

LUCIO DE GIOVANNI

L'esperienza giuridica nella tarda antichità

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This study aims to examine some more significant themes of the late-ancient legal experience, related to institutional aspects and changes in the system of sources. In particular, the focus is on the ways in which, especially since the reign of Diocletian, a statist organization, unknown to previous eras, is implemented as well as the study also investigates the figure of the emperor, considered as the centre of production of the rules and his relationship with the law by himself created, the relationship between imperial law and jurisprudential law, the birth of the *forme-code* and of the confessional empire. Considered in these respects, the Late Antiquity appears, also from the point of view of legal events, a laboratory of accelerated transformations, that gives rise to a history of long life destined to have a profound effect on the events of the following centuries.

ELIO DOVERE

Funzione sistemica del Codice Teodosiano

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The researchers of Roman Law usually ignore the importance of the Theodosian Code in the history of the sources of law: the work of Justinian inevitably distracts the attention of the research. As a matter of fact, the publication of the Theodosian Code in 438 d. C. completely altered the Roman system of the sources of law. The *ordo iuris* was from the beginning 'horizontal', with all sources located at the same level; the *Theodosianus*, instead, created a 'vertical' system, which provided a rigid hierarchy of sources. In practice, the Theodosian Code can be considered the *magna-lex* (such as it is the Civil Code of 1942): all other sources, which are recognized as such by the Code itself, come only after this. This appears to be the most important historical precedent of the western pyramidal legal system of the modern age.

ANNA MOTTA

**L'anima alata di Platone e la sua missione soteriologica:
esegesi neoplatoniche sul *Fedro***

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Purpose at which this paper aims is to discuss the privileged connection which some souls possess with the transcendent world in

virtue of which they can in their descent reveal truth and bring about the return of souls that have fallen from the intelligible world. Starting from the Platonic *Phaedrus* and Plotinus' exegesis, we will examine some texts of Iamblichus, Proclus and Hermias in order to consider the incidence that the Neoplatonic interpretation of the myth in Plato's *Phaedrus* has on the *Prolegomena* to Platonic Philosophy. Iamblichus distinguishes between different sorts of souls; Proclus discusses the different degrees in the descent of the soul in the world and draws the souls who do descend, but remain pure, and Hermias asserts that some souls are 'not fallen', but 'sent down' into material world. What is also interesting is the possibility that the Neoplatonic psychology, expressed by these commentators, is used for the divine image of Plato described in the Anonymous *Prolegomena* to Platonic Philosophy. Here the Anonymous stresses the divine origin of Plato's soul and his spiritual rather bodily genealogy. The theory of superior souls seems to determine the break with the classical mythical tradition which declared Plato's divinity in virtue of his birth from a mortal woman and a god. Only through the Neoplatonic interpretation of the myth of *Phaedrus* the Anonymous can suggest that Plato's soul in descent has superior knowledge inspired by the gods and therefore a soteriological mission.

MARIA CARMEN DE VITA

'Generare nella bellezza': l'estetica del processo demiurgico in Giamblico e Giuliano Imperatore

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All recent studies on the Neoplatonic tradition confirm the close connection that Plotin and his successors use to establish between metaphysics, theology and what we might define as an aesthetic vision of the intelligible and sensible reality. In fact, for these philosophers, the Beauty that specifically floods of itself the various *kosmoi* and connotes the divine nature is the manifestation and the product of the intelligible dimension; this belief is presented as the result of an intense exegetical work conducted on famous Platonic passages, from the *Symposium*, the *Phaedrus* and especially the *Timaeus*. And really the *Timaeus*, in my opinion, is the main reference text for the Julianic hymn *To the King Helios*. Here is outlined a theory about the 'aesthetics' of cosmic demiurgy that deserves attention, because it could go back to an originary

Chaldean-Iamblichaeon doctrine of the intelligible Beauty and its irradiations in the sensible *kosmos*.

JUAN ANTONIO LÓPEZ FÉREZ

Bibliógraphos: estudio del término desde su primera aparición hasta Galeno

» 79

Bibliographos, «copyist», appears for the first time, in the second century A.D. (Pollux, Lucian and Phrynicus, once each). I examine and study the contexts which contain the term. Nevertheless it is in Galen (19 examples) where the term is important because the famous doctor provides us with extensive data about the profession of “copyist”. I established several paragraphs to distribute the sequences according to their content: a) the first copyist and his errors; b) the ancient copyists; c) several examples of omission; d) two errors caused by graphical corruption; e) Galen favours adding a term; f) omission of a preposition, because of Hippocrates or of a copyist’s carelessness; g) inclusion of headnotes in the main text; h) a comment on the style. After filing, translating and commenting the texts in the immense work of Galen, I allude to the scarcity of *Bibliographos* in later literature.

ROSALBA ARCURI

Etnogenesi, «entelechia barbarica» e attuali orientamenti storiografici sulla *Völkerwanderungszeit*

» 107

The contemporary discussion about “Migrations of the Peoples” at the beginning of a new world shows contrasting positions between those who approach the “Narrators of Barbarian History” with total skepticism and hypercritical attitude, in the belief that ancient sources have passed merely classicist *topoi* about Barbarians and then their use is highly doubtful, if not entirely needless, for construction of euristically valid models for understanding Europe between Late Antiquity and Early Middle Age, and scholars of Wien School and others European researchers. Going back to the Wenskus’ *Neue Lehre*, the latter believe in the existence of an ethnographic tradition, although largely legendary, but living among barbarian *gentes*, of which Greek and Latin texts handed down a faithful reflex. This paper, divided in two parts, after having reviewed some of the most representative positions of both thought, focuses on the issue of Ostrogoth Kingdom in Italy: this history is emblematic

of barbarian propensity to cultural osmosis with *Romanitas* along with requirement of preserving their identity features in front of a culture, however, felt as “other”.

LUIGI TARTAGLIA

Su talune ‘aporie’ della *Vita Constantini* di Eusebio di Cesarea » 143

The examination of a few debated passages of the *Life of Constantine*, contrary to some scholars’ opinion, points out that it is possible to read this renowned Eusebian text as a coherently conceived and accomplished work.

Nuove testimonianze sulla polemica antigudaica

in due manoscritti della *Cronaca* di Giorgio Cedreno » 159

The anecdotes concerning the antijudaic controversy in two manuscripts of the Kedrenian *Chronicle* prove the popular spreading of this topic by documentary evidence.

FRANCESCO ARCARIA

I testamenti pubblici romani: una chimera? » 167

The Author analyses, from a renowned perspective, one of the most peculiar features of the Roman “public wills” (the postclassical wills *apud acta conditum e principi oblatum*), that is their being formed through the reception by the public authority of an oral declaration coming from the testator. Nonetheless, the Author, from the very title, questions the idea of Roman public wills, since the limited role of the public authority in this process and the modalities of his intervention do not allow to state with certainty the existence of real “public” wills in the Roman legal experience.

GIUSEPPE CRESCENZO

**Sulla ‘capacità patrimoniale’ dei monaci
nella legislazione tardoantica** » 203

The study concerns the subject of monk’s ‘patrimonial capacity’ in Late Antiquity, with particular reference to private law aspects of the Justinian legislation on the monk’s property and to the principle of evangelical poverty, as a main spiritual engagement of religious to starting a monastic life. Following brief comments about the religious principle of poverty, the State-Church relations and the ecclesiastical-monastic legislation of Constantine, Theodosius II,

and Leo I, special attention has been placed on the deep gap (in relation of the professed ‘patrimonial capacity’) existing between the rules contained in the Code of Justinian (*Codex Iustinianus*) and those that Emperor issued later on. Actually, in the *Codex* there are several rules made both by Emperors and Justinian himself, which pertain (marginally or particularly) the ‘system’ of monastic property and state that the admission to monastery life does not determine the loss of religious ‘patrimonial capacity’: principle of poverty, although is essential to constitute the monk’s state, does not deprive the religious of property right that remains to him. In the following years between 535 and 546, Justinian establishes with Novels (*Novellae*) 5, 76 and 123 new principle compared to previous principle, to agree the ‘evangelical’ *ratio* of *paupertas* in the latest ecclesiastical-monastic legislation. So, with the right of *Novellae* has been established (in general) that the monk’s property and assets (except for offspring’s rightful share) are assigned directly to monastery, without a necessary manifestation of the subject will; the ancient praxis based on the evangelical principle of poverty becomes in this way a juridical rule: the monk dedicates to monastery which he belongs, not only his person but also his assets. The ‘solution’ of Justinian was revised and further clarified by the subsequent jurisprudential doctrine both civil and canonic.

CARLA CASTELLI

**Due scoli a *Iliade* I 1 nei supporti cartacei dell’*Ilias Picta*:
considerazioni e prospettive di indagine**

» 225

The medieval paper sheets on which the miniatures of the *Ilias Picta* were affixed, contain scholia h (or Byzantine scholia), not only scholia D. The identification allows to look at the material – scarcely studied – from a new perspective which ultimately aims to illuminate the history of the illustrious manuscript in its two components: late-antique images and medieval scholia.

CLAUDIO BEVEGNI

**Il mago Cipriano nella letteratura agiografica
e nel poemetto di Eudocia Augusta**

» 235

The main sources about Cyprian of Antioch, a legendary figure of magician, who was converted to Christianity and then became bishop and saint, are three anonymous hagiographical writings en-

titled *Conversio Cypriani*, *Confessio Cypriani* and *Passio Cypriani*: written in the IV century, all three survive in different (two or more) versions. In the V century empress Eudocia transposed these three works concerning Cyprian into hexameter verses and composed a poem in three books, the *Story of Saint Cyprian*; Eudocia followed a different version of *Conversio* and *Confessio* from the ones known to us, as we can infer beyond doubt through a systematic textual comparison between prose hagiographical writings and Eudocia' poem. Finally, it is not easy to find out the reason why Eudocia wrote a paraphrastic poem of this kind. It is unlikely that the *Story of Saint Cyprian* has been composed as a school text; it is improbable as well that Eudocian poem was a mere learned divertissement with no particular further purpose. Maybe Eudocia, matching classical form (hexameter and Homeric heritage) and Christian content, aimed to draw last pagan supporters near to Christian values and, after all, to Christian faith.

JEAN-LOUIS CHARLET

Claudian chantre païen de *Roma aeterna*

» 255

Following Claudian's great political poems according to their chronology, we see clearly that Rome is the central character of his public poetry, from the *Panegyric of Olybrius and Probinus* (395). Even when he becomes the cantor of Stilicho's policy (from 396), Claudian is faithful to his own conception, traditionally pagan, of Rome and of her mission. In his last poem (*Panegyric for the 6th consulate of Honorius*), recited in January 404, Claudian exposes clearly, without any reserve, his ideal of a *Roma aeterna* culturally pagan, and of a citizen-emperor who, from Rome (from the Palatine), would govern the Empire, restoring traditional customs. That is not Stilicho's or Honorius' point of view and, after this audaciousness, Claudian will no more speak.

CLEMENTINA MAZZUCCO

Luoghi e metaluoghi tra Bibbia e *sacra itinera*

» 271

The article deals with the phenomenon of resignification of the places in Christian pilgrimages to the Holy Land in late antiquity. It touches – so to speak – the reciprocal relationship that is established between the pilgrims and the holy sites, due to the fact that the places are bearers of meaning but themselves receive new meaning

by the pilgrims. It is based predominantly on pilgrims' accounts, specifically on the *Peregrinatio Egeriae* and the *Itinerarium Antonini Placentini*. The following points are considered: the pilgrims' fascination for the places mentioned in the Bible and their intention to verify what they learned about them; the pilgrims' expectation of finding those places unchanged, and, in turn, their discovery of changes and losses that occurred; the broadening of the traces of holiness (tombs of new saints, cells and monasteries); the physical and sensory experiences linked to the visited places; emotions and mystical phenomena; the tendency to idealize the holy sites and transform them according to the models of Eden and heavenly Jerusalem; some cultural practices inspired by the places; encounters and interactions with different religious traditions and customs.

EUGENIA FRANCIOSI

La detenzione nella legislazione di Giustiniano

» 295

The article aims to clarify the role of custody in prison in late antiquity, with special regard to the legislation of Justinian, which aims at qualifying its character as that of a temporary and precautionary custodial measure, which falls entirely under state jurisdiction.

LOREDANA DI PINTO

Il procurato aborto nel pensiero dei giuristi severiani

» 317

The article analyzes some meaningful law sources of third century AD about procured abortion. They are mainly attributable to Severan time jurists and concern the topic of liability and succession. Some of them (*D.* 37, 9, 1, 4; *D.* 9, 1, 27; *D.* 29, 2, 30, 4; *D.* 5, 4, 3; *D.* 1, 5, 7) show the existence of an early safeguard of the fetus' future inheritance rights, according to the principle of '*spes nascendi*', having as main aim the protection of interests of the *pater* or of the *res publica*. Others (*D.* 9, 2, 27, 22; *D.* 9, 2, 9 *pr.*) underline that jurists of the Severan time consider the phenomenon of abortion only in terms of economical liability to the *dominus* and then the *maritus*. Finally, the contribute contemplates three famous fragments (*D.* 48, 19, 39; *D.* 48, 8, 8 e *D.* 47, 11, 4, respectively compiled by Tryphoninus, Ulpian and Marcian), in order to reach a reconstruction of the text of the law which introduced the first punitive measures against procured abortion. The law, issued by Severus and Caracalla, recognizes for this *crimen* the punishment of temporary exile, in

order to protect the *pater* from the injury of its rights. Therefore, the absence of punishments relating to the homicide confirms the persistence of the Stoic philosophical conception on the fetus. In fact, as in the succession subject would be inadmissible to protect the fetus' interests because of its inexistence, also regarding the prospective damages, it does not seem that there were actions ordered by the lawgiver against procured abortion to protect the unborn's rights.

SERGIO CASTAGNETTI

Giuliano, *Christiani* e decurioni: note su *CTh.* 12, 1, 50 » 349

The purpose of emperor Julian's policy was to restore municipal revenues. *CTh.* 12, 1, 50 was an example: it represses with some rules the behaviour of decurions who tried to avoid municipal *munera*, and at the same time gives to the city councils an exemption from tax payment. The first part of this constitution caused an old debate which is in particular about the phrase *qui ut Christiani declinant munia*, in which it seems problematic to give a not ambiguous meaning to the word *Christiani*: that's what this article tries to do, comparing the constitution quoted above with other ones of *Theodosian Code* and other literary sources too.

HELMUT SENG

Hermetische Herden? » 367

Didymus of Alexandria attributes to Hermes Trismegistus the idea that the wise man is not subject to *Heimarmene*, whereas the *man of the common herd* is. The latter expression seems to be not hermetic in origin, but to come from the *Chaldaean Oracles*.

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