

La 76ème session de la **S**ociété **I**nternationale
Fernand De Visscher pour l'**H**istoire des **D**roits
de l'**A**ntiquité Helsinki, 22 - 26 August 2023

Abstracts - Résumés - Riassunti - Resúmenes -
Zusammenfassungen - 報告要旨



SIHDA 2023, 22-26 August, Helsinki,
Finland

**MATERIALITY
AND IMMATERIALITY
OF ANCIENT LAW**

76th SESSION OF THE
SOCIÉTÉ
INTERNATIONALE
FERNAND DE VISSCHER POUR
HISTOIRE DES
DROITS DE
ANTIQUITÉ

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Materiality and Immateriality of Ancient Law

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Abstracts
Résumés
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報告要旨



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Ius vigilantibus scriptum or par condicio creditorum: Reflections on the dependence of legal principles on their practicability

Competition among creditors occurs when the debtor cannot satisfy them all, or does not have to. Because such situations always cause similar problems, modern lawyers still use Roman law as an argument in today's debates. As in modern law, there were two main approaches to solving the problem: Either the creditors found themselves in a race, or they were satisfied proportionately. Justifications were at hand for both solutions: On the one hand, a race seemed the right solution, for anyone had to accept that the faster creditor wins the prize and the law is written for the vigilant (*melior est condicio occupantis* and *ius vigilantibus scriptum*). On the other hand, equal distribution seemed necessary insofar as all creditors found themselves in the same condition (*iam par condicio creditorum facta*). At first glance, it is surprising for both Roman and modern law that such different solutions can coexist.

It is easy to overlook the fact that distribution among creditors is a great challenge and therefore only practicable under certain conditions. Of this, the Roman jurists were more than aware. That is how legal positions – one may understand them as "immaterial" law in the sense of the general topic – came to depend on the "material" – or at least: factual – condition of whether a certain procedure was carried out or not.

Keywords: obligations, insolvency, par condicio creditorum, Forderungskollision

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The Petition of Dionysia (P. Oxy. II 237): New Insights

In the context of a joint research project with the University of Warsaw for a new commented edition of P. Oxy. II 237, this paper intends to present a new reconstruction of the conflict that led in the late Antonine period to a clash in court between two fairly visible members of the Greek elite in Roman Egypt: Chairemon, an ex-gymnasiarch and his own daughter, Dionysia, who fights her father's attempts to compromise the family estate and to separate her from her husband. Dionysia's petition illuminates, like no other private document from its time, the interplay between the different legal traditions that articulate everyday life in Roman Egypt: the customs and laws of the countless Greeks who came to Egypt with Dionysia's ancestors, the new rules brought by the Roman administration, and the remnants of the oldest traditions of the Land, rooted in the ancient Egyptian culture.

Keywords: papyrology, marriage law, bibliothek enkteseon, legal pluralism

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Le statut juridique (contesté) du cadavre en Droit Romain

Chair:

Prof. José Luis Alonso

Intervenants:

Prof. Doris Forster

Prof. José-Domingo Rodríguez

PreDoc. Yaiza Araque

Sujet: Le cadavre est lié à diverses institutions et concepts du droit romain (la noxalité, l'*actio de pauperie*, le gage, la peine, l'extinction des obligations, le droit religieux, etc.) mais les sources juridiques romaines n'offrent pas une réglementation claire de sa nature juridique. La connaissance de cette nature juridique serait très utile pour comprendre les institutions juridiques susmentionnées dans toute leur dimension.

Dans le but d'éclaircir la figure du cadavre en droit romain, ou du moins d'identifier les points clés de la discussion et ses possibilités exégétiques, un panel composé de chercheurs qui ont traité le sujet sous différentes perspectives et sur la base de sources juridiques, littéraires et documentaires est proposé: Doris Forster (Université Genève) étudiera les informations que l'on peut extraire des sources jurisprudentielles conservées dans le Digeste sur le rôle du cadavre dans les actions noxales et, en particulier, dans l'*actio de pauperie* ; José-Domingo Rodríguez (Université de Vienne) étudiera les données fragmentaires sur cette question conservées dans les Institutions de Gaius, à la lumière de la Paraphrase d'Autun ; enfin, Yaiza Araque (Université Complutense de Madrid) étudiera les sources littéraires qui témoignent des pratiques extra juridiques du cadavre comme gage ou objet de pression sur le débiteur tant dans l'Ancien Monde que dans le Droit moderne.

Résumés d'interventions individuelles:

Doris Forster: Le cadavre de l'animal dans l'*actio de pauperie*

Les actions noxales et l'*actio de pauperie* présentent certaines similitudes, notamment dans la possibilité qu'elles offrent au *pater/dominus* ou au propriétaire de l'animal de choisir d'indemniser le lésé ou de procéder à l'abandon de l'auteur du délit (fils/esclave ou animal).

Toutefois, il convient de noter une différence intéressante quant au sort de ces actions en cas de décès du coupable du délit. Ainsi, dans le cas du décès de l'animal après la *litis contestatio*, le

propriétaire n'a pas le droit de donner le cadavre de l'animal à la victime (D. 9.1.1.14), contrairement à l'action noxale (cf. Gai. 4.81 ; Frag. Aug. 4, 82).

Dans ce cas, le cadavre de l'*alieni iuris* responsable peut remplacer une compensation pécuniaire. Cette différence interroge sur la valeur du cadavre. Faut-il ainsi voir dans le don du cadavre une compensation ou bien une rémanence de la vengeance, au travers notamment de possibles mutilations du corps ? L'absence de cérémonie funéraire peut-elle nous aiguiller dans ce sens ? Un tel but présenterait néanmoins une contradiction avec l'interprétation de Gaius de la « *noxae deditio* » qui y constate une protection économique du *pater/dominus*, dans l'hypothèse où la valeur du fils/de l'esclave serait plus basse que le dommage causé (Gai. 4.75). Au-delà de ces questions, cette procédure interroge sur le développement et le rôle réel que revêtaient les actions noxales : compensation ou punition ?

La différence de traitement entre les corps humains et animaux dans ces actions met également en évidence une séparation nette entre les définitions d'humain – même *alieni iuris* – et d'animaux. Ces catégorisations mettent par ailleurs en exergue de possibles, voire probables interpolations dans les sources sur sujet, tout en nous donnant de précieuses informations pour mieux saisir les prémices conceptuelles sur lesquels reposaient la responsabilité pour le fait des animaux et des êtres humains

José-Domingo Rodríguez: Le cadavre du malfaiteur en droit romain : magie, religion, vengeance et action noxale

Le palimpseste de Vérone contenant les *Institutions* de Gaius présente une lacune dans les paragraphes Gai 4,80-81, juste au moment où le juriste a apparemment traité de la question de savoir comment la mort de l'auteur du délit affecte l'exercice de l'action noxale. D'après le peu qui nous est parvenu, on supposait que la remise d'un cadavre en *nox*a n'était pas autorisée en droit classique. Cependant, la découverte en 1898 d'une paraphrase anonyme des *Institutions* de Gaius dans le Ms. S.28(24) de la Bibliothèque Municipale d'Autun (France) a révélé la nouvelle surprise que qu'il était apparemment possible non seulement de livrer in *nox*a le cadavre de l'auteur du délit, mais même des parties du corps.

Cette intervention entreprend une analyse exégétique des paragraphes pertinents de la paraphrase (Frag. Aug. 4,81-87) dans le but de clarifier le contenu du texte perdu dans les *Institutions* de Gaius. Les données fournies par l'auteur anonyme du "Gaius d'Autun" permettront de mieux éclairer la nature juridique du cadavre en le mettant en relation avec le concept de punition en tant que vendetta dans le droit romain archaïque, avec l'exécution personnelle pour dette à l'époque classique, avec les croyances religieuses et même avec la pratique de la magie noire.

Yaiza Araque: Le cadavre comme gage ou objet de pression : pratique et réglementation en droit romain et droit comparé

Traditionnellement, le cadavre a été considéré par la doctrine romanistique comme *res religiosa* et, en conséquence, *res extra commercium*. Selon cette conception, dont la base se trouve principalement dans Gai. 2,6, le cadavre est contemplé comme *res religiosa* et ce caractère est partagé avec le lieu où il est conservé après l'enterrement.

Cependant, les sources ne confirment pas cette hypothèse. Par conséquent, il est possible réfléchir sur la possibilité que le cadavre n'ait pas ce statut. Surtout si l'on tient compte des témoignages qui ont survécu jusqu'à nos jours où les créanciers, consciemment et volontairement, ont entravé et empêché l'enterrement de leurs débiteurs en retenant leurs cadavres en cas de non-paiement de ses dettes.

Ces témoignages attestent des pratiques extra juridiques du cadavre comme gage ou objet de pression et ils sont -entre autres- l'œuvre De *Tobia* 10,36-37 de Saint Ambroise de Milan sur l'activité exécutive des *funeratores* (fin du IV^e siècle) ou la lettre de *Sidonius Apollinaris* (fin du V^e siècle).

Cette présentation analysera plusieurs témoignages littéraires sur cette pratique extra juridique ainsi sa survie au moins jusqu'au milieu du VI^e siècle (*CJ.* 9,19,6 ; *Nov.* 60,1,1 ; *Nov.* 115,5,1). Il sera également exposé comment cette pratique n'a pas disparu aujourd'hui puisque, étonnamment, il existe encore au XXI^e siècle des cas où les créanciers retiennent le corps inerte de leurs débiteurs jusqu'à ce que ses héritiers paient la dette qu'ils ont contractée.

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The End of *tutela mulierum*

It is well known that the Roman guardianship of women (*tutela mulierum*) had lost much of its original significance by the third century AD. This was partly because ever since the early Empire, most adult women had received the privilege of *ius liberorum* by giving birth to three living children and were thus exempt from guardianship. Moreover, from the second century there developed another guardianship (*cura*) over minors between 12 and 25 years of age. This meant that *tutela mulierum* was now superfluous even for younger women, who had not yet given the required number of births.

However, the exact time when *tutela* finally disappeared from Roman law has remained a mystery. This is because it was no longer a relevant institution when the Theodosian Code was assembled in the 430s, and also because the early books of the Code are regrettably defective in the manuscripts. In modern research, the proposed dates of the demise of *tutela* have ranged from the late third to the early fifth century.

The aim of this paper is to show that, combining legal and papyrological sources, it is in fact possible to establish the precise date in the fourth century when *tutela mulierum* was removed from Roman legislation.

Keywords: women, guardianship, papyri

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De la résistance des cités aux immunités des enseignants

Si la période républicaine avait vu les autorités romaines adopter une attitude très mesurée sur l'encadrement des enseignants, il n'en fut pas de même avec le pouvoir impérial. Les mesures d'Antonin le Pieux témoignent, ainsi, d'un encadrement des libéralités que les cités pouvaient accorder, mais également d'une protection des avantages des enseignants. Les sources juridiques témoignent d'une constance dans les protections accordées par le pouvoir impérial aux enseignants répondant aux exigences légales. Pourtant, les sources littéraires témoignent d'une forte hostilité des cités (et des populations) à ces immunités. Le témoignage d'Aelius Aristide illustre bien les difficultés des enseignants pour bénéficier effectivement des avantages promis. Cette opposition devait se maintenir tout au long de la période impériale comme en attestent les répétitions des dispositions sur les enseignants au sein du droit romain.

Une troisième source peut permettre d'affiner nos connaissances de la situation des enseignants au sein de l'Empire : l'épigraphie. L'opposition entre les cités et le pouvoir impérial apparaît alors comme plus nuancée. Tout d'abord, parce que certaines inscriptions témoignent d'une collaboration entre le pouvoir impérial et les autorités locales (comme dans le cas de l'école Epicurienne d'Athènes). D'autres cas nous renseignent sur des solutions locales visant à concilier les intérêts des enseignants et des cités comme dans le cas d'une inscription portant sur un rhéteur de Thasos.

L'objet de cette présentation serait alors d'étudier le dialogue entre ces trois sources afin de présenter au mieux l'opposition entre les volontés impériales et les résistances municipales ainsi que les solutions spécifiques qui ont pu en découler.

Keywords: Immunités, Pouvoir impérial, cités, enseignants

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L'épigraphie latine et testament romain - observations sur la matérialité des testaments en droit romain

Des nombreuses inscriptions funéraires et honoraires latines transmettent des extraits de testaments romains. Ces extraits contiennent des dispositions du défunt sur sa tombe et le culte mortuaire à accomplir, mais aussi des legs et des fidéicommiss pour ses proches, et aussi des constitutions de fondations pour des *liberti* ou la communauté. Alors que les recherches antérieures ont souvent exprimé leur scepticisme quant à la fiabilité juridique de ces inscriptions, un examen de l'ensemble du matériel montre la grande technicité et l'exactitude juridique des clauses transmises sous forme épigraphique.

Ce constat permet d'attirer l'attention sur l'aspect central de ces inscriptions, à savoir la fonction de la publication extraordinaire de certaines parties du testament. Ce changement de perspective implique d'évaluer d'une part, si le testateur, le tailleur de pierre et les lecteurs de l'inscription étaient en mesure de comprendre le contenu technique de ces extraits. Il convient d'autre part d'explorer le rapport entre les formalités juridiques nécessaires pour l'établissement du testament et de la copie partielle sur pierre.

Keywords: Roman wills, wills on inscriptions, publications of wills, mancipatio

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Le statut des prêtresses romaines: l'accès à la prêtrise au niveau local. La nécessité des sources épigraphiques

Si la femme est exclue de la vie politique romaine, elle est présente dans la vie publique grâce aux charges religieuses qu'elle peut revêtir. Ces charges sont plurielles, en particulier à l'époque impériale : *sacerdos*, *flaminica*, *antistes*, *magistra*, *ministra*, *mater sacrorum*, *camilla*, *canistraria*, etc. Nos recherches portent sur le sacerdoce, la plus haute charge pouvant être obtenue par une femme. Celle-ci porte alors le titre *sacerdos* ou *flaminica*, ou encore plus occasionnellement *antistes* : c'est celle qui accomplit les cérémonies ou présente les offrandes. La prêtresse est l'agente cultuelle pleinement actrice dans la réalisation des rites sacrés.

Les prêtresses, œuvrant dans les cités de l'empire, dites prêtresses municipales ou locales, ne sont presque uniquement connues que par les sources épigraphiques. Plus de 550 *sacerdotes* et *flaminicae* sont répertoriées et seuls quelques fragments littéraires les abordent très ponctuellement. L'étude des sources épigraphiques est donc indispensable pour connaître le statut juridique de ces femmes, notamment les modalités de leur condition d'accès au sacerdoce et de leur désignation ou élection.

Cet exposé a ainsi pour objectif une présentation du vocabulaire présent dans les inscriptions latines et les conclusions que l'apport de telles informations nous permettent de formuler.

Keywords: Sacerdos, priestesses, epigraphic sources, legal status

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Ancora in tema di 'iuridici'

Questo intervento intende analizzare le attività svolte dai cosiddetti *iuridici*, funzionari imperiali istituiti dagli imperatori Marco Aurelio e Lucio Vero intorno al 164-164 d.C., con particolare attenzione all'ambito dell'amministrazione della giustizia nei territori della penisola italica. Sebbene dalla lettura della *Historia Augusta* (si veda, in particolare, Hist. Aug. *Vita Marci* 11.6) parrebbe evincersi che i *principes* avessero preso ad esempio, per la creazione dei *iuridici*, i *consulares* a suo tempo istituiti da Adriano e successivamente aboliti per volere del suo successore Antonino Pio, l'analisi delle fonti, sia di tradizione manoscritta, sia di natura epigrafica, permette di individuare piuttosto nei *iuridici legati provinciae* il modello al quale Marco Aurelio e Lucio Vero dovettero essersi ispirati. Il confronto con alcuni testi epigrafici (si veda, tra gli altri, il cosiddetto *aes Italicense*) offre altresì la possibilità di cercare di delineare le competenze dei *iuridici* nel campo dell'amministrazione della giustizia, con riferimento sia al diritto privato, sia al diritto criminale (tema sul quale la dottrina si è spesso divisa, offrendo diverse interpretazioni della questione, a partire da quella autorevolmente espressa nel 1919 da Moriz Wlassak nel noto lavoro *Zum römischen Provinzialprozeß*).

Keywords: iuridici, amministrazione della giustizia, penisola italica

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Res corporales e res incorporales: radici romane e sviluppi contemporanei di una bipartizione

Quali sono le sfide derivanti dall'era digitale per il giurista europeo? Il cambiamento tecnologico impone di ripensare alle tradizionali categorie giuridiche, nel loro processo di resilienza di fronte alla crisi.

In quest'ottica, a partire dall'esperienza romana, l'intervento tornerà sul significato della nota bipartizione gaiana *res corporales-res incorporales* (Gai 2.12-14), che distingue le *res quae tangi possunt* da quelle *quae tangi non possunt, qualia sunt ea, quae iure consistunt*. In particolare, l'approfondimento dell'origine storica della dicotomia e del criterio discretivo in essa ricompreso, delle ragioni della mancata menzione del *dominium*, dei rapporti con la partizione *res Mancipi-res nec Mancipi*, in connessione con il regime di circolazione delle stesse, consentirà di mettere in luce il ruolo fondamentale svolto da questa antica concettualizzazione della materialità e dell'immaterialità.

Ponendosi in una prospettiva di comparazione diacronica, lo sguardo sarà poi rivolto allo sviluppo di tali categorie in alcuni ordinamenti contemporanei afferenti alla tradizione romanistica europea ed extra-europea. Dopo la disamina delle ragioni del mutamento del modello – da *res* a beni e diritti, frutto dell'epoca moderna –, l'indagine si soffermerà su alcune questioni giuridiche contemporanee sollevate dal metaverso, quali esempi paradigmatici della necessità di una rinnovata riflessione sul senso assunto oggi dal binomio materialità-immaterialità.

Keywords: Res corporals; res incorporales; material goods; immaterial goods; Roman legal

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How can the immaterial cause something material? The theory of climate and law in ancient times

The idea of this paper would be to focus on the role of the theory of climate in law making in ancient times: how can something immaterial (weather) contribute to something material ie laws and political systems? This theory is well known because of Montesquieu (*Esprit des Lois*, around 1750) and Madame de Stael (*De l'Allemagne*, 1809), but might need a synthese about its roots in ancient times. An important text is of course the Hippocratic Treatise on Places: an aim of this paper is to bring to light other texts which mention the theory of climate and its consequences about the making of law.

Keywords: climate, laws, Hippocratic corpus, Livy

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Aper in laqueo e pavo mansuetus - gli animali selvatici come un oggetto di furto

Nel diritto romano, gli animali selvatici sono considerati *res nullius* la cui proprietà si acquista mediante *occupatio*. Le regole relative all'acquisito e alla perdita della loro proprietà sono quindi completamente diverse da quelle applicabili agli animali domestici. A partire dalla fine della repubblica, gli animali selvatici assumono un ruolo importante nell'economia romana, diventando una fonte di guadagno cospicuo per i proprietari terrieri. I giuristi romani, consapevoli di questo nuovo contesto socio-economico, cercano quindi di assicurare ai loro proprietari una tutela paragonabile a quella prevista per i proprietari di bestiame domestico. L'analisi dei testi riguardanti la responsabilità per furto e per il danno cagionato tramite la liberazione dell'animale selvatico dalla custodia dell'uomo ne è la migliore testimonianza.

Keywords: *occupatio*, *furtum*, *revertendi consuetudo*, *revertendi animus*, *naturalis libertas*

Der Klagenzirkel im römischen Recht

Bei mehrpersonalen Rechtsverhältnissen konnte es passieren, dass dem Kläger eine Forderung gegen den Beklagten, dem Beklagten gegen den Dritten und dem Dritten gegen den Kläger zustand. Falls diese Forderungen auf dieselbe Sache oder den gleichen Betrag abzielten, stellte sich die Frage, ob zwischen den Parteien ein wechselseitiges Fordern / Klagen und Leisten vorzunehmen war. Aus prozessökonomischer Sicht erscheint ein Klagenzirkel, der im Ergebnis keine dauerhafte Vermögensverschiebung bewirkte, wenig sinnvoll. In D. 44.4.7.1 ist ein Text von Ulpian überliefert, in dem Ulpian eine Entscheidung Julians, welcher den Klagenzirkel durch Gewährung einer *exceptio doli* verhindern wollte, erörterte. Nach der Auffassung von Ulpian könnte die Lösung von Julian mit der *humanitas* gerechtfertigt werden (*habet haec sententia Iuliani humanitatem*).

Die Vermeidung des Klagenzirkels könnte neben der Prozessökonomie vor allem auch damit begründet werden, dass der Beklagte dann nicht das Insolvenzrisiko des Dritten tragen müsste. Im gegenständlichen Vortrag soll – ausgehend von D. 44.4.7.1 – der Versuch unternommen werden, Quellenstellen, in denen sich das Problem des Klagenzirkels ergibt, zu analysieren und darzulegen, unter welchen Umständen die römischen Juristen einen Klagenzirkel verhinderten beziehungsweise zuließen.

Keywords: Klagenzirkel, Prozessökonomie, *dolo facit, qui petit quod redditurus est*

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Le Tablettes Albertini, paradigma virtuoso di un'economia di confine

L'Africa romana fu, a partire principalmente dal periodo del Principato, uno dei luoghi economicamente e culturalmente più prosperi dell'impero. Diverse fonti storiche e letterarie (da *Victor Vitensis* a *Procopio di Cesarea*) trattano il suo drammatico destino durante il V secolo d.C., in seguito al suo sequestro da parte dell'esercito di Genserico. Senza alcun dubbio, le *Tablettes Albertini* (collocabili cronologicamente tra il 493 e il 496 d.C.), reperto epigrafico che costituisce un *unicum* nel suo genere, offrono una ricca messe di informazioni. Esse, per essere interpretate correttamente, devono sempre essere confrontate con dati storici, geografici, archeologici e numismatici, ma anche con i dati che vengono offerti da scienze dure come la botanica e la climatologia: solo così il documento può davvero parlarci e svelarne alcuni dei segreti.

Parole Chiave: Tavolette Albertini; invasione vandalica; *Africa Byzacena*; *Flavius Geminius Catullinus*.

Les Tablettes Albertini, paradigme vertueux d'une économie frontalière

L'Afrique romaine était, à partir principalement de la période de le Principat, l'un des endroits les plus prospères économiquement et culturellement de l'empire. Plusieurs sources historiques et littéraires (de *Victor Vitensis* à *Procopé de Césarée*) traitent de son sort dramatique au cours du Ve siècle de notre ère, à la suite de sa prise par l'armée de Genséric. Sans aucun doute, les *Tablettes Albertini* (placées chronologiquement entre 493 et 496 après JC), une découverte épigraphique qui constitue un *unicum* du genre, offrent une riche richesse d'informations. Pour être interprétées correctement, elles doivent toujours être comparées aux données historiques, géographiques, archéologiques et numismatiques, mais aussi aux données offertes par les sciences dures telles que la botanique et la climatologie: ce n'est qu'ainsi que le document peut vraiment nous parler et révéler certains de ses secrets.

Mots-clés: Tablettes Albertini; invasion vandale; *Afrique Byzacena*; *Flavius Geminius Catullinus*.

The Tablettes Albertini, virtuous paradigm of a border economy

Roman Africa was, one of the most economically and culturally prosperous places of the empire. Several historical and literary sources (from *Victor Vitensis* to *Procopius of Caesarea*) treat its dramatic fate during the 5th century AD, following its seizure by Gaiseric's army. Without any doubt, the Albertini Tablets (between 493 and 496 AD) offer a wealth of information which, however, to be interpreted correctly, must always be compared with historical, geographical, archaeological and numismatic data, but also with the ones that are offered by hard sciences such as botany and climatology: only this way the document can really speak to us and reveal some of its secrets.

Key words: Tablettes Albertini; Vandal invasion; *Africa Byzacena*; *Flavius Geminius Catullinus*.

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Algunas consideraciones sobre el delito de injurias en las comedias de Plauto

En fecha indeterminada, posiblemente hacia el siglo III a.C., los pretores, según la opinión común de la doctrina, configuraron a través de un edicto general, reconstruido por Lenel, una *actio iniuriarum aestimatoria* que vino a derogar el régimen jurídico que, según las fuentes, fue establecido en la Ley de la XII Tablas para los supuestos de lesiones físicas como *membrum ruptum*, *os fractum* y lesiones leves. La nueva acción judicial penal pretoria daba lugar a una *obligatio ex delicto* consistente en el pago de una estimación económica, equitativa y flexible del daño físico causado, según las circunstancias del caso. Junto al *generale edictum*, los pretores publicaron edictos especiales en los que se recogían supuestos de ofensas morales como insultos o violación de domicilio, entre otras.

En las fuentes literarias latinas, concretamente en varios pasajes de las comedias de Plauto, posiblemente se nos transmitan referencias a esta nueva *actio iniuriarum* pretoria en pasajes como *Asinaria*, 375, *Aulularia*, 792 y ss., *Poenalus*, 1336-1337 o *Rudens*, 669 y ss.

La comunicación que presento en el congreso de Helsinki aporta observaciones sobre esta materia a la luz de una lectura atenta de las fuentes jurídicas y literarias y, sobre todo, de diversos pasajes de las comedias de Plauto.

Keywords: Plauto, teatro, *actio iniuriarum aestimatoria*

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The origins of natural law

In my talk I will deal with the vexed question of the origins of the expression of natural law. Whereas modern scholars often attribute the notion to Greek thinkers like Plato and Aristotle, they actually did not use the expression. I will argue that it was first put to use in the 1st century BCE and that its occurrence can be explained as a result of the interaction between Roman jurists on the one hand and Stoic philosophers on the other: whereas for the jurists the Stoic doctrine of law offered a theoretical underpinning for their unique practice of dispute resolution, in which law materialised in their responsa, for the Roman Stoics this practice offered an unexpected opportunity to develop their conception of law in more detail. Natural law thus entered the debate not just as referring to unwritten principles that are universal and eternal, but in a broader and more encompassing sense.

Keywords: Natural law, late Republic, jurists, Stoics, unwritten principles

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The Roman emperor, private water grants, and material evidence

Urban water supply was among the most conspicuous achievements of Roman civilization. As one aqueduct after another was built for the city of Rome, the involvement of first the Republican and later the Imperial government was fundamental. Eventually, aqueducts were built all over the Mediterranean, but the financing of these projects varied. Municipal funds were used, local and sometimes external sponsors played a role, and sometimes the emperor acted as benefactor. But who decided over the distribution from the urban aqueducts? Here, scholars very frequently have recourse to Ulpian's comment in *Dig.* 43.20.1.41–43 (*Permittitur autem aquam ex castello vel ex rivo vel ex quo alio loco publico ducere. Idque a principe conceditur: alii nulli competit ius aquae dandae. Et datur interdum praediis, interdum personis*).

The meaning is gratifyingly clear and the passage is often quoted, as many recent examples show, when discussing Roman water supply and distribution, a topic of considerable current interest due to the environmental challenges facing the world. Indeed, the Roman emperor had autocratic powers and in theory he could decide any matter anywhere in the empire. But this was arguably not common, far from it. Regarding hydraulic resources, in Augustus' edict concerning the aqueduct of Venafrum, known from a contemporary inscription, the right to dispose over the water was given to the local authorities (*Ilviri, praefecti*; *CIL* X 4842). This was surely the norm everywhere. The material realities of the urban water supply all over the Roman world dictated this. Why, then, did Ulpian write what he did, and why was the opinion included in the Digest? This paper argues that his original purpose must have been to comment specifically on the situation in Rome, the centre of the world. Later, Justinian's commission must have found the power so explicitly granted the emperor appealing. (299).

Keywords: Roman water, water distribution, power of the emperor, Ulpian

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D.45.1.122.1 (Scaev. 28 *dig.*) and the Interpretation of Penal Stipulations

In D.45.1.122.1, Q. Cervidius Scaevola responds to a *quaestio* concerning the interpretation of a penalty clause in a maritime loan contract. In fact the text is the apotheosis of a juristic discussion stretching back at least to Serv. Sulpicius Rufus about the proper interpretation of penal stipulations. Though it is not possible to determine the reality of the case discussed in the text, similar cases were litigated at Athens in the fourth century BCE, providing an insight into the relation between juristic discourse and the practical resolution of commercial disputes.

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Documenti epigrafici sul tribunato della plebe in Italia (III - I sec. a.C.)

Nella relazione si illustreranno i pochi casi noti della magistratura tribunizia plebea documentati in epigrafi restituite da diverse comunità peninsulari nel periodo III - inizi I sec. a.C. L'occasione per questa breve rassegna, che non pretende esaustività, è data dal fatto che, nell'ambito di queste testimonianze sul tribunato rientrano alcune tra le più importanti novità epigrafiche di contenuto istituzionale in lingua osca: si tratta complessivamente di cinque testi, rinvenuti in Lucania, in Campania e in Abruzzo.

Alcuni di questi testi, con la loro datazione nei secoli III-II a.C., rientrano attualmente tra le più antiche testimonianze, piuttosto rare, dell'esistenza del tribunato della plebe *extra Romam*. Inoltre, uno dei testi rinvenuti in Campania rientra tra le più antiche testimonianze di una competenza della magistratura dei tribuni della plebe anche nel settore delle costruzioni e specificamente nella realizzazione di strade, una competenza tribunizia anomala e anch'essa raramente documentata.

Keywords: Tribunato della plebe, Competenze edilizie, Epigrafia osca, Epigrafia latina

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Parens in una lex regia. Il ruolo fondamentale delle fonti di tradizione manoscritta per l'interpretazione del termine

Festo's work (*De verborum significatu*) resend, under the voice *plorare*, to the content of a *lex regia* at the basis of which the king Servio Tullio would have punished with the *sacertas*, following the *paren's ploratio*, the guy guilt of having lashed the parent. The truth about this disposition, considered its extreme dating, is confirmed by numerous textual references, conserved in the literary sources, that allow, in some cases, to clarify interpretative doubts on the constitutive elements of the criminal case in point.

Keywords: *verberatio parentis*, *parens*, *lex regia*

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Entre coutumes et droit légiféré, le pluralisme juridique des Athéniens au V^e s.

De l'*Antigone* de Sophocle à l'oraison funèbre de Périclès, les Athéniens revendiquent un profond respect des « lois non-écrites ». La nature de ces normes, que leur appellation définit par l'absence de passage à l'écrit (*agraphoi nomoi* ou *agrapta nomima*), interroge. Seraient-elles des lois naturelles, des lois orales ou encore des lois d'origine divine ? Toutes ces hypothèses opposent les lois non-écrites à une conception précise, celle d'un système juridique athénien fondé sur la raison, l'écriture et la délibération. Cette perspective a longtemps conduit les hellénistes à interpréter ces *nomoi* comme un reliquat du droit archaïque, amené à être supplanté par les formalisations de l'âge classique et tout particulièrement le recours à l'écrit et à l'affichage public. Toutefois, comme son nom l'indique, l'*agraphos nomos* est conçu en réaction à l'essor du recours à l'écriture dans les pratiques législatives. En outre, il n'est jamais présenté comme un vestige obsolète, mais bien comme une norme valide. Il s'agira dès lors de comprendre de quoi l'alpha initial d'*agraphos* prive le *nomos* ainsi qualifié, avant de revenir sur les caractéristiques que les discours antiques lui attribuent.

L'hypothèse de départ est la suivante : plutôt qu'aux textes inscrits, alors rares ou éphémères, la référence à l'écriture renvoie aux documents produits par le processus législatif. Dans cette perspective, le droit « non-écrit » désigne des règles informelles par opposition aux normes produites par les travaux législatifs de l'Assemblée. Il distingue ainsi des normes immémoriales de celles auxquelles on peut attribuer des auteurs et des dates. En ce sens, la « loi non-écrite » apparaît comme un droit coutumier que l'on mobilise pour limiter le développement du droit formel et en encadrer les abus. Le recours à l'*agraphos nomos* peut ainsi être interprété comme le signal d'une pensée qui cherche à ordonner le pluralisme juridique athénien.

Keywords: Athènes, *agraphos nomos*, coutume, inscriptions juridiques

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La expectativa de derecho como derecho real

La expectativa de derecho, como derecho real, se originó en el derecho alemán a principios del siglo XX. A esta se le dio la categoría de derecho real luego de una recopilación y extensivo análisis de la jurisprudencia de los respectivos fallos judiciales. Este derecho no ha sido reconocido como tal en ninguna legislación latinoamericana. Sin embargo, dentro de la legislación en materia civil de algunos países, se pueden encontrar normas jurídicas, que al integrarlas, dan reconocimiento a la expectativa de derecho y le aportan el carácter de derecho real.

Además, es innegable que derivado del tráfico comercial y de la celebración de negocios jurídicos, existen casos en los que se evidencia la expectativa de derecho como derecho real y de los cuales se derivan controversias que requerirían para su resolución, el reconocimiento de este derecho y un adecuado análisis e integración de normas en materia civil.

Keywords: Derecho civil, Derecho alemán, Latinoamérica

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La configurazione del crimen tergiversationis tra fonti giuridiche, letterarie e papirologiche

Il senatoconsulto Turpilliano del 61 d.C. introdusse una limitazione significativa ad uno dei capisaldi principali del principio della libera accusa nei *iudicia publica*, sanzionando il comportamento dell'accusatore che avesse desistito dal procedimento criminale intentato senza giustificata ragione e senza aver richiesto l'autorizzazione al giudicante (si parlava, in questo senso, di *crimen tergiversationis*).

Nonostante l'attenzione riservata alla materia da parte dei giuristi romani e le numerose costituzioni imperiali intervenute sul punto, la ricostruzione del contenuto delle disposizioni del provvedimento senatorio sulla base dei testi trãditi nel Digesto e nel *Codex giustiniano*, da parte della dottrina, ha fatto emergere, nel corso del tempo, una serie di questioni a lungo rimaste irrisolte. A tale proposito, tuttavia, importanti informazioni in merito al *crimen tergiversationis* si possono evincere dalle testimonianze contenute nelle fonti letterarie e papirologiche, le quali non solo permettono di integrare ed arricchire il quadro relativo a questo crimine altrimenti offerto dalle sole fonti che possiamo rinvenire nel *Corpus iuris civilis*.

Il presente intervento, in particolare, intende concentrarsi inizialmente sull'analisi del papiro BGU 611. Esso conserva il testo di un'*oratio principis in senatu habita* pronunciata dall'imperatore Claudio, nella quale il *princeps* affronta la medesima problematica che di lì a qualche anno sarebbe stata oggetto anche del senatoconsulto Turpilliano, dettando misure che verosimilmente confluirono poi anche in quest'ultimo provvedimento. A seguire, verrà dedicata attenzione ad una lettera dell'epistolario pliniano, nella quale sono documentati due casi di applicazione concreta della disciplina del Turpilliano.

Le informazioni che si possono ricavare dalle fonti oggetto di questo studio verranno infine confrontate con quelle che si possono evincere dalla lettura dei testi relativi a questa materia riportate nel Digesto e nel Codice. Da questa comparazione si potranno ricavare elementi importanti per comprendere la portata originaria del *crimen tergiversationis*, così come concepito in età neroniana; l'analisi delle fonti di natura letteraria e dei papiri permetterà altresì di esaminare le concrete modalità di attuazione delle misure introdotte dal Turpilliano nei decenni successivi alla sua approvazione.

Keywords: Tergiversatio, papiri, Plinio, senatoconsulto Turpilliano

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The Immaterial in Decision-Making: Rhetoric and Proof in Roman Law

This paper will examine the use of rhetorical concepts in the development of a theory of proof in Roman law. The paper will consider the assumption and use of Greek rhetorical ideas in the late Roman Republic and outline the extent to which these concepts were applied to Roman legal reasoning. In particular, the paper will consider the development of a distinctly Roman form of rhetoric in that period, revealing how the Romans repurposed Greek rhetorical thought for use in the development legal argumentation.

The paper will give an account of rhetoric as a system of proof for the establishment of a consistent method of appraisal in legal decision-making. It argues that rhetoric provided the basis of legal decisions in Roman case law, which then, through its recognition by practice, was concretised either by Praetorian Edict or in juristic writing.

The central argument is that rhetoric was not a nebulous appeal to emotions, nor a means of trickery by which decision-makers could be deceived or beguiled, but rather an understood and reliable means of arguing for legal outcomes from the facts presented in disputes. While ultimately an appeal to immaterial ideas, rhetoric was a developed method for the establishment of legal fact, which drew out constant and just decisions based upon the socially understood values that were deeply entrenched in Roman culture and society.

Having set out the way in which the Romans developed a purposeful system of rhetoric for use within their legal system, some consideration will be given to evidence for the practical application of rhetorical concepts to the law of the late Republic.

Keywords: Rhetoric, Society, Proof, Decision-making

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Historical and dialectical materialism in the views of the so-called “Marxist Roman law scholars”

Materiality and immateriality in Roman law studies - an important moment in this took place after Second World War in Central-Eastern Europe, where the science of law was subject to political and ideological influences from Soviet science, and in particular from Marxist science. According to Marxist theory, historical research, including research on the ancient history should be carried out using the right method. Only then can facts be understood correctly and given the right meaning. In this approach, the method was more important than a good command of language, or knowledge of law, facts and works of a given historical epoch. These were especially the theses on the proper understanding of history, which were rooted in dialectical materialism and in historical materialism developed on its basis. Some scholars from socialist countries pointed out that a new discipline should be developed in the Roman law studies, namely “Marxist Roman law studies”/Marxist Romanistic, because traditional “bourgeois” science has exhausted its potential and material, and most importantly, it uses erroneous and outdated methods. The autor will focus on views, based on historical and dialectical materialism, given by some scholars, so-called “Marxist Roman law scholars” after Second World War, particularly in East-Central Europe.

Keywords: Roman law, Marxist methodology, dialectical materialism, historical materialism

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**Between letter and law: the materiality and immateriality of the imperial correspondence
of the third century CE**

Chair:

Assoc. Prof. Serena Connolly

Speakers:

Prof. Elsemieke Daalder

Assoc. Prof Zachary Herz,

MA student Lucianna Parr

General description

It is widely known that the legal correspondence of the Roman emperors, both in the form of *epistulae* and *subscriptiones*, had a profound impact on Roman legal practice and by extension, on Roman society as a whole. Thousands of imperial letters survive and have been transmitted through different types of classical sources. Extremely well known are of course the imperial rescripts which form the basis of the Justinian Code or can be found in the legal writings of the classical jurists included in the Digest. At the same time, we also come across attestations of imperial letters in inscriptions, papyri and other classical sources such as literary texts. As such, the source material of the imperial state correspondence presents us with precisely the dichotomy central to this SIHDA conference, i.e. the contrast between intensely material, local and casuistic sources (inscriptions and papyri) and sources transmitted almost exclusively through a textual tradition, such as the Digest and the Codex. The presentations of this panel will explore and comment on this dichotomy through the lens of the correspondence of the Roman emperors with a focus on the third century CE (i.e. 193-284 CE). This period is generally regarded in modern scholarship as a pivotal moment in Roman history, a period of enormous political turmoil and social change that formed a bridge from the Roman Empire of the classical world to the fractured empires and kingdoms of Late Antiquity. Nevertheless, the events of the third century and the dynamics behind them still remain in many ways a mystery, mainly due to the very scarce literary source record dating to the period itself. In contrast, the surviving record of the imperial correspondence actually shows a peak for exactly this period. By discussing imperial letters from the third century, this panel will therefore not only shed light on the connections and disjunctions between the documentary and manuscript tradition of this important source of Roman law, but also hopes to contribute to the study of the administration of the Empire during this turbulent period in Roman history.

Serena Connolly (chair) - Introduction: the EPISTULAE project

Zach Herz - Law as Database: The Indexing of Imperial Constitutions

Anyone who keeps both Watson and Lenel on her desk can tell you that it matters how authorities are organized. Do we imagine, say, D.1.9.8/Lenel, Ulpian 1896 within a historical corpus of “things Ulpian said,” or as part of “the law of Senators”? My talk considers changes in how imperial legal writing was organized, tracked against changes in how imperial writing was conceived in relation to law.

I begin with the *seme(n)stria* (e.g., D.29.2.12), collections of imperial replies given within a six-month period, and argue that individual *seme(n)stria* were likely ordered alphabetically by the name of the recipient. While evidence of this kind of time-bounded indexing practice persists into the 220s with the relabeling of Elagabalic rescripts (on which Coriat 1999: 105-06), Papirius Iustus’ *XX Libri de Constitutionibus* (Licandro and Palazzolo 2021) broke new ground by organizing the legal writing of Marcus according to the logic of juristic treatises. This organizational practice would be replicated in the *Codex Gregorianus* (Corcoran 1999) and most famously in the codifications of Theodosius and Justinian. By treating imperial writing as part of a multi-authorial “law,” these organizers imagined a law that could outlive individual imperial lawmakers and, eventually, Rome herself.

Elsemieke Daalder - Tracing Ovinus Tertullus: Severan letters in the epigraphic and textual tradition

This paper focuses on the surviving correspondence of a senator named C. Ovinus Tertullus with the emperors Septimius Severus (193-211) and Caracalla (211-217) during his time as governor of Moesia Inferior, which has been transmitted through several media. A first piece of correspondence can be found in *CIL* 3, 781 (*ILS* 423 = *FIRA* I, nr. 86) containing – amongst other letters – a Severan letter to Tertullus on the fiscal privileges of the citizens of Tyras. A second letter is recorded in both the *Codex Justinianus* (C. 8,50(51),1) and in two texts by Ulpian in the *Digest* (D. 38,17,1,3 and D. 49,15,9) and concerns the intricacies of the *ius postliminii*. The case of Ovinus Tertullus is therefore illustrative for the extremely varied transmission of imperial *epistulae* mentioned in the general description of this panel. After a short introduction on this subject, the paper will mostly focus on the second letter mentioned above, shedding light on the development of the *ius postliminii* and the legal challenges involved as well as on the way the Roman jurists incorporated, presented and used imperial *epistulae* in their works. It will therefore not only explore the dichotomy between material sources and sources transmitted almost exclusively through a textual tradition, but also discuss the interaction between different sources for the same letter within that textual tradition

Lucy Parr - Encoding Epistulae: Challenges and Solutions in Encoding Third Century CE Imperial Correspondence

Digitizing third-century CE imperial correspondence, critical to the study of this period of Roman history, has proven challenging due to their varied preservation on papyri, inscriptions, and manuscripts, making it difficult to create a uniform database. This paper addresses the challenges of developing such a database, focusing on XML encoding and Epidoc guidelines in order to standardize each text while preserving any unique textual features. This paper explores the solutions to problems that have arisen in the process of encoding the database, such as issues with double rescripts or difficulties with XML tagging, in order to preserve the oddities in each text within the metadata and text itself. These techniques provide insights into the challenges of digitizing documents preserved through various means and the solutions developed to overcome them with the overarching goal to create an easily searchable database in order make these correspondences more accessible to scholars and researchers, facilitating further exploration and analysis of this important period of Roman history.

Keywords: Imperial legislation, epistulae, rescripts, third century, database

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La “materialità immateriale” delle *regulae iuris* romane nella cultura giuridica europea

Si può pensare alla cultura giuridica europea in termini di consolidamento di idee?

Alcune delle regole che riteniamo più consolidate non hanno mai trovato una loro materialità, nel senso che non sono mai state scritte e neppure sono mai state sancite ufficialmente. Eppure, quel consolidamento culturale può pensarsi come materialità, per lo meno se si tien conto che quelle *regulae iuris* hanno sempre prodotto vincolatività.

Si può anzi aggiungere che quelle idee paiono caratterizzate da differenti gradi di densità: talune sono consolidate, altre invece indicano soltanto tracce orientative; quest'ultimo è il caso delle prassi e, in generale, del *soft law*.

L'intervento intende affrontare criticamente una specifica *regula* proveniente dalla cultura dei giuristi romani: *pacta sunt servanda*. Si tratta di una *regula* apparentemente solida, la cui portata effettiva della regola sopravanza di molto la sua formalizzazione, per lo meno se si guarda alle fonti romane.

Eppure, nei secoli quella *regula* trovò espliciti riconoscimenti nei sistemi nazionali, nonché nel diritto internazionale.

L'intervento si propone quindi di sottoporre a critica la *regula* del *pacta sunt servanda*.

Nel 1876 Siegmund Schlossmann pubblicò un'opera, *Der Vertrag*, corrosiva nei confronti dell'idea della vincolatività dell'accordo.

Da lì l'intervento partirà per prendere in esame la porosità del *pacta sunt servanda*. Si tenga conto che la vincolatività dell'accordo comporta implicazioni politiche, sociali, economiche. Si giungerà infine alla cultura giuridica europea contemporanea, nella quale sempre più pressanti si dimostrano le esigenze di eteronomia, di adeguamento a valori costituzionali, nonché di direzione pubblica – sebbene in forme nuove – del fenomeno economico.

Alla fine, si potrà valutare appieno il senso del paradosso di una “materialità immateriale” delle *regulae iuris* romane nella cultura giuridica europea.

Keywords: *regula iuris*, consensus, immaterial

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***Ius civile* and *ius gentium* in the Roman provinces – Babatha Archive as source of legal tradition**

When Babatha, a Jewish woman living in Maoza, conducted her legal affairs in the early second century CE, her homeland was already under the rule of the Romans as the province Arabia Petraea. Although people were granted the right to use their original legal system, the situation with respect to legal disputes was not that straightforward. The nearest judiciary authority was the appointed Roman governor. Since Babatha was not a Roman citizen, in case of litigation, the governor would apply *ius gentium*, which was, in fact, more of an idea than a specific legal system. The Greek documents in the Archive are a precious testimony not only for the life of Babatha herself, but also for how Roman dominion over various regions influenced how local legal affairs were conducted. The discussion continues relating the archive, whether traces of the Roman *ius civile* can be found in the papyri, and if so, what does it mean considering the law that was used in the provinces.

Keywords: Babatha archive, Roman law, *ius civile*, *ius Gentium*, provinces

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Legum custodiam nullam habemus: leges e certezza del diritto fra materialità e immaterialità nella Roma repubblicana

Di fronte all'indebolimento del dogma della legge scritta come fonte di diritto per eccellenza, correlato al processo di progressiva dematerializzazione del diritto, riecheggiano le parole di Cicerone contenute in un celebre passo del *'De legibus'* (3.20.46): *'legum custodiam nullam habemus itaque eae leges sunt, quas apparitores nostri volunt: a librariis petimus, publicis litteris consignatam memoriam publicam nullam habemus'*. Nel I sec. a.C., pur in un contesto storico-sociale-politico ben diverso da quello contemporaneo, l'Arpinate denunciava l'assenza di norme circolanti in una versione condivisa, autentica e integrale, anelando alla costruzione di un sistema giuridico 'certo' i cui componenti venissero accuratamente custoditi e si mostrassero, di conseguenza, affidabili.

Partendo dall'aspra critica del Retore, l'intervento si propone di esaminare il rapporto fra la possibile declinazione della certezza del diritto in età repubblicana e le modalità di pubblicazione del testo delle *leges*, nonché la sua protezione da dispersioni e alterazioni. Infatti l'assenza, per lungo tempo, di apposite norme – ovvero, per converso, la sussistenza di prassi altalenanti e non regolamentate – comportò disagi legati alla replicazione imprecisa, e non necessariamente colposa, dei testi, con notevoli implicazioni sul piano sistematico ed applicativo.

Sulla base di questi spunti, verranno esplorate luci e ombre delle principali modalità di stesura, conservazione e replicazione del testo delle *leges* nella Roma repubblicana, ove si rintracciano le radici della fruibilità di un testo giuridico condiviso, e protetto da alterazioni o da repliche infedeli, come pilastro della certezza del diritto: fra materialità e immaterialità.

Keywords: roman law, Cicero, legal certainty, safekeeping, legal text

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Se di testamento olografo si sia trattato

La *scriptura holographa* con la quale Micce, *illustris femina*, volle istituire erede Pelagia, donna come lei *illustris*, è al centro dell'episodio che, nel *principium* della Novella di Valentiniano III (Nov.Val. 21.2, a. 446), restituisce l'*occasio legis* dalla quale scaturì il riconoscimento «*cunctis profutura*» della validità del testamento olografo (Nov. Val. 21.2.1). La rilettura di «*quod nuper evenit*» consentirà di mettere a fuoco il significato giuridico dei fatti narrati e di riconsiderare la natura dell'atto di ultima volontà redatto «*secretius*» dalla testatrice. In particolare, si terrà conto del ruolo svolto da *Cesarius*, nipote di Micce, e di aspetti materiali della *charta* emergenti dalla lettera del testo, alla luce del quadro normativo in materia vigente nella *pars Occidentis* dell'Impero e di reperti riconducibili alla coeva pratica legale.

Keywords: *holographa scriptura*, *charta*, *fides*

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Material and immaterial aspects in the transfer of ownership

What I will be examining in this presentation is how legal decisions can be based both on material, tangible factors that can be perceived by the senses, as well as on immaterial principles – ethical principles, in particular. Of course a decision is never based entirely on either the former or the latter; generally, we can observe that one type of approach predominates somewhat over the other. At any rate, as my examples will clearly demonstrate, both material and immaterial perceptions of reality have a fundamental influence in the process of legal decision making. By presenting examples drawn from Roman law, I will show how tangible, material aspects (that is, things perceived by our five senses) and immaterial, theoretical aspects come together in the adjudication process.

I start the discussion with a well-known fragment of Julianus (Iul. 13 dig. D.41.1.36.) where two parties agree on a given physical object, but have different views with regards to its (immaterial) status in law. Then I turn to a passage originating from Ulpian (Ulp. 7 disp. D. 12.1.18pr.), which, at first glance, seems to present a disturbing contradiction. What we can learn from my paper is that many immaterial, conceptual legal problems can be reframed through tangible, physical, material aspects.

Keywords: traditio, pecunia, condictio

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Tracing Gender in Augustan Marriage Laws

Modern scholars use the term gender to refer to the social construction of norms, attitudes and roles assigned to “women” and “men”. Even though for decades scholars have debated the impact of nature on gender identity, it is distinct from biological differences often referred to as “sex”.

Scholars have emphasized gender’s potential as a category of analysis because it permeates all aspects of a culture and serves to establish social distinctions. In a fundamental article in the field of gender history, Joan Scott explained: “gender is a constitutive element of social relationships based on perceived differences between the sexes, and gender is a primary way of signifying relationships of power”. Gender shapes the way people perceive and experience their world. When legal authorities in ancient Rome tried to define the structure and hierarchy of their society, gender played an important role in the discussion (Matthew J. Perry).

This paper aims to examine how Augustan marriage legislation contributed to the definition and affirmation of gender in the early Roman Empire. Accordingly, it seeks to explore how Augustan reforms influenced gender dynamics in the early Roman Empire and propose a new way of understanding of the “emancipation” of women in the Augustan era.

Keywords: Gender, Augustus, lex Iulia de maritandis ordinibus, lex Papia Poppaea nuptialis

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Las Cosas Comunitarias En La Monarquía Romana: Concepción Y Conocimiento Material De Su Regulación Jurídica

La manifestación y contenido de las normas que regulan las realidades comunitarias de uso colectivo durante el periodo de los reyes romanos está muy vinculada con la forma constitucional y con el estado evolutivo en el que se encuentra la sociedad.

Sobre el conjunto de esta monarquía es necesario diferenciar dos etapas: la primera constituida por los llamados reyes latino-sabinos y la segunda formada por los reyes etruscos o de tendencia mediterránea. La diferencia entre ambos periodos es manifiesta desde los puntos de vista político, social, económico y jurídico.

La comunidad política romana durante el periodo de los reyes latinos-sabinos se configura en sí misma como una realidad en transformación hacia la plena unidad material y ciudadana, que solo llega a alcanzarse con la intervención del elemento extranjero-etrusco. Los reyes etruscos suponen para Roma la definición básica del modelo material y espiritual de ciudad-Estado que será perfeccionado en época de la República.

Desde un plano jurídico-material, no disponemos de ningún testimonio directo sobre la ordenación de las cosas de uso colectivo en la monarquía latina, si bien un estudio crítico de los textos literarios aporta cierta luz sobre la cuestión. Por su parte, de época de los reyes etruscos, donde ya puede existir la escritura, además de las referencias literarias, poseemos el testimonio fundamental de la estela del Foro como posible ordenación directa más antigua sobre el uso de realidades comunitarias.

Desde una perspectiva de ideas, en ninguna de las dos fases regias la normativa «demanial» se concibe como un sistema general-abstracto, sino como disposiciones separadas que se dirigen sobre la individualidad de cada objeto «demanial». No obstante, la monarquía etrusca acelera el reconocimiento de un sistema de ordenación para esta materia.

Keywords: cosa común, uso colectivo, monarquía, ordenación jurídica, concepción

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Analysis of Dig. 47,10,7,1. Concurrence between criminal law and civil law in instances of bringing bodily harm

A question of concurrence between criminal law and civil law: May a private suit presuppose a criminal trial?

This paper proposes to discuss and analyse Dig. 47,10,7,1. The text deals with the question if a private suit may presuppose a criminal trial. And while it is placed within the digest title on *iniuria*, it arguably contains a rule that had a more general application. The paper will touch on the following points:

- Description of the text, references to the criminal and civil laws which are mentioned. Determine what their active and passive legitimation are (i.e. who could bring an action or make an accusation and against whom), what interests are underlying to the different criminal and civil actions that can be undertaken which are referred to in the text.
- The (contrasting) opinions of Ulpian and Labeo within Dig. 47,10,7,1. and what this could tell us about the development of the sphere of criminal law during the classical period.
- The meaning of Dig. 47,10,7,1. for the relationship between Roman criminal law and civil law within the context of bodily harm.
- Possible relation between Dig. 47,10,7,1. and Dig. 47,10,6.

Keywords: Concurrence between criminal law and civil law, immateria, Dig. 47,10,7,1

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“Evolution” as a theme in Henry Sumner Maine’s *Ancient Law* (1861)

This paper is devoted to a critical assessment of chapters 1 – 4 of the Victorian jurist Henry Maine’s bestseller, *Ancient Law*, published in 1861. In these four chapters, Maine constructs a theory, based on his reading of Roman law, of the gradual development of certain legal systems in response to societal impulses. Unlike most “social evolutionists”, who went no further than describing changes to society and law in parallel, Maine’s theory was more developed. He set out to identify specific “instrumentalities”, as he called them, or mechanisms of legal change. The aim of this paper is to place the work in its broader context, specifically with reference to broader intellectual currents such as “evolution” prevalent in Victorian society. This will, in turn, permit a broader discussion concerning the reception of contemporary ideas into the study of ancient law.

Keywords: Henry Sumner Maine, Ancient Law, Evolution of Law, Legal Change

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Pedro Ruiz de Moros - the Alciato's disciple

Andrea Alciato (1492 – 1550), an Italian jurist and writer, is regarded as the founder of the French school of legal humanists. His legal studies (initially probably in Pavia, and then in Bologna) were crowned with the title of doctor iuris utriusque. He taught law in Avignon, in Bourges, and in 1533 he returned to Italy, where he taught law in Pavia, Bologna and Ferrara. His Roman law courses were very popular thanks to non-traditional, historically and philologically profiled teaching methods, attracting crowds of students from different countries. Alciato's comprehensive education - not only in law but also in philology - had an impact not only on his lecture style, but also on his research on legal texts. Although Alciato was not the first author to use philological methods in this type of research, his originality is expressed in the selection of sources in the form of e.g. works of historians and other authors from the late imperial period. One of his students in Bologna was Pedro Ruiz de Moros from Spain. At the beginning of 1542, he came to Krakow and soon after he took the chair of Roman law. He lectured until 1550 or 1551. In 1549 he was appointed royal adviser. About 1552 he was appointed an assessor of the royal court, which resulted in the need to move to Vilnius. From 1561, Pedro Ruiz de Moros also joined the Lithuanian assessor's court. His legal practice, above all in the Lithuanian assessing court, which was an appeal court for the courts of royal cities in Lithuania, is associated with the creation of the work *Decisiones (...) de rebus in sacro auditorio Lituanico ex appellatione iudicatis*, published for the first time in Krakow in 1565. The subject of consideration will be the answers to the following questions: did Ruiz de Moros use his master's method in his lectures? Did he use this method in his work and did he refer to Alciato's views or argue with them?

Keywords: legal humanism, Andrea Alciato, Pedro Ruiz de Moros

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Lex Laetoria in Practice: Papyri from Roman Egypt and the Impact of Roman Law

Lex Laetoria was a Roman act from about the turn of the 3rd and 2nd centuries BC, granting additional protection to adults under the age of 25. Amongst its primary sources are the *Tabula Heracleensis*, a.k.a. *lex Iulia municipalis* (cf. FIRA I, 112), an excerpt from the Theodosian Code (C. Th. 8, 12, 2), and several papyri (BGU II 378, BGU II 611, P. Oxy. VII 1020 [+ P. Oxy. LXIV 4435], P. Oxy. X 1274 and P. Oxy. XVII 2111) bear greater importance. These papyri are resourceful in the debate about the actual name of the Act (*lex Laetoria* versus *lex Plaetoria*). From a legal point of view, the most important ones are BGU II 378 and P. Oxy. X 1274: they contain a petition and a contract or agreement, respectively, where the reference to *lex Laetoria* is part of legal argumentation. Besides the actual case, these papyri are significant because they present the Roman world's quotidian social and economic life and practice in Egypt around the 2nd century AD. By examining and analysing the cases described in these papyri, we get a closer view of Roman law's everyday reality. The characters in the cases bear Roman names, the issues occur in Hellenised Egypt, and the correspondence is in Greek, yet Roman law measures are used to settle the disputes. We sense multiculturalism in these documents without the awkward feeling of being unfamiliar with Roman Egyptian culture. This presentation aims to catch a glimpse of Roman law in action, by multicultural approach and to provide an example of how Rome had managed to handle herself as an Empire.

Keywords: *lex Laetoria*, *lex Plaetoria*, praetorian edict, exceptio, circumscriptio, minor, minores, protection of minores, Arsinoe, Alexandria, Oxyrhynchus, Faiyum Oasis, BGU II 378, P. Oxy. X 1274

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Mujeres y economía en el Mundo Romano: Trabajo, patrimonio y egocios a través de las fuentes jurídicas, literarias, epigráficas y papirológicas

El presente trabajo tiene como objetivo la aproximación al estudio de la participación de las mujeres en la economía romana mediante su trabajo (los oficios femeninos remunerados o no), así como a través de la gestión patrimonial y negocial de su propia riqueza.

Si bien tradicionalmente se ha considerado que la esfera de la mujer romana se ubicaba en el ámbito doméstico, cada vez se van publicando estudios en los que se muestra una participación femenina tanto en la economía doméstica como en el ámbito comercial y empresarial que, a pesar de la escasez de fuentes en comparación con la masculina, poco a poco, se va fundamentando no sólo con los textos jurídicos sino, sobre todo, con las fuentes literarias, arqueológicas, epigráficas y papirológicas.

En este sentido es relevante el conocimiento que de la realidad femenina, especialmente en provincias, se puede obtener a través de las fuentes epigráficas como en Hispania o las fuentes papirológicas como en el Egipto romano, las fuentes literarias y epistolares o en las propias excavaciones arqueológicas de ciudades como Pompeya.

Con el uso de estas fuentes materiales, de las que tanto en ocasiones se duda, se propone acercarse al estudio del trabajo realizado por las mujeres en el mundo romano, tanto en Roma como en provincias, así como a las actividades patrimoniales, comerciales y empresariales llevadas por sí o por representante y que a partir de la época tardorrepública nos empiezan a ser conocidas. Quizá sólo una visión de conjunto de fuentes pueda darnos luz y desvelar la vida de las mujeres romanas reales.

Keywords: mujer, economía, trabajo femenino, gestión patrimonial

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Die stipulatio argentaria in den Rechtsquellen - eine Dekonstruktion

Nach herrschender Lehre gibt es drei *exceptiones argentariae*, nämlich die *exceptio mercis non traditae*, die *exceptio redhibitionis* und die *exceptio pecuniae pensatae*. Lenel fasste sie unter der Rubrik „*Si ex contractibus argentariorum agatur*“ zusammen. Ihnen liegt ein Dreipersonenverhältnis von Auktionator, Einlieferer (*dominus*) und Käufer zugrunde. Streitig ist jedoch, ob der Auktionator oder der Einlieferer Partei des Kaufvertrags wurde. In jedem Fall gab es eine Stipulation des Kaufpreises zwischen Auktionator und Ersteigerer. Sie ist uns in den pompejanischen Quittungstafeln und in der *lex metallis Vipascensis* überliefert, unsere Rechtstexte kennen sie jedoch nicht. Die von Lenel behauptete Eigenständigkeit der genannten Argentariereinreden steht auf tönernen Füßen.

Keywords: *exceptiones argentariae*, auction, stipulatio

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Wie römische Frauen Geschichte machen

Der Vortrag widmet sich dem Thema, wie und warum manche Frauen in die römische Geschichtsschreibung eingegangen sind: sei es als Opfer oder als Heldin (bzw beides zugleich), sei es als Mutter bzw Ehefrau eines Gewalthabers mit gewissem Anteil an Macht, sei es als Vorbild oder als abschreckendes Beispiel.

Keywords: women, history, images, topoi

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Die Rolle des römischen Rechts bei der Entstehung des Japanischen Bürgerlichen Gesetzbuchs

In den Jahren 1896 bis 1898 tritt das Japanische Bürgerliche Gesetzbuch in Kraft. Nach einer Zeit tiefgreifender politischer Umwälzungen wurde innerhalb weniger Jahrzehnte ein Zivilgesetz geschaffen, das den modernsten Stand der damaligen Rechtswelt verkörperte. Es kann, mit den Worten von Nobushige Hozumi, als „fruit of comparative jurisprudence“ bezeichnet werden. Im Redaktionsprozess wurden mehr als dreißig verschiedene Zivilrechtsordnungen herangezogen und auf ihre Eignung für das neue Gesetzbuch untersucht. Einen besonders großen Raum nahmen dabei die verschiedenen europäischen Rechtsordnungen ein.

Die gemeinsame historische Grundlage europäischen Rechts war damals wie heute das römische Recht. Das wirft die Frage auf, ob die Begründer des modernen japanischen Zivilrechts diese Bedeutung des antiken römischen Rechts für die europäischen Rechtsordnungen berücksichtigt haben und welche Rolle es im Kodifikationsprozess eingenommen hat.

Um dieser Frage nachzugehen, werden vier Personen herausgegriffen, die einen besonderen Einfluss auf die Gesetzgebung genommen haben: Der französische Rechtsberater der japanischen Regierung Gustave Boissonade (1.) sowie die Mitglieder des Gesetzgebungsausschusses Nobushige Hozumi (2.), Masaakira Tomii (3.) und Kenjirō Ume (4.). Nach einer Darstellung ihres jeweiligen Werdegangs im römischen Recht wird anhand von Publikationen und Gesetzgebungsprotokollen untersucht, inwiefern sich ihr Bezug zum römischen Recht in den Vorarbeiten für das japanische Zivilgesetzbuch niedergeschlagen hat. So soll nachgezeichnet werden, wie das antike römische Recht – auf direkten und indirekten Wegen – Eingang in die japanische Rechtswissenschaft gefunden hat.

Der Beitrag ist im Rahmen eines Forschungsaufenthalts am Lehrstuhl von Frau Prof. Mariko Igimi, Inhaberin des Lehrstuhls für römisches Recht an der Kyushu University, Fukuoka, Japan entstanden und wurde durch den DAAD/Prosa LMU gefördert.

Keywords: Römisches Recht, Japan, Meiji, Rezeption

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Correspondence of Justyn I and Justinian I with the Bishops of Rome and her influence on religious doctrine. Between orthodoxy and heterodoxy in Justinianic law

Justinianic law enjoys constant interest of researchers of various science disciplines. Relatively few are works based on Roman law and non -legal sources, which are devoted to theological problems of the first half of the 6th century. The emperors Justin I and Justinian I wanted sanation of the legal system, the end of Trinital, Christological, Mariological disputes and the achievement of religious peace. They were aimed at combining the *imperium* and *sacerdotium*. The legal and theological activity of both emperors is worth scientific attention. Imperial support for the Nice-Konstinian *Credo*, the opposition of the Nestorian appearance of the "humanization" of *Logos*, condemning the authors conducive to Nestorianism – all this consists of a post-classical legal legacy. This content can be analyzed, among others from the letters of Justyn I and Justinian I to the Bishops of Rome and from the letters of popes to these emperors. Correspondence varies in legal and theological terms, shows the political background of the problem. Certain threads can be found in a later promulgated Roman law and Roman-Bizantine law.

The main source is the study: *Epistulae imperatorum pontificum aliorum inde ab a. CCCLXVII usque ad a. DLIII datae. Avellana quae dicitur Collectio*, ed. O. Guenther. *Corpus scriptorum ecclesiasticorum Latinorum*. Österreichische Akademie der Wissenschaften, t. 35, p. 1: *Prolegomena. Epistulae I-CLV*; p. 2: *Epistulae CV-CCXXXVIII. Appendices. Indices*, Pragae-Vindobonae-Lipsiae 1895-1898. The reference point, however, is other source collections, i.e. *Acta conciliorum et epistolae decretales ac constitutiones summorum pontificum*, ed. J. Hardouin, t. 2-3, Parisiis 1714; *Sacrorum conciliorum nova et amplissima collectio* (...) ed. I.D. Mansi, I. B. Martin, L. Petit, t. 8-9, Florentiae-Venetiis-Parisiis-Lipsiae 1762-1763; *Patrologie cursus completus. Series Latina*, ed. J.P. Migne, t. 63, 66, 69 Parisiis 1847, 1865-1866 and *Epistolae Romanorum pontificum genuinae et quae ad eos scriptae sunt a S. Hilario usque ad Pelagium II*, t. 1: *A S. Hilario usque ad S. Hormisdam ann. 461-523*, ed. A. Thiel, Brunsbergae 1868.

Keywords: non-legal sources in materia religiosa, imperial letters to the Bishops of Rome

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Is the Night Time the Right Time? The Night in Roman Law

The conference organisers probably never considered daylight-or the lack of it-as an aspect of the "material surroundings of law". Prior to the advent of 19th century gas or electrical illumination, nights were primarily dark, dangerous and awe-inspiring. In people's perception, light and dark hours were often proverbially "as different as night and day". For the Early Modern period, the history of the night has been an established topic of research for some time now, and studies have received high critical acclaim. The inquiry into this aspect of Roman civilisation is under way but has not caught the limelight yet. This paper tries to add a legal perspective to this endeavour. For the law, night did have no existence of its own; rather it was considered as a part of day only: *More Romano* a day consisted of two half nights and the sunlit time in between (D. 2,12,8 Paul. 13 Sab.).

This aspect in the sources of Roman law still awaits systematic exploration. Studies of the nightlife of ancient Rome regularly touch upon legal aspects, but jurists' writings offer more than information on the well-known *fures nocturni*, the *tabernarius* who defended his oil lamp too vehemently (D. 9,2,52,1 Ulp. 18 ed.), or brothel looting revellers (D. 47,2,39 Ulp. 41 Sab.). Illegal acts under the cover of darkness, however, were not the only legal problems related to the nighttime. Some cast doubt on the validity of legal acts performed at night. Further topics of legal discourse were related to the *cena*/dinner party and, of course, the typical nightly "activity" of sleep (as well as bedroom furniture etc.).

From the moment a Roman jurist started wondering whether the application of law might be different "because of the night", the night turned into an "immaterial" factor of Roman law.

Keywords: day, night, light, darkness

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Dichotomies between material and immaterial histories of “international law” in Greek, Roman and Persian Antiquity

Chair:

Dr Hab., University Prof. Jakub Urbanik

Speakers:

Prof. Dr. Kaius Tuori

Dr. Jacob Giltaij

Dr. Silvia Schiavo

Panel proposal, SIHDA 2023, Helsinki

Title: *Dichotomies between material and immaterial histories of “international law” in Greek, Roman and Persian Antiquity*

The strange dichotomy between the inexistence of international law in Greek, Roman and Persian Antiquity, and the Greek, Roman and Persian (legal) texts as the basis of modern international law, is well-known. This panel provides a more in-depth investigation of this dichotomy, inspired by shifting and changing definitions of ‘modern international law’. Where in the course of the twentieth century, various handbooks on the longue durée history of international law could exclude Antiquity as a whole from this narrative, it could be argued for example through the rise of non-state actors that the definition of ‘international law’ has changed to such a degree that either Greek, Roman or Persian Antiquity are to be included nowadays.

The focus of the panel will be concrete instances of interpolity and ‘interstate’ (legal) relations within and beyond ‘empire’ both in Greek, Roman and Persian Antiquity. The instances will be analyzed based on the ancient material sources and placed in the broader context of the law of the time-period in which they occur. Moreover, an attempt shall be made to compare and contrast the Greek, Roman and Persian experiences, particularly with respect to possible causal developments or traditions, and with respect to similar material rules, concepts, ideas and notions, such as war, trade and diplomacy.

The goal of the panel is to view possible material instances of ‘international law’ in Greek, Roman and Persian Antiquity on their own terms, rather than defined and determined by the longer immaterial longue durée tradition in which they may or may not actually ‘belong’. As such, instead of being bogged down in agonizing over what ‘international law’ may or may not be then and

nowadays, a more in-depth perspective on what actually was considered and should be seen as 'interstate' relations in Greek, Roman and Persian Antiquity can be presented.

Moderator: **Prof. Jakub Urbanik (or TBD)**

Speakers

Prof. Dr. Kaius Tuori

Questioning Territorialities in Ancient International Law

Dr. Jacob Giltaij

Material and immaterial histories of "international law" in the ancient Roman world: the concept of *ius gentium*

Debates on the inclusion or exclusion of Antiquity from histories of international law oscillate between a 'maximalist' and a 'minimalist' view. This debate is in need of recalibration, because in the last few decades the definition of international law itself has altered. On the basis of current discussions of what international law 'is', eight parameters of a definition are presented: Inside/outside; City-state/Empire; Centre/periphery; Public/private; Law/non-law; Positive law/legal theory; System/judicial organization; and Inventend traditions/concrete historical context. These eight parameters will be set out with reference to the ancient Roman concept of '*ius gentium*'. On this basis, the manifold problems with regard to the sources of "international law" in Roman Antiquity can be determined.

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Dr. Silvia Schiavo

International Law in the Sasanian Empire

The paper aims to discuss if the Persian Empire under the Sasanian dynasty, in its relationship with Roman empire, had and practiced a concept of international law. The Sasanian dynasty, entered on world stage in 224, soon started to intertwine with Rome, influencing profoundly its history. Besides wars, the relation between Persian Empire and Roman Empire in Sasanian period also produced transmission of cultural, religious and scientific ideas, and led to the construction of a very complex system for legitimacy and coexistence of the two empires.

Some cases of study will be taken into consideration, focused on different issues: the vision that the Sasanians had of the Roman Empire, their concept of war and their territorial approach. Furthermore, various aspects of Persian diplomacy and treaties will be studied. In this perspective, we can talk about examples of the existence of 'diplomacy' in Sasanian world, to be understood as a set of tools for creating relations with other nations, stopping/avoiding war, influencing the behaviors of counterparts, also for economic and commercial purposes.

Among many treaties concluded between Persians and Romans in the Sasanian Period, two of them are particularly interesting for the high level of the diplomatic relations and techniques of negotiations they show, also from the Persian point of view: the treaty of 363 (Shapur II and Jovian) and the one of 562 (Khosroe I and Justinian): some observations will be dedicated to them.

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Keywords: Greek Antiquity, Roman Antiquity, Persian Antiquity, International law

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Changing Paradigm in the Law of Sale: Some Romanistics Remarks on modern Profiles

Chair:

Prof. Dr. Pascal Pichonnaz

Speakers:

Prof. José L. Linares Pineda

Prof. Carmen Gómez Buendia

Dr. Albert Gómez Jordán

(Prof. José L. Linares Pineda) THE DUTY OF THE SELLER TO TRANSFER OWNERSHIP

From *vacuum possessionem tradere* to significant 19th century codifications with particular reference to the reception of the Roman solutions in the Chilean (1855) and Spanish (1889) civil codes; the situation under the French civil code (1804) and the transfer of ownership based on consent; the early examples of the duty of the seller to transfer ownership in the Argentinian (1869) and Brazilian (1916) civil codes; the step forward of the Italian civil code (1942); and finally the position of the German BGB (1896) before the *Schuldrechtsmodernisierung* (2002)

(Prof. Carmen Gómez Buendia) The Vienna Convention of 1980 and the modern efforts of harmonisation of European Private Law

The United Nations Convention on Contracts for the International Sale of Goods (CISG), adopted in Vienna in 1980, created a new model for international sales contracts overcoming the traditional barriers between civil law and common law legal systems. The impact of the CISG on the sales law paradigm is uncontroversial as we can appreciate on the most modern codifications of the 20th century, and especially, on the harmonization of the sale in the field of European contract law. Among other examples we will mention the Common European Sales Law Draft Regulation (2011) or the VI book of the Civil Code of Catalonia (2017) which regulates the obligations and contracts.

(Dr. Albert Gómez Jordán) THE NATURE OF THE PRICE ON THE CONTRACT OF SALE: AND OLD IUS CONTROVERSUM PROJECTED ON CRYPTOCURRENCIES.

The current phenomenon of cryptocurrencies has revived an old discussion between the Sabinians and the Proculians regarding the nature of the price on the contract of sale: if it should only consist in money or if it could also consist in other goods (Gai. 3, 141). The divergent civilian doctrinal views on the legal nature of cryptocurrencies (i.e. whether to consider them as digital currencies or intangible assets) have led us to delve deeper into the Roman sources in order to define the limits between sale and exchange and the true legal nature of the contract of sale.

Keywords: sales law, CISG, transfer of ownership, price, cryptocurrencies

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,ne quid infamandi causa fiat': on the relevance of subjective aspects of the offence in the Classical actio iniuriarum

The *actio iniuriarum*, whose origins can be traced back to the Twelve Tables and which in its original form and intent appears to have sanctioned minor assault and physical insults, increases in relevance during the Classical era and establishes itself as the key instrument of the protection of personal honour in Roman civil law. This in turn provides the basis and starting point for a question that has been hotly disputed in Romanist circles for several centuries, i.e. whether and to what extent the intention to insult the person concerned actually constituted a decisive element of the classic *iniuria* offence. The majority of scholars sees the extension of the applicability of the *actio iniuriarum* to a wide range of acts considered to be defamatory in a causal connection with a stronger weighting of the subjective motivation of the actor, usually described with the term *animus iniuriandi* (which incidentally is not documented in this form in the sources). Sometimes it is postulated that it was precisely the existence of such an *animus* that made the extension of the protection of personality to more atypical constellations of cases and acts possible in the first place; other scholars warn against an overvaluation of this aspect; a minority denies the consideration of subjective elements in general or at least in the vast majority of possible constellations of cases. Against this background, my paper will address this problem from a slightly different angle. Although it will briefly examine previous approaches, the main focus of this paper lies not on *iniuria* in general but on the specific offences sanctioned by the special edicts and on the weighting of subjective elements of the offence in this area, as well as on the question of extra-legal, predominantly socio-political, motivations that might have made it necessary for judges and jurists to take into account possible motivations behind the offender's actions.

Keywords: *actio iniuriarum*, personality rights, civil-law protection of honour

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Two faces of an inheritance

The materiality is often regarded as the opposition of the immateriality because this characteristics are usually describing things and distinguishing them as corporeal or incorporeal and yet they are closely related. For example, an inheritance can be considered an incorporeal immaterial thing but it usually consists of a sum of individual things which are material and so corporeal. It may even seems that the difference only lies in a perspective. This impression is given by reading Seneca's sixth book On Benefits at least. He expresses a disagreement there about an opinion of lawyers who said that an usucaption of an inheritance is impossible but the usucaption of individual things can be. This contribution deals with a question what is the ground of that presented legal opinion on the usucaption of an inheritance and the disagreement of Seneca. Even though the philosopher does not mention anything about the materiality, which may be caused by his lack of a legal education, it has a key role to explain the opinion of lawyers that is for him such an incomprehensible wonder. The answer seems to depend on the fact that the possession and therefore the usucaption are related to a material thing only as compared with statements and arguments of lawyers.

Keywords: inheritance, corporeal thing, incorporeal thing, usucaption, Seneca

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Roman credit money: the materiality of debt claims and the immateriality of Rome's money supply

In the Roman empire credit money could be created by monetary practices, especially those of the elite, this being due to the legal arrangements that directed economic activity. There were multiple types of documents used to record monetary debts (e.g. *nomina*, *chirographa*) and there were multiple mechanisms in place for transferring obligations (e.g. *delegatio*, *nomina transscripticia*). No single procedure created the preconditions conducive to the endogenous emergence of credit money. Instead, a combination of factors generated the adaptability displayed by the users of Roman money. This paper argues that the materiality of debt claims had affected also how they were perceived. In the mindset of those who frequently used debt claims, over time their materiality made it acceptable to comprehend debts themselves as transportable. In fact, the transferability of financial obligations did not depend on the type of document used. Instead, the overriding principle was that the relevant obligations should be capable of being transferred. The normativity of this principle in actual practice encouraged its endorsement also by the law (evident in Justinian's *Digest*). For this purpose, all methods were appropriate, and therefore such a wide variety of legal formalities for the transfer of debt claims can be found. This was a shift in perception that could only have taken place in a world in which monetary practices associated with debt claims had for centuries enjoyed a stable regulatory framework; and, at the same time, a world in which generations of users of money had come to depend, in their financial dealings, on written records of debt claims. The materiality of these debt claims, together with their continuous configuration and reconfiguration, contributed to a shift in perception, which turned what had been conventional legal processes into a novel financial reality, in which credit money effectively increased Rome's money supply.

Keywords: Roman law, credit money, *nomina*, *chirographa*, *delegatio*, *nomina transscripticia*

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Zwischen Tradition und Reform - Joseph von Schey, das römische Recht und das österreichische ABGB

Die Jahrzehnte um die Wende vom 19. zum 20. Jahrhundert charakterisiert in Zentraleuropa - und somit Wien als Hauptstadt der Donaumonarchie - eine außerordentlich dynamische Entwicklung auf dem Gebiet zahlreicher künstlerischer und wissenschaftlicher Disziplinen; zu erinnern ist etwa an die Wiener Secession („Jugendstil“), die Zweite Wiener Schule der Musik, den Beginn der Psychoanalyse, den „Wiener Kreis“ des logischen Empirismus etc. Traditionelle Anschauungen geraten ins Wanken.

Nur in einem - vergleichsweise - geringen Ausmaß aufgearbeitet ist, welche Tendenzen, Strömungen und Innovationen zu dieser Zeit in der österreichischen Privatrechtswissenschaft beobachtbar sind. Während das deutsche BGB kurz vor seinem Inkrafttreten am 1.1. 1900 steht, wird das Allgemeine Bürgerliche Gesetzbuch Österreichs (ABGB) im Jahr 1911 bereits seinen hundertjährigen Geburtstag feiern und Rufe nach seiner Modernisierung werden immer lauter; neue Phänomene wie die soziologische Rechtslehre und Forderungen nach einem Privatrecht, das sozialen Bedürfnissen gerecht wird, entstehen.

In diese Zeit des Umbruchs fällt das Wirken des österreichischen Juristen Joseph (Freiherr von) Schey; geboren 1853 als Sohn einer dem aufstrebenden Wiener jüdischen Großbürgertum angehörenden Familie, studiert er Rechts- und Staatswissenschaften an der Wiener Fakultät, inskribiert - gemäß der seit Mitte des Jahrhunderts geltenden und eminent an rechthistorischen Inhalten orientierten Studienreform - Lehrveranstaltungen zum Römischen Recht unter anderen bei Rudolf Jhering und Joseph Unger und habilitiert sich 1877 für Römisches Recht.

Bestrebungen nach einer umfassenden „Revision“ (Josef Unger) des ABGB münden letztlich in den sogenannten drei Teilnovellen 1914 bis 1916, an deren Ausgestaltung Schey - mittlerweile Universitätsprofessor in Wien - in prominenter Position beteiligt ist.

Entlang seiner „legal biography“ soll dem Einfluss der akademischen Ausbildung Scheys auf seine Schriften zum römischen sowie zeitgenössischen Privatrecht und seinen rechtspolitischen Vorstellungen für eine moderne und praxisorientierte Normsetzung nachgegangen werden.

Keywords: Wien, 1900, Römisches Recht, ABGB, Reform

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Local consumer protection: Revised assessment of Roman law based on local and temporally limited measures?

Roman contract law has often been interpreted as requiring a rather high degree of self-responsibility from the parties. However, basic features of consumer protection are not only found in the texts of the Roman jurists, but it is striking that especially local and temporally limited measures reveal how the respective legislators seek to protect the weaker contracting party.

This leads to the question how local legislations establish a consumer protection. The presentation analyses if the legal rules of the Roman jurists represent a 'basic protection' which is increased by local measures.

By means of various examples, the yield of this research question is examined. For instance, there are price restrictions for certain goods and services handed down in inscriptions or Hadrian's regulations on the sale of fish and oil in Athens. What had prompted these consumer-protective regulations, how effective were they, and why were they not introduced everywhere?

Similarly, laws were enacted in the Roman Empire to ensure a basic supply of essential goods (particularly grain). Was the legislation motivated by concerns that the reliance of consumers on these goods would lead to an imbalance of power vis-à-vis merchants or that high food prices and shortages would bring social unrest?

From this, the presentation aims to shed light on the extent to which benefits for consumers are often driven by political calculations. The results of the presentation allow us to draw conclusions as to why only some measures led to the establishment of fixed structures. It is explored whether Roman legislators and jurists relied on more extensive regulation by local authorities to remedy acute grievances.

Moreover, research is confronted with the problem that only some local laws have survived. Are statements, for example about a 'level of consumer protection' in the Roman Empire at a certain time, possible at all?

Keywords: consumer protection, Roman Law, local legislation

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“Hope for sale - emptio spei and the immaterial objects conceived by the Roman jurists”

The viewpoint of my presentation stands on a somewhat special understanding of our common theme “Materiality and immateriality of the ancient law”. I am generally interested in the mode of legal reasoning applied to immaterial or intangible objects by the jurists in ancient Rome. I chose the *emptio spei* and *emptio rei sperate* as a typical concrete topic in such a field. I start from rereading and rethinking the major source D. 18,1,8(Pomp. Lib. 9 ad Sab.) as well as the other related ones and then trace the doctrine formed by antecedent European scholars e. g. from the late 19th century to the present according to the major works by Endemann, De Visscher, Knütel etc. Lastly, I will present a panoramic overview of how *emptio spei* was treated in the Westernization process of the modern Japanese legal system as a facet of a reception of law performed through typically immaterial sources, that is, printed books and oral lectures by law professors.

Keywords: emptio spei, risk, probability, res incorporales

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Diritto Funerario: Il Concetto Romano e Le Sfide Moderne

Alcuni testi giuridici romani, in particolare le *Istituzioni* di Gaio, mostrano che non è possibile costituire un diritto sul corpo di un defunto, perché il corpo appartiene ai *Manes*, che venivano identificate con le divinità dell'oltretomba. Tuttavia, un'analisi dettagliata dei testi giuridici, conferma non solo la possibilità di costituire un diritto sul cadavere, ma consente altresì di individuare le persone cui spetta l'organizzazione del funerale, la cremazione, il trasferimento del corpo, la costituzione di un monumento, ecc.

Riteniamo che questi diritti, in primo luogo, appartenessero che questi diritti, in primo luogo, appartenessero al defunto, e, dopo la sua morte, se non altrimenti specificato, al coniuge e ai legittimari, chiamati secondo l'ordine stabilito per la successione *ab intestato*, indipendentemente dalla loro qualità di eredi.

Dopo presentiamo comparativamente la concezione del diritto europeo nell'era delle moderne codificazioni di diritto privato durante il XIX secolo e all' inizio del XX secolo. Tenendo presente che ci sono punti di vista condivisi su questi temi, prestiamo particolare attenzione alla tradizione del *Codice civile austriaco*, lasciando la possibilità di risolvere vuoti normativi nello spirito della tradizione giuridica romana.

Keywords: Diritto Romano, Diritto contemporaneo, *res religiosae*, cadavere, Diritto successorio, *Codice civile austriaco*

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Re-Materialising Ancient Law in the Middle Ages - A Study of the Notarial Practice on the Eastern Adriatic

Roman law as transmitted in Justinian's codification was the subject of extensive study and commentary of medieval civilian jurists. In that sense, specific texts and sources on which medieval jurists worked might be categorised under *materiality* as understood in the context of this year's theme for the SIHDA conference. On the other hand, the legal system they built this way, tentatively called *ius commune*, was abstract and thus *immaterial* in the same sense. A further step in the same vein of development was an adaptation and application of particular abstract legal notions, often identical to their ancient counterparts, in specific medieval surroundings. In its turn, this development was reflected in notarial records, which thus became *material* manifestations of an indirectly transmitted ancient Roman law.

The aim of this paper is to analyse how this process unfolded in the late medieval law of Dubrovnik (Ragusa), a major flourishing medieval commune on the eastern Adriatic. It will take into account notarial records from Dubrovnik from the end of the 13th century and analyse several particular legal matters (for example nomination of representatives, transfer of claims (*cessio*), testaments, etc.). Many aspects of those notions were simply taken over from ancient Roman law and included in a number of academic notarial treatises. The analysis will try to establish in which measure the ancient Roman legal notions managed to be practically relevant in a particular medieval setting. The analysis may thus be a contribution to a more complete understanding of the transmission of ancient Roman law from the *materiality* of the sources that the medieval jurists used, to the *immateriality* of the learned medieval *ius commune* and back again to the final *materiality* of legal practice as demonstrated in the notarial records.

Keywords: Roman law, notaries, Middle Ages

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***ius* / *lex* for Comparative Analysis of Current Law**

Notably, *ius* as well as *lex* have been used in wide variety of meanings throughout our legal history. Just to mention a few examples, *ius*, defined as "*ars boni et aequi*" by Celsus, could mean the law of jurists, natural law, etc., while *lex* were imperial statutes, positives Recht, or just terms of conditions in contracts. According to legal tradition in East Asia, however, the "law" was mainly *lex*, namely written ~material~ *lex*.

In this presentation, analysis of some topics in current law would be tried applying the dichotomy of *ius* / *lex*. The topics may include "rule of law" in China, "fundamental human rights" in Japan, "tort law" in Nepal.

Keywords: *ius*, *lex*, comparative law, Asian legal tradition

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Tra storia materiale e immateriale nell'Africa romana: il caso dei *sufetes* nel dibattito sulla romanizzazione

Il dibattito sull'idea di romanizzazione ha prodotto, nei decenni, interpretazioni contrastanti, passando da una sua definizione quale imperialismo di tipo impositivo, incurante delle culture e tradizioni locali, ad una diametralmente opposta, figlia della cd. Postcolonial turn verificatasi negli anni '70 e '80 del secolo XX che ha portato alla ribalta le nozioni di 'subalternità' e 'agency' delle popolazioni indigene. Un'interpretazione quest'ultima che, da un lato, ha introdotto la nozione di 'resistenza' alla romanizzazione e, dall'altro, ha proposto la sostituzione del termine romanizzazione, ritenuto negativamente connotato, con i termini ibridazione o creolizzazione che permetterebbero una maggiore valorizzazione degli elementi locali pre-romani. Due esiti in parte differenti ma accomunati dal loro inserimento all'interno della più generale narrativa che vede l'esperienza coloniale romana come un caso esemplare di pluralismo giuridico.

Questo intervento vuole contribuire alla proposta di uno schema interpretativo alternativo a quello del pluralismo giuridico, presentando il caso dei *sufetes* africani. Di antiche origini fenicie, quella del *sufetato* è stata una magistratura tipicamente cartaginese, apice del sistema amministrativo punico tra il V e il III sec. a.C., che con la provincializzazione del territorio africano è stata integrata nell'amministrazione romana quale massima carica nelle *civitates peregrinae*. Attraverso lo studio della storia (immateriale) delle tradizioni cartaginesi e quello (materiale) delle numerose iscrizioni pubbliche rinvenute sul territorio della provincia d'Africa (poi *Africa Vetus* e, infine, *Africa Proconsularis*), questo intervento vuole osservare il fenomeno di evoluzione che tale magistratura ha avuto in seno al processo di municipalizzazione avvenuto a partire dal I-II sec. d.C.; si vuole mostrare, in particolare, come la loro trasformazione in *duumviri/triumviri* in occasione delle promozioni delle *civitates* a *municipia* e *coloniae* possa deporre a favore di una loro lettura quale strumenti funzionali ad una romanizzazione alternativa alla narrativa del pluralismo giuridico, una romanizzazione (comunque giuridica) che si configura piuttosto come l'applicazione di uno standard flessibile, in grado di preservare la diversità istituzionale nell'amministrazione dell'impero e allo stesso tempo consentire una facile comunicazione con le strutture più propriamente romane.

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Rechte und Pflichten des *heres fiduciarius* - inschriftliche Belege und literarischer Befund

Während das Fideikommissrecht in den juristischen Quellen intensiv diskutiert und dabei auch die Stellung eines Universalfideikommissars sowie des mit dem Universalfideikommiss belasteten Erben eingehend erörtert wird, kommt der Begriff des *heres fiduciarius* für einen solchen Erben in den Digesten nur zwei Mal vor (Iav 11 epist, D. 36, 1, 48 ; Valens 3 fideic, D. 36, 1, 69, 3). Franziska Beutler (in *Corps du chef* 2020, 369–385) hat eine neue Grabstele aus Carnuntum vorgestellt, welche neben insgesamt zehn weiteren Grabinschriften die Position eines *heres fiduciarius* greifbar machen. Diese inschriftlichen Belege für einen *heres fiduciarius* als materielle Gegenstände sollen den immateriellen Ideen, welche in den Rechtstexten zur Frage der Rechte und Pflichten des mit einem Universalfideikommiss belasteten Erben zum Ausdruck kommen, gegenübergestellt werden.

Keywords: *heres fiduciarius*, Universalfideikommiss, Grabrecht, Soldatentestament

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Eis, qui iudaicam superstitionem sequuntur...

An excerpt from the third book of Ulpian's "*de officio proconsulis*," found in *Dig.* 50.2.3.3, records a constitution by Septimius Severus and Caracalla, which allowed Jews to hold provincial and municipal offices on the condition that they maintain their "*superstitio*": "Eis, qui iudaicam superstitionem sequuntur, divi Severus et Antoninus honores adipisci permiserunt, sed et necessitates eis imposuerunt, qui superstitionem eorum non laederent." However, this constitution presents two challenges. The first pertains to the meaning of "*superstitio*" in this specific context, while the second revolves around the underlying reason for this requirement.

In this paper, I will address these questions by undertaking a comprehensive investigation. I will commence by examining the authenticity of this excerpt and assessing the likelihood of its interpolation after Ulpian published his treatise. Subsequently, I will delve into the meaning of "*superstitio*" at the time Ulpian composed his treatise, shortly after the enactment of the so-called "*Constitutio Antoniana*." The term "*superstitio*" underwent significant changes from its initial usage during the middle Republic when it denoted excessive religious sentiments to its current connotation of "false belief(s)."

Moreover, I will explore the possibility of contextualizing this postulation not solely within a religious framework but also within the social context of preserving *consuetudines* and *mores*. By addressing these aspects, the paper aims to shed light on the complexities of the constitution and its implications for Jews holding public offices.

Gelebtes und gesetztes Recht: Rechtsurkunden römischer Bürger aus der Provinz

Versteht man das Rechtssystem als Kommunikationssystem, betrachtet man das Recht in seinen „Operationen“, welche die „Grenze zu seinem Anderen laufend ziehen“ (Luhmann). Sowohl als System als auch topologische Struktur, das Recht zieht dauernd die Grenzen zwischen Recht und Unrecht, System und Umwelt ... Ausnahmen bedeuten dabei Störfaktoren. Die Ausnahme verwirrt die Einheit und Ordnung des rationalistischen Systems.

In meinem Beitrag soll untersucht werden, wie sich die Juristen Roms mit der Problematik der Ausnahme und deren Verhältnis zur Regel herumgeschlagen haben. Wie ist aus der Vielfalt der Rechtssprachen und Rechtsvorstellungen des Imperium Romanum durch die sorgfältig erwogenen Entscheidungen der Juristen die Einheit eines bis heute wirkenden Rechtssystems entstanden? Im Mittelpunkt stehen ungewöhnliche juristische Konstruktionen von Verfügungen *mortis causa*.

In einem breiteren Kontext geht es auch um die Unanfechtbarkeit eines Grundprinzips der antiken Gesellschaften: das Personalitätsprinzip. Es gilt immer noch als unbestrittene Regel, dass die ‚Rechtswahl‘ der Akteure in ihren Rechtsgeschäften nach ihrem Status determiniert war (Wolff). Die Vielfalt der Völker und der von ihnen verwendeten Geschäftsmodelle haben jedoch dazu geführt, dass die handelnden Personen – ob Römer oder Peregrine – in ihrem alltäglichen Geschäftsverkehr sowohl von römischem als auch von ‚lokalem‘ Recht Gebrauch machten. Die Grenzen zwischen „Recht“ und „Unrecht“ – zwischen den sogenannten Rechtsmassen – begannen bereits in der ausgehenden Republik zu verschmelzen.

Im Schrifttum gilt als „absolute Ausnahme“ von diesem „Rechtspluralismus“, dass die testamentarische Erbfolge (Berufung *ex testamento*), die uns hier beschäftigen wird, im klassischen römischen Recht unter zwingender Regelung gestanden sei: Form und Inhalt letztwilliger Verfügungen seien von strikten Regeln, vom *ius cogens* beherrscht worden. Vergleicht man jedoch Entscheidungen der klassischen Juristen (Scaevola, Modestinus, Paulus, Ulpian) mit dokumentarischen Texten aus den griechischen Provinzen, gewinnt man den Eindruck, dass die Römer ihre erbrechtlichen Verfügungen in manchen Fällen nach lokalem Brauch artikuliert haben. Kam es zu einem Rechtsstreit vor einem römischen Gericht, entstand die Notwendigkeit, diese Rechtsverhältnisse nach den Kategorien des römischen Rechts auszulegen. Es stellte sich die spannende Frage, ob die Ausnahmen als unwirksam abgetan oder als Regel anerkannt werden sollen.

Keywords: Rechtsurkunden, letztwillige Verfügungen, Rechtsleben in den öTheorie und Praxis

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Material Bias in Greek Law

I will argue that bias in Greek legal sources is not a product of a material-immaterial source distinction but permeates Greek law.

A structural feature of Athenian law scholarship is the dominance of courtroom speeches as our most important sources. Every historian of Athenian law has to take account of the outspoken partiality of these speeches, and most do so with cautions about over-reliance on litigants' representations of what the law says. A similar feature affects the study of the law of Greek Egypt, because legal petitions, an important source of our knowledge but biased by their very nature, must be used with caution in reconstructing the substantive and even procedural law.

What is perhaps less obvious is that litigant bias also features in legal *inscriptions* found across the Greek world. We see this bias in some honorary decrees for arbitrators and foreign judges, and in other inscribed records of interstate legal disputes. I will focus on a Boiotian inscription recently published by Yannis Kalliontzis, which describes litigation of a loan dispute (in compliance with the terms of a *symbola* agreement) between the city of Orchomenos and individuals from Amphissa—and which depicts the dispute from a decidedly pro-Orchomenos slant.

My paper will show that the material-immaterial distinction in our sources does not ramify in every aspect of Greek legal history. Litigant bias permeates the “immaterial” Athenian legal speeches transmitted through the manuscript tradition, speeches that had immense influence on the development of Roman rhetorical theory and practice, and on literary and legal culture in the Renaissance and beyond. But bias is also visible throughout the material record of legal papyri and inscriptions. I will suggest that this ubiquity indicates the centrality of bias in Greek adversarial legal culture, and highlights its continuing importance in contemporary adversarial systems.

Keywords: bias, inscriptions

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Roman law and the conscience of the Christian. The case of the Apostolic Penitentiary of 1441 (PA 2bis f. 231)

The highest ecclesiastical court of the Roman Catholic Church that considers matters of conscience is the Apostolic Penitentiary (commonly known as the Tribunal of Penance). Its powers were defined by Pope Benedict XII in his constitution *In argo dominico* of April 8, 1338. This court has jurisdiction over, among other things, matters of absolution. It adjudicates especially (but not exclusively) in cases of sins whose absolution is reserved to the pope.

In 1441, an unfortunate accident occurred on the field during a football game in Glasgow. One of the players lost his life. Since the perpetrator of the brutal foul was a clergyman, the case went to Rome. The reasoning cited in his letter to the Pope shows that the ancient Roman constructs the Church applied to solve problems related not only to temporal matters, but also to eternal life. With the help of concepts such as *culpa*, *diligentia*, *impetus*, *malitia*, and *voluntas*, the salvation of the soul was to be decided.

Keywords: Roman criminal law, Canon law, sin, football

Causa contractus - material act or pure intention? For and against freedom of contracts

As is well known, medieval interpreters of Roman law (glossators and commentators) remained faithful to the Roman principle of the unenforceability of *pacta nuda*. In order to become enforceable a consent needed a *vestimentum*, one of which was the effective performance of one of the reciprocal duties agreed upon, defined as a *causa* of a contract. As opposed to the canonists and moral theologians, the civil law lawyers commonly excluded that either the mere expectation of the counter-performance or the intent to benefit the contractor was a cause sufficient to make an agreement enforceable (their principle text of reference was D.2.14.7.1). Interestingly, the civil lawyers struggled with the paradoxical idea that consent itself could work as a *vestimentum* as well, although only in the case of four typical contracts, qualified as consensual. I'll discuss the reasons of their restrictive approach to the effectiveness of the mere consent, trying to show that they went beyond fidelity to Roman sources. Of significance are the objections made by some moral theologians, who opposed as well the notion, prevailing in their movement, that the mere intention to oblige oneself is a cause sufficient to make an agreement legally binding.

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Infirmity vs Calliditas? Identifying Material and Immaterial Roots of the SC Velleianum

Revolving around the *SC Velleianum*, a prohibition that banned women from acting as guarantors since the mid of the 1st century CE, the classical Roman jurists have created an abundance of case law, which may be referred to as the "*Velleianum-complex*" (Benke 2001, 46). This body of law essentially analyses in which cases the *SC Velleianum* applied, i.e., in which cases creditors were unable to access a female guarantor's funds. While the *SC Velleianum* broadly invalidated all guarantees of women, said case law presents a different picture. Ulp. (29 ed.) D. 16. 1. 4 pr. argues, for instance, that a creditor, who lacks knowledge of the fact that he accepted a woman's guarantee in violation of the *SC Velleianum*, is able to receive in payment what the woman had promised him; Ulp. (29 ed.) D. 16. 1. 2. 3 states that the *SC Velleianum* does not apply to women, who were motivated by *calliditas*, i.e., women, who have acted in a dishonest manner. These assessments seem to undermine the *SC Velleianum*'s supposed goal – which was the protection of women, who were deemed to be at a disadvantage due to their *infirmity*. My presentation will engage with the seminal ideas that drive these assessments and analyse to which extent they prove to be (in)compatible. Further, I will examine to what extent these immaterial roots of the *SC Velleianum* are grounded in material roots, i.e., social structures.

Keywords: SC Velleianum, calliditas, infirmity, social structures

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Elliptical stipulatory clause and the influence of written practice on verbal contract

Written, material, *cautiones* were standard means of evidencing *stipulatio* as a verbal contract. These documents, tablets or others, were supposed to faithfully record the contents of the contract, the object of performance as well as the words creating the obligation, the question and the answer. In practice, however, as the sources inform us, in the preparation of the tablets, the question was occasionally left out, or forgotten, as it was primarily important to write down that the debtor responded, thus obliging himself. Concerning the strict formalism of the stipulation, this allowed for the objections and complaints leading to litigation with regard to the probative value of such elliptical stipulatory clauses and the documents comprising them. In this paper, it will be analysed how the jurists and the emperors tried to extend the probative force of documents based on common reasoning, that the answer was preceded by the question, to uphold these defective *cautiones*. It will be pointed out the presumptive nature of their arguments and argued how this *praesumptio facti* formed the basis for Justinian's *praesumptiones iuris* arising from the *cautiones*.

Keywords: cautio, stipulatio, praesumptio

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Res Furtiva, Twelve Tables and Lex Atinia

There are several Roman sources about the prohibition of *usucapio rei furtivae*. However, at first glance, they contradict each other. While Gai (2.45, 2.49) writes that it was introduced by the Twelve Tables, Paul reports that it was introduced by *Lex Atinia* (D.41.3.4.6, D.50.16.215). On the other hand, Julian (D.41.3.33.pr) and Institutes of Justinian (2.6.2) refer to both acts. Although not mentioning *usucapio*, Cicero (*De officiis* 1, 12, 37) quotes the Twelve Tables using the phrase attributed also to the *Lex Atinia* ("*aeterna auctoritas*").

According to the commonly advocated and widely accepted thesis, Twelve Tables prohibited *usucapio* to a thief and three centuries later *Lex Atinia* forbade acquisition of a stolen thing to everyone and not just the thief. This opinion is based on the assumption that some of the reports are incorrect. At the same time, Cicero's report is considered as unrelated to the stolen thing.

The aim of the paper is to challenge this thesis and to try to reconcile the sources without eliminating any one of them as unreliable but by trying to link them to Cicero's text.

Applied methods are linguistic, systemic and historical interpretation of the mentioned passages, as well as *Gellius* 17.7.1.

Key words: *res furtiva*, *usucapio*, Twelve Tables, *Lex Atinia*, *res habilis*

... quia aliud sit materia, aliud navis: Über die „Materialität“ des klassischen Pfandrechts

In seinem Ediktskommentar referiert der Spätklassiker Paulus (D 13.7.18.3) eine Entscheidung des Frühklassikers Cassius: Jemand hat ein Pfandrecht an einem „Wald“ (*silva*) bestellt; später wird aus den Bäumen ein Schiff erzeugt. Es stellt sich die Frage, ob auch das Schiff vom Pfandrecht des Gläubigers umfasst ist. Cassius verneint dies, zumal das Schiff etwas anderes sei als der Wald: *quia aliud sit materia, aliud navis*. Das Schiff sei nur dann verpfändet, wenn sich das Pfandrecht explizit auf alles erstrecken sollte, was aus dem Wald erzeugt worden ist. Wird hingegen an einem „Haus“ ein Pfandrecht bestellt, erstreckt sich dieses weiterhin auf den Grund, sollte das Haus in weiterer Folge abbrennen (Paulus D 20.1.29.2). Ist ein Grundstück verpfändet, umfasst das Pfandrecht auch später durch *alluvio* hinzugekommenes Land (Marcian D 20.1.16 pr). Wird auf dem verpfändeten Land ein Haus gebaut oder ein Weinberg angelegt, erstreckt sich das Pfandrecht auf den Überbau (Marcian D 20.1.16.2). Wie die Formulierung des Cassius nahelegt, kommt es entscheidend auf den Inhalt der Pfandabrede an. Dabei zeigt sich auch, dass die klassischen Juristen wie so o ihr Denken an der Klagsformel orientierten: Die dingliche Pfandklage bezieht sich darauf, dass die Sache, um die es geht, von der Pfandabrede umfasst ist (*Si paret inter Aulum Agerium et Lucium Titium convenisse, ut ea res qua de agitur Aulo Agerio pignori esset propter pecuniam debitam ...*). Dementsprechend kann der Gläubiger nicht auf ein Schiff greifen, wenn sich die Pfandabrede bloß auf den Wald bezieht, aus dessen Holz das Schiff entstanden ist.

Keywords: roman law of pledge

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Gods, grants and grace. Corporate personhood of religious institutions in Roman law

This paper deals with the recognition of corporate personhood in Roman law, particularly that of religious institutions and associations. I believe some continuity may be found between pre-Christian grants of personhood and the situation in Justinian's Code. The latter slots into and makes use of an already existing world. In turn this raises the question how older, political grants of personhood by way of fiction fit within more Christian doctrines. My particular point of departure is the honorific grant of *ius liberorum* to certain religious institutions in the Roman world (Cassius Dio 55.2.7 and UE 22.6). Traces of the pre-Christian construction of personhood of religious institutions can be found in some texts in the Digest as well, most notably in Scaevola's treatment of a fideicommissum made over by a certain Attia (Dig. 33.1.20.1, Scaevola, 18 Dig.).

Keywords: Classical Roman law, religion, personhood, *ius liberorum*

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Why It Matters? The Use of Legal Language in Ancient Roman Verse Satire

The relationship between the fields of law and satire has always been closely intertwined, with both serving as means of punishment and social control. In ancient Rome, this connection was particularly pronounced due to the fact that satirical writing often addressed pressing social problems, including those related to the law, and legal training was a standard part of education. As a result, juristic language and topics became a familiar presence in both everyday and literary life of Rome.

Four Roman satirists – Horace, Persius, Juvenal, and Martial – gladly included legal language in their works, but often not in conventional (juristic) sense. Consequently, modern legal scholars often consider these references as *incorrect* and merely *poetic* applications of the legal language, rather than *relevant* and *material* for their research on ancient Roman law institutions.

This paper proposes an alternative approach to understanding the legal language present in ancient Roman verse satire. Rather than offering an in-depth analysis of legal institutions, it aims to explore how interpreting satire through the lens of law can inform our understanding of these works. By doing so, it provides a fascinating way to dispel doubts that can arise when the legal meaning of the phrases used by the satirists is not taken into account. In other words, this approach shows how the seemingly *immaterial* concepts of law and jurisprudence can help us better understand and explain the abstract, metaphorical concepts present in satirical poetry through more tangible, concrete examples.

Keywords: Roman Law in Literature, Roman Satire, Legal Language

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The Rule of the (Un)Written Laws in Ancient Athenian Legal Culture

No concentrated collection of written laws existed in Athens until the end of the fifth century BCE. The first written law-code had been that of Draco's in ca. 621 BCE, and in the 590s BCE, Solon had revised all Draco's laws except for the homicide law. During the last decade of the fifth century BCE, Draco's and Solon's laws were collected and written in stone. At that time, the Athenians declared that a new era regarding the laws had begun and that unwritten laws were no longer in force. This did not mean, however, that the unwritten laws – understood as ancestral and divine principles or regulations not written down but generally accepted by the community and/or enacted by the gods – would have lost their significance; indeed, there are numerous allusions to unwritten laws in the law-court speeches produced in the fourth century.

Against this background, my presentation will focus on the intersections of written and unwritten laws in Athenian legal culture. I will examine the interaction between written and unwritten laws in philosophical writings (Plato, Aristotle) and in political and law-court speeches (Thucydides, Demosthenes). Based on these sources, I will analyse the effects of writing down the laws on the decision-making of the juries (composed of laymen selected by lot) and on the litigants' court-room rhetoric. In this connection, I will bring into discussion the significance of the idea of the rule of law for the juries when deliberating their judgments. My presentation will therefore contribute to the ongoing scholarly discussions on the role of the rule of law in Athenian courts. I will illustrate that unwritten and written laws were closely intertwined in the minds of the sentence-giving jurors and that the question whether the Athenians adhered to the principle of the rule of law is intricate and complex.

Keywords: laws, legal culture, rule of law, Ancient Greece, Classical Athens

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Corpus and Animus as Material Instruments to Perform Possessory Activities

For legal effects to be produced, an immaterial human activity is almost always necessary; in the field of possession, in the other hand, it must result in physical contact between man and thing. In view of its peculiar constitution, the ordinary rules for the acquisition, conservation and loss of rights could not be applied to possession, and it was therefore necessary to identify methods more suited to its particular nature: they were found by referring to the physical dimension of man, which, according to a consolidated philosophical-scientific tradition in antiquity, was composed of an element of an intelligent spiritual nature (*animus*) destined to govern the other, of a material nature (*corpus*). In the classical sources the terms *corpus* and *animus* refer to two distinct means by which man can operate over possession, they simply indicate the parts of the human being, through which he can interact with things and have possession of them. The Romans spoke of a *possidere corpore*, i.e. with one's own body; on the other hand, the term *animus* in the context of *possessio* does not indicate an attitude of mind, but is in fact the possessor's own mind or soul through which a kind of 'mystische Macht', according to Axel Hagerstrom's original expression, is exercised over the thing.

Keywords: Corpus, Animus, Possessio

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Il munus hospitalitatis attraverso le fonti non codicistiche

Il *munus hospitalitatis*, identificato con l'onere fiscale imposto ai *possessores* di fornire ospitalità e ricovero ai funzionari civili e alle milizie durante l'espletamento delle loro mansioni ed operazioni belliche, è stato oggetto di numerose disposizioni imperiali, raccolte, principalmente, in C.Th. 7.8 "*de metatis*", 7.9 "*de salgamo hospitibus non praebebendo*" e 7.11 "*ne comitibus et tribunis lavacra praestentur*"; parallelamente, la nostra conoscenza di questo tributo è arricchita dall'apporto di numerose testimonianze, *extra codicem*, di carattere archeologico, epigrafico e papirologico.

Il presente contributo intende esaminare una selezione di queste fonti per, poi, coordinarle con le *leges* contenute nel Codice Teodosiano, con l'intento di verificare rispondenze, giustapposizioni ma anche eventuali contraddizioni.

Nello specifico, dal punto di vista archeologico, si analizzeranno le risultanze di scavi relativi alla struttura di alcune *domus*, il cui sviluppo architettonico subito in età tardoantica potrebbe essere stato influenzato dalla pratica della *deputatio tertiarum* (disciplinata da C.Th. 7.8.5), cioè la suddivisione dell'abitazione in tre porzioni, di cui una sarebbe stata destinata al richiedente ospitalità.

In secondo luogo, ci si soffermerà sull'indagine del rescritto di Settimio Severo e Caracalla del 204, noto solamente attraverso iscrizioni latine e greche, che menziona un senatoconsulto che garantiva l'esenzione dal *munus hospitalitatis* per i senatori *inviti*.

Infine, per quanto concerne la documentazione papirologica, si prenderà in esame P. Oxy. XV. 1813, testimonianza della circolazione orientale della silloge di Teodosio II. Infatti, il prezioso lacerto consiste nella parziale trascrizione proprio di C.Th. 7.8, non del tutto coincidente con il testo codicistico.

Keywords: *munus hospitalitatis*, *deputatio tertiarum*, Codice Teodosiano, planimetrie

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Causalidad y responsabilidad contractual

Desde hace tiempo la romanística ha puesto de relieve el empleo de criterios de causalidad por parte de los juristas romanos, en particular en sede de delitos y, más específicamente, en la interpretación de la ley Aquilia. Pero menos estudiado parece encontrarse el razonamiento causal en sede de responsabilidad contractual. El hecho de constatar que en ciertos fragmentos –como aquellos que se ofrecerá a discusión– los juristas romanos operaron con criterios de causalidad en materia de responsabilidad contractual, lleva a conjeturar que quizá lo hicieron, además, sistemáticamente.

El objetivo de esta presentación es ofrecer algunos ejemplos extraídos del campo de la responsabilidad contractual en los cuales puede observarse cómo los juristas romanos emplean esquemas de pensamiento en los cuales se exhiben razonamientos en torno a la causalidad, en materia contractual. Ello es importante por tres motivos: el primero, porque permite profundizar acerca de ciertas características relevantes del pensamiento jurisprudencial romano, esto es, acerca de la aplicación de criterios de la causalidad a la materia de la responsabilidad contractual. Ello, como es lógico, incide en el conocimiento de que disponemos acerca de la argumentación de los juristas romanos. En segundo lugar, porque permite, nuevamente, abordar las relaciones entre filosofía antigua y jurisprudencia romana. En efecto, la perspectiva acerca de la causalidad fáctica no es ajeno a la filosofía antigua, como lo demuestra Cic. top. 16, 60-63. En tercer lugar, porque permite ofrecer una base de comparación entre el aparato conceptual del derecho romano y el del derecho moderno en relación con la causalidad, lo que abre la posibilidad a comparar críticamente los criterios de solución entre uno y otro ordenamientos sobre esta clase de problemas.

Keywords: responsabilidad contractual, causalidad, razonamiento

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Immaterial factor in the law-making of the Roman Republic

It would be interesting to determine the influence of beliefs and rites on the legislative process in the Roman Republic, as well as the role of priests in this process. The influence of pontiffs and augurs on the Roman law is undeniable, but the extent of this impact is still not established. The College of Pontiffs announced a calendar of *dies fasti*; the college of augurs interpreted the signs sent by the deities. It is worth considering, if it is possible now to fully find out how their influence translated into the very passing of the law by the popular assembly. Was it and did it have to be regulated by the human law? Did beliefs and priests have an impact only on the technical side of the legislative process, or on the content of legal acts too? Was it abused? The source texts bring one some answers, but the immaterial factor in the Republican law-making seems to be both appealing and elusive.

Keywords: law-making, priests, Roman Republic

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The resurrection of noxal surrender: limitation of shipowner liability for collision damage in Roman-Dutch law

The concept of noxal surrender stands out as one of the most peculiar features of Roman law. Originally a mere complication of direct redress against a delinquent slave, noxal liability was reconceptualised already by the time of classical law as a form of strict liability of the owner, in deviation from the principle of fault-based liability. Noxal surrender, in turn, was rationalised as an equitable means to mitigate the unfairness that was inherent to strict liability, as noxal surrender warranted the owner against any further damage than the loss of his slave. Further developments were hampered, as it is generally assumed that the concept did not survive the gradual relinquishment of slavery on the European continent. It could therefore not have been received into the *ius commune*, apart from incidental occurrences in the law of liability for animals.

Contrary to common perception, it will be hypothesised that noxal surrender has in fact made a remarkable re-entrance into European private law. In the case of *Jansdr. v. Blaeu* (1617-1640), the Supreme Court (*Hoge Raad*) of Holland considered a statutory strict liability of shipowners for collisions involving their ship and decided that this liability was to be limited to the value of that ship. In order to arrive at this liability limitation, so it will be argued, the Court drew extensively on the Roman law of noxal surrender – or more specifically, the arguments of equity adduced in the Digest to support it. The case has survived both in the archives of the Court and in a published case report (Coren's *Observatio* 40), and exerted a considerable influence on the development of limited shipowner liability in Roman-Dutch law and beyond. As such, it stands at the basis of the modern doctrine of limitation of liability for maritime claims.

Keywords: Noxal surrender, shipowner liability, collision, maritime law, Roman-Dutch law

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Acquisition of the Possession of the Estate's Assets. Materiality and the Non-Roman Origins of «Possessio Civilissima»

As Jörg Domisch has concluded in his doctoral thesis published in 2015, Roman Law required in every situation the seizure of the estate's assets for the acquisition of its possession. This applied to the voluntary heirs (*heredes extranei*), as it was expressly stated in an extract from *Iavolenus libro primo epistularum* (D.41,2,23 pr.). But the same solution was applied to the *necessarii heredes* and the *sui et necessarii heredes* (who became heirs without having to accept the inheritance), which stems from texts like Gaius 3,34 and 4,144, thoroughly examined by the much-missed Professor Eric Pool.

It is true that a large body of opinion advocates that seizure was not required for the last two categories of heirs, an approach already present in the Accursian Gloss. However, this view is based on an interpretation of sources concerning *usucapio pro herede* and the *furtum* of the estate's assets that do not allow such extrapolation. Thus, in my opinion, the origins of the so-called *possessio civilissima* and its immateriality (by which, in the words of Lena Kuntz, "an heir possesses the deceased's belongings right after the death without further ado") are entirely non-Roman.

Keywords: acquisition of possession, estate's assets, *possessio civilissima*

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Laws as Oaths

What is the basis for the authority of law in ancient legal thought? is it a maxim that one must obey the laws of the ruler or the divine, or is there a different rationale substantiating the authority of legal norms? The article will seek to present a novel answer to this question through the comparative study of several texts of ancient law, focusing on the connection between laws and oaths. Famously, in the Hebrew Bible, the commandments are part of a covenantal oath-based structure. As such they are thought to be rooted in a very particular Israelite theology. The existence of substantial parallels to this framework from other ancient Near Eastern regimes is much debated among scholars, but even the maximalists see such possible parallels as limited to the specific Hittite context of the *"išḫiúul"*. Contrary to this view, the paper will argue that the oath-based framework of laws is a broad-ranging paradigm, that spans throughout various ancient legal regimes, independently of a covenantal structure. Moreover, the framing of laws as oaths is not unique to priestly texts like the *Šurpu* incantations, but rather is evident also in the laws of Hammurabi, as well as in legal texts from ancient Greece. The examples to be discussed will demonstrate that throughout this ancient cultural milieu the imposition of the laws was perceived as the imposition of sworn oaths. Based on this finding, the paper will further argue that this conceptual characteristic of ancient law is indicative of the legal theory on which it is predicated: all mighty kings and even the almighty Yahweh cannot impose their laws as mere commandments; for the law to be binding it depends on the quasi - autonomous mechanism of an oath.

Keywords: laws, oaths, covenant, curses

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La funzione giuridica della proposizione relativa proto-indoeuropea

Language of the paper: Italian

Language of the abstract: English

Proto-Indo-European probably knew two types of relative clauses. One, where the relative clause follows the main clause, and a correlative one, where the relative clause precedes the main clause. Similarly, the oldest records of Indo-European languages preserve two types of relative pronoun: **yo*, found in Sanskrit and Greek, and **kwi*, found in Hittite and Latin. The two phenomena are crossreferenced: Archaic Latin and Hittite attest a marked use of the anticipated relative clause, while Greek and Sanskrit already regularly present the plain relative clause. In addition to a possible structural correspondence, a potential element of archaism also comes into play: Greek and Sanskrit belong to a later phase than Hittite, whose departure from the protolanguage probably precedes the formation of late PIE, and archaic Latin, which presents elements generally considered more conservative in terms of dependence on the original model. Besides structural and historical aspects, however, the difference rests on the literary genre. The oldest literature in Greek and Sanskrit, such as the Homeric epos or the Rigveda, is poetic in character. The oldest literature in Latin and Hittite is legal, instead, such as the XII Tabulae and the Code of the Nesi-lim. The more conservative nature of legal language may certainly have played a role in maintaining the correlative structure. But this could also be connected with a peculiar linguistic legal mode of expression and its evolution. Earlier prescriptive forms have indeed conditional structure. A relative clause allows a further qualification within the norm. The anticipation of the relative clause makes both the norm formulated with the relative and the norm formulated with the conditional *similar in structure*: *si X, is Y*; *qui X, is Y*.

The aim of this paper is to investigate this aspect and to show how an immaterial legal tradition has been transmitted through language.

Keywords: relative clause, legal language, PIE

Une explosion agonistique: Modestin and Materiality in Dig. 50.12.10 (Mod. 1 Resp.)

In imperial times, a grand revival of 'Greek' games, contests and festivals can be seen in the eastern part of the Roman Empire. According to the French scholar Louis Robert this revival can be described as *une explosion agonistique*. Eminent citizens of Hellenistic cities promised to finance games, contests and festivals by which means they tried to achieve great acclaim. This practice is not only evident from epigraphical and papyrological sources, but can also be seen in Modestin's *responsum* of Dig. 50.12.10 (Mod. 1 Resp.), which originates from above mentioned imperial times, namely the second / third century AD. The introduction, the legal question and the answer of this *responsum* were all drafted in Latin. The body of facts, however, is derived from a document in Greek, which has been copied into the *responsum*. This document in Greek is an indication that this case took place in the Roman East. In the case of Dig. 50.12.10 (Mod. 1 Resp.), a citizen named Septicia promised a sum of money, so that once every four years a *thymelic* festival would be organised in her city. She stated only one condition, namely that her husband or her sons would preside over these 'ἄθλα τῶν θυμελικῶν'. This condition eventually led to legal proceedings, in which the Roman jurist Modestin was asked to give an advice (*responsum*). In this presentation, Dig. 50.12.10 (Mod. 1 Resp.) will be analysed thoroughly and will be embedded in its proper legal, historical and material context.

Keywords: Roman Law, Games, Legal Bilingualism, Roman East

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Recent Contributions in the Field of Natural Law: Ancient Evidence and Modern Theory

Recent years have witnessed a genuine proliferation, in the Anglophone world, of monographs and articles, including collections of articles, dedicated to the subject of Natural Law. There are a number of reasons for this, including important political and legal developments that have occurred in the United States. Almost inevitably, a number of these contributions cite ancient sources as authorities, including the Roman jurists.

To cite one example in place of numerous possibilities, there is C. Wolfe and S. Brust eds., *Natural Law Today: The Present State of the Perennial Philosophy*. Lanham, MD: Lexington Books, 2018.

This paper offers a critique of the use made in these works of ancient authorities regarding Natural Law. Not surprisingly, perhaps especially in cases where there is no evidence that the sources have been accessed in the original, the impact is often minimal, with Greek and Roman authors cited without much if any discussion. At worst their views are reduced to caricature, but, even in the best of circumstances, doubts sometimes arise as to whether they say in fact what they are assumed to say.

This problem raises an interesting pair of questions. Is there in fact an alignment between modern and ancient notions of Natural Law and, if so, to what extent does this hold?

Keywords: Natural Law

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Transcending corporality. Managing a dead person's last business

Taking care of the burial of a dead person is an act of piety which may also give rise to a claim for recovery of the expenses by means of an *actio funeraria*. This action is closely connected to the idea of managing the affairs of the deceased and thus could overlap with claims based on negotiorum gestio. As the *dominus negotii* is not living any more it becomes legally difficult to determine which and whose interests have to be taken into account by the person who is organizing the funeral. The paper discusses in which ways Roman law respects the will of the deceased – albeit he is materially no longer among the living.

Keywords: negotiorum gestio, actio funeraria

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Considerations on the peculiarity of Plautus' *Rudens* and *fides*

In a series of Roman Comedy written by Plautus, there are characters with typological characteristics, so-called stock characters, e.g. '*adulescens amator*' and '*servus callidus*'. One of such characters is the '*leno*', translated as pedant, who makes his living owning or arranging '*meretrix*'. The '*leno*' is usually referred to as a '*violator of *fides* (*infidus*)*' and is subjected to relentless attacks in Plautus' plays, with the concluding part of the play usually depicting their utter destruction.

Including the Plautus' 21 surviving plays, '*leno*' appears in seven. In six of them, the play ends with the destruction of the '*leno*' in contrast to the fulfilment of the young man's love or marriage. *Rudens*, however, is unique: whose concluding scene shows that not only does '*leno*' escape destruction, but he is also invited to a feast as one of the other characters and is accepted into the community.

This paper is based on the hypothesis that the concept of *fides*, which has an important meaning in Roman society, may play a significant role in the peculiarity of the ending of this play. To support this, we first consider the nature of Plautine comedy and the meaning of stock characters, then identify the characteristics of '*leno*'. To explore why *leno* is oppressed in Plautus, we focus on '*servus callidus*', who is rarely punished in the play, even though he often deceives their own masters. We also inspect the outline of the play, particularly in relation to *fides*. In conclusion, we will try to show that *fides* is the important factor working to the peculiarity of this play, which has not been mentioned before.

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Historical development of agreement for selling collateral and its significance from the viewpoint of legal policy

Regarding the nature of *Pfandrecht* and the consequences of the collateral in the event of default, the prevailing view was that, in the old days, the collateral would be confiscated by the obligee (so-called Verfallpfand). In contrast, Verhagen (2013) divides the historical development of collateral sales into three stages, explaining the process by which agreement for selling collateral gradually became commonplace. In this regard, Tabulae Pompeianae Sulpiciorum (TPSulp.) excavated from Pompeii in the 1st century AD reports that the agreement was made between the creditor and the debtor in setting the security interest that the creditor has the right to sell the collateral in the event of default (TPSulp. 79). There might be a dispute among classical jurists as to whether a special agreement was required for the right to sell, but Ulpian's text (D.13.7.4) and contemporary constitutio (C.8.34.1) let us know that in the first half of the 3rd century no special agreement was required. What significance did this system have in terms of legal policy? This paper stands in the position that selling collateral has the advantage of avoiding the risk of the price of the collateral increasing or decreasing for both parties, it is thought that jurists and emperors who positively evaluated the merits adopted the agreement to sell collateral as a legal policy, there was a policy intention to prevent the expansion of the lex commissoria, but the effect of that policy was limited.

Keywords: Verfallpfand, TPSulp. 79, Agreement for selling collateral

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Plautus as Source for Dos in Archaic Roman Law

Comedies of Plautus have been popular among legal and literary scholars as a source of archaic Roman law. Though caution is well advised due to Plautus' use of works of new Attic comedy, their contamination without identification and subsequent amalgamation with realities of contemporary Roman life, original Plautine elements have been identified most famously by Fraenkel. Modern caveats as to supposedly un-Roman aspects in Plautus can be found in the Oxford Handbook of Greek and Roman Comedy, unfortunately the representation of Roman law provided by the authors of the handbook is somewhat lacking in precision. Taking into account the aforementioned, Plautine characters using spoken and somewhat less cultivated Latin paint a vivid picture of Roman society of his time. This makes Plautus a good extra-legal source for studying the perception of and social attitudes towards various legal institutes (and institutions) by the lay folk. Presentation will focus on references to dowry (dos) in comedies, not limited merely to quantitative analysis of the various lexemes found in them (i.e. dotalis, dotatam, indotatam etc.), but will also take into account the context in which the various terms are used with emphasis on the comedies Trinummus and Aulularia due to prevalence of the dotal terms in them. Particularly of interest will be the connections that Plautus draws between dos and matrimonium, the amount of dos and its impact on the relation between the spouses, assets furnished as dos as well as general observations on the connection of dos and traditional Roman moral virtues.

Keywords: Plautus, dowry, dos, archaic law

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Acerca del uso de los vocablos '*mando*' y '*mandatum*' en las fuentes relativas a la *delegatio*

El acto inicial de la operación delegatoria, por el que el delegante encomienda al delegado una gestión ante el delegatario, se identifica con un *iussum*. En las fuentes, sin embargo, con frecuencia se emplean otras locuciones para aludir a este encargo delegatorio. De entre estas expresiones alternativas destaca especialmente el empleo de los giros '*mando*' y '*mandatum*', puesto que este vocabulario es uno de los antecedentes -junto con el que en ciertos supuestos de *delegatio* se mencione una *actio mandati*- que ha llevado a que se afirme que el impulso delegatorio constituye o bien puede estar constituido por un contrato de mandato.

El trabajo que se propone se aboca al estudio de la terminología de que se sirven las fuentes para designar el encargo delegatorio, con el objeto de determinar si ella permite o no fundamentar la tesis que sostiene que un contrato de mandato es parte integrante de la operación delegatoria.

Keywords: Delegatio, iussum, mando/mandare, mandatum.

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Alcuni aspetti dei diritti e degli obblighi delle parti in *servitus oneris ferendi*

La relazione si propone di esaminare la natura dei diritti e degli obblighi delle parti nella costituzione di una servitù per mantenere un muro. A questo proposito verranno esaminate, analizzate e confrontate le opinioni di diversi giuristi romani. L'attenzione verrà concentrata sulle informazioni che riceviamo dalle fonti a proposito di quello che poteva essere concordato tra le parti e dei rimedi in caso di violazione degli obblighi assunti. Nella misura in cui la *servitus oneris ferendi* rientrava nella categoria delle servitù urbane, la natura dei diritti e degli obblighi delle parti in base ad essa sarà confrontata con quella di altre servitù della stessa categoria allo scopo di cercare di comprendere le diverse opinioni dei giuristi romani sulla natura della servitù in esame.

Keywords: *servitus oneris ferendi*, servitù urbano, diritti e obblighi

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CID I 9: leggi dell'unità-minore e leggi della polis

Oggetto dell'intervento sarà il noto Cippo dei Labiadi (*CID I 9*), nome nel quale si riconosce e si identifica una delle unità-minori della polis delfica. Si tratta di un blocco calcareo, alto poco più di un metro, iscritto per oltre 200 linee di testo *stoichedon* su quattro facce nella prima metà del IV secolo a.C. Per usare le parole che Margherita Guarducci riferiva alle leggi di Gortina, l'epigrafe si presenta come «una *satura legum* cioè una raccolta di articoli non sempre ben collegati l'uno all'altro: si tratta spesso di frammenti di leggi più antiche inserite nella trama di leggi nuove che in parte modificano le leggi precedenti in parte le arricchiscono di aggiunte ispirate da esperienze più recenti». Sappiamo per certo, infatti, che l'iscrizione accoglie in almeno due punti il testo di epigrafi di età arcaica (*CID I 9bis* e la roccia di Panopeo, non ancora inserita in una raccolta epigrafica, con coordinate 38°29'45.348" N, 22°47'44.52" E). Le prime due facce, la faccia A e la faccia B, contengono il regolamento relativo ai nuovi ingressi nell'unità minore e ai sacrifici ad essi collegati. La terza faccia, la faccia C, sembra accogliere una legge della polis di natura sontuaria sui funerali che demanda fissazione e riscossione delle multe ai Labiadi. La quarta ed ultima faccia, la faccia D, contiene disposizioni relative alla vita religiosa dei Labiadi e di tutto il corpo civico delfico. Scopo dell'intervento sarà quello di ricostruire il funzionamento dell'unità minore grazie alle norme registrate sulla sua epigrafe, e il suo rapporto con le istituzioni e le leggi della polis, di cui sembra essere interprete ed esecutrice.

Keywords: Delphi, Labiadai, polis, citizenship, legislation

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Aron Aleksander Olizarowski's Considerations on Law

Aron Aleksander Olizarowski was probably the first professor of Roman law (civil law) and one of the most outstanding scholars at Vilna Academy in the 17th century. He is the author of work *De politica hominum societate*, which was published in Gdańsk in 1651. It was undoubtedly a publication which was a systematic outline of knowledge on society and state. The first book (part) - *De Domo* - had significant importance from the point of view of Roman lawyer because it contained the analysis of the institution of marriage and family. Aron Aleksander Olizarowski discussed the purpose of marriage and its consequence according to Roman and canonic law in it. His considerations on concluding the marriage (*matrimonium*), on the age of spouses and on the *secundae nuptiae* of a widow are also worth mentioning. The author of *De politica hominum societate* was granting the full power over wife to husband and recommended him a love and respect to her. He was referring his views to present (17th century) legal regulations and was trying to compare them with Roman law institutions. Aron Aleksander Olizarowski presented interesting dissertations about the relations between parents and children and on the content of paternal authority. Such insightful analysis of problems presented in the dissertation may confirm good scientific background of Vilna's professor. Aron Aleksander Olizarowski knew Roman law and was able to use this knowledge skilfully during works on his *opus vitae*.

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The possibility of an early Greek legal history beyond philology: on material approaches to the Mycenaean tablets

Was it inevitable that the invention of script would lead to the emergence of written law? In seeking an answer to this problem in the specific context of ancient Greek law, the scholarship has focussed on the earliest inscriptions of codes from seventh-century Crete, offering a buffet of explanations. Among the competing views is a general tendency to ascribe to the writing of law certain normative values, such as its supposed greater accessibility, or its purported guarantee of more equal justice, and the like. Yet such approaches fail to answer why the first emergence of written Greek in the Linear B script used by the palaces of the Late Bronze Age never did lead to written law despite the advanced uses of script in the palatial administration. Although the Mycenaean epigraphy contains no 'legal' documents in the positivist sense, this paper argues that this earliest written Greek evidence still provides insight into key problems relevant to legal history, in particular proprietary relations. The few treatments of these sources from a legal historical perspective have attempted to reconstruct the Mycenaean administration as an advanced, central system of sovereign law-making and adjudication based on speculative philological readings supplemented by comparison with the Near East. This paper shall take a different approach, focussing on the material aspects of the Mycenaean documents, considering their form, and mode of production to reveal the relationship between power and language in this Late Bronze Age context. It is argued that these earliest administrative documents, considered in this way, serve to complicate evolutionist narratives of the emergence of written law found in the scholarship on the re-emergence of writing in Archaic Greece.

Keywords: Greek law, materiality, epigraphy, Mycenaean, Bronze Age, methodology

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Common origins and purpose of rituals in Roman law

Roman law may be considered as the most-developed legal system of ancient Europe. Owing both to the mediaeval reception of Roman law and to the focused attention of lawyers in the 1800s, it established itself as the grass-roots of all significant codifications of private law. Without doubts, even the current legislation follows the heritage of ancient Rome in many aspects, be it either in terms of the system of law or in terms of the contextual parallels.

However, only limited attention has been paid to rituals and symbols that accompanied almost every aspect of life of the ancient Roman citizen. And yet it must be stressed that the performance of many rituals was required by law, the exact execution of the prescribed formal procedure was a condition for the success of the legal act.

The aim of this paper is to investigate to what extent a common origins and purpose of rituals can be traced. Are we really able to trace the religious or magic origin of the ritual legal acts as some scholars claim? Is formalism, and thus applying of rituals, a primitive or, conversely, an advanced and sophisticated means of law? Which rituals were set forth already by customary law on the one hand and which were set forth by written law on the other hand? As far as the functioning of the rituals is concerned, it appears necessary to verify whether the shared segment of the rituals is the ensuring of legal stability amongst the participants of the legal relationship; or, whether the aim of the ritual is to influence the psychology of the man, hence supporting the determination of the parties to the legal relationship to fulfil their respective obligations; or to emphasise the importance of certain legal facts.

Keywords: ritual, symbol, mancipatio, formalism

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Le statut des *res religiosae* en droit romain: essai de synthèse

Les normes romaines concernant les choses affectées à la religion païenne (*res divini iuris*) sont un excellent terrain pour comprendre l'imbrication entre sources matérielles et immatérielles. Les sources juridiques transmises par la tradition manuscrite (Digeste ou encore Institutes de Gaius) nous semblent assez rigides et lacunaires dans les principes qui s'y exposent, à savoir une sorte d'indisponibilité de principe de ces choses au commerce humain en raison de leur affectation divine. Dans le domaine des *res religiosae*, que les juristes assimilent aux tombeaux, de nombreuses sources matérielles montrent à l'inverse des cessions de tout ou partie de tombeaux ou encore de terrains contenant des sépultures. L'archéologie montre également des réaffectations de lieux qui, a priori, n'auraient pas pu être transformés en tombeau compte tenu de leur statut public. La doctrine s'est traditionnellement divisée en deux courants dans l'analyse de ces problématiques, la première, essentiellement fondée sur la lecture des sources juridiques se prononce pour une inaliénabilité absolue des tombes et la seconde, en se fondant sur une considération des sources épigraphiques se prononce pour une inaliénabilité relative encadrée au regard de la fonction sépulcrale de la sépulture. Après avoir discuté un texte de Gaius qui fait état de l'abandon des tombeaux au dieux Mânes nous tenterons de dissiper certains malentendus au sujet de la « propriété » divine et également de faire émerger une trame théorique intégrant l'idéologie religieuse romaine afin de concilier les conceptions juridiques avec les exigences pratiques qui relèvent du statut des tombeaux et de la gestion de la mort au quotidien.

Keywords: Droit romain, choses religieuses, tombeaux, idéologie funéraire

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Mag. iuris. Janko Paunović

On the law of dowry in the Statute of Kotor

Dear ladies and gentlemen,

the topic of my proposal for participation at this year's *SIDHA* Conference is the right of dowry in the Statute of Kotor (created from the end of the 13th century to the middle of the 15th century, printed in Venice in 1616) and the influence of Roman legal reception, namely

Justinian's *Corpus Iuris Civilis*, subsequent Byzantine legal practice (*Eclogue*, *Epanagoge*, *Eisagoge*, The *Prochiron* of Basil the Macedonian and the *Basilika*), as well as the influence of the work of notaries (mostly foreigners) and the Venetian Statute from 1242 (*Statuto Veneto - Statutum novum*), passed under Jacopo/ Giacomo Tiepolo.

The Statute of Kotor comprehensively regulates relations in the community (in the autonomous city of Kotor). In terms of having its own Statute, Kotor was no different from other cities on the eastern Adriatic coast. The Statutes in the eastern Adriatic were divided into two groups, northern and southern.

The central research question of my upcoming dissertation concerns the regulation of the dowry - the *dos*/ the *perchivium*/ the *parchivium* - in the Statute of Kotor. My work will take the dowry law in the Statute of Kotor as a starting point, compare it with the dowry law in Justinian's *Corpus Iuris Civilis* and focus on the influence or reception of the ancient Justinian dotal law in the dowry law of the Kotor Statute.

The dowry is regulated in the Statute of Kotor in more than 25 chapters. The provisions on *dos* in the Statute of Kotor come from different times. It is primarily about the ban on sale, pledging and the requirement of writing (*dota notale*). This written requirement is one of the central dowry provisions in the Kotor Statute.

Keywords: Dowry, Statute of Kotor, Corpus Iuris Civilis

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From Material to *Opus*. Some Thoughts on the Greek-Philosophical Influences of the *Locatio Conductio Operis*

In the writings of the Roman jurists, we can find both simple explanations of the meaning of words as well as extensive or restrictive interpretations. Some of these passages also occur in the detailed 16th title of the 50th book of the Digest, entitled *de verborum significatione*, but the compilers probably pursued a different purpose than the authors of the texts in question: it is not the educated Roman who is to be supported in better understanding, but the reader of Greek origin who had a very good command of the Greek language, but not always of Latin.

One of the most famous examples is Paul. 2 *ed.* D. 50.16.5.1, in which Labeo defines *opus locatum* by contrasting the two terms ἀποτέλεσμα and ἔργον, which constitute concepts of Aristotelian philosophy. Why the jurist used these terms to complete the Latin explanation, to what extent they contributed to the conceptualization of the *locatio conductio operis* and which other Greek expressions/concepts left their (in)visible traces in Roman jurisprudence will be analyzed in the lecture.

Key words: *locatio conductio operis*, *Graeca* in the Digest

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Ancient Mayan Law: Steles vs Tradition

Ancient law is not only European and Asian law. Other continents had parallel cultures who had their own rules/laws. A society can't exist without laws. Therefore, the study of ancient law can also be done by studying other cultures that existed in other continents from 800 BC to the fall of the Roman Empire.

The Mayans settled in Mesoamerica 2000 BC and they started building their first cities in 800 BC that is at the same time that the antiquity began. As they created cities, they also created laws. Even though there are different studies regarding the Mayan law, it has been very difficult to reconstruct their legal system. When the Spaniards arrived to America in the 15th century, they destroyed the Mayan literature (that wasn't much), and only the steles and a few written amate sheets survived. At the beginning it was believed that the legal system of the Mayans was based on punishment. However, the oral tradition has revealed otherwise...

El derecho de la antigüedad no es solamente el derecho europeo y asiático. Los demás continentes contaron con culturas que florecieron paralelamente con sus propias reglas y su propio sistema jurídico. Una Sociedad no puede existir sin leyes. Por ello el estudio del derecho de la antigüedad puede darse también estudiando otras culturas que existieron entre el 800 a.C. y la caída del imperio romano.

Los mayas se establecieron en Mesoamérica en el año 2000 a.C. y ellos iniciaron a construir ciudades a partir del 800 a.C., lo que coincide con el inicio de la antigüedad. Conforme los mayas crearon sus ciudades, también crearon sus leyes. Sin embargo, a pesar de que hay diversos estudios del Derecho Maya, reconstruirlo ha sido muy difícil. Con la llegada de los españoles en el siglo XV se destruyó la literatura maya (que era poca). Solamente las estelas y pocos cuadernos escritos en hojas de amate sobrevivieron. Inicialmente se creía el Derecho Maya era un Derecho basado en el castigo, pero la tradición oral ha mostrado otra cosa...

Keywords: Mayan Law, Forgiveness, Remediation

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Ius sine scripto and νόμος γεγραμμένος. For a Comparison of Roman Private Law and the Legal Experience of Athens

The paper, on the one hand, takes as its starting point the well-known passage by the jurist Ulpian recorded in D. 1.1.6.1 (*ius nostrum constat aut ex scripto aut ex non scripto*) in order to emphasise, in the context of Roman republican private law and the age of the principate, the role played by orality (both at the level of the sources of law and at the level of litigation and substantive law) as opposed to the use of writing. On the other hand, the Roman reality based on orality shall be compared with that - recalled by Ulpian himself - of ancient Greece (and, in particular, Athens), where the constitutive importance of writing makes it possible to outline an ideal model diametrically opposed to Rome.

Keywords: orality, writing, Rome, Athens

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Materialität und Recht am Beispiel kaiserzeitlicher defixiones in fures

Der Vortrag beschäftigt sich mit lateinischen *defixiones in fures*, die von Bestohlenen in einem rituellen Akt schriftlich, zumeist auf Bleitafeln eingeritzt und gefaltet, gegen oft unbekannte Täter gerichtet und danach vorwiegend in Grabanlagen, Brunnen oder bei Heiligtümern deponiert werden. Solche archäologischen Funde wurden in der Literatur (A. Audollent, F. Graf, J.G. Gager) seit jeher von Fluchtafeln im Zusammenhang mit Prozessstreitigkeiten, Liebeswerben, Agonistik oder wirtschaftlicher Konkurrenz abgegrenzt. In der neueren Lehre interpretiert man sie häufig als „Gebete für Gerechtigkeit“ (*prayers for justice*), die sich als eigenständige Kategorie von den Bindezaubern (*defixiones* in engeren Sinn) abgrenzen lassen (H. Versnel, R. Tomlin, J. Blänsdorf). Unter Berücksichtigung dieser Einteilungen wird die Reaktion der Rechtsordnung auf die in der Prinzipatszeit offenbar weit verbreitete Praxis untersucht und zugleich die Frage aufgeworfen, inwieweit derartige gesetzgeberische Maßnahmen das Handeln der Normadressaten beeinflussen haben könnte.

Keywords: defixio, lex Cornelia de sicariis et veneficiis, furtum

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Un confronto tra dati delle fonti giuridiche e *signa* riportati sugli oggetti della cultura materiale: osservazioni minime

Il mio contributo si sviluppa nel solco delle ricerche compiute da un filone della romanistica italiana, tra la fine degli anni Ottanta e la metà degli anni Novanta del secolo passato, sui risultati che si potrebbero raggiungere dal confronto tra certe iscrizioni della tarda età repubblicana e dei primi due secoli dell'Impero, contenute nei sigilli apposti su *lateres*, anfore, ceramiche, *dolia*, lucerne e *fistulae aquariae*, e dati emergenti dalle opere dei giuristi coevi in tema di esercizio delle attività economiche organizzate. Nel fare ciò, sono consapevole che è impossibile dare un'interpretazione univoca e mono-orientata dei moltissimi *signa* ritrovati e che un riscontro con i testi giurisprudenziali può essere proficuo solo laddove i primi abbiano riferimenti terminologici a nozioni tecnico-giuridiche abbastanza sicure per permetterlo. L'occasione per ritornare su questo argomento mi è stata data da una mostra tenuta nel 2016 presso i Mercati di Traiano a Roma dal titolo altamente evocativo *Made in Roma. Marchi di produzione e di possesso nella società antica*. Utilizzando i risultati raggiunti dai suoi curatori, tutti archeologi, ho formulato alcune riflessioni su tre specifici punti, per i quali un approccio interdisciplinare offre allo studioso di diritto romano l'opportunità di sfruttare elementi già acquisiti da altre branche complementari del sapere sul mondo antico. Il primo punto riguarda un commento di quei *signa* marchiati sui prodotti laterizi, dove *dominus* e *offinator* sono entrambi liberi; il secondo prende in considerazione quelle iscrizioni di donne qualificate come imprenditrici o *manager*; il terzo si occupa della protezione dei sigilli sul piano giuridico.

Keywords: Signa e loro interpretazione, giuristi, *offinator*, imprenditoria femminile

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Aristotle and Machiavelli on the Mixed Constitution

Republican balance has traditionally been used to describe Aristotle's, Machiavelli's, and other republican thinkers' political thought in the context of mixed constitutions. More recently, scholars have argued that in the context of the Roman (mixed) constitution, Machiavelli does not agree to the Aristotelian idea of balance. As such, Machiavelli's notion of the mixed constitution, as Gabriele Pedullà writes, is not an Aristotelian idea of checks and balances, rather it is checks without balances.

In this paper, I would like to revisit the question of balance in Machiavelli's and Aristotle's notions of the mixed constitution through the perspective of civil strife. Since the mixed constitution can traditionally be seen as a way to solve the issue of factionalized conflicts, the idea of balance is essentially a question of internal conflicts.

Although Machiavelli's acceptance of an omnipresent internal conflicts in his ideal Roman constitution is commonly used to differentiate him from the traditional classical republican canon of *homonoia* and *concordia*, he presents a similar understanding of unwelcomed internal conflicts, factionalized conflicts, as does Aristotle in his *Politics*. Focussing on these factionalized conflicts, I juxtapose Aristotle's and Machiavelli's notions of these clashes and their respective remedies. I question whether the notion of balance was ever present in Aristotle's ideal mixed constitution, the well-mixed aristocracy. In Machiavelli's case, I seek to show similarities in his understanding of factionalized conflicts and Aristotle's notion of civil strife (*stasis*).

Keywords: Aristotle, Machiavelli, Mixed Constitution, Republicanism

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Res corporales - Res incorporales - Data : Dematerialisation and some impacts on real rights

Res corporales were not enough to describe all the goods that could be sold, received or even be object of usufruct. *Res incorporales* grew therefore as a specific category of goods, as expressed by Gai. 2,14 ("incorporales sunt quae tangi non possunt, qualia sunt e aquae in iure consistent"). This "de-corporalisation" of goods, or one could say "dematerialisation", triggered some challenges on well-established concepts, in particular for real rights. Can one become owner of a *res incorporalis*? One could answer positively, as a *reivindicatio* meant requesting a judge to acknowledge the existence of a right of the claimant on such *res incorporalis*, while imposing on the defendant to transfer to the claimant the means to exert concretely such right on the goods. Acquiring ownership through *usucapio* was considered not to be possible, given the absence of *possession* over a *res incorporalis*, but would the *quasi possession iuris* not work ? And if possession was really needed, why would then a usufruct over a *res incorporales* be possible? The paper undertakes to analysis some key-elements of the de-corporalisation of *res* and some of the consequences on legal concepts, in particular in the field of real rights.

Finally, the paper will compare this process of dematerialisation with the one induced by data, and some similar consequences on the contemporaneous legal concept of possession and ownership on data.

Keywords: res incorporales, property, usufruct, possession, data, ownership on data

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The Exception of Spanish Colonial Law: Scholarship on Police Regulation and *ius commune*

In early modern colonial laws, Roman law existed in the same way it did in the European legal orders in general. As an integral part of *ius commune*, Roman law formed the backbone of private law. In the early modern period, national, regional, and local legal normativities grew on top of *ius commune*. Colonial legal rules, specifically speaking, were not Roman law but rather belonged to the genre of police regulation which spread in all parts of Europe from the late middle ages onwards. Police ordinances regulated matters such as trade, urban life, mining, and many other facets of social life that needed regulation not the least in the colonies. Police, however, was not considered law in the meaning of *ius*, but rather a part of everyday administration. Therefore, police was usually not considered an object of legal scholarship before the late eighteenth century. The presentation argues that the sixteenth- and seventeenth-century Spanish colonial legal scholarship was an exception in that it took scholarly interest in police. In fact, the mere existence of an ample colonial legal scholarship in the Spanish empire was exceptional in the sense that no other early modern empire produced such scholarship. The presentation discusses the reasons for these significant differences by looking at early modern authors of Spanish colonial law (e. g. Juan de Solórzano Pereira, Juan de Hevia Bolaños, Luis de Matienzo) and their use of both Justinian sources, and the writings of medieval and early modern *ius commune* authors.

Keywords: Early modern period, colonial law, Spain, police

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***Obligatio litteris* in Classical Roman Law**

Gaius in the 3rd book of his Institutes (G.3.128-133), gives a detailed description of the roman *obligatio litteris*, making a differentiation between two kinds of annotations in the account books: *nomina transcripticia* and *nomina arcaria*. He explains that a *nomen arcarium* records an effectuated payment and therefore can be merely employed as a proof of the transaction, while the creditor's claim is based in the transaction itself. *Nomen transcripticium*, to the contrary, replaces an existing debt giving rise to a new obligation. As consequence, the creditor loses his/her claim arising from the original contract, gaining in its place a *condictio* based on the *obligatio litteris*.

Although the divergence in consequences between two kinds of *nomina* is clear, it raises two further questions, for which there is no clear answer in Gaius' text. Firstly, it is not explained how the two kinds of annotations could be distinguished from each other. Secondly, it is not evident for which reason in a case of an effectuated payment, the possibility of basing his/her claim in the *obligatio litteris* was precluded to the creditor, whereas a claim arising, for example from a consensual contract, was substituted by one based on the *litteris obligatio*. The present paper aims at addressing these two questions and formulate a plausible explanation considering Roman accounting documents.

Keywords: *Litteris obligatio*, *nomina transcripticia*, *nomina arcaria*

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Materiali da costruzione e rapporti di vicinato nel I sec. a.C.: il giurista Mela ed il *paries craticius* nel responso trådito da Ulp. 31 ad ed. D. 17.2.52.13

Lo studio delle problematiche giuridiche che trovano la loro origine nei rapporti di vicinato urbano a Roma antica e, più in generale, l'analisi delle fonti giurisprudenziali che prendono in esame la proprietà cittadina nella sua prospettiva statica e dinamica non possono prescindere – a mio giudizio – da un approccio interdisciplinare, capace di evidenziare le molteplici sfaccettature di un fenomeno estremamente variegato e complesso.

In particolare, la conoscenza delle principali caratteristiche delle tecniche edilizie romane risulta di fondamentale importanza per apprezzare compiutamente talune caratteristiche, non solo degli interventi normativi volti a garantire (da differenti angolature) la “tutela urbanistica” in contesti abitativi caratterizzati da un’alta densità demografica, ma anche di quelle regole privatistiche che furono chiamate ad assicurare un “punto di equilibrio” tra conflitto e cooperazione dei proprietari confinanti (*vicini*).

In quest’ottica, le caratteristiche “materiali” del *paries communis* realizzato in *opus craticium*, di cui parla Mela in un famoso responso, possono fornirci importanti indicazioni al fine di meglio comprendere la *ratio* giuridica della soluzione tramandataci da Ulpiano.

Keywords: *paries communis*, *communio de pariete*, *opus craticium*

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El principio *litterae chartis cedunt* y la protección de los derechos de autor en la antigua Roma

El *plagium* en la antigua Roma estaba tipificado como un crimen que castigaba con la pena capital a quien secuestrase a un hombre libre para tenerlo o venderlo como esclavo. Fue Marcial quien, por primera vez, trasladó el término *plagium* al concepto moderno de usurpación de la autoría de una obra intelectual (*ep.*, 1.52); asimismo, en *ep.*, 1.53, Marcial acusa a Fidentino por haberle copiado versos haciéndolos pasar como propios, y le imputa la comisión de un hurto manifiesto, de ser un ladrón.

Algunos estudiosos han reconocido la existencia, en época romana, de una cierta tutela de los derechos morales de los autores mediante el posible ejercicio de la *actio iniuriarum aestimatoria*; mientras que otros, han visto en el principio romano *litterae chartis cedunt* (Gayo 2.77; D. 6.1.23.3) una primera forma de protección del autor, el cual por medio de la escritura materializaba su creación intelectual sobre una *res corporalis*, el manuscrito, siempre que éste fuese de su propiedad.

Keywords: plagio, derechos de autor, *litterae chartis cedunt*, Terencio

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La volontà del morto ed il diritto sepolcrale. Osservazioni su un'epigrafe trace

La relazione si propone di esaminare un epigrafe sepolcrale della provincia di Thracia (I. Aeg. Thrace E216), offrendo, in primo luogo, un case study interessante e usando, in secondo luogo, le osservazioni fatte come uno spunto per la comprensione del funzionamento del diritto sepolcrale nelle province orientali.

Si partirà dall'analisi contenutistica dell'epigrafe, la quale si concentrerà soprattutto sull'hapax νεκροδιάταγμα καθολικόν. In base a paralleli con altre epigrafi non solo funerarie, ma anche pubbliche si cercherà di interpretare il significato di questa frase unica. Si osserverà, poi, come essa getta luce sul modo in cui gli abitanti delle province orientali concepiscono la volontà del fondatore della tomba. Si rientrerà a questo proposito anche nel dibattito spinoso riguardo la romanità o la grecità del diritto sepolcrale in Oriente.

Passando al problema dell'aspetto materiale del diritto, si porrà la questione se l'epigrafe esaminata, come anche le altre iscrizioni dello stesso tipo, possano essere concepite come portatori materiali di un atto giuridico. Si analizzeranno le fonti attestanti le procedure della fondazione dei sepolcri e delle multe sepolcrali e si presenteranno le conclusioni degli studi recenti. Si ribadirà in questo modo che sono proprio i testi iscritti sui monumenti sepolcrali a dover essere considerati l'originale dell'espressione scritta della volontà del fondatore della tomba. Tornando al case study, infine, si osserverà come l'epigrafe I.Aeg.Thrace E216 debba essere considerata una dichiarazione di volontà originale e rappresenti dunque un piccolo "pezzo di diritto" materiale.

Keywords: *lura sepulchrorum*, *voluntas*, tombe, copia, originale,

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Das Verbot der Delation und das *edictum de accusationibus* - Strafrecht und Fiskalrecht zu Beginn des 4. Jahrhunderts

Das *edictum de accusationibus* ist eine Kaiserkonstitution aus dem frühen 4. Jahrhundert, die sowohl durch mehrere inschriftliche Kopien als auch auszugsweise in CTh. 9.5.1 und C. 9.8.3 überliefert ist. Welcher Kaiser das Edikt erlassen hat, ist ebenso unsicher wie seine genaue Datierung.

In der Konstitution heißt es, den *delatores* sei die Befugnis, sich an einen Richter zu wenden, durch eine Vielzahl früherer kaiserlicher Maßnahmen versagt (*delatoribus autem quot adeundi quoque iudicis tam statutis parentum nostrorum quam etiam nostris sanctionibus interclusa sit facultas, omnibus cognitum est*). In der Forschung ist umstritten, ob hiermit die fiskalische Delation gemeint ist, bei der eine Privatperson auf konfiszierbares Vermögen (insbesondere *bona vacantia et caduca*) hinweist oder auf dessen Herausgabe an den *fiscus* klagt, oder ob sich die Passage auf die strafrechtliche Delation bezieht, bei der eine Privatperson ein Verbrechen anzeigt oder eine strafrechtliche Anklage erhebt.

Diese Frage soll in dem Vortrag mittels einer Analyse der Konstitution selbst sowie ihres mutmaßlichen Kontextes untersucht werden. Dabei sind sowohl andere Kaiserkonstitutionen – manche von ihnen in den Codices, andere epigraphisch überliefert – als auch die politische Situation zu Beginn des 4. Jahrhunderts in den Blick zu nehmen. Weiterhin sind die Vorverständnisse, die sich aus der bisherigen Forschungsgeschichte in Bezug auf das Edikt ergeben, kritisch zu hinterfragen.

Keywords: Delatio, accusatio, vindicatio caducorum, crimen maiestatis

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Index 2.0

Roundtable proposal for the 76e session de la Société Internationale Fernand DeVisscher pour l'Histoire des Droits de l'Antiquité University of Helsinki, 22-26 September 2023

Chair:

Dr. Benet Salway

Speakers:

Dr. Joanna Kulawiak-Cyrankowska

Dr. Marton Ribary

Dr. Giuseppe Di Donato

The proposed roundtable introduces the Index 2.0 project which aims to revive the invaluable resource of the Index Interpolationum in digital form and unlock a new wave of text-based computational research in Roman law. In order to create a workflow for future research assistants with varying levels of Latin proficiency and familiarity with Roman law and to explore Index 2.0's potential for future research, we are holding a one-day practical workshop at Royal Holloway (Egham, England) in April and another one (subject to funding) at Napier University (Edinburgh, Scotland) in June, where participants receive training, test and comment on the data entry process. This roundtable, chaired by Benet Salway, offers short ice-breaker presentations that will cover different aspects of an ambitious project in its early stages.

Joanna Kulawiak-Cyrankowska will address the philological aspects, and explain our strategies to convey the importance of following the principle of limited trust when reading the Digest, and use selected case studies to demonstrate how potential interpolations can be identified.

Marton Ribary will discuss the project's digital humanities aspects. He will explain the data entry process which includes semantic decoding of the information available in the Index, and its subsequent digital encoding in an interactive technical infrastructure created in Google Form with data validation and Google Apps Script.

Giuseppe Di Donato will illustrate the benefit and value of this project to Roman law research, taking into account both the alternating fortune experienced by the original Index since it was elaborated and the current state of research.

We invite the audience to an open discussion about the digital revival of interpolation research. The aim of Index 2.0 is to make the Digest text interactive and allow users to toggle between different readings according to periods, schools and individual researchers. Users would be able to record their own insights about textual authenticity on a platform we envisage to become an online meeting point of text-based Roman legal scholarship.

Keywords: Digest, interpolation, digital humanities, text criticism

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The materialisation of ancient law in modern legal terminology

The presentation will focus on the Latin terms used in the decisions of the Supreme Court of Estonia. Because the law is a discipline the conceptual apparatus of which has developed over centuries on the basis of the Latin language, legal professionals are using Latin as their practical working tool even today. My previous research on the usage of Latin terms in Estonian academic legal texts shows an increase in the use of Latin terms in recent decades. This presentation aims at analysing the language of the Supreme Court of Estonia as the judicial authority of the highest instance. The vocabulary employed by judges when formulating their decisions will be explored: how many Latin terms and which expressions from ancient law have been used in judicial argumentation.

Keywords: legal language, Latin terms, Roman law, judicial argumentation, court decisions

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Was the Digest cheap?

In the introductory constitutions to the Digest, Justinian praises –among other things– that his compilation would make legal knowledge available to both rich and poor, since the Digest could be obtained at a very low price (Tanta § 12: “*vilissima pecunia facilis eorum comparatio pateat tam ditioribus quam tenuioribus, minimo pretio magna prudentia reparanda*”). This enthusiastic advertisement is not self-evident if one considers the large bulk of the *Codex Florentinus*. Some scholars even argue that Justinian made legal knowledge more expensive, particularly regarding the texts that should be used by students. This poses interesting problems regarding the organization, before and after Justinian, of the writing materials involved in legal education and legal practice. The answer to the problem of the material availability of the law may in turn offer valuable insights into the scope and impact of Justinian’s compilation, as well as the diffusion of the Digest.

Keywords: Digest, writing materials, legal education, *Tanta*.

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Maître de conférences Mrs. Lucia Rossi

Droit de saisie et piraterie dans le droit international à l'époque hellénistique : la contribution du *koinon* des Éoliens

Un corpus épigraphique riche, constitué de *psephismata* de différents types et de conventions-*symbolai*, témoigne de la contribution du *koinon* des Éoliens, en tant qu'instance supra-civique, dans l'élaboration de principes juridiques définissant non seulement le droit de saisie, mais aussi les pratiques de prédation pirates, ainsi que les procédures judiciaires visant à garantir la sécurité des biens et des personnes. En partant de l'analyse des typologies documentaires attestées, de la nature des délits visés, des acteurs institutionnels impliqués dans la production de ces actes aussi bien que dans l'application des sanctions établies, il s'agira plus généralement de s'interroger sur la manière dont ces principes juridiques immatériels ont influencé, voire façonné, les pratiques concrètes des circulations humaines entre l'Étolie, la mer Égée et l'Asie Mineure au III^e av. n.è.

Keywords: Éoliens, saisie, piraterie, droit international

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Diocletian's legislation on currency reform and maximum prices at Aphrodisias in Caria

For many years now scholars of Roman legislation have had to rely on the standard editions of Diocletian's Prices Edict by Siegfried Lauffer (*Diokletians Preisedikt*, Berlin, 1971) and Marta Giaccherio (*Edictum Diocletiani et Collegarum de pretiis rerum venalium in integrum fere restitutum e Latinis Graecisque fragmentis*, Genova, 1973), which have long ceased to represent current knowledge of the text because of the flow of subsequent archaeological finds, particularly those arising from the New York university excavations at Aphrodisias in Caria (Geyre, Turkey). Thanks to advances in our understanding of the architecture of the façade of the Flavian-era civil basilica on which the Prices Edict and Currency Revaluation legislation (see most recently *AE* 2015, 1500) were inscribed, Michael Crawford (*Diocletian's Edict of Maximum Prices at the Civil Basilica in Aphrodisias*, Wiesbaden, 2023) has now been able to produce new consolidated editions of both texts. This paper will reflect on how the new appreciation of the physical disposition of the texts on the façade has enabled the new (complete) reconstruction of the Prices Edict, how it has enhanced our understanding of the composition of the dossier of pronouncements on Currency Revaluation, and what conclusions we might draw about the relationship between the two legislative initiatives on the basis of the relative placement of their inscribed copies at Aphrodisias.

Keywords: Roman imperial legislation, imperial edict, imperial letter, coinage, prices

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Prohibition of Lex Commissoria and Its Impact on Turkish Law

Lex commissoria agreement is described as condition attached to the contract in Roman law. It results in the creditor becoming the owner of the pledged property in case the debt is not paid at maturity, with regard to its application in pledge agreements. The lex commissoria agreements, the first applications of which are accepted to have emerged with fiducia, were prohibited by Emperor Constantine in 326 AD with a decree. Prohibition of lex commissoria was included in the Codex Theodosianus and repeated by Emperor Justinian. The reason for prohibition of lex commissoria was the economic crisis prevailing and the need for protection against the deceits of usurers. In Turkish law, the ratio legis of this prohibition focuses on protection of the debtor against lesion.

Since prohibition of lex commissoria was mostly applied in the provincial lands and many practices narrowed the scope of this prohibition were accepted, the application area of this prohibition in Roman law is very limited, contrary to Turkish law. Despite the change in economic conditions later on, abolishing prohibition of lex commissoria was not considered necessary and discussed. Prohibition of lex commissoria took its place in Swiss law after the cantons have started to be under the influence of Roman law, and in current Turkish law, due to the adaptation movements at the foundation of the Republic of Turkey. In the Turkish Civil Code, prohibition of lex commissoria is included in Art. 949 for movables and Art. 873/2 for immovables.

This study will focus on the emergence and application of prohibition of lex commissoria in Roman law, its effects on Turkish law and its application in Turkish law.

Keywords: Lex commissoria, Pledge, Prohibition of lex commissoria, Roman law, Turkish law

„Die fiktiven Besitzer führen nämlich Böses im Schilde“ – Zum wirtschaftlichen und sozialen Hintergrund des Vindikationsprozesses gegen einen Nichtbesitzer

Die *rei vindicatio* war im römischen Recht die Klage des Eigentümers gegen den Besitzer. Im Legisaktionenverfahren war nur der Besitzer passivlegitimiert. Deshalb hatte der Beklagte die Sache vor den Prätor zu schaffen: Damit war die Passivlegitimation für den Prätor, für den Kläger und für jedermann sichtbar und greifbar. Im Formularverfahren gab man das Erfordernis der Sachpräsenz auf. Damit war es möglich, dass auch ein Nichtbesitzer sich vor dem Prätor auf den Vindikationsprozess einließ.

Tatsächlich berichten die Quellen von zwei Fallkonstellationen, in denen ein Nichtbesitzer einen Vindikationsprozess führt. Im ersten Fall bietet sich ein Nichtbesitzer als Beklagter an, als ob er besäße (*qui liti se obtulit*). Im zweiten Fall hat jemand zunächst besessen, den Besitz aber noch vor Litiskontestation arglistig aufgegeben (*qui antem litem contestatam dolo desiit possidere*). Die Quellen lassen den Nichtbesitzer in beiden Fällen haften, als ob er besäße. Das hat die Interpolationenkritik auf den Plan gerufen: Man konnte sich die Vindikation – wie im alten Recht – nur als Zugriff auf die Sache selbst vorstellen, als Rechtsmittel gegen den Besitzer. Aber bevor man die Interpolationenfrage beantwortet, muss man sich eine andere stellen: Bei dinglichen Klagen gibt es keinen Einlassungszwang. Wo wir also von der Haftung des Nichtbesitzers hören, müssen wir davon ausgehen, dass der Nichtbesitzer sich freiwillig auf den Vindikationsprozess einlässt. Was aber könnte ihn dazu bewegen, einen Prozess um eine Sache zu führen, die er gar nicht besitzt? Die Römer geben nur spärliche Hinweise auf die Gründe des Beklagten. Der Beitrag untersucht den wirtschaftlichen und sozialen Hintergrund, der den Nichtbesitzer zum Vindikationsprozess motiviert haben könnte.

Keywords: *rei vindicatio*, *ficti possessores*

Schaffen der Materialität der Sachverhalte durch die Fiktion: Ein typischindogermanischer Mechanismus?

In der Formel einer actio utilis wurde die Klausel "si paret condemnato" der intentio in abgewandelter Form formuliert, so dass die Klage auf den neuen Sachverhalt angewendet werden konnte. In dieser neuen Formel war der Konjunktiv "si pareret" oder "si oporteret" enthalten, der für die Anwendung der Normen des ius civile das Vorhandensein oder Nichtvorhandensein bestimmter Umstände vorgaukelt. Die actio Publiciana zum Beispiel wurde als actio utilis geschaffen, die vom Prätor durch Fiktion zugesagt wurde. Hier war der vollzogene Erwerb des Klägers in der Klage fiktiv. Nach dieser Vorlage kann auch die Formel der actio in rem utilis in den Fällen der plantatio("si pareret eius esse ex iure Quiritium, si nondum coaluisset.") und der tabula picta("si in tabula, qua de agitur, a No. No. pictum non esset, tum si pareret eam tabulam ex iure Quiritium Ai. Ai. esse") rekonstruiert werden.

Der Konjunktiv, ein aus der indoeuropäischen Sprachfamilie stammendes Merkmal, half dem Richter bei der Abfassung der Formel für eine actio ficticia. Beim Irrealis geht der Sprecher davon aus, dass die Aussage im Konditionalsatz (Protasis) nicht wirklich stattgefunden hat. Natürlich nimmt er auch den Inhalt des Satzes (Apodosis) als nicht wirklich an. Diese durch die Verwendung des Konjunktivs angedeutete Nicht-Realität des Sachverhalts wäre also ein wesentliches Merkmal einer fiktiven Klage. Dementsprechend ist anzunehmen, dass die römischen Juristen um den Preis des Zusammenfallens der beiden widersprüchlichen Sphären den Rechtsschutz erweitert haben. Nachdem die Nicht-Tatsache einmal mit Hilfe der Fiktion bewältigt worden ist, bedarf es auch im Satz keiner weiteren Manipulation der Fiktion. Indem man die konditionale Aussage an die Tatsache anknüpft, ist man bereits bei der Realität angelangt. Diese Erklärung sollte ihm die weitere Ausdehnung der Rechte und damit zugleich auch dem Prätor die Möglichkeit der weiteren Rechtsentfaltung verschaffen.

Keywords: Materialität der Sachverhalte, Fiktion, Irrealis, Rechtsschutz

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Things Corporeal and Incorporeal in the Institutes of Gaius Revisited: The Role of Materiality in the Transfer of Ownership and the Structure of the Gaian Narrative

The division of things into *res corporales* and *res incorporales*, alongside the partition of law into three major domains dealing with persons, things, and claims, is a cornerstone of the institutional system as known from the Gaius' Institutes. Arguably, the main focus of the discussion as well as the main target of criticisms has been its umbrella function allowing to accommodate property law, succession law, and the law of obligations under one heading, i.e. '*res*', and thus to uphold the seemingly coherent general tripartite scheme.

At the same time the actual didactic use of the distinction between things corporeal and incorporeal in the Institutes pursues the aim to explain the differences between various modes of acquisition of ownership. Gaius' recourse to this distinction appears to be narrowly linked to several distinctive features of his approach to dealing with the law of things. This conceptual framework appears only natural if one considers 1) that Gaius regards the law of things from the perspective of acquisition of ownership, 2) that he abandons the traditional distinction between acquisition *iure gentium* and *iure civili* as the guiding one and prefers to start with derivative modes of acquisition, and 3) that his endeavour is to embrace both aspects of property law taking on board *ius civile* and *ius honorarium* alike.

The paper invites to revisit the famous division of things from this perspective while paying the main attention to its use in Gaius' reasoning and comparing the Institutes of Gaius to his *Res cottidianae sive aurea*, the *Tituli ex corpore Ulpiani* as well as to the Justinian's Institutes and Digest.

Keywords: *Res corporales*, *res incorporales*, acquisition of ownership, Institutes of Gaius

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Local vs. Roman – Advantage of the Materiality of the Legal Sources in the Baltic Provinces of Russian Empire

According to the Capitulations of Baltic provinces – Livonia, Estonia and Courland – to the Russian Empire (1710), those provinces enjoyed a special legal position in the Russian Empire and retained their traditional legal system. Thus, the whole system of the legal sources of *ius commune* was used in Baltic provinces and it meant the continuation of validity of various laws of different origin: local, Swedish, Polish, the town laws, knightly laws, etc. Among other rights, Roman law should have also applied but subsidiarily, only after all different local laws. However, according to local Baltic authors, too often in court practice, instead of local sources the subsidiary Roman law was applied. In my presentation, I will analyse the causes for the reverse usage of the legal sources in Baltic provinces.

Keywords: Roman law, local law, Baltic Provinces, legal sources, materiality

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Materiality and immateriality of space in the study of Roman law and administration

Chairs:

Dr. Samuli Simelius & Dr. Juhana Heikonen

Speakers:

Doctoral researcher Vesa Heikkinen

Doctoral researcher Anna-Maria Wilskman

Dr. Antonio Lopez Garcia

Dr. Samuli Simelius

We propose a roundtable panel "Materiality and immateriality of space in the study of law and administration" for the 76^e *session de la Société Internationale Fernand De Visscher pour l'Histoire des Droits de l'Antiquité* meeting in Helsinki in 2023. Space plays an important role in law and administration, creating their physical settings, but additionally influencing the nature of the work that relates to them. In their space, law and administration manifest a very visible and tangible form. For example, a basilica can be thought of as a material representation of Roman law. However, the space of law and administration can be also very flexible and almost immaterial, focusing on the sphere of the magistrate, wherever he might be, and therefore legal and administrative functions can occur almost anywhere. This creates a multitude of ways and methods of studying the spaces of Roman law and administration, which have been at the center of the project *Law, Governance and Space: Questioning the Foundations of the Republican Tradition* (SpaceLaw). This roundtable will present the work of the project members, with the aim of stimulating conversations on how the space of law and administration can be studied by combining historical, philological, and archaeological sources and methods and through the adoption of new theoretical frameworks.

Presenters and their themes

Antonio Lopez Garcia: Secretaria et Tribunalia: Two Key Spaces of the Judicial System in Late-Antique Rome

Anna-Maria Wilskman: Remaking the past, creating the future: inscriptions and coins in the use of magistrates

Vesa Heikkinen: Citizenship as belonging – common sense, corporation, and religion

Samuli Simelius: Atypical venues of administrative and legal work

Chairs

Juhana Heikonen & Samuli Simelius

Keywords: space, architecture, Rome, reception, art

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Prof. Boudewijn Sirks

Chirographs: evidential or constitutive

Were chirographs, the IOU's of Greek and Roman antiquity, constitutive for the debt registered, or merely evidential? Recently it was maintained that in Roman law they were and remained essentially evidence of the debt in the classic period. That was, however, only part of the nature of chirographs. It is posited that their special nature made that they were effectively constitutive and as such so considered already in the first century, turning thus into obligationes litteris.

Keywords: chirograph

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Composition of the Digest: The Material Evidence

Chair:

Dr. Anna Arpaia

Speakers:

Prof. Dr. Jakob Fortunat Stagl

Dr. Anna Arpaia

Kimberly Sas

Prof. Dr. Jakob Fortunat Stagl,

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Composition of the Titles according to the "Inscriptiones"

The aim of Bluhme's theory of masses was to destroy the systematic coherence of the Digest's 432 titles. From then on, the 9.139 fragments with which these titles are filled up with, were interpreted in an atomistic way. This view was recently challenged by the present author ("Der Tempel der Gerechtigkeit: Zur Morphologie und Hermeneutik der Pandekten", Brill 2023). If one analyses closely the *inscriptiones* one observes immediately that the compilers used a technique of weaving several authors together. From this we must conclude that the fragments were just thrown into the titles without any regard to their content but rather to contrary that the titles were in many cases composed carefully. This discovery has far-reaching consequences for the interpretation of the Digest and our relationship to this source. Some traces of this process can be found in *spatia* and punctuation marks which have hitherto gone unnoticed.

Dr. Anna Arpaia,

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The "Littera Florentina": Material Clues of the Compilers' Work and their Significance

Due to its chronological proximity to the publication of the Justinianic archetype, the "Littera Florentina" represents the single most relevant manuscript for the transmission of the Digest. A hitherto unnoticed material aspect of it are several *spatia* interrupting the *scriptio continua* - in some cases combined with dots and double dots, which are mainly concentrated in the sections assigned to one of the scribes working on the manuscript. This paper aims to briefly present a new

project focused on these material clues. The main questions are whether the scribe reproduced (more or less consciously) signs or signals, which were not actually intended to appear in the final version of the text but rather belonged to a final stage of the compilers' work, and – in such a case – whether these signs might correspond to mark-ups used by the compilers in taking into consideration – or practically doing – reassignments, omissions, or structural changes within the *excerpta* of the Digest. In the latter case, these signs or signals could be accounted for as material proof for interpolations in the broader sense of the term. The analysis is focused both on the philological aspect – namely the study of the systematic occurrence of these signs in their context, eventually supported by textual parallels out of the Digest, and on the thematic interrelation between sections of the same or different fragments, where these signs materially occur.

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The Systematical Structure of D. 47.23 *De actionibus popularibus*

A specific and further clue to the systematic way of working of the compilers is in the Book 47 of the Digest – one of so called *libri terribiles*. It ends up with relatively short and laconic title. On the face of it we can presume, that it was put there for no particular reason or most likely in lack of better place to do so. But after throughout analysis different conclusion can be drawn. This title – despite its small size – not only can be described as a structurally fully composed one, but also its position within the Book 47 and whole of the Digest as such is definitely not the matter of coincidence. A thesis can be proposed, that by placing title *De popularibus actionibus* at the very end of Book 47 – devoted to institutions of private criminal law – the compilers wished to distinguish and confirm the unique and mixed nature of this kind of legal actions. Making popular actions a kind of “bridge” between the book containing the “private” criminal law on the one hand and “public” criminal law on the other hand stands a perfect example of a symbiosis of the content with its location. This allocation within the system of the Digest is an authentic reflection of classical doctrine on this matter.

Keywords: Digest, Composition of Titles, Bluhme

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The Right To Use In Roman And Serbian Law

The right to use is a servitude, which authorizes the holder to use the property within the limits of his needs. According to the Roman classification, it is a personal servitude, as well as *ususfructus*, the free housing and the use of the work of someone else's slave or animal. Formed in post-classical Roman law, with minor changes, the institute was absorbed into Serbian medieval law, and subsequently, in the mid-19th century, into the Civil Code of the Principality of Serbia. The existence of the servitude is recognized by Serbian law, although it is not closely defined, due to the 1946 Annulment Act of Pre-war Legislation. Subsequently, certain dilemmas appeared in the judiciary. Some of them are similar to those existing in the works of Roman jurists, such as the one concerning the scope of rights - whether the holder can transfer the right to another or if he acquires fruits. An interpretation by the Commercial Court of Appeal 2019 has highlighted the problems regarding the institute. Similar to the Roman legal methods, the court decision quoted the legal doctrine. The aim of the paper is to analyze the decision, to compare it to the Roman legal solutions and methods, and to find out whether it would increase the legal certainty.

Keywords: Roman law, Austrian Civil Code (ABGB), Serbian Civil Code (SGZ), Personal Servitudes, Right to use (*usus*).

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Roman Law as Propaganda? On National Socialism and Ancient History

This presentation examines how the history of Roman law was used by Nazi intellectuals in a propagandistic manner. I approach this topic by offering a new reading of the lawyer and political theorist Carl Schmitt (1888-1985) and his Nazi engagement by chronologically examining the changing uses of Roman law in his Weimar and Nazi thought. I argue that Schmitt's different ways of narrating the modern reception history of Roman law disclose, first, the Nazification of his thought in the spring of 1933, and second, the partial and apologetic de-Nazification of his thinking in the 1940s. While Schmitt's Weimar-era works are defined by a positive use of Roman imagery, ranging from Schmitt's support to the Catholic Church to his endorsement of Benito Mussolini's 'total state' in Italy, Schmitt's Nazi writings from 1933 to 1936 describe the reception of Roman law as an anti-German virus that must be overcome by the Nazi movement. This shift mirrors Schmitt's transformation from an authoritarian thinker sympathetic to Italian Fascism into a devoted Nazi. However, once Schmitt begins to see that Germany will lose World War II, he recalibrates his position. While Schmitt's earlier Nazi writings offered a negative estimation of the historical school of Friedrich Carl von Savigny, in his 1943/44 book on European legal science, Schmitt portrays Savigny as the paradigmatic European, whose work opens the path for a renewed legal science. The presentation contextualizes Schmitt's ideas through a detailed analysis of the ways in which Roman law was used by different intellectuals at different historical periods. It is argued that Schmitt's different ways of using Roman law clearly reflect and disclose these various tendencies of interpretation and open up different ways of understanding the various political uses of Roman law in the first part of the 20th century.

Keywords: Roman law, National Socialism, Fascism, Ancient History, Legal Science

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An Evaluation of the Logical Framework of the Non-Fungible Token (NFTs) Concept in Terms of Property Law from the Roots of Corporeality, Fungibility and Identification in the Roman Legal Tradition

A non-fungible token (NFT) refers to a unique and non-replicable entry on a cryptographic blockchain ledger that points to the metadata of a particular digital item on the web and is the newest mysterious entity to pop out of the complex world of financial technology. The idea of fungibility, however, and thus, the notion of non-fungibility has a very ancient origin. The Roman system of private law distinguished between *res fungibiles* and *res nec fungibiles*. *Res fungibiles* translates to fungible (interchangeable) things, while *res nec fungibiles* translates to the very opposite, that is, items that are not interchangeable.

Fungibles were “those things that are estimated by weight, number, or measure, for instance, wine, oil, corn, coined money, copper, silver, or gold” (Inst. 3.14 pr.). Non-fungible things were those identified and valued in and for themselves: e.g., a particular horse or piece of land or slave. The difference had legal relevance with respect to some legal relations, and specifically when it came to rules regarding risk: for such purposes, fungible things were completely interchangeable, since one instance was as good as another; not so for non-fungible things. In general, only non-fungible things could be used without being consumed. For this reason, there could be no usufruct of fungibles.

Key to the distinction, in both the modern world and in the sphere of Roman law is that uniqueness confers additional value to an item. Fungibles are fairly common – if one exchange one \$10 note for another, there is no change in the amount of cash one holds. Similarly, cryptocurrencies are fungible as well – one bitcoin is interchangeable with another without any change in the value or utility derived. Conversely, one pink diamond may not be interchangeable with the other due to differing cuts and crystal structures – diamonds are non-fungible. A further layer of complexity to the idea of fungibility is the operation of NFTs entirely in the digital sphere.

Here, this paper first considers, understanding NFT’s technological nature is key to how we understand them via a legal prism. Secondly, it goes over the modern application of NFTs as digital collectibles addressing questions about ownership and rights. Essentially, the aim of this study is to discover how the criteria used in the Roman Law to distinguish between fungible and non-fungible things can be used in a logical framework in the legal regime that today’s NFT will be subject to in terms of property law.

Keywords: Fungibility, Roman Property Law, Non-Fungible Token (NFT), *Res nec fungibiles*

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Translating Roman Law Knowledge into Danish Medieval Law

Danish Medieval law was written down in Danish language in the 13th century and is preserved in a number of Manuscripts since the late 13th century. Legally Denmark was divided into three different provinces with written laws not differentiating very much from each other. However, only in 1683 a code for the entire Kingdom of Denmark was issued. How the medieval laws came into being and their relation to *ius commune* is a question often discussed. In this paper it will be maintained that a Danish legal language as we find it in the laws could only be created at that time by scholars familiar with Latin and that Roman Law (and canon law) to a higher degree than formerly admitted has contributed to the formation of Danish medieval law.

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Protecting possessio in Byzantine law, but how? The so-called καθολικὸν παράγγελμα and its origins

Aim of this paper is to explore why and in which way the possession in Byzantine law is protected by the so-called καθολικὸν παράγγελμα. The starting point of our whole discussion) shall be the *Institutes* of Theophilus. In his so called *Paraphrasis*, text that dates from 533-534 AD and is basically a Greek translation of the Latin *Institutes* of Justinian it is evident that the interdicts as means to protect possession, although still typically in force, were already in the 6th century not applied.

The above mentioned development is confirmed by regulations in byzantine legal sources as well as cases from the byzantine jurisprudence regarding disputes concerning possession, that make no reference to the *interdicta*. Instead what is applied is the constitution C. 8.4.7 (year 389), that is mentioned as καθολικὸν παράγγελμα (general interdictum) and is sometimes confused and merged with other forms of *interdicta*.

Keywords: possessio, interdicta, Byzantine law, Roman law

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Censorial control over marriage in the Roman Republic

A special place in the activities of the Roman censors was occupied by the problems of the *familia*. The enormous, even unprecedented scope of the power of its superior - the pater familias - was initially subject to very few restrictions. The importance of the family to the public interest was however so serious that any kind of control had to be ensured. Therefore, censors dealt with family matters, interfering deep into the private lives of citizens. The institution of marriage was certainly subject to control, and that even ante factum, namely, already at the stage of betrothal concluded in the form of sponsio. Breaking such a contract could result not only in the payment of a fine, but also in the imposition of a *nota censoria*. Marriage itself was not always an arbitrary affair: the censors were against unions between men of equestrian and senatorial families and women from the lower social strata. A *nota* could be expected if one married a freedwoman or a woman of dubious reputation (such as a prostitute). These regulations were later adapted in Augustus' marriage legislation, with the difference, however, that they covered only senators and their offspring when it came to marriages with freedwomen, while all freeborn citizens were not to enter into unions with *feminae famosae*. The roots of Augustus' laws can also be traced to the censor's policy on procreation. The censors urged citizens to marry and have offspring mainly through speeches made on various occasions. In addition to this, however, they used various forms of pressure: there is a well-known case of imposing a financial penalty on old bachelors, as well as rewards for fathers of numerous offspring. The censors' scope of interest also included adultery. A man who seduced other people's wives could be subject to a *nota*. It is worth noting that this was also the prototype for the *lex Iulia de adulteriis*. The emperor himself pointed out that he was not the forerunner of the solutions introduced to justify his solutions and convince the citizens.

Keywords: censor, nota censoria, marriage, adultery, betrothal

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Applicazioni della pena dell'*aqua et igni interdictio* nel Principato: insubordinazione dei re clienti, salvaguardia degli equilibri politici e questioni di spazialità

Nel I sec. d.C. l'*aqua et igni interdictio* era una pena regolarmente applicata nelle corti giudicanti, sia nelle tradizionali *quaestiones*, sia nell'ambito dell'*extraordinaria cognitio*. L'*interdictio* veniva comminata per sanzionare i più diversi tipi di *crimen*, era prevista parallelamente alla pena di morte e determinava delle conseguenze particolarmente gravi per il condannato: bando da Roma e dall'Italia, perdita della cittadinanza romana, confisca dei beni. Nel 12 d.C. un provvedimento dell'imperatore Augusto intervenne sul quadro sanzionatorio dell'*aqua et igni interdictio*, con severe conseguenze per la situazione patrimoniale degli esiliati e un'estensione della portata geografica del bando. Inoltre, nella prassi della *cognitio extra ordinem*, oltre a comminare l'*interdictio*, si cominciò altresì ad imporre uno specifico luogo di confino. Ciò avveniva per lo più in casi politicamente rilevanti, nei quali il luogo d'esilio era scelto tenendo conto dell'esigenza di avere un controllo diretto sul condannato e di determinarne la totale neutralizzazione sul piano politico. Lo studio della casistica, possibile grazie all'impiego di varie tipologie di fonti, mostra che l'*interdictio in certum locum* era tipica per la repressione delle condotte criminose di quei re clienti che, venendo meno agli accordi con Roma, erano causa di violenze e pericolose situazioni di instabilità politica. Paradigmatici sono i casi riguardanti il re trace Rescuporide (18 d.C.); il re d'Armenia Vonone I (19 d.C. ca.); il notevole di Macedonia Antistio Vetere (21 d.C.); il tetrarca Erode Antipa (39 d.C.); i sovrani Tiridate e Ariogeso (170 d.C. ca.). L'analisi di questi casi permette di comprendere il quadro sanzionatorio e le funzioni dell'*interdictio in certum locum*, sia facendo considerazioni sulla capitale importanza per Roma di assicurarsi la stabilità e il controllo di determinate aree d'interesse, sia interrogandosi sul ruolo giocato dalla spazialità nell'indirizzare alcune scelte di repressione criminale e, con esse, l'evoluzione della pena dell'esilio.

Keywords: Diritto penale romano, cognitiones, esilio, aqua et igni interdictio, re clienti

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On the function of the 'Petition of Dionysia' (P. Oxy. II 237)

Since its publication more than 120 years ago, P. Oxy 237, usually dubbed as the 'Petition of Dionysia' has attracted considerable scholarly attention: not just because the court confrontation of an elite daughter with her own father provides prime fodder for social history, but due to the numerous insights it offers into legal life in 2nd century Egypt. Its nine columns preserve for us rich normative and jurisdictional material, and provide crucial information on the functioning of the property record office, on the law of marriage, on the paternal power and its limits, on the Roman jurisdictional practice, the activity of the local legal experts, and, above all, on one of the main questions confronted by juristic papyrology: the coexistence in Roman Egypt of different legal traditions ('legal plurality'), the interactions between them and the approach thereto of the Roman courts.

In the proposed paper I will present some of the results of a research project aiming at a comprehensive new edition and commentary of P. Oxy. 237. The reading of the fragmentary four columns left unpublished by Grenfell and Hunt and numerous corrections to the rest of the text have allowed a renewed look into the entirety of the document and new insights into its narrative, content, and nature. I will especially focus on the materiality of the document and its first, hitherto unpublished column. My presentation will attempt to suggest the possible function of the P. Oxy. 237 in the light of the discoveries of the research time which I head.

Keywords: juristic papyrology, Roman Egypt, divorce, marriage, legal plurality, local laws

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Dal *piaculum* alla pena. I origini religiosi della responsabilità civile

Lo scopo di questa ricerca è spiegare, nel caso del diritto romano, alcune forme iniziali di responsabilità e descrivere la loro evoluzione da un livello religioso fino a quello propriamente giuridico. Per questa ragione, vengono esaminate le fonti letterarie e materiali disponibili, e si raffrontano con le ipotesi che sono state formulate prima della loro scoperta. A questo punto si giudicherà la continuità oppure la discontinuità fra tre possibili momenti: un primo momento in cui, dinanzi a certi tipi di omicidi e danni non intenzionali, le fonti testimoniano l'imposizione di una sanzione esclusivamente religiosa; un secondo momento nel quale la sanzione ha un carattere misto (al contempo giuridico e religioso); e, infine, un terzo momento nel quale la sanzione diventa esclusivamente giuridica.

In questo contesto sarà trattata, in particolare, l'idea di *piaculum*, la sua relazione con il concetto di responsabilità e pena, e la sua discussa presenza nella Tab. 8,24a.

Keywords: Diritto e religione; Responsabilità arcaica; Piaculum; Pena

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The deed in question: Slavery, social death, and the "dynamics of choice" in Roman Britain

Roman law is no longer widely viewed as a "definite, identifiable, and unitary body" (Czajkowski, 2019: 111-112). However, there is an ongoing tendency towards the framing of creative adaptations of Roman law as illegitimate or incorrect. In this paper, I propose an approach which takes seriously the deliberate instrumentalization and manipulation of Roman legal forms to contrive legal acts not provided for by positive law. I will demonstrate the utility of moving beyond normative dichotomies of valid and invalid through a contract of sale from London for Fortunata, a Gallic slave girl (AE 2003, 1016). This document records Fortunata's conveyance between

Albicianus, a Gallic *venalicius*, and Vegetus, the *vicarius* of an imperial slave. Neither Vegetus nor Albicianus were Roman citizens, yet the method of transfer was *mancipatio*, a formal legal procedure normally reserved for Roman citizens (Gaius, *Inst.* 1.119). The use of *mancipatio* by a peregrinus and a *servus vicarius* to effect the sale of another slave has been of great interest to both historians of Roman Britain and scholars of Roman law. Since its publication in 2003, various readings of this text have been proposed, which attempt to resolve this legal "oddity", situating the sale in its broader local and Roman imperial contexts. I will propose an alternate interpretation of this contract's form and content, privileging the flexibility of Roman legal forms over the coherence of 'Roman law' as a unitary system, and demonstrating how legal processes designed to enforce and reify the 'social death' of slaves, could become mechanisms through which they exercised agency.

Keywords: slavery, identity, roman law

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Wicked Women of the Roman World - Women's disability and mental illness in the Imperial prose

Presentation Title: Women's Disability and Mental Illness in the Imperial Roman Legislation

Paper Title: Wicked Women of the Roman World - Women's disability and mental illness in the Imperial prose

Roman jurists widely believed that women need an assistant in legal matters just like they need *tutela*, their ignorance of law being forgivable because women are "careless with such grave matters". The dominant tone in descriptions of women's legal position is undervaluing; women are compared to the weak or those who are not in full understanding, indicating that womanhood is a type of disability in itself, comparable to other debilitating conditions and to be differentiated from men. This creates a picture of women as virtuous in the context of law when they are passive, but paradoxically gives legists space to underestimate women's eligibility in court by relying on stereotyping.

The legal aspects of women's disability and mental illness are particularly discussed when evaluating marriage; like childlessness, *furor* was in certain cases an acceptable reason for a divorce or it could prevent a marriage altogether. However, the Roman legal texts also protect married women in some instances; illness needed to be witnessed or otherwise proven. *Furor* is often discussed neutrally, without any indication to either spouse. Typically, *furor* prevented consent, and since consent is a key element in rightful marriage, women's health is from the legal perspective in the very core of Roman marriage.

Women's disability and illness are often portrayed as moralistic in the Roman narratives; these depictions revel on modest virtues of womanhood, condemning and exaggerating any deviation from the ideal. On the other hand, healthy women are generally associated with marginalised groups such as children, the elderly, and the disabled. In Roman legal texts, descriptions of women's disability focus on evaluating physical and mental capabilities in different contexts. Roman legislation thus provides a starting point for examining the ideals imposed on women and realities that were achieved within the limitations of these laws.

Keywords: disability, mental illness, illness, health, women, virtue, Rome

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“The letters and their meaning: from manuscripts to critical edition”

This paper explores the road from the material to the immaterial, from formalised ink-blots on parchment and paper, with all the mistakes they usually contain, to the critical edition of the work whose contents they carry.

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Adhésion et remise en question de l'institution judiciaire d'après la documentation non littéraire du Nouvel Empire égyptien

Connue par des sources variées (documents juridiques, textes sapientiaux, autobiographies...), l'institution judiciaire égyptienne, déjà millénaire lors du Nouvel Empire, se veut être parfaite et irréprochable¹, respectant ainsi le concept de la *maât* qui est fondamental dans la vision du monde des anciens égyptiens².

Beau et vertueux système qui ne souffrirait d'aucun défaut, jugeant sans différence le riche et le pauvre³, faisant preuve d'une telle capacité d'écoute⁴ et de conciliation que les deux parties quittaient le tribunal le « cœur réjoui »⁵.

Vision presque surhumaine et écrasante de l'institution judiciaire qui semble faire fi de la faiblesse des hommes.

Or, la seconde moitié du Nouvel Empire traversa une profonde crise sociale, économique et politique qui entraîna une véritable débâcle des valeurs morales d'une partie de ses habitants⁶. Écroulement de l'idée même de l'éthique qui se retrouve dans certaines sources manuscrites de l'époque⁷.

Face à un tel changement de paradigme, ma contribution visera à mettre en exergue les conséquences que le phénomène eut sur le lien unissant l'Égyptien « moyen » à un système judiciaire en crise.

L'étude des sources matérielles non littéraires, telles les correspondances privées ou semi-officielles⁸, permet d'observer une dichotomie fluctuante entre le rôle théorique de l'institution judiciaire et son recours dans la pratique.

De fait, le recours au divin⁹ – permettant ainsi d'éviter une (in)justice rendue par des hommes corruptibles⁹ – semble prendre une place de plus en plus centrale dans la justice égyptienne. La protection d'une divinité venant ainsi supplanter, sans le remplacer, un ordre judiciaire en faillite qui ne remplit plus sa fonction.

Keywords: histoire du droit, Egypte Antique, oracle, sources non littéraires, pluralisme

¹ Cf les différentes Sagesse égyptiennes (*Sebayt*) et en particulier les *Maximes de Ptahhotep*.

² J. Assmann, *Maât, l'Égypte pharaonique et l'idée de justice sociale*, Paris, Julliard, 1989, p. 16 ; B. Menu, *Histoire économique et sociale de l'ancienne Égypte*, vol. 1, t. 1, Paris, CNRS Éditions, 2018, p. 35 ; S. Morenz, *Ägyptische Religion*, Stuttgart, Kohlhammer Verlag, 1960, p. 120 ; R. VerSteeg, *Law in Ancient Egypt*, Durham, Carolina Academic Press, 2002, p. 21.

³ Cf l'*Autobiographie du vizir Rekhmirê* (Urk. IV, 1079.4-6), K. Sethe, *Urkunden der 18. Dynastie*, Abteilung IV, Band IV, Heft 13-16, Leipzig, J.C. Hinrichs'sche Buchhandlung, 1909. ; A. H. Gardiner, « The autobiography of Rekhmerê », *ZÄS* 60, 1925, p. 62-76.

⁴ B. Menu, *Histoire économique et sociale de l'ancienne Égypte*, *op. cit.*, p. 227.

⁵ Cf *Rekhmirê* ; M. Dessoudeix, *Lettres égyptiennes*, t. 2, Arles, Actes Sud, 2012, p. 253-296.

⁶ P. Vernus, *Affaires et scandales sous les Ramsès*, Paris, Pygmalion, 1993.

⁷ *Ibidem*, p. 17-20, 56-60, 101-120, 123-140 et 174-189 ; G. Posener, « Amon juge du pauvre », *Mélanges Ricke*, BÄBA 12, Wiesbaden, Frans Steiner Verlag, 1971, p. 59-64.

⁸ En particulier la documentation provenant de la région thébaine. ⁹G. Posener, « Amon juge du pauvre », *op. cit.*, p. 59-64.

⁹ *Ibid.*, p. 60. ; papyrus Anastasi II ; ostracon IFAO 2181.

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Creation of imperial constitutions in the light of the insignia of the *Notitia Dignitatum*

The paper analyzes the meaning of details represented in the insignia of the late Roman court officials, specifically *questores sacri palatii* and *magistri scriniorum*, as depicted in the *Notitia Dignitatum*. The *Notitia Dignitatum* preserves a listing of senior government offices in the Roman Empire from around 400 CE. All the surviving versions of the register are copies of the *Codex Spirensis*, an illuminated Carolingian copy of the late antique original. In the manuscripts copied from the *Spirensis* between 1426/7 – 1550/51, the information concerning particular dignitaries is in most cases preceded with sheets depicting their insignia. This paper discusses all versions of the insignia preserved in the primary copies of the *Spirensis*, though it gives preference to the two most important of those, i.e. the earliest, almost complete copy of the *Notitia Dignitatum* (Oxford, Bodleian library, western ms. 19854 - Canonici ms. misc. lat. 378 from 1436), and the most reliable one (Munich, Bayerische Staatsbibliothek, ms. Clm. 10291: codex 2, made in 1550/1551). The author also relied on two of the secondary copies of the *Spirensis* (Madrid, Biblioteca nacional, ms. Reservado 36; Napoli, Biblioteca nazionale, ms. IV.D.14). To a greater or lesser extent, all preserved insignia of the *Notitia Dignitatum* contained a symbolic meaning, conveying the competences of particular officials and their position within the administration of the Later Roman Empire at the turn of the fifth century. The author discusses the significance of the details in the insignia of both officials and concludes that the drawings, together with the text of the *Notitia Dignitatum*, should be associated with the nature of the limited influence that quaestors and magistri scriniorum had on the shape of imperial legislation in the Eastern and the Western Roman Empire alike.

Keywords: *Notitia Dignitatum*, *Codex Spirensis*, quaestor sacri palatii, magister scriniorum

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De la faute antique à la faute moderne: Mucius D. 9.2.31, la Cour de cassation française et le Tribunal fédéral suisse

La responsabilité civile est en train d'opérer une boucle. La lex Aquilia, sous sa forme initiale, ne requerrait pas de faute. Les grands Codes civils mettent la faute sur un premier plan. Depuis la seconde guerre mondiale, nos jurisprudences s'éloignent matériellement de la notion de faute pour revenir à une responsabilité sans faute – autrement dit, nous revenons à la conception initiale de la lex Aquilia, qui nous apparaît du coup sous une autre lumière.

Keywords: lex Aquilia, faute, illicéité,

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The reception of 'Institutiones' in Far East

This paper explores the reception of Western law in Japan during the early Meiji era (the second half of the 19th century), with a focus on the comprehension of the Justinian Institutes.

At this time, Japan had no other choice but to transplant Western law onto its own legal cultural foundation. We find that Roman Law played a prominent role in understanding Western law.

Interestingly, the influence of English law and legal thought was significant in introducing Roman law to Japan.

When the law school started in Japan, Roman Law was included in the legal education curriculum, following the method of legal education in England. The first Roman law teacher, W. E. Grigsby, was invited from England and taught Roman law in English, using the Justinian Institutes as the textbook.

During this time, Japanese authors also began to publish books and papers on Roman law that included explanations of the Justinian Institutes. One of these authors, Tatsui Baba, studied law in Inner Temple, England as a student at public expense (1870-1874) and translated the first two sections of Justinian Institutes (I.1,1-2) in his "Roma ritsu-ryaku" (The Outlines of Roman Law) (1879-1880). Baba's interpretation of Ulpian's definition of natural law (I.1,2pr. = Ulp. Inst.1 D. 1,1,1,3) was unique. I assume that he might understood to connect it to Sir Henry James Sumner Maine's "Ancient Law," which he also lectured on in a law school (1884-1885).

This paper examines how, through Baba's reading, Japanese understood Western law in the early stage of the reception.

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Aulo Gellio come giudice

A Roma non era richiesto che un giudice avesse conoscenze di diritto o di pratica processuale. L'elenco dei giudici, noto come *album iudiciorum selectorum*, poteva includere qualsiasi cittadino romano di sufficiente livello sociale. Aulo Gellio acquisì le conoscenze necessarie per servire come giudice dopo essere stato inserito nell'elenco dei giudici privati. Si fece consigliare da diversi specialisti e lesse testi di vari autori, non solo giuristi e avvocati, ma anche retori e filosofi. Nell'articolo vengono presentate le situazioni in cui Aulo Gellio si trovò come giudice e che descrisse nelle sue *Noctes Atticae*.

Keywords: Aulus Gellius, *Noctes Atticae*, *iudex*, *officium iudicis*

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From Stoicism to Ius Naturale - On the Effects of Philosophy on Roman Law

It is generally accepted that Roman jurisprudence was heavily influenced by Greek philosophy in both public law and private law; and this influence was especially concentrated in the stoic school of thought. Roman jurists established the understanding of natural law, *ius naturale*, by following the Stoic thought. This idea of stoicism, which Zenon is accepted as the founder, systematically formed the logic and the understanding of natural law in Rome, especially through Cicero and Marcus Aurelius. In addition to the direct influence of Stoicism on Roman political thought and public law in this way; also in the Digest, there are texts in which *ius naturale* is clearly seen as a source of law. In this study, it is aimed to present some related texts after examining this philosophical idea and its form in Rome.

Keywords: Stoicism, natural law, *ius naturale*, ratio