

Reviews

Autorità e diritto. L'esempio di Augustus. By Lucia Fanizza. Rome: "L'ERMA" di Bretschneider, 2004. 111 pp. ISBN 88-8265-288-2.

The work under review stands out principally for the originality of its approach, and this is in spite of the fact that it deals with a theme — the relationship between political power and the genesis of law — already analysed in depth by those interested in the origin of legal regulations and their transformation, as reflected in a large majority of legal-historical studies.

The author shows in a brief *premissa* that these questions have been addressed from time to time, but that her responses are distinct from those which are commonly offered, being based on an exhaustive analysis of various concrete texts and a global perspective of the period in which the study was based: the origins of the Principate, and especially Augustus' administration. This is the general theoretical-legal problem, addressed by the author from an original perspective, and revealing a deep reflective study which beats in the heart of this work. The Principate's problems are known to all: the new political regime overtaking the existing one, the Republic, without its institutions being explicitly repealed; in this panorama, Augustus intervenes to control the creation of law, but he cannot achieve this without obstacles, and so appears as the savior of a Republic which had its own methods of creating law.

The work is divided into three chapters, each with an equally indicative title: I. "Stabilire il *ius*" — II. "Interporre l'autorità" — III. "Ristabilire gli *iura*." The book's final pages contain a complete index of sources. Each chapter of the work corresponds, according to the author's vision, to one of the three methods of intervention in the law which individualizes and characterizes the Augustan period according to its own criteria. In her opinion these three methods — *ius constituere*, *auctoritatem interponere*, *iura restituere* — can also be seen as phases in the formation of

particular rules. Thus we come to see that, in many ways, the author overtakes her conclusion, employing an inductive instead of a deductive method in the execution of the work, as is appropriate in a piece of this intellectual maturity.

The first chapter analyses a series of selected texts. The author begins with the well-known passage in D.1.3.11 (Iul. 90 *dig.*) and considers whether the dichotomy *interpretatio / constitutio*, reflected in that text, represents an opposition between jurisprudence and *princeps*. To illustrate the value of legal decisions in the construction of the law, viewed in light of the emperor's power, the author offers two examples. The first is the definition of *litus* in D.50.16.96 (Celsus 25 *dig.*), in which Celsus refers to the decision of an *arbiter*, and second, the awarding of the *ius respondendi* by Augustus to some *iurisprudentes*, related by Pomponius in D.1.2.2.49 (Pomp. *lib. sing. enchr.*). For the author the case of the *testamentum militis* merits special mention, and could be considered virtually a direct imperial creation, as deduced from D.29.1.1 (Ulpian 45 *ed.*), likewise the prohibition against women undertaking acts of *intercessio pro viris suis*, later recorded in the *SC Velleianum*, as Ulpian himself describes in D.16.1.2 pr.–1 (Ulpian 29 *ed.*). To these we can add examples regarding quaestorship and marriage, remembering in the latter case Claudius' decision on unions between uncle and niece, this being a clear example of the real power which the *princeps* came to hold in the area of law-making, despite the formal establishment of a *senatus consultum*.

In my opinion, however, the significance of the judges' or arbiters' interventions, probably due to Cicero, in his role as arbitrator, is less than that of the emperor's actions, which focus on the configuration of wills, sureties, and marriage. I therefore believe it is unnecessary to compare various interventions in the formation and development process of legal rules in the Principate, although I agree with the author that this is not exclusively a task for emperors. The jurists also participate in this creative process, as the author highlights in making reference to the changes in the relationship between emancipated slaves and their patrons (D.38.2.1, Ulpian 42 *ed.*), and the active legitimation of the accusation of adultery (D.48.5.16.5, Ulpian 2 *adult.*). The author is particularly strong on the subject of institutional configuration, the importance of imperial intervention in trusts and codicils being explored in the last part of the chapter (with special analysis of J.2.25 pr.).

In the second chapter the focus of attention is on the intervention of Augustus himself in the transformation of the law,

which suggests a departure from the current tension between the survival of the Republican institutions and the desire for change in this period (which the author herself categorizes as “di transizione,” 46). Here, the author believes that the relationship between Augustus and the consuls is key. Although the consuls were not in fact responsible for process, they had particular competencies in “sensitive” materials, such as manumissions and trusts. The importance of the *lex Iulia iudiciorum privatorum* in the evolution of the *ordo* does not go unremarked: on first analysis the *lex* goes contrary to the interests of the *princeps* who, one might think, was more interested in the *cognitio extra ordinem*. On this question we should not forget that Augustus was not in a position suddenly to change reality and act astutely to “reinforce” the *ordo iudiciorum privatorum*, to ensure the existence of a secure and modern process which would respond to the needs of the period.

An especially interesting aspect of this chapter is the observation on the difference between the *auctoritas* of the Republican organs and that of Augustus himself, understood as an integral part of his power. The *auctoritas* of the former, part of the identical legitimacy of a number of organs — senate, *populus*, judges and jurists — is “in balance” in a way the latter is not; it is no longer subject to the limitations of others,¹ and stands as “una forma superiore di legittimità” (52). This, according to the author, is the basis of Augustus’ influence over the consuls, subordinated to a certain degree to his power, and affected also by a new jurisprudential mechanism extended to jurists: the *ius publice respondendi ex auctoritate principis*. On this basis the author offers a broad and personal interpretation of the famous report in Pomponius’ *Enchiridion* on the jurists’ approach to the duty of *respondere*. The author plausibly resolves questions such as the differences between the concession of the *ius respondendi* offered by Augustus and Tiberius, the difference between the expressions *publice respondere* and *populo respondere*, and the significance of Hadrian’s response to the ex-praetors who requested the *ius respondendi*.

The third chapter, perhaps the most personal of all, begins with a discussion of the political importance of public life for Augustus: the *ius respondendi* as a means of service to the commu-

¹ As the author herself highlights (50, n.66), Augustus sees in *auctoritas* the differentiating factor between his power and that of the “rest” of the magistrates. For Augustus, the other component of power would be *potestas*, as described in *Res Gestae* 34.3.

nity (as commonly recited at the time), the preservation of public places, and the conversion of his own house into a public property in which he installed a library open to the *populus*. Thus Augustus sought to establish a contrast between himself and his old adversary Antonius, with himself appearing as a model of virtue and generosity.

For these reasons, I believe, the author attributes importance to the global political stage on which Augustus' government was developed, without limiting herself to the concepts proposed by the relevant literature, and maintaining an all-encompassing view of the period in question. Without losing sight of these issues, the author also highlights how intervention in the law became a distinctive trait of Augustus himself, as proven by coinage ("leges et iura pr restituit") with a clear political aim: on the one hand, Augustus placed great emphasis on producing rules by means of public laws, and on the other hand, the author believes he would have restored the ancient attributes to government organs, however much this may have flouted reality.

Finally, the author elucidates the work's general conclusion: Augustus assumes a new *auctoritas*, a new power which allows him to initiate a new stage in the political history of Rome.

I wish to highlight two problematic issues without overshadowing in any way the brilliance and value of the work. The first observation is formal in character and the second substantial. First, the title of the work *Autorità e diritto* refers only to *auctoritas* which, as we know, has a very concrete scope in the romanistic field;² it is for this reason I believe that this excellent book could have alternatively been titled "Potere e diritto," as it speaks of power in general and not only the influence that the *auctoritas* of Augustus held over the law of his time (although we understand that the term is used in the sense that Augustus himself gives it, and is justified as a symbol of the Augustan regime itself). Moreover, the offered examples of imperial intervention in the formation of the *ius novum* are not limited to Augustus alone as the principal protagonist, but important references are also made to other *principes* such as Tiberius and Claudius; therefore perhaps the subtitle could have been "L'esempio dei primi imperatori." Secondly, I believe that the definition provided by the author, with regard to the three methods of intervention used in the development of a regulatory framework for the incipient Princi-

² For further information, see R. Domingo, *Auctoritas* (Barcelona 1999).

pate,³ is valuable, interesting and enlightening, although it could be suggested that Augustus saw the three instruments as tools at his disposal, tools with which he had the power to adapt the legal reality at his convenience, although such speculation is more difficult to demonstrate and confirm with certainty. Proof of such a belief lies in the fact that the jurists cited when referring to this reality all date from a period long after that of Augustus, and include such individuals as Julian and Pomponius.

Among this work's many virtues are its exactitude, the proportions observed between the number of quotes and their relevance, and above all, the global, mature, and personal vision it offers of this universal legal problem, the relationship between power and law, viewed from the always enlightening perspective provided by Roman sources, and in particular by the interesting period of the early Principate.

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Ricerche in tema di *negotiorum gestio*. II.1. Requisiti delle *actiones negotiorum gestorum*. By Giovanni Finazzi. Cassino: Università degli Studi di Cassino, 2003. 658 pp. ISBN 88-8317-013-X.

The work under review is in the best Italian-romanistic tradition: a serious, dense, and profound book, as well as ambitious, as it connects directly to another study by the author on the same subject.¹ In addition, it is extremely well constructed from a formal viewpoint. In this study, Giovanni Finazzi focuses on the conditions necessary for the exercise of the *negotiorum gestorum actiones*, having previously described these, both the praetorian and the civil, in his earlier work; we can therefore justifiably de-

³ *Ius constituere, auctoritatem interponere, iura restituere.*

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¹ G. Finazzi, *Ricerche in tema di negotiorum gestio*. I. *Azione pretoria ed azione civile* (Naples 1999). The author is preparing, as he suggests in various footnotes, a third work on this same subject, regarding responsibility.