

Abstract

Vincenzo Giuffrè, «*Regulae iuris*» e metodi della «*scientia iuris*». Prospettive di approfondimenti

The topic of *regulae iuris* has been treated several times, also recently. Nevertheless, the results are not satisfactory yet and mainly concern the *iurisprudentia* of the late *respublica* and *principatus* which gave birth even to a true literary genre. The study draws the attention on the age of late antiquity and the compilation of Justinian. In the first one the *regulae iuris* were no longer considered as a synthesis of the existing regulations or of dialectical arguments, but as actual regulations. On the contrary, Justinian / Tribonian, despite having given legal force to the material taken from the works of ancient jurists, downgraded the *definitiones* and *regulae* considering them imprecise by nature and useful only if corresponding to the existing law.

Le sujet des *regulae iuris* a été traité plusieurs fois même récemment. Toutefois les résultats ne sont toujours pas satisfaisants et ils concernent surtout la *iurisprudentia* de la vieille *respublica* et du *principatus*, dans le domaine de laquelle il y eût même un genre littéraire. Cet étude focalise son attention sur l'âge bas-ancienne et sur la compilation de Justin. Dans la première les *regulae iuris* n'étaient plus considérées comme des synthèses de règles en vigueur ou des sujets dialectiques mais plutôt des véritable normes. Au contraire, Justinien/Tribonien, même s'il a donné une valeur juridique au matériel tiré des œuvres des juristes de l'antiquité, a cependant déclassé *definitiones* et *regulae* percevant qu'elles n'avaient pas l'officium typique du ius mais elles étaient par leur nature imprécises et utiles seulement si elles correspondaient au droit courant.

Parole chiave

Definitiones, regulae iuris, regulations.

Definitiones, regulae iuris, règlements.

Berthold Kupisch, «*Legatum liberationis*» und «*acceptilatio*»: D. 35.2 (*De lege Falcidia*).82, *Ulpian 8 disput. auf den Spuren Julians*

The principal subject of the article is how to understand the meaning of the pronoun ‘*sibi*’ as a component of the expression «*ipse (debitor) sibi solvendo videtur*» applied to a debtor to whom an *acceptilatio* is bequeathed. Interpretations so far do not convince and are, incidentally, not in accordance with *acceptilatio* described by Julian. In fact, Julian's conception of *acceptilatio* allows a new view for the matter in question and seems to be the guide-line for Ulpian's reflections in general, whose frame of reference is the application of the *lex Falcidia*.

A minor problem concerns the phrase «*si soli ei liberatio relicita est*» which appears to be spurious.

L'indagine si sviluppa principalmente intorno al significato del pronome ‘*sibi*’ nella frase «*ipse (debitor) sibi videtur solvendo*»: le interpretazioni correnti in storiografia sono giudicate non convincenti e in contrasto con la descrizione giuliana dell'*acceptilatio*, la cui concezione getta una nuova luce sull'argomento, integrando la linea guida delle riflessioni di Ulpiano in tema di *lex Falcidia*. Un problema minore riguarda la frase *si soli ei liberatio relicita est* che sembra essere spuria.

Parole chiave

Legatum liberationis, acceptilatio, lex Falcidia.

Legatum liberationis, acceptilatio, lex Falcidia.

Giacomo Conte, *La norma decemvirale «partis secanto»: una nuova ipotesi di studio*

The article addresses the exegesis of XII tab. 3.6, according to traditional palingenesis and suggests, as for the topic of *sectio*, an essentially ‘patrimonial’ interpretation, already tried in the doctrine but rejected by the prevailing opinion, then developed by analysing the peculiarities that distinguished the V century BC. society, with special reference to the organization of the *familia* and the key role of the *pater*. The paper reaches then the final conclusion of an interpretation hypothesis of the decemviral precept that identifies the *partes* of the *sectio* in the *personae alienae potestati subiectae*.

Cet article analyse le XII Tab 3.6 selon le renouvellement traditionnel à travers, en ce qui concerne la *sectio*, une lecture de type essentiellement ‘patrimonial’, déjà faite en doctrine mais refusée de l’opinion dominante, qui est développée en analysant les caractéristiques typiques de la société du Vème siècle a.J.C. et surtout sur l’organisation de la *familia* et le rôle clé du *pater*. On arrive ainsi en conclusion à une hypothèse d’interprétation du précepte decemviral qui identifie les parties de la *sectio* dans les personnes *alienae potestati subiectae*.

Parole chiave

Partis secanto, familia, alieno iure subiecti.

Partis secanto, familia, alieno iure subiecti.

Annarosa Gallo, *L’Hirpinia fra III e I sec. a.C.: agro pubblico, assegnatari viritani, giurisdizione delegata, assetto istituzionale*

The *ager publicus populi Romani* in Hirpinia was established after the Hannibal’s war, as a punishment of the rebel communities. Lands were distributed among veterans of Scipio, Gracchan assignees, veterans of Sulla and beneficiaries of the *lex Iulia agraria* (59 BC.). The *praefecti* of the *praetor urbanus* administered the justice for them.

Around mid- I century BC., the land assignees located in the upper valley of the Calore and of the Ofanto were conferred to Compsa, while those in the valley of the Ansanto were organized into an autonomous local community whose identity is still unknown.

In Hirpinia wurde der *ager publicus populi Romani* nach dem hannibalischen Krieg als Bestrafung für die aufständischen Gemeinden gegründet. Hauptsächlich diente er, in verschiedenen Zeiten, der Ansiedlung der Veteranen von Scipios, Ti. Gracchus, Sullas, sowie von Begünstigten nach der *lex Iulia agraria* (59 v. Chr.). Zugunsten dieser Assignataren beauftragte der Prätor einen oder mehrere Präfekten zur Ausübung der Rechtspflege. Um die Hälfte des 1. Jahrhunderts v. Ch. wurden die Assignataren im oberen Tal des Calore und des Ofanto zu dem *municipium* von Compsa zugeschrieben. Die Assignataren im Tal des Ansanto wurden dagegen zum Rang eines *municipium* erhoben. Die Identität dieses *municipium* bleibt noch unbekannt.

Parole chiave

Hirpinia, ager publicus, lex Sempronnia agraria, possessores Sullani, lex Iulia agraria, praefecturae.

Hirpinia, ager publicus, lex Sempronnia agraria, possessores Sullani, lex Iulia agraria, praefecturae.

Aniello Parma, «*Universus numerus curiae Pollio Iulio Clementiano statuam conlocavit*»

In an unpublished inscription of the first half of the IV century AD., discovered over recent years, the assembly of *curiales* from Nola honored Pollius Julius Clementianus, *vir perfectissimus*, for his countless demonstrations of euergetism towards the entire local community. To celebrate his unceasing activities in favour of the defense and support of the town, some statues were also built of the town districts (*regiones*) as a tribute to him, already reknowned because of three honorary dedications published in 10th Volume of the *Corpus Inscriptionum Latinarum*, (1255, 1256, 1257). The analysis of the epigraph is an opportunity to trace the social and historical panorama of Nola in the late Antiquity.

Dans une inscription inédite de la première moitié du quatrième siècle, découverte au cours des dernières années, l’ensemble des *curiales* de Nola honore Pollius Iulius Clementianus, *vir perfectissimus*, pour ses innombrables manifestations d’évergétisme en faveur de l’ensemble de la communauté locale. Le personnage illustre et généreux est déjà connu par trois dédicaces honorifiques publiées dans le volume X^e du *Corpus Inscriptionum Latinarum*, sous la rubrique Nola (1255, 1256, 1257). En son honneur des statues de quartiers de la ville (de *regiones*) étaient également élevées pour célébrer son incessante activités de défense et de soutien de la ville. L’analyse de l’épigraphie est une occasion de dessiner un panorama social et historique de Nola dans la période de l’Antiquité tardive.

Parole chiave

Pollius Julius Clementianus, Nola, Late Antiquity.

Pollius Julius Clementianus, Nola, Antiquité tardive.

Michele Giagnorio, *Presupposti ideali nella «svolta» costantiniana verso le comunità cristiane: il motivo della libertà religiosa*

The paper develops the theme of religious freedom, by comparing the use made by Tertullian and the references contained in the edict of Milan in its version mediated by the story of Lactantius and in particular it investigates its spreading in the Latin Christian literature. The author also compares the contents of the Edict of Milan referring to the version of Lactantius, with that reported by Tertullian, according to which religious freedom was a *naturalis potestas* (not reducible by the public power) as a response to the concept of *libera potestas* (reducible by the public power) deriving from the edict of Milan.

Le document développe le motif de la liberté religieuse, en comparant l'utilisation que fait Tertullien et les références présentes dans l'édit de Milan en version médiée par l'histoire de Lactance et en particulier enquête sur la circulation dans la littérature chrétienne latine. L'auteur compare également le contenu de l'édit de Milan en fonction de la version de Lactance, avec ce qui a été dit par Tertullien, selon lequel la liberté religieuse était une *potestas naturalis* (non compressible par la puissance publique) en réponse à la notion de *libera potestas* (compressible par la puissance publique) cultivées à partir de l'édit de Milan.

Parole chiave

Religious freedom, edict of Milan, Tertullian, Lactantius.

Liberté religieuse, édit de Milan, Tertullien, Lactance.

Johannes Platschek, *Das Nebengut der Ehefrau in D. 23.3.9.3 (Ulp. 31 Sab.): quae Gaiae peculium appellantur*

Dealing with the exegesis D. 23.3.9.3, Ulp. 31 *ad Sab.*, the author questions the text interpretation of the fragment according to which Ulpian would have assimilated the παράφερνα to goods that the Gauls defined *peculium*, suggesting to correct the traditional version of the words «*quaeque Galli peculium appellant*» into «*quae Graeci παράφερνα dicunt quaeque Ga{ll}i<ae> peculium appellantur*».

Affrontando l'esegesi di D. 23.3.9.3, Ulp 31 *ad Sab.*, l'autore revoca in dubbio la lezione testuale del frammento secondo cui il giurista severiano avrebbe assorbito i beni parafernali ai beni che i Galli avrebbero definito *peculio*, proponendo di correggere la versione tradizionale delle parole «*quaeque Galli peculium appellant*» in «*quae Graeci παράφερνα dicunt quaeque Ga{ll}i<ae> peculium appellantur*».

Parole chiave

Parapherna, peculium, Galli.

Parapherna, peculium, Galli.

Gergely Deli, *Die «lex commissoria» im neuen Licht oder verhaltensökonomische Streifzüge im klassischen römischen Recht*

The paper focuses on the so called *lex commissoria* in purchase and sale agreements, a clause that allowed for a transfer of a good delivered to the creditor by virtue of a non-performance of contractual obligations. Speculating on the discipline according to Roman experience, in particular on the suspensive and termination effect of an obligation, on the impact on social relationships, the author elaborates on the case-law interpretation obtained when searching for practical solutions rather than dogmatically correct ones.

Abstract

L'articolo si concentra sulla cd. *lex commissoria* nei contratti di compravendita che consentiva il trasferimento di un bene consegnato al creditore per effetto dell'inadempimento degli obblighi contrattuali. L'autore, interrogandosi sulla disciplina nell'esperienza romana, sugli effetti sospensivi o risolutivi dell'obbligazione, sui riflessi nelle relazioni sociali, si sofferma sull'elaborazione giurisprudenziale formatasi nella ricerca di soluzioni pragmatiche, piuttosto che risposte dogmaticamente corrette.

Parole chiave

Lex commissoria, suspension clause, termination clause, retroactivity.

Lex commissoria, clausola sospensiva, clausola risolutiva, retroattività.

Raffaele Ruggiero, *Gli anni della Monarchia. Per una rilettura del trattato politico dantesco in occasione della nuova edizione*

Starting from the influences of the *Monarchia* by Dante on the relationship between ecclesiastic and secular jurisdiction in the commentaries by Bartolus of Saxoferrato in the second part of the *Digestum (Novum)*, the author – following the analysis of Diego Guaglioni – examines the unity of the knowledge among XIV century scholars and intellectuals and the social and political development of these people. In this perspective the *Monarchia* rests in the European legal and political literary tradition that invites the reader to relate to judicial, administrative and canonical doctrine.

Partant de l'influence de la *Monarchie* de Dante sur le thème du rapport entre juridiction ecclésiastique et juridiction séculière dans le commentaire de Bartolus de Saxoferrato à la deuxième partie du *Digestum (Le Novum)*, l'auteur qui suit l'analyse de Diego Guaglioni s'interroge sur l'unité des savoirs parmi les littéraires et les intellectuels du XIV^e siècle et sur l'évolution sociale et politique de ces personnages. Dans cette perspective, la *Monarchie*, rapportée à son origine idéologiquement naturelle, se situe ainsi dans la tradition littéraire juridico-politique européenne qui invite le lecteur à se rapporter à la doctrine juridique, statutaire et canonique.

Parole chiave

Monarchia, Dante, literature, doctrine.

Monarchia, Dante, littérature, doctrine.