

ΚΟΙΝΩΝΙΑ

46

2022

KOINONIA

Rivista dell'Associazione Internazionale di Studi Tardoantichi

Comitato scientifico: Franco Amarelli (Università degli Studi di Napoli Federico II) – Francesco Arcaria (Università degli Studi di Catania) – Gaetano Arena (Università degli Studi di Catania) – Bruno Bureau (Université de Lyon 3) – Jean-Michel Carrié (École des Hautes Études en Sciences Sociales, Paris) – Francesco Paolo Casavola (Università degli Studi di Napoli Federico II, Presidente emerito della Corte Costituzionale) – Donato Antonio Centola (Università degli Studi di Napoli Federico II) – Fabrizio Conca (Università degli Studi di Milano) – Chiara Corbo (Università degli Studi di Napoli Federico II) – Jean-Pierre Coriat (Université Panthéon-Assas Paris II) – Ugo Criscuolo (Università degli Studi di Napoli Federico II, *Direttore*) – Giovanni Cupaiuolo (Università degli Studi di Messina) – Lucio De Giovanni (Università degli Studi di Napoli Federico II, Presidente dell'Associazione Internazionale di Studi Tardoantichi, *Condirettore*) – Lietta De Salvo (Università degli Studi di Messina) – Emilio Germino (Università degli Studi della Campania Luigi Vanvitelli) – Andrea Giardina (Scuola Normale Superiore di Pisa, Accademia dei Lincei) – Mario Lamagna (Università degli Studi di Napoli Federico II) – Renzo Lambertini (Università degli Studi di Modena e Reggio Emilia) – Orazio Licandro (Università degli Studi di Catania) – Detlef Liebs (Albert-Ludwigs-Universität, Freiburg i. Br.) – Juan Antonio López Férez (Universidad Nacional de Educación a Distancia, Madrid) – Arnaldo Marcone (Università degli Studi Roma Tre) – Grazia Maria Masselli (Università degli Studi di Foggia) – Giulio Massimilla (Università degli Studi di Napoli Federico II) – Giuseppina Martino (Università degli Studi di Napoli Federico II) – Daniela Milo (Università degli Studi di Napoli Federico II) – Claudio Moreschini (Università degli Studi di Pisa) – Christian Nicolas (Université de Lyon 3) – Lidia Palumbo (Università degli Studi di Napoli Federico II) – Laurent Pernot (Université de Strasbourg) – Teresa Piscitelli (Università degli Studi di Napoli Federico II) – Stefano Pittaluga (Università degli Studi di Genova) – Giovanni Polara (Università degli Studi di Napoli Federico II, *Condirettore*) – Salvatore Puliatti (Università degli Studi di Parma) – Umberto Roberto (Università degli Studi di Napoli Federico II) – Marcello Rotili (Università degli Studi della Campania Luigi Vanvitelli) – Helmut Seng (Goethe Universität, Frankfurt am Main) – Adriaan Johan Boudewijn Sirks (University of Oxford) – Marisa Squillante (Università degli Studi di Napoli Federico II) – Luigi Tartaglia (Università degli Studi di Napoli L'Orientale) – Domenico Vera (Università degli Studi di Parma) – Nigel Guy Wilson (University of Oxford).

Comitato editoriale: Maria Consiglia Alvino – Maria Vittoria Bramante – Piera Capone – Maria Carmen De Vita – Loredana Di Pinto – Francesco Fasolino – Alessio Guasco – Assunta Iovine – Emanuela Malafronte – Giulia Marconi – Aglaia McClintock – Giovanna Daniela Merola – Valerio Massimo Minale – Cristiano Minuto – Giuseppina Maria Oliviero Niglio – Paola Pasquino – Francesco Pelliccio – Antonella Prenner – Margherita Scognamiglio.

Coordinamento di redazione: Daniela Milo (*Responsabile*).

Collaboratori: Valentina Caruso – Isabella D'Auria – Giuseppe Nardiello – Antonio Stefano Sembiant.

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.

Referee. Prima della pubblicazione, tutti i saggi sono sottoposti a peer review obbligatoria da parte di due referee. Il referaggio è a doppio anonimato. Il giudizio del referee potrà essere a) positivo, b) positivo con indicazione di modifiche, c) negativo. In caso di due referaggi nettamente contrastanti, il testo verrà inviato ad un terzo referee.



ISSN 0393-2230

© 2022 SATURA EDITRICE S.R.L.
Via Giacinto Gigante, 204 - 80128 Napoli
tel. 081 5788625
sito web: www.saturaeditrice.it
e-mail: saturaeditrice@tin.it

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

INDICE DEL VOLUME

GAETANO ARENA		
Ecologia e climatologia: modernità della Tarda Antichità.	pag.	1
VALENTINA CARUSO		
Una citazione di Eschilo in tre epistole di Libanio: il fr. 340 Radt. . .	»	15
MARGHERITA CASSIA		
Disabilità infantile e dinamiche inclusive: attualità della Tarda Antichità.	»	27
LUCIETTA DI PAOLA LO CASTRO		
Giustiniano e le donne. Alcune riflessioni a proposito di <i>Nov.</i> 134, 9 (556) sui privilegi delle debitrice.	»	39
MASSIMO LAZZERI		
Echi di tradizioni antiche: intorno all'isola di Delo in alcuni passi di Imerio.	»	73
ANNAMARIA MANZO		
Le 'triadi' di giuristi nella <i>successio auctorum</i> di Pomponio. Una possibile lettura.	»	91
VALERIO NERI		
Vescovi romani e vescovi provinciali nelle <i>Res Gestae</i> di Ammiano Marcellino.	»	119
MIRKO RANIERI		
L'alterazione mentale nella visione giuridica romana. Profili evolutivi del concetto di <i>furor</i>	»	139
ANTONIO STEFANO SEMBIANTE		
Forme di memoria nell' <i>orazione</i> 18 di Gregorio Nazianzeno.	»	167
STUDI SULLA TARDA ANTICHITÀ BILANCI, PROPOSTE, PROSPETTIVE		
LUCIO DE GIOVANNI		
Premessa.	»	191

JULIA AGUILAR MIQUEL Studi sulla Tarda Antichità tra il 2007 e il 2022: progressi, risultati e linee di ricerca future nell'ambito della filologia latina.	pag.	193
FRANCESCO ARCARIA Itinerari di ricerca sul Tardoantico tra storia, società, economia, re- ligione, cultura e diritto.	»	201
MARIAGRAZIA BIANCHINI Spunti di ricerca sul diritto tardoantico.	»	203
THIBAUT CLÉRICE Antiquité tardive et littératures latines: corpus et perspectives nu- mériques.	»	207
FABRIZIO CONCA Tardo antico e moderno: appunti di lettura.	»	217
MARIA ELVIRA CONSOLI Ulteriori frontiere di studio per il Tardoantico.	»	227
CHIARA CORBO Il tardoantico dal 'buio' al 'boom' storiografico: ulteriori itinerari di ricerca.	»	235
LUCIO CRISTANTE - VANNI VERONESI Gli elementi e i contesti storico-giuridici nel racconto letterario. Tracce per una nuova indagine.	»	241
MARCO CRISTINI L'Italia del VI secolo: questioni aperte e prospettive di ricerca.	»	249
PAOLA OMBRETTA CUNEO Lo studio del tardo Impero: un florido futuro, ma nel rispetto degli insegnamenti dei Maestri.	»	257
ALESSANDRO CUSMÀ PICCIONE La <i>formula quaesturae</i> di Cassiodoro (<i>Var.</i> 6, 5) e la c.d. 'crisi' dell'argomentazione nell'esperienza giuridica tardoantica.	»	263
GIANNI DE BONFILS Effetti collaterali di una esplosione.	»	271

<i>Indice del volume</i>		IX
LIETTA DE SALVO		
Nuove prospettive sul Tardoantico.	pag.	275
ELIO DOVERE		
La ricerca giusromanistica sul mondo postdiocleziano: ombre, as- senze, lacune.	»	283
MARÍA VICTORIA ESCRIBANO PAÑO		
La intercesión de la emperatriz en <i>petitiones</i> al emperador: Aelia Eudoxia. Una nueva perspectiva de investigación.	»	291
IOLE FARGNOLI		
Palingenesi delle costituzioni tardoimperiali e nuove tecnologie.	»	299
SARA FASCIONE		
Gli studi tardoantichi e lo «stile di vita europeo».	»	309
PAOLO GARBARINO		
Giusromanistica e storiografia ‘pura’.	»	315
MEILING HUANG		
Itinerari sugli studi dei profili giuridici del Tardo Antico in Cina.	»	319
HERVÉ INGLEBERT		
Le problème de la spatialité de l’Antiquité tardive.	»	327
RENZO LAMBERTINI		
Potenzialità euristiche in temi usati del tardoantico?.	»	337
MARK LETTENEY		
Widening the frame of ancient legal history.	»	345
ORAZIO LICANDRO		
Inchiesta sulla Tarda Antichità.	»	351
RITA LIZZI TESTA		
La <i>villa</i> tardoantica come ecologia idealizzata: l’impatto del cristia- nesimo. Una nuova prospettiva d’indagine.	»	361
ANDREA LOVATO		
Orizzonti di ricerca aperti verso il futuro del tardoantico.	»	367

LAURETTA MAGANZANI Istruzioni tecnico-giuridiche ai <i>mensores</i> tardoantichi nei manoscritti del <i>Corpus Agrimensorum Romanorum</i> : un nuovo ambito di ricerca.	pag.	373
ARNALDO MARCONE Il rinnovamento degli studi sulla Tarda Antichità.	»	379
VALERIO MAROTTA Due brevi note sulla storia giuridica d'età tardoantica e sulle sue prospettive di sviluppo future.	»	385
GIULIO MASSIMILLA La poesia greca tardoantica: linee e prospettive di ricerca.	»	397
VALERIO MASSIMO MINALE Diritto bizantino: nuove prospettive sull'esperienza isaurica, tra legislazione imperiale e diritto consuetudinario.	»	403
CLAUDIO MORESCHINI - CHIARA OMBRETTA TOMMASI Una 'nuova' Tarda Antichità.	»	413
GIUSEPPINA MARIA OLIVIERO NIGLIO Sulle tracce di un'indagine in tema di diritto delle persone e della famiglia.	»	423
LIDIA PALUMBO Sul Platonismo tardoantico. Gli studi degli ultimi anni e l'indicazione di una prospettiva.	»	429
FEDERICO PERGAMI Prospettive di ricerca e criteri metodologici nello studio del diritto romano della Tarda Antichità.	»	437
STEFANO PITTALUGA La letteratura latina 'laica' tardoantica.	»	445
SALVATORE PULIATTI Gli Studi sul Tardoantico: prospettive.	»	453
UMBERTO ROBERTO Prospettive di ricerca sul quinto secolo.	»	461

<i>Indice del volume</i>		XI
LAURA SOLIDORO		
Il futuro del passato. pag.		469
MARISA SQUILLANTE		
Tra passato e presente: le nuove frontiere della ricerca sull'età tar- doantica nel mondo latino. »		477
EMANUELE STOLFI		
«Bilanci e prospettive», quindici anni dopo. »		485
GIUSTO TRAINA		
Tardoantico: problemi, tendenze, <i>desiderata</i> »		493
NOTE E DISCUSSIONI		
FABIO BOTTA		
I legati «tessili» fra diritto romano e archeologia. »		501
PHILIP MICHAEL FORNESS		
Emperors and Emperorship in Late Antiquity. »		507
THOMAS KUHN-TREICHEL		
Gregor von Nazianz, <i>Carmen</i> II, 1, 45: über eine neue Edition. »		513
CLAUDIO MORESCHINI		
Gli <i>Oracula Chaldaica</i> nella rinascenza. »		517
CLAUDIO MORESCHINI		
Su una nuova edizione della <i>Hesperis</i> di Basinio da Parma. »		521
RASSEGNA BIBLIOGRAFICA		
a cura di EMILIO GERMINO. »		525

MARK LETTENY

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 change².

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'adjectif *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 siècles: 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 scholarship⁴. 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 384⁷.

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 thought⁸.

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» (ἐβεβαίωσε πάντα τὰ κεκριμένα παρὰ τῆς ἁγίας καὶ οἰκουμένης συνόδου νόμοι 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 consequences⁹?

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 *Koinōnía* 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).