ΚΟΙΝΩΝΙΑ

46

2022

KOINΩNIA
Rivista dell'Associazione Internazionale di Studi Tardoantichi

I lavori proposti per le *Note e discussioni* andranno inviati al seguente indirizzo: Redazione di Koinonia, Prof. Daniela Milo, Dipartimento di Studi Umanistici, Università degli Studi di Napoli Federico II - Via Porta di Massa, 1 - 80133 Napoli.

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ISSN 0393-2230

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Reg. Trib. Napoli n. 2595 del 22 ottobre 1975 - D. A. Centola, Direttore responsabile

INDICE DEL VOLUME

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Widening the frame of ancient legal history

A decade and a half has passed since the publication of *Trent'anni di studi sulla Tarda Antichità: bilanci e prospettive*. In the intervening years a steady stream of primary materials and synthetic studies pertaining to the late ancient world grew into a torrent, helped along by expanded channels in the form of new book series and scholarly journals dedicated to the study of Late Antiquity, along with new training capacity for graduate students as departments of classics and history have come to embrace the late ancient world as part of their own disciplines, however peripheral. Each contributor to this updated appraisal of late ancient studies has found that the field has continued to expand and innovate – methodologically, linguistically, geographically, and temporally – and I join them in keen anticipation of what the next decade will bring. For my contribution, I want to focus on one emergent methodological trend in the study of late antiquity and its implications for the study of late ancient law in particular, and to suggest a few fruitful avenues of further research that such methodological changes afford.

In 1995, philosopher Elizabeth Anderson published a defense of feminist epistemology, suggesting that «it is a characteristic of human thought that our concepts do not stay put behind the neat logical fences philosophers like to erect for them. Like sly coyotes, they slip past these flimsy barriers to range far and wide, picking up consorts of all varieties, and, in astonishingly fecund acts of miscegenation shocking to conceptual purists, leave offspring who bear a disturbing resemblance to the wayward parent and inherit the impulse to roam the old territory»[1]. Concepts, and in Anderson's estimation concepts about gender in particular, have a peculiar proclivity to move between otherwise distinct domains, morphing as they travel and finding new and surprising expressions as they move from their place of production to new lives in distant fields. In this volume, Orazio Licandro has suggested fruitful new avenues of research in «scambi in termini di contaminazione ideologica e semantica tra neoplatonismo, pensiero cristiano e categorie e linguaggio giuridico imperiali», a suggestion to which I return below. For now it is important only to note that awareness and attention to the movement of peculiar terms and discourses between the domains of Roman law and especially Christian theological

[1] E. Anderson, «Feminist Epistemology: An Interpretation and a Defense», in *Hypatia* 10/3, 1995, p. 62.

disputation have been a subject of recent, useful analysis, though the avenues of exchange are typically understood to be unidirectional: ideas come from legal culture and proliferate out, and rarely the other way around. This, however, has begun to change[2].

Over the past decade historians of classical and late antiquity have increasingly taken to studying ancient ways of knowing as objects of inquiry, bridging the gap between the history of science and social history's more classical *foci*. Spurred on by synthetic studies like Daryn Lehoux's 2012 *What did the Romans Know* and Chin and Vidas's 2015 edited collection *Late Ancient Knowing*, recent scholarship especially in the Anglophone world has taken the formation of knowledge in late antiquity as an object of study in and of itself, with the best studies, like Andrew Riggsby's 2019 *Mosaics of Knowledge*, appraising both intellectual and material changes in the production and dissemination of scholastic knowledge as part of a single *episteme*[3]. Such studies stand at the newly opened intersection of classical studies, book history, and the history of science, presenting a glimpse of what is possible if traditional dividers between literary studies, philology, and the broad swath of materialist approaches are dismantled in view of productive collisions.

Traditionally, the study of Roman law, and above all the study of Roman law as practiced in law schools and departments of jurisprudence, has been resistant the notion that generative change in legal frameworks, or even in language, could have originated outside of the ancient discourse of law. Over the course of the twentieth century the study of ancient law became a largely insular discipline, perhaps due to its high barrier of entry as a field of expertise, and perhaps because of the segregation of legal studies physically and departmentally within the modern university structure. Ancient lawyers have not been studied as people who move and breathe within the wider scholastic culture, picking up language, mores, and concepts from other fields of study, or from everyday life, and porting them into their professional juristic work; we reproduced the modern insularity of the academy in our portraits of the legal academy of the past. These presuppositions strain credulity, and recent work has pushed back against the idea that juristic ideals can be traced fully, or even primarily, to

[2] See, for instance, B. Caseau, «L'adjectiv *profanus* dans le livre XVI du Code Théodosien», and C. Freu, «Rhétorique chrétienne et rhétorique de chancellerie: à propos des "riches" et des "pauvres" dans certaines constitutions du livre XVI du Code Théodosien», in Aa.Vv., *Empire chrétien et église aux IVe et Ve siécles: intégration ou «concordat»? Le témoignage du Code Théodosien* (Actes du Colloque international, Lyon, 6, 7 et 8 Octobre 2005), Paris 2008.

[3] D. Lehoux, *What Did the Romans Know? An Inquiry into Science and Worldmaking*, Chicago 2012; C. M. Chin - M. Vidas (eds.), *Late Ancient Knowing: Explorations in Intellectual History*, Oakland 2015; A. M. Riggsby, *Mosaics of Knowledge: Representing Information in the Roman World*, New York 2019.

internal evolution within the domain of ancient legal scholarship[4]. Such a pretextual commitment has hamstrung attempts to understand some of the most basic underpinnings of late Roman law as stated on its own terms, even with the advent of legal positivism as a mainstream research orientation and the integration of non-state normative sources into conversations about the nature of law in ancient societies. The siloing of jurists into their own domain of specialized knowledge is beginning to change, however, as legal studies are integrated (or, perhaps, reintegrated) into the broader field of social history, often with surprising results made possible by a wider frame of reference and range of comparanda that extend beyond the boundaries of 'law', an operation that Dario Mantovani has recently called «une historicisation par proximité»[5].

As a single example, this broader frame of reference has recently shed new light on an old question: why framers of the *Theodosian Code* intended the codex to comprise a collection of *leges generales* edited to a point where they could constitute a *magisterium vitae* – guide to life (1, 1, 5). Scholars of Roman law have long debated the basic lexical meaning of these phrases, with the classical statement found in Archi's 1976 *Teodosio II e la sua codificazione*. But the debate has always been carried out on the basis of a legal corpus inflected by the ideological strictures of legal centralism; the *Digest* has been mined *ad nauseam* to understand what constitutes a «general law», to little avail – so little that on the topic of «general law», Archi admitted that before the promulgation of the so-called *Law of Citations* on the 7th of November 426, «[…] nelle fonti romane non ci sono equivalenti a una così puntuale presa di posizione» regarding the relationship between *leges generales* and *edicta*[6]. But Archi's statement only holds true if one's definition of «fonti romane» excludes the mass of Roman Christian theorization on precisely the topic of «general law», where the distinction was often invoked with different valences from what we see in the *Law of Citations*, but with no less degree of sophistication. Among Christians and Jews, discussion of the contours and extent of «general law» stretches back at least to work of Philo in the early first century CE, encompassing both Greek and Latin sources. And yet, no single commentator on the meaning of «general law» as a framing ideal for the *Theodosian Code* has cited any such literature, including the explicit, extended discussion of the history and meaning of *lex generalis* in Ambrosiaster's

[4] To adduce only a single, excellent example, see C. Humfress, «Ordering Divine Knowledge in Late Roman Legal Discourse», in *COLLeGIUM* 20, 2016, pp. 160 ss.

[5] D. Mantovani, *Droit, culture et société de la Rome antique: Leçon inaugurale prononcée le jeudi 17 janvier 2019*, Paris 2019, par. 40.

[6] G. Archi, *Teodosio II e la sua codificazione*, Napoli 1976, p. 15. Date according to O. Seeck, *Regesten der Kaiser und Päpste für die Jahre 311 bis 476 n. Chr. Vorarbeit zu einer Prosopographie der christlichen Kaiserzeit*, Stuttgart 1919, p. 352.

Commentarius in Pauli epistulam ad Romanos, written from Rome between 366 and 384[7].

Another oversight stems from the historiographic failure to look beyond the bounds of law to understand the intellectual project proposed by the framers of the *Theodosian Code*, this one corrected in 2019 by Sebastian Schmidt-Hofner in his «Plato and the Theodosian Code», about the creation of a universal code intended as a *magisterium vitae*. Schmidt-Hofner argued compellingly that, to understand what it might mean for a law book to be considered a «guide to life», one must look beyond the discourse of law itself, and beyond the books that might be taught in ancient law schools, investigating instead the texts that these lawyers may have read at home or encountered in the wider world of Theodosian Age scholastic culture. He writes,

> […] the codification project of 429 stands out: nothing as comprehensive had ever been conceived of before in Roman legal history, both in regard of its thematic scope and in terms of the range of legal sources that were to be included. The novelty of the envisaged codification is all the more striking if it was meant to provide not just a larger-than-ever collection of law, but something wholly new in Roman legal history: a systematic exposition of the entire law governing the Roman state and the life of its citizens. But whatever the precise shape of the envisaged *magisterium vitae*, the conceptual and ideological affinities between the codification project with its surrounding discourses and Plato's *Laws* suggest that the idea of such an unprecedented comprehensive codification might have had an inspiration – and perhaps not the least important one – in the law code that Plato designed for the second-best of his ideal cities. If true, this philosophical background to the codification project, together with the influence of Platonic thought among the eastern Roman civilian elite in which the plan arose, helps explain how such a revolutionary and un-Roman concept as a comprehensive codification could emerge (or at least come to the fore) in Roman legal thought[8].

Archi and those following his method were unable to uncover or otherwise contrive a compelling juristic backstory for the notion of a law book as *magisterium vitae* because, simply put, there was none to be found – not within the domain of jurisprudence, anyway. When the frame is widened even the slightest bit, to include the late ancient Levantine renaissance in Platonic scholarship, new answers come quickly into view, as Schmidt-Hofner has shown.

[7] Ambrosiaster's discussion of the history and meaning of «general law» is at 7, 1 (*CSEL* 81). For the dating, see T. de Bruyn, *Ambrosiaster's Commentary on the Pauline Epistles: Romans*, Atlanta 2017, pp. xiii-xxix. For a full accounting of the history of scholarship on this issue, and the ancient Christian discourse surrounding «general law», see the appendix in M. Letteney, *The Christianization of Knowledge in Late Antiquity: Intellectual and Material Transformations*, New York forthcoming 2023.

[8] S. Schmidt-Hofner, «Plato and the Theodosian Code», in *Early Medieval Europe* 27/1, 2019, p. 60.

Returning to the fecundity of concepts: new avenues of research opened up when concepts are traced as they move between domains of expertise, and when novel intellectual products like the *Theodosian Code* are seen within the broader frame of the history of knowledge, rather than within the narrow bounds of legal history. How does a concept like «general law», with its early attestation in theological disputation and subsequent appropriation by jurists, slip back into theological scholarship? When the official record of the ecumenical council of 451, produced by the imperial chancery, claims that Theodosius II «confirmed all the judgements of the holy and ecumenical council by a general law» (ἐβεβαίωσεν πάντα τὰ κεκριμένα παρὰ τῆς ἁγίας καὶ οἰκουμενικῆς συνόδου νόμωι γενικῶι), are we seeing a recently defined juristic concept slip back into the realm of Christian theology, or is there a more subtle, complex story to be told about this seemingly innocuous line with explosive historiographical consequences[9]?

New questions abound. What is the relationship between the rise of prestige majuscule biblical codices and the concomitant rise of legal codices during the Theodosian Age? Can productive epistemic correspondences be found in the rise of the universal code in the Christian Theodosian Empire and, for instance, the codification of the *Palestinian Talmud* in a Roman province during the same period? At base, these complex questions are motivated by a rather simpler inquiry: how did concepts move between domains of knowledge in Late Antiquity? Or, put simpler still: did ancient scholars talk to each other, across disciplines? To my mind the most important recent innovation in the study of Late Antiquity, and the research perspective with the greatest potential for dramatic further understanding, lies in presuming that the answer to the latter question is «yes». Making progress will require more of the broad-scale, interdisciplinary interaction of the type that has populated the pages of Κοινωνία in recent years; perhaps the most productive path forward in the study of Late Antiquity lies at the edges of traditional disciplines, where we can follow concepts as they migrate between domains of knowledge, and the ancient lawyers who put down their books of law and emerged into a world teeming with an ascendant ideology of Christian state power.

[9] *ACO* 2, 1, 1, 53, p. 75. The Greek text of the proceedings may obscure the technical nature of this pronouncement by the emperor. The translation of the *acta* produced to circulate in the West reads: […] *confirmavit omnia quae iudicata sunt a sancta et universali synodo, generali legi* (*ACO* 2, 3, 1, 53, p. 50).