to examine this judgment from the historical lawyer’s point of view, developing remarks on ‘the use’ of Roman law today by not only the academics of Roman law but also the ‘legal operators’.

Parole chiave: Extra-contractual liability, pre-contractual liability, ‘quasi-contract’, sources of obligations.
Responsabilità extracontrattuale, responsabilità precontrattuale, ‘quasi contratto’, fonti delle obbligazioni.

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Nunzia Donadio, «Dal *vocare in tributum* alla *datio actionis tributoriae*» (p. 437-455)

Reivew article of Alessandro Cassarino, *Il vocare in tributum nelle fonti classiche e bizantine*, «Collana del Dipartimento di Giurisprudenza dell’Università di Pisa. Nuova serie. Monografie, 23» (Torino, Giappichelli, 2018) p. x, 210. – Pertaining to the recent book of Cassarino the paper examines multifarious components of the *vocare in tributum* and of the *actio tributoria* especially in the classical Roman law.

Parole chiave: *Actio tributoria*, *vocatio in tributum*, *peculium*, *exercitio navis*, *actio de peculio et de in rem verso*.

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Maurizio d’Orta, «Dalla ‘potenza’ al ‘potere’. Rileggere i *Primordia civitatis* di Pietro De Francisci» (p. 30-66)

Reflecting on the ancient Roman religion is also reflecting on the origins of law. The ancient Romans find the dominion of divine ‘potenza’ in the afterlife. The human ‘potere’ descends from the divine ‘potenza’ – teaches Pietro De Francisci – and the *primordia religionis* emerge with the

primordia civitatis. As a result of the process of 'laicizzazione' the law acquires rationality and gives rise to a new humanism. The person is at the center of the social and it is the principle formulated in the Justinian's Digest: «... *hominum causa omne ius constitutum [est]*» (Hermog. 1 *iuris epit.* D. 1.5.2).

Parole chiave: *Religio, ius*, force/power, new humanism.
Religio, ius, potenza/potere, nuovo umanesimo.

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Alberto Filippi, «Francisco Delich y la cultura italiana: la sociología crítica de las transiciones democráticas» (p. 660-676)

Sulla sociologia critica di Francisco Delich e sull'influsso in Argentina della cultura italiana (anche di matrice antichistica), soprattutto a partire dalla diffusione dell'opera di Norberto Bobbio incentrata sul binomio democrazia /dittatura.

Parole chiave: Francisco Delich, sociologia critica, Norberto Bobbio, democrazia /dittatura.
 Francisco Delich, sociología crítica, Norberto Bobbio, democracia/dictadura.

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Thomas Finkenauer, Fabian Klinck, «Hans Josef Wieling» (p. 751-755)

Obituary of the late authoritative romanist and civil lawyer, for many years professor in Trier.

Parole chiave: Roman law, German private law, Roman law scholarship, Hans Josef Wieling.
 Diritto romano, diritto privato tedesco, tradizione romanistica, Hans Josef Wieling.

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Mario Fiorentini, «Cloache e sanità urbana nello specchio del diritto» (p. 320-343)

The paper includes an analysis of cases about the *interdicta de cloacis* investigated by Roman jurists in I-III centuries AD, related to the right to conduct private sewers into public ones and to clean them, if obstructed, also in spite of neighbours' opposition. The case system discussed by Roman jurists may also help solve a question at the top of interest among the

scholars: did Romans think about an «environmental protection»? Can it be identified in a more modest and empirical, yet essential, protection of the hygienic, sanitary conditions in the Roman cities? Finally, some considerations of Severan jurists may help verify an interesting intersection among legal reasoning and medical theories on the onset of the epidemics, with particular reference to the miasma - theory of hippocratic origin, reassessed by Galen.

Parole chiave: *Interdicta de cloacis, purgatio, salubritas civitatum*, miasma theory.

Interdicta de cloacis, purgatio, salubritas civitatum, teoria miasmatica.

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Vincenzo Giuffrè, «La ideologia del contrasto violento alla dissidenza politica» (p. 431-436)

Review article of Luigi Labruna, *Vim fieri veto. Alle radici di una ideologia*. Con una *nota di lettura* di Luigi Capogossi Colognesi, «Antiqua, 107» (Napoli, Jovene, 2017) p. xlii, 319. – Review article of the reprint of the first edition of Luigi Labruna's monograph. The subject (*vis*) analysed by Labruna in the light of the political interests of the late Republican age is also re-read by Giuffrè focusing on the time when Labruna actually wrote the book. Giuffrè develops an analysis of the book around the interests of historiography, during the years of its first publication, highlighting that few Romanists had adopted Marxist historicism as Labruna did.

Parole chiave: *Vis*, Marxist historiography, political struggle.

Vis, storiografia marxista, lotta politica.

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Vincenzo Giuffrè, «Le pene atroci dell'antichità fra storiografia e sociologia» (p. 470-481)

Review article of Nunzia Donadio, *'Documentum supplicii' e 'documentum criminis'*. *Il corpo del reo tra precetto e sanzione nel mondo antico*. «L'arte del diritto, 34» (Napoli, Jovene, 2017) p. ix, 297. – The a. observes the human need to punish misbehavior during the course of some ancient and modern juridical experiences. In particular, Donadio's book is read by Giuffrè from a social-historical perspective, that allows the review author to analyse the sense of the '*naturalis ratio*' as a foundation of criminal repressive discipline. Indeed, cruelty in the excogitation and the execution of death sentences from the ancient age to the modern one, like tor-

ture, is a fact that has to be deeply analysed on a historical, psychological, and sociological level.

Parole chiave: Criminal repression, *naturalis ratio*, incivility.
Repressione criminale, *naturalis ratio*, inciviltà.

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Laura Gutiérrez Masson, «Dall'aratro al remo: geodiritto e acculturazione nell'esperienza romana» (p. 490-497)

The a. studies the historical process during which Rome, being terrestrial power, became also maritime power, characterized by three phases: the victory over Carthage in the Punic Wars, the fight against the piracy in order to secure the supply and the commerce and, at last, the pacification of the Mediterranean Sea which reached its peak with Octavian. The a. deals also with some aspects of the socio-cultural impact and the way *ius civile* adapted itself to the new geographic scenario by means of the study of literary and juridical sources that were contemporary or somewhat later than the founder of the Principate, with whom Rome reached the desired balance between the metropolis and the provinces.

Parole chiave: *Lex Rhodia de iactu*, *lex Gabinia de bello piratico*, shipwreck, piracy.
Lex Rhodia de iactu, *lex Gabinia de bello piratico*, naufragio, pirateria.

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Luigi Labruna, «Francesco Fratto nel ricordo di un amico» (p. 756)

Obituary of the late Roman law scholar for many years assistant of Professor Antonio Guarino in Naples.

Parole chiave: Roman law, Roman law scholarship, Francesco Fratto.
Diritto romano, tradizione romanistica, Francesco Fratto.

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Umberto Laffi, «Perdere la cittadinanza romana» (p. 1-29)

Accurate analysis of the texts and of the theories on the loss of the Roman citizenship (among the sources analyzed, Cic. *pro Caec.* 98-100, Pomp. 37 *ad Q. Muc.* D. 50.7.18[17]).

Parole chiave: *civitas romana*, *ius Latii*, *aqua et igni interdictio*.

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Francesca Lamberti, «Il diritto romano ‘oltre’ il diritto romano: i suoi destini nella Russia zarista» (p. 559-579)

Review article of Martin Avenarius, *Fremde Traditionen des römischen Rechts. Einfluß, Wahrnehmung und Argument des »rimscoe pravo« im russischen Zarenreich des 19. Jahrhunderts* (Göttingen, Wallstein, 2014) p. 776. – The essay is a survey about the influence of Roman law in Russia from the early Middle Ages to the contemporary age. It focuses in particular on the reception of Roman law in Russia in the eighteenth and nineteenth centuries and on its vicissitudes before and after the revolution of 1917. At the same time it offers a reading of the recent book of Martin Avenarius.

Parole chiave: Roman Law, Russia, Roman legal tradition, Pandektistik. Diritto romano, Russia, tradizione romanistica, Pandettistica.

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Pedro López Barja de Quiroga, «Independent freedmen in the *album* of Herculaneum» (p. 255-278)

Este artículo tiene como punto de partida el concepto de ‘liberto independiente’ planteado por P. Garnsey en 1981. Intentaremos demostrar, primero, que la construcción jurídica del *ius patronatus* favorecía, en efecto, la independencia económica de los libertos durante su vida y, en segundo lugar, que tras los llamados incerti del *album* de Herculano se ocultan ‘libertos independientes’, es decir, libertos que carecían de patrono. Para ello, será necesario descartar otras opciones que se han sugerido, en particular, la de que estos incerti sean *Latini Iuniani*.

Parole chiave: Patronato, *Orcinus*, *SC. Ostorianus*, Latinos Junianos, *operae*. *Ius patronatus*, *Orcinus*, *SC. Ostorianus*, Junian Latins, *operae*.

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Luca Loschiavo, «Legislazione e prassi nella Benevento longobarda» (p. 539-558)

The duchy (successively principedom) of Benevento raises the interest of the legal historians in various aspects. The crucial moment is 774 when Arechi II proclaims himself heir of the sovereigns of the Pavia Kingdom defeated by the Franks. Alongside a strong but formal attachment to the Lombard traditions, norms, documentation and testimonies of judicial practice reveal at the same time a considerable openness to the influences deriving from the Roman, canonical and Byzantine culture, all present in

the South of Italy. We have for instance to consider carefully those singular collections of norms of various origin called *Lectio legum* and *Collectio Gaudentiana*. The innovative solutions suggested by the changing socio-political context (the game of alliances with the papacy and the Byzantine emperors, the urbanization of the aristocracy) and by the various emergencies affecting the principedom (the Arab threat) are also of particular interest. These, together with the elaboration of a very characteristic scripture (the Beneventan script), make evident the attempt to build a strong sense of identity.

Parole chiave: Principedom of Benevento, lombard tradition, *Lectio legum*, *Collectio Gaudentiana*.
Principato di Benevento, tradizione longobarda, *Lectio legum*, *Collectio Gaudentiana*.

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Giulio Massimilla, «*Τυτθὸν γὰρ ὑπέκ θανάτοιο φέρονται*: i pericoli del mare nella poesia antica» (p. 483-489)

From Homer onwards, ancient poets often referred to the dangers of the sea. A powerful Iliadic simile describes a ship caught in a storm. In the Works and Days, Hesiod advises his brother Perses against sea trade even in springtime. Seafaring and sea trade kept arousing the fear and disapproval of later poets such as Aratus, Callimachus, Lucretius, Horace, Juvenal and Oppian.

Parole chiave: Ancient poets, ancient seafaring, ancient sea trade.
Poeti antichi, navigazione marittima antica, commercio marittimo antico.

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Rosaria Mazzola, «A proposito di Q. Varius Hybrida tr. pl. 90 a.C.» (p. 67-80)

The paper is focused on Q. Varius Hybrida, *tribunus plebis* in 90 B.C. He was native of Sucro (Spain) and arrived in Rome at the beginning of the I cent. B.C. Thanks to his oratorical skills he received great approval and get noticed by influential politics (e.g. L. Marcius Philippus and Q. Servilius Caepio). Favored by *equites*, he was opponent of Drusus and of his political view. His election as *tribunus* can be considered a sign of a change in the balance of power in Rome.

Parole chiave: Q. Varius, *Hybrida*, *Hispaniensis*, M. Livius Drusus, *factio Metellana*.

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Felice Mercogliano, «Genovesi, la *Diceosina* e la legislazione matrimoniale augustea» (p. 580-588)

The paper, beginning by making a few brief points about Antonio Genovesi during the eighteenth-century Neapolitan Enlightenment and a quick look at his *Diceosina*, points out the *lex Papia Poppaea* which in Genovesi's treatment avails as a model for Ethics which is used in rewarding ethical virtues (marriage and parentage) through legislative instrument.

Parole chiave: Antonio Genovesi, *Diceosina*, *lex Papia Poppaea*, Roman law tradition.
Antonio Genovesi, *Diceosina*, *lex Papia Poppaea*, tradizione romanistica

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Cosima Möller, «*Usus servitutis* e abuso, *non usus e usucapio libertatis*» (p. 309-319)

In this article, easements (*servitutes*) are examined as a legal institute that restricts the freedom of the burdened estate and at the same time offers opportunities for the dominant estate. The restriction is evaluated with regard to the appropriate use of the right. It is shown that two different positions can be found in the *Digest*, concerning the usage of *servitutes*. Therefore, the distinctions made between use and misuse differ. One approach offered only a narrow scope for interpretation and demanded strict obedience to the consented content. The other was less rigid, taking into account the interests of both parties into account. Furthermore, the usage of the right is seen as a possibility to acquire an easement or not. The decision of the *lex Scribonia* serves as proof of a *favor libertatis*. Some jurists interpreted the loss of an easement as *usucapio libertatis*, others consider the non-use of the easement as a sufficient reason for losing it. The rule of necessary use is studied in detail.

Parole chiave: Easement, appropriate use, acquisition through usage, loss through non-usage.
Servitú, *usus servitutis*, *usucapio servitutis*, prescrizione della servitú.

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Donatella Monteverdi, «Il rilievo 'politico' della composizione numerica del Decemvirato (tra proposta ed esperienza)» (p. 141-152)

Moving from an observation of Machiavelli, the a. proposes a re-reading of the livian history on the Decemvirate. Looking at the description

in watermark, the historian's narration would not seem to blame the failure of the magistracy on Appius Claudius's character.

Parole chiave: Decemvirate, Titus Livius, Niccolò Machiavelli, numerical strength.

Decemvirato, Titus Livius, Niccolò Machiavelli, composizione numerica.

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Martin Pennitz, «Das *non reddere* als Deliktstatbestand – Juristendiskurse zu Besitz, Detention und Diebstahl» (p. 201-225)

Based on the broad concept of *furtum* in Roman law eminent scholars argue that one who refuses to restore anything given to him, especially an object to be kept in safe custody (*res deposita*), is to be treated as a thief. In this paper the a. examines the sources on the subject and suggests that non-return (*non reddere*), as well as refusal to restore (*abnegare* etc.), can only lead to a contractual action. Such a breach of contract cannot constitute *furtum* since the necessary objective element, a *contractatio*, is lacking. But in some other cases, such as pledge and the special deposit of *sequestratio*, some jurists, for example Ulpian, concede an *actio furti*, because then a possessor is invested with the possessory interdicts and is not a mere detentor, who refuses to restore the thing given to him.

Parole chiave: *Furtum*, *possessio ad interdicta*, *depositum*, *pignus*.

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Jurij Petrov, «Migrazioni nell'Impero russo, in URSS e nella Federazione Russa» (p. 721-724)

Тезисы выступления директора Института российской истории Российской Академии Наук (ИРИ РАН) профессора Ю.А. Петрова на XXXVI Международном семинаре исторических исследований «От Рима к Третьему Риму» по теме: Миграции, Империя и города, организованного в Риме, на Капитолии, 21-22 апреля 2016 года Исследовательским центром «Джорджо Ла Пира» Национального Совета по Научным Исследованиям Италии в сотрудничестве с ИРИ РАН. Миграционные перемещения населения сопровождают историю России с момента основания государства. Однако относительно достоверные статистические данные имеются, начиная с XIX в. В своем выступлении автор кратко останавливается на трех основных исторических эпохах истории России за последние 200 лет (Российская империя, Советский Союз и Российская Федерация). Изложение сосредоточено на трех направлениях миграции – выезде за пределы

страны (эмиграция), въезде иностранных граждан (иммиграция) и перемещениях населения внутри границ государства (внутренняя миграция).

Parole chiave: Миграции, Российская империя, Советский Союз, Российская Федерация.
Migrazioni, Impero russo, Unione Sovietica, Federazione Russa.

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Johannes Platschek, «Nochmals zur *lex Pesolania de cane* in PS. 1.15.1: Systematik der römischen Tierhalterhaftung und humanistische Textkritik» (p. 153-168)

A mysterious '*lex Pesolania de cane*' appears in current editions of PS. 1.15.1. Within the manuscript tradition, the statute's name appears in numerous variants. Modern and recent attempts to explain its historical and systematic setting are not convincing. An original reference to the legislation of Solon has already been suggested by Jacques Cujas and Bonifacius Amerbach. Their conjecture is compulsory; there was never a Roman *lex* 'on the dog'.

Parole chiave: Noxal liability, dog owner, *Pauli sententiae*, Solon.
Noxalhaftung, Hundehalter, *Pauli sententiae*, Solon.

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José-Domingo Rodríguez Martín, «Cláusulas 'terrestres' y cláusulas 'marítimas' en negocios documentados en papiro» (p. 517-538)

Due to the rigid formality of legal language, contractual clauses tend to remain immutable for long periods of time; on the other hand, they can be subjected to modification in order to adapt legal documents to economic or political changes. Sometimes, legal clauses are not even able to survive after deep changes in the socioeconomic fabric of society. Therefore maintenance, modification or suppression of legal formulas provide a precious source of information for legal historians, in order to study the evolution of an ancient society and to detect and analyse the effects of social and economic changes on legal institutions and contractual language. Applying this methodology, this paper studies the 'maritime' origin of two Greek legal clauses preserved in documentary papyri ('*καθάπερ ἐκ δίκης*' and '*ἐγγαίων καὶ ναυτικῶν*') and their degree of adaptation to the changing Egyptian society through Ptolemaic, Roman and Byzantine periods.

Parole chiave: Contractual clauses, juristic papyrology, καθάπερ ἐκ δίκης, ἐγγαίων καὶ ναυτικῶν.
Cláusulas contractuales, papirología jurídica, καθάπερ ἐκ δίκης, ἐγγαίων καὶ ναυτικῶν.

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Annamaria Salomone, «Alle origini dei titoli esecutivi stragiudiziali. Tra *fictio iuris* ed analogia» (p. 395-410)

In ancient Mediterranean legal procedures there is evidence of fast juridical resolutions, founded on private declarations of debt that, without opposition on the part of the debtor, allowed creditors to proceed immediately against the person or the property of the debtor. This can be seen in Greek and Græco-Egyptian documents from the Ptolmaic period, and before these in documents found in Elephantine from the period of Persian domination, written in Aramaic. All these sources, through variously expressed contractual clauses, contain explicit references to legal procedures and consequential judgements, even just to exclude their use or to take them as given. This article throws light on the history of these clauses with respect to Roman juridical documentation which focuses on the execution of judgements made on the basis of a convenient juridical fiction. The Roman sources appear in a context where a need for a typicity that followed the bases of civil case resolution was accompanied by the progressive consolidation of the legal protection of rights.

Parole chiave: Execution of judgements, executive clauses, civil cases, judgements.
Esecuzione, clausole esecutive, processo civile, giudicato.

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Gianni Santucci, «A proposito del cd. editto di ritorsione» (p. 456-465)

Review article of Fabiana Tuccillo, *Editto e 'ius novum'*. *Sulle tracce del 'quod quisque iuris'*, «Pubblicazioni del Dipartimento di Giurisprudenza dell'Università degli Studi di Napoli Federico II, 6» (Napoli, ESI, 2018) p. vi, 304. – The a. reviews the book by F. Tuccillo, about the short title of Digest, D. 2.2, which contains the few opinions of Roman jurists about the praetor's edict '*Quod quisque iuris in alterum statuerit ut ipse eodem iure utatur*'. This edict decrees the liability of the magistrate if he doesn't guarantee equal treatment between his position and the one of other citizens. The a. describes in detail the content of Tuccillo's book which examines every aspect of the history and the structure of edict. Special attention is devoted to: magistrate's liability, the concept of *ius novum*

et iniquum sanctioned by the edict; the social and legal background of this historical period; the ideology of the edict; the relationship between Ethics and law with specific attention to the Gospel teaching ‘*quod ab alio oderis fieri tibi, vide tu aliquando alteri facias*’.

Parole chiave: D. 2.2, praetor’s edict, ‘golden rule’.
D. 2.2, editto del pretore, ‘regola aurea’.

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Paolo Siniscalco, «A proposito di *Gen. 1.28: Crescite et multiplicamini*» (p. 677-678)

В своем кратком предисловии к публикации выбранных материалов XXXVI Международного семинара исторических исследований «От Рима к Третьему Риму» по теме «Миграция, Империи и города» (Рим и Москва, 2016 г.) и Семинара по теме «‘Москва Третий Рим’: формула мира и единства до и после 1917 г.» (Сергиев Посад, 2017) автор предлагает рассмотреть проблему миграции и приобретения гражданства с точки зрения цитаты из Первой книги Ветхого Завета, книги Бытие: «И благословил их Бог, и сказал им Бог: плодитесь и размножайтесь, и наполняйте землю, и обладайте ею, и владычествуйте над рыбами морскими, и над птицами небесными, и над всяким животным, пресмыкающимся по земле».

Parole chiave: Ветхий завет, Книга Бытия, миграция, демографический рост.
Antico Testamento, Libro della Genesi, migrazione, crescita demografica.

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Marek Sobczyk, «Performance for an evil purpose in classical Roman law» (p. 371-394)

Il contributo affronta il tema della prestazione resa per uno scopo turpe nel diritto romano classico e dei presupposti per ottenere la sua restituzione (*datio ob rem inbonestam, condictio ob turpem causam*). La problematica soprattutto riguarda le transazioni effettuate per uno scopo che violi i *boni mores*. Vengono esaminate le caratteristiche di tali transazioni, in particolare: i criteri per valutare se lo scopo sia immorale, le fattispecie tipiche di tale situazione, le conseguenze della prestazione, le differenze rispetto alla prestazione con scopo onesto, le regole relative alla restituzione, la *turpitudine utriusque partis* e la relazione tra la *condictio ob turpem causam* e la *condictio ob rem*.

Parole chiave: *Datio ob rem, condictio*, ingiustificato arricchimento, prestazione, scopo illecito o turpe.

Datio ob rem, condictio, unjustified enrichment, performance, evil purpose.

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Pia Starace, «Certezza e ordine del *ius civile* nell'*Enchiridion*» (p. 173-200)

The phenomenon of codification isn't born in late antiquity. It has ancient roots. It is based on concepts of order, organization, certainty of law, and is congenial to centralization policy, typical of the emperor's power, in order to implement the control of law's production and application. Some ancient attempts to codify law for political reasons were already performed by Pompeus at first and then Iulius Caesar. But, when reading, one more time, some excerpts of *Pomponii Enchiridion*, we can note the recurrence of the concepts of order and certainty. They are beneficial for retracing the historical development of *ius civile*, from *ius Papirianum* onward. In particular, Aulus Ofilius' opera, the burgeoning of *Digesta*'s literary genre and Salvius Iulianus' edictal reorganization, are important features. This reading shows, at least, Pomponius' aim to emphasize the essential jurists' role in giving certainty, putting in order, creating law, in contrast to the bully Prince's trend to centralize the same activities in his hands for political purposes.

Parole chiave: Codification, certainty of law, policy, jurists.

Codificazione, certezza giuridica, politica, giuristi.

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Armando Torrent, «*Hispalis*, de César a Augusto» (p. 81-93)

Review article of Antonio F. Caballos Rufino, *Hispalis, de César a Augusto. La Colonia Romula y los orígenes institucionales de la Sevilla romana entre la República y el Imperio*, «Collección Historia y Geografía, 331» (Sevilla, Editorial Universidad de Sevilla, 2017) p. 254. – Sulla vicenda della importante comunità della Betica, con esame delle modificazioni organizzative, in relazione ai diversi contesti storici e giuridico-istituzionali.

Parole chiave: *Hispalis*, *Hispania Baetica*, organizzazione cittadina.

Hispalis, *Hispania Baetica*, organización de la ciudad.

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Caterina Trocini, «Dall'Accademia delle Scienze dell'URSS all'Accademia Teologica di Mosca (2017)» (p. 681-697)

История Международных семинаров исторических исследований «От Рима к Третьему Риму» и сотрудничества итальянских ученых Римского университета «Ла Сапиенца» и Национального Совета по Научным Исследованиям с русскими учеными Российской Академии Наук и Московской Духовной Академии (в 2017 г.). Название глав: I. СОТРУДНИЧЕСТВО С ИНСТИТУТОМ ИСТОРИИ СССР: 1981-1991 ГГ. 1. Первые Семинары на Капитолии (1981-1985 гг.); 2. Протокол по сотрудничеству с Институтом истории СССР (1986 г.) и его применение. Поддержка московских городских властей. 3. Сборник «Идея Рима в Москве» и 400-летие Московской Патриархии (1989 г.). II. УСТОЙЧИВЫЕ ЮРИДИЧЕСКАЯ И ИСТОРИКО-РЕЛИГИОЗНАЯ ПЕРСПЕКТИВЫ «ОТ РИМА К ТРЕТЬЕМУ РИМУ». 1. Семинары 1991-1999 годов. 2. Семинары 2000-2009 годов ('святость', 'города и ойкумена', 'право и религия', 'Империя', 'народ'); 3. Исследования в области юридической, политической и церковной лексики древнерусских документов. Публикация в Москве в 2015 году словаря Стоглава. 4. Рим, 2017 год: XXXVII Международный семинар исторических исследований «От Рима к Третьему Риму» по теме «Города Империи». – III. К ВОПРОСУ О МИГРАЦИЯХ. 2006-2016 ГГ. 1. Начало исследования в 2006 году и Семинары 2010-2015 годов. 2. Публикация в Москве в 2015 году книги «Миграции. Формирование Российского государства». 3. Рим и Москва, 2016 год: XXXVI Международный семинар исторических исследований «От Рима к Третьему Риму» по теме «Миграция, Империи и города». IV. МОСКОВСКАЯ ПАТРИАРХИЯ И ДУХОВНАЯ АКАДЕМИЯ (СЕРГИЕВ ПОСАД). 1. Участие Историко-правовой комиссии Русской Православной Церкви в Семинарах «От Рима к Третьему Риму». 2. Религиозная свобода (2011 г.). 3. Книга «Третий Рим в Журнале Московской Патриархии. 1944-1948 гг.» (2013 г.). 4. Сергиев Посад, 2017 год: Семинар по теме «'Москва Третий Рим': формула мира и единства до и после 1917 г.».

Parole chiave: Третий Рим, Семинары, Патриархия, миграции.
Terza Roma, Seminari, Patriarcato, migrazioni.

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Caterina Trocini, «*Index per la Terza Roma. 1995-2016*» (p. 743-746)

Список статей, опубликованных в «*Index*» под заголовком «*Da Roma alla Terza Roma*» (1995-2016).

Parole chiave: *Index*, Третий Рим, Семинары.
Index, Terza Roma, Seminari.

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Angelina Troiano, «*Auctoritas e solutio legibus: configurazioni ideologiche e istituzionali del Principato tra Augusto e Vespasiano*» (p. 94-108)

Review article of Marina Evangelisti, *Principato, auctoritas, solutio legibus*, «Collana del Dipartimento di Giurisprudenza dell'Università degli Studi di Modena e Reggio Emilia. Terza Serie, 6» (Torino, Giappichelli, 2018) p. xii, 250. – The reviewed book analyzes the historical, political and legal evolution of the early Principate, focusing on some aspects of the *auctoritas principis* and the *solutio legibus*, from the last century of the Republic to the *lex de imperio Vespasiani*, a new and different way to legitimate the power of the Flavian *princeps*. Starting from a historical perspective, the reviewer criticizes some setting points of the research about the relationship between the *princeps* and the *lex*, especially testing Ulpian's principle *princeps legibus solutus est*.

Parole chiave: Principate, *auctoritas, solutio legibus, lex de imperio Vespasiani, lex, Ulpian*.
Principato, *auctoritas, solutio legibus, lex de imperio Vespasiani, lex, Ulpiano*.

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Franco Vallocchia, «*Ius migrandi? Migrazioni latine e cittadinanza romana*» (p. 698-705)

Доклад прозвучал на XXXVI Международном семинаре исторических исследований «От Рима к Третьему Риму» по теме: Миграции, Империя и города, организованном в Риме, на Капитолии, 21-22 апреля 2016 года Исследовательским центром «Джорджо Ла Пира» Национального Совета по Научным Исследованиям Италии в сотрудничестве с ИРИ РАН.

Название глав: 1. К вопросу о возможности определить (так называемое) 'ius migrandi' [право перемещаться]. 2. 'Ius migrandi' в терминологии современных ученых. 3. «Предполагаемое» 'Ius migrandi'. От слов к понятию. 4. От предполагаемого к известному. Слова и понятия римских источников. 5. 'In civitatem Romanam per migrationem et censum transire' ['переходить в римское гражданство посредством переселения или записи в ценз' (Тит Ливий, История Рима от основания города, книга XXI, 8. 6-12)]. Цензоры и народ.

Parole chiave: Римское гражданство, право перемещаться, ценз, латини.
Cittadinanza romana, *ius migrandi, censo, latini*.

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Mario Varvaro, «*Favor dotis* e singolari interpretazioni in tema di *ius singulare*» (p. 226-254)

This paper shows that the Roman law of dowry cannot be categorised as *ius singulare*, as Stagl believes, and that there is no evidence in our sources to support his opinion about the existence of a Gaius' «didactic system» in law teaching. Even Stagl's most recent attempt to affirm those ideas is based upon a misinterpretation of the Roman sources and is affected by methodological fallacies.

Parole chiave: Law of dowry, *favor dotis*, *ius singulare*, Gaius' «didactic system».
Diritto dotale; *favor dotis*, *ius singulare*, «sistema didattico» di Gaio.

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Giorgio Vespignani, «Migranti greci tra Roma, l'Italia e Mosca nella seconda metà del XV secolo» (p. 706-714)

Доклад прозвучал на XXXVI Международном семинаре исторических исследований «От Рима к Третьему Риму» по теме: Миграции, Империя и города, организованном в Риме, на Капитолии, 21-22 апреля 2016 года Исследовательским центром «Джорджо Ла Пира» Национального Совета по Научным Исследованиям Италии в сотрудничестве с ИРИ РАН. Название глав: 1. Венецианцы и Московская Русь в конце XV века. 2. Итальянцы и греки в Московской Руси в конце XV – начале XVI века. 3. «Римляне» и греки в Московской Руси в XV-XVI веках по русской историографии XIX и XX веков.

Parole chiave: Эмигранты, греки, итальянцы, Московская Русь.
Migranti, Greci, Italiani, Rus' moscovita.

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Ana Zaera, «*Leges sumptuariae*: un nuevo estudio» (p. 169-172)

Review article of Francisco Javier Casinos Mora, *La restricción del lujo en la Roma republicana. El lujo indumentario*, «Monografías de Derecho Romano y Cultura Clásica» (Madrid, Dykinson, 2015) p. 393. – About a new interpretation of the history of the sumptuary laws through the sources, from the *leges regiae* to the *lex Iulia sumptuaria* (attributed to Caesar).

Parole chiave: *Luxus*, *leges sumptuariae*, *lex Oppia*, *lex Iulia*.

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