

## Abstract

Pierangelo Buongiorno, *BGU II 611 e 628r: fra diritto, processo e potere normativo imperiale*

The paper takes as its starting point the historiographical aspects of the *editio princeps* of the two papyri BGU II 611 and 628 and then sets out to investigate the legal profiles of the measures reproduced in them, both relating to judicial reforms carried out during the age of Claudius and later Nero. This investigation also allows us to make some considerations on the relationship between *senatus consulta* and normative measures of the imperial chancellery.

El trabajo parte de los aspectos historiográficos de la *editio princeps* de los dos papiros BGU II 611 y 628 para, a continuación, investigar en los perfiles jurídicos de las medidas en ellos reproducidas, ambas relativas a reformas judiciales llevadas a cabo durante la época de Claudio y posteriormente de Nerón. Esta investigación también nos permite hacer algunas consideraciones sobre la relación entre las *senatus consulta* y las medidas normativas de la cancillería imperial.

Parole chiave

*Editio princeps*, Claudius, Nero, *senatus consulta*.

*Editio princeps*, Claudio, Nerón, *senatus consulta*.

Lorenzo Lanti, *Per una ricostruzione del regno e dell'attività normativa di Treboniano Gallo (251-253)*

The contribution aims to retrace the period of Trebonianus Gallus' rule (251-253) by focusing on the evidence of his normative activity. Beyond two rescripts concerning private matters, literary and documentary sources will be analyzed to better understand the actions of this emperor within a broader framework characterized by crises on multiple fronts (religious, diplomatic, and military).

La recherche se propose de retracer la période du règne de Trebonianus Gallus (251-253) sur la base des témoignages de son activité normative. Au-delà de deux rescrits sur des questions privées, des sources littéraires et documentaires seront examinées pour tenter de comprendre l'action de cet empereur dans un cadre plus large, marqué par des crises sur plusieurs fronts (religieux, diplomatique et militaire).

Parole chiave

Trebonianus Gallus, Rescripts, Soldatenkaiser, Anarchy, *mandatum*, Plague.

Trebonianus Gallus, Rescrits, Empereurs-soldats, Anarchie, *mandatum*, Peste.

Ines de Falco, *Interrogationes in iure: un'ipotesica estensione*

Starting from the case in D. 46.3.36 (Iul. 1 *ad Urs. Fer.*), the present study questions the possibility of extending the use of *interrogatio in iure* beyond the original cases. In particular, it analyses whether the hypotheses contained in Book XI of Justinian's Digest, Title I *De interrogationibus in iure faciendis et interrogatoriis actionibus*, constitute a *numerus clausus* or whether, on the contrary, the praetorian remedy can find further applications, with particular reference to the condition of the debtor-inheritor.

Partendo dalla fattispecie racchiusa in D. 46.3.36 (Iul. 1 *ad Urs. Fer.*), il presente studio si interroga sulla possibilità di estendere l'utilizzo dell'*interrogatio in iure* al di là dei casi originari. In particolare, si analizza se le ipotesi contenute nel libro XI del Digesto di Giustiniano, al titolo I *De interrogationibus in iure faciendis et interrogatoriis actionibus* configurino un *numerus clausus* o se,

al contrario, il rimedio pretorio possa trovare ulteriori applicazioni, con particolare riferimento alla condizione del debitore ereditario.

Parole chiave

*Interrogatio in iure*, praetorian remedy, debtor-inheritor.

*Interrogatio in iure*, rimedio pretorio, debitore ereditario.

### Francesca Lamberti, Testamenta e propinquitas nella declamatio minor 308 (Duo testamenta)

The paper deals with a *Declamatio minor*, No. 308. The Declamations are a literary genre that usually consisted of exercises for students in rhetorical schools. *Declamatio minor* 308 deals with the case of a testator who had made two wills, one after the other: in each of them he had named a different friend as heir. The dispute arose in the event that the second will was declared invalid. The arguments discussed in this text are also of interest to legal historians and may help to clarify certain issues concerning the validity and invalidity of wills in the debate at the end of the 1st century AD.

Die Arbeit beschäftigt sich mit einer *Declamatio minor*, die Nr. 308. Die *Declamationes* sind eine literarische Gattung, die i.d.R. aus Übungen fuer Studenten in der rhetorischen Schulen bestanden. Die *Declamatio minor* 308 behandelt den Fall eines Testators, der zwei Testamente nacheinander angefertigt hatte: in jedem von beiden hatte er einen unterschiedlichen Freund als Erbe eingesetzt. Die Kontroverse entstand für den Fall, dass das zweite Testament als ungültig erklärt worden war. Die in diesem Text behandelten Argumenten sind auch für den Rechtshistoriker von Interesse und helfen möglicherweise dazu, einige Fragen aus der Debatte (am Ende des 1. Jhdts. n. Chr.) über Gültigkeit und Ungültigkeit von Testamenten zu klären.

Parole chiave

*Declamatio minor*, valid/invalid will, *propinquitas*.

*Declamatio minor*, gültig/ungültig Testament, *propinquitas*.

### Johannes Platscheck, Zur Ersetzung von sodalicium durch societas in den Digesten und zum Phänomen des collegium sodalicium. Mit Nebenbemerkungen zur so genannten societas publicanorum

In 1873 Max Cohn suggested replacing the word *societas* with *sodalicium* in D. 3.4.1 pr.-1 in order to reconstruct the original Gaius text. The result is the expression *collegium sodalicium* – ‘sodalician association’ in D. 3.4.1.1, which is confirmed by D. 47.22.1 pr. and perhaps also by two inscriptions from the imperial period. Cohn’s suggestion was sometimes met with approval, sometimes with harsh rejection, and often with simple disregard. The article supports Cohn’s assumption, takes it further and explores the question of what is meant by a *collegium sodalicium*, why it is rarely documented and why *sodalicium* was consistently replaced by *societas* in the Digest.

Nel 1873 Max Cohn propose di sostituire la parola *societas* con *sodalicium* in D. 3.4.1 pr.-1 per ricostruire il testo originale di Gaio. Il risultato è l’espressione *collegium sodalicium* – ‘associazione di sodali’ in D. 3.4.1.1, che è confermata da D. 47.22.1 pr. e forse anche da due iscrizioni del periodo imperiale. Il suggerimento di Cohn è stato talvolta accolto con favore, talvolta con un duro rifiuto e spesso con un semplice disinteresse. L’articolo sostiene l’ipotesi di Cohn, la approfondisce ed esplora la questione di cosa si intenda per *collegium sodalicium*, perché sia raramente documentato e perché *sodalicium* sia stato costantemente sostituito da *societas* nel Digesto.

Parole chiave

*Collegium sodalicium*, *societas*, *publicani*, legal person, interpolations, *Littera Florentina*, *Basilika*.

*Collegium sodalicium*, *societas*, *publicani*, persona giuridica, interpolazioni, *Littera Florentina*, *Basilika*.

Andreas Wacke, *Ne optimus vel pessimus accipitur. Die Qualitätsanforderungen an Gattungsschulden (unter Einschluss von vertretbaren und verbrauchbaren Sachen)*

What constitutes fungible property is determined by the general view of the market, what constitutes generic debts is determined by the parties' agreement, and in the case of legacies by the testator's instructions. The Roman legal sources do not contain a generic term for fungible things; they speak of *res quae pondere numero mensura consistunt*. Consumable goods (*res quae usu consumuntur*) form a sub-category of fungible goods; the foodstuffs *vinum oleum frumentum* are mentioned. As objects of a loan, modern laws refer to 'fungible items' (apart from money); but in practice these are only consumable items.

The opposite of a generic debt is a specific obligation. In German legal terminology, the distinction was made between *genus* debt and *species* debt. However, the ambiguous term *species* should be avoided. *Species* is also a *subgenus*.

According to the prevailing view, a Roman debtor could fulfil a generic debt with the worst non-defective item. One can agree with this view if a creditor did not have the best quality guaranteed by stipulation. However, a legatee cannot, as a rule, be promised the quality of the bequest. If a slave was bequeathed in general terms (without specifying names, qualities or abilities), then it must be assumed (*accipitur*) as the will of the testator that neither the legatee had the right to choose the best nor the heir to choose the worst quality. Justinian confirmed these results from three digest fountains in decrees from the years 530/531, according to which the *mediocritas* must be observed and a thing *mediae aestimationis* must be provided.

According to classical sources, it was controversial whether the quality owed in the bequest of consumable goods was to be determined according to the testator's custom of consumption or according to his region. The affirmative view is preferable.

According to modern codifications, a person who owes a thing defined only by class is to supply a thing of average kind and quality. Instead of this positive formulation, the negative formulation is more precise, according to which the items owed must not be below the average quality. The fulfilment of generic legacies should sometimes be determined by the needs or circumstances of the beneficiary. The object owed might then be of above-average quality. However, the legatee may not choose the most valuable item if this would harm the legitimate interests of the burdened heir.

Lo que constituye bienes fungibles viene determinado por la opinión general del mercado, lo que constituye deudas genéricas viene determinado por el acuerdo de las partes y, en el caso de los legados, por las instrucciones del testador. Las fuentes jurídicas romanas no contienen un término genérico para las cosas fungibles; hablan de *res quae pondere numero mensura consistunt*. Los bienes consumibles (*res quae usu consumuntur*) forman una subcategoría de los bienes fungibles; se mencionan los alimentos, *vinum oleum frumentum*. Como objetos de un préstamo, las leyes modernas se refieren a 'artículos fungibles' (aparte del dinero); pero, en la práctica, solo se trata de artículos consumibles.

Lo contrario de una deuda genérica es una obligación específica. En la terminología jurídica alemana se distingue entre deuda de *genus* y deuda de *species*. Sin embargo, debe evitarse el término ambiguo '*species*'. *Species* también es un *subgenus*.

Según la opinión predominante, un deudor romano podía cumplir una deuda genérica con el peor artículo no defectuoso. Esta opinión es aceptable si el acreedor no tenía garantizada la mejor calidad por estipulación. Sin embargo, a un legatario no se le puede prometer, por regla general, la calidad del legado. Si se legó un esclavo en términos generales (sin especificar nombres, cualidades o capacidades), entonces debe asumirse (*accipitur*) como voluntad del testador que ni el legatario tenía derecho a elegir la mejor calidad ni el heredero a elegir la peor. Justiniano confirmó estos resultados con tres decisiones que datan de 530/531.

Según las fuentes clásicas, era controvertido si la calidad debida en el legado de bienes consumibles debía determinarse según la costumbre de consumo del testador o según su región. La opinión afirmativa es preferible.

Según las codificaciones modernas, quien debe una cosa definida únicamente por su clase debe suministrar una cosa de clase y calidad medias. En lugar de esta formulación positiva, es más precisa la negativa, según la cual las cosas debidas no deben ser de calidad inferior a la media. En

ocasiones, el cumplimiento de los legados genéricos debe venir determinado por las necesidades o circunstancias del beneficiario. Por tanto, el objeto adeudado podría ser de calidad superior a la media. Sin embargo, el legatario no puede elegir el objeto más valioso si ello perjudica los intereses legítimos del heredero gravado.

Parole chiave

Fungible and consumable items as objects of general debts arising from contracts or legacies and their quality requirements.

Bienes fungibles y consumibles como objetos de deudas generales derivadas de contratos o legados y sus requisitos de calidad.

Lucio Parenti, «*Quia simile est, quasi perdituro pecuniam sciens credideris*» (D. 17.1.12.11, Ulp. 31 ad ed.)

The essay analyses the phrase «*quia simile est, quasi perdituro pecuniam sciens credideris*» present in D. 17.1.12.11 (Ulp. 31 ad ed.), which Ulpian inserts as a ratio to deny the *actio mandati contraria* in favour of someone who knowingly accepted a mandate to provide surety to a prostitute from a lustful adolescent. In particular, it has been found that the Severian jurist, with this expression, intended to refer not to the minor, as has been hypothesized, but, in general, to a subject who was *perditurus*, that is, a spendthrift, who, therefore, would have been relieved from returning what he had received as a loan, if the lender had been aware of his propensity to waste. Furthermore, the sources would suggest that the condition of *perditurus* justified particular treatments, aimed on the one hand at protecting their patrimonial position, and on the other at sanctioning those who, despite being aware of their tendency to waste, had nevertheless contracted with them.

Il saggio analizza la frase «*quia simile est, quasi perdituro pecuniam sciens credideris*» presente in D. 17.1.12.11 (Ulp. 31 ad ed.), che Ulpiano inserisce quale *ratio* per negare l'*actio mandati contraria* a favore di colui che scientemente avesse accettato un mandato a prestare fideiussione ad una meretrice da parte di un adolescente lussurioso. In particolare, si è riscontrato come il giurista severiano, con tale espressione, intendesse riferirsi non al minore, come è stato ipotizzato, ma, in via generale, ad un soggetto che fosse *perditurus*, cioè uno scialacquatore, il quale, quindi, sarebbe stato sollevato dal restituire quanto ricevuto in prestito, qualora il mutuante fosse stato consapevole della sua propensione allo sperpero. Dalle fonti, inoltre, risulterebbe che la condizione di *perditurus* giustificasse trattamenti particolari, miranti da un lato a tutelare la loro posizione patrimoniale, dall'altro a sanzionare chi, nonostante avesse contezza della loro indole allo sperpero, avesse comunque contratto con loro.

Parole chiave

*Perditurus; adolescens; meretrix; mandatam; mutuam; fideiussio.*

*Perditurus; adolescens; meretrix; mandatam; mutuam; fideiussio.*

Maria Vittoria Bramante, *Note minime in tema di contratti di allattamento*

The contribution highlights, about to motherhood and the breastfeeding, that in the wealthiest families, in Rome and in the provinces, the child was entrusted to a wet nurse. The mother's choice does not always appear to be free and dictated by aesthetic reasons and vanity, but prompted by social reasons or by the need arising from a condition of debilitation after childbirth, from illness or from the quality of the milk itself unsuitable to guarantee correct nutrition of the newborn, but also, given the spread of cot deaths, to become pregnant again. The onerous entrustment of the care and breastfeeding service to wet nurses, free or of servile rank, was deduced in specific contractual agreements, and regulated in the practice returned by the Egyptian papyri, on the basis of traditional medical prescriptions, also known in Rome. Among these was the limitation of the sexual freedom of women, who had the obligation not to damage their milk, πρὸς τὸ μὴ διαφθαρήναι τὸ ἐαυτῆς γάλα (*ex aliis*, P. Oxy 78.5168; CPG. I 10, 11), with inappropriate behavior, and not to have sexual intercourse or become pregnant.

Il contributo mette in evidenza, a proposito della maternità e del delicato momento dell'allattamento, che nelle famiglie più agiate, a Roma e nelle province, si ricorreva all'affidamento del bambino ad una nutrice. La scelta della madre appare non sempre libera e dettata da ragioni estetiche e per vanità, ma sollecitata da motivi sociali o dalla necessità derivante da una condizione di debilitazione dopo il parto, da malattia o per la qualità del latte stesso inidoneo a garantire una corretta nutrizione del neonato, ma anche, stante la diffusione delle morti in culla, di restare incinte nuovamente.

L'affido oneroso a balie, libere o di rango servile, del servizio di cura e di allattamento era dedotto in apposite intese contrattuali, e regolamentato nella prassi restituita dai papiri egiziani, sulla base di tradizionali prescrizioni mediche, note anche a Roma. Tra queste era la limitazione della libertà sessuale della donna, che aveva l'obbligo di non danneggiare il suo latte, *πρὸς τὸ μὴ διαφθαρήναι τὸ ἐαυτῆς γάλα* (ex *aliis*, P. Oxy 78.5168; CPG. I 10, 11), con comportamenti inadeguati, di non avere rapporti sessuali né di rimanere incinta.

Parole chiave

Motherhood, Breastfeeding, Wet nurse, Paramonè, Contract, Medical prescriptions, Egyptian papyri, practice.

Maternità, Allattamento, Baliatico, Paramonè, Prescrizioni mediche, Contratti, Papiri Egiziani, Prassi.

Annarosa Gallo, *Le iscrizioni latine della collezione di Cristiano VIII di Danimarca tra Friedrich Münter e Giuseppe Capece Latro*

The paper is concerned with the five Latin funerary inscriptions belonging to the royal collection of Christian VIII of Denmark. It mainly reconstructs the antiquarian history of three of these inscriptions, with regard to their original belonging to the late 18th-century collection of the bishop of Taranto, Giuseppe Capece Latro, as well as to the role carried out by the German-Danish Lutheran bishop and scholar Friedrich Münter, who first drew up their epigraphic descriptions.

Il contributo si occupa delle cinque iscrizioni latine funerarie presenti nella collezione reale di Cristiano VIII di Danimarca.

Ricostruisce la vicenda antiquaria di tre di esse relativamente alla loro originaria appartenenza nella collezione tardo settecentesca del vescovo di Taranto, Giuseppe Capece Latro; e altresì al ruolo svolto dal vescovo luterano ed erudito tedesco-danese Friedrich Münter che per primo ne redasse le schede epigrafiche.

Parole chiave

Museum of Copenhagen; *CIL* IX, 6154; *CIL* VI, 27673; *CIL* X 2472; Friedrich Münter; Capece Latro collection.

Museo di Copenhagen; *CIL* IX, 6154; *CIL* VI, 27673; *CIL* X 2472; Friedrich Münter; collezione Capece Latro.

Leo Peppe, *Sulla frase 'partus sequitur ventrem' in Von der Poesie im Recht di Jacob Grimm*

In Jacob Grimm's *Von der Poesie im Recht* appears the phrase '*partus sequitur ventrem*'. Grimm claims that this is a rule (so Grimm) of archaic Roman law. But this is not the case. The 'rule' appears only in the Middle Ages, most likely based on Roman sources, with a wide diffusion. A particularly important context is that of slavery in the colonies, primarily British in North America (Virginia). Grimm probably uses the phrase for its expressive force.

In *Von der Poesie im Recht* di Jacob Grimm appare la frase '*partus sequitur ventrem*'. Grimm afferma che si tratta di una regola (così Grimm) del diritto romano arcaico. Ma non è così. La 'regola' appare solo nel Medio Evo, assai probabilmente sulla base di fonti romane, con un'ampia diffusione. Un contesto particolarmente importante è quello della schiavitù nelle colonie, in primo luogo britanniche nel Nord America (Virginia). Probabilmente Grimm usa la frase per la sua forza espressiva.

Parole chiave

Jacob Grimm, Roman law, *partus ventrem*, civil law, slavery, colonies.

Jacob Grimm, diritto romano, *partus ventrem*, civil law, schiavitù, colonie.

Francesco Arcaria, *Profili comparatistici del silenzio nell'esperienza giuridica romana e nel diritto civile ed amministrativo italiano*

The article examines the meaning, function and applications of silence in a comparative perspective that includes the Roman legal experience and Italian civil and administrative law, highlighting, in particular, the work of deciphering the multipurpose solutions inherent in this institution operated by Roman jurisprudence and Italian doctrine in theory and also in reference to practical needs.

L'article examine le sens, la fonction et les applications du silence dans une perspective comparative qui inclut l'expérience juridique romaine et le droit civil et administratif italien, en soulignant, en particulier, le travail de décryptage des solutions polyvalentes inhérentes à cette institution opérée par la jurisprudence romaine et la doctrine italienne en théorie et également en référence aux besoins pratiques.

Parole chiave

Silence, Roman law, Roman jurisprudence, Italian civil law, Italian administrative law, Italian doctrine.

Silence, droit romain, jurisprudence romaine, droit civil italien, droit administratif italien, doctrine italienne.