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-

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[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.

scribe the two as complementary works. Indeed, there are continual references in this more recent study to the monograph of 1999.

As is known, there are two *negotiorum gestorum actiones* which coexist in the edict: the first, and more historic action, is considered *in factum*, and the second, which has the *in ius* formula and a good-faith clause, also has a broader spectrum. Both *actiones*, which have both *directa* and *contraria* versions, are aimed at rebalancing a situation in which a person has unjustifiably gained wealth at the cost of another. This could be due either to not having transferred the results of an action carried out by a *gestor* without mandate, or to not having indemnified the agent for expenses and liabilities incurred from an objectively justified service (*utiliter gestum*).[2]

Regarding the requirements necessary for the use of these *actiones*, three have been generally identified, or isolated, from a didactic viewpoint: *gestio negotiorum alterius*, *gestio sine mandato*, and *gestio utiliter coepta*.[3] These further the purposes of the doctrine by offering objective criteria for legitimization, criteria which act as standardizing elements for the complex and diverse regulations of the *negotiorum gestorum actiones*.

This extensive and magnificently edited volume comprises six chapters, although chapter six (609–35) is dedicated entirely to the presentation of the general conclusions drawn from the study. Each chapter except the first is divided into sections and, with the exception of the first and second chapters, each one presents its own conclusions. As is characteristic of romanistic works, the study ends with a carefully drafted index of sources (637–51), which in this case precedes the monograph's general index (653–58).

The first chapter, "Requisiti e costruzioni dogmatiche" (7–48) is, in my opinion, particularly valuable and interesting, as it analyses the doctrinal work on the dogmatic construction of the concept in question, with particular attention centered on the problem of the prerequisites necessary for the exercise of the *actiones*. I believe the use of the two adjectives "valuable" and "interesting" at the beginning of this paragraph is justified by the chapter's commendable methodological perspective, which responds to the need to analyse the current *status quaestionis* and constitutes a vital starting point. Moreover, the author is not content with analysing the recent doctrine alone, which consti-

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[2] Cf. D.3.5.2 (*Gaius* 3 *ed. prov.*).

[3] A. Guarino, *Diritto privato romano* (Naples 2001), 964.

tutes the final stage of our understanding of the topic, but instead investigates much further into the origins of the doctrinal work, carried out by interpreters of the justinianic sources, to offer a complete overview of the dogmatic approach to the problem.

Thus, the difficulties experienced by glossators and commentators in summarizing the casuistic richness of the Roman sources is reflected in their intent to facilitate the application of justinianic legislation to their time. In this case, the consensualist structure based on the *contemplatio domini* and the *animus aliena negotia gerendi*, as we know, is not sufficient to answer the diversity of assumptions made, in which the sources recognize the opportunity of the *negotiorum gestio* actions, even when turning to the coercive or even fictitious *ratihabito*. The author explains that this approach has only been superseded since Fulgosio, through the formulation of the *negotium alienum ipso gestu*, which dispenses with the voluntary element. The two stances, consensualist and objectivist, form the doctrinal development in the field of study, and at times, such as in the theses supported by Cujas, Glück, and subsequently Pacchioni, one finds a mixture of both criteria, depending on whether the actions in question were *directa* or *contraria*. A third foundation for the exercise of the *negotiorum gestorum actiones* would be an appeal to *equitas*, as described by Pothier and supported by Jhering, when there is a lack of intent on the part of the *negotiorum gestor* and a lack of *utilitas* in his act. The consensualist theses are supported by the acknowledgment of the unlawful enrichment action in France in the nineteenth century, although the theoretical structure of this base does not adequately respond to the diversity reflected in the Roman sources.[4] As the author explains, the German doctrine of the nineteenth century popularized the coexistence of two *negotiorum gestio* models; the "consensual" or appropriate model, and the "objective" or inappropriate model. The views of E. Zimmermann and Wlassak are examples of this perspective, which is ultimately reflected in the BGB and in Italian civil law, accepting both the quasi-contractual *negotiorum gestio* and unlawful enrichment. In the twentieth century, the objective and subjective stances come into conflict once more, supported by Partsch and Riccobono respectively, both appealing to the Byzantine interpolations in the texts in order to defend their point of view.

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[4] Cf. for example D.3.5.48(49) (Afric. 8 *quaest.*) and D.5.3.50.1 (Pap. 6 *quaest.*), which contain examples of *aliena gestio* of affairs which are erroneously considered to pertain to the *negotiorum gestor* who will carry out the *negotiorum gestorum actio*.

The distinction between the classical and the justinianic outlook forms the basis of the most recent approach to the problem, as maintained by Luzzatto, although there is currently a great diversity of opinions on the matter, as is demonstrated by the author.

Finazzi appropriately raises the matter of the importance of evaluating the coexistence of the two *actiones*; the praetorian, or *in factum*, and the civil, or *in ius*, as it is a necessary element to take into account when analysing the internal structure of the concept in question and, specifically, the assumptions or prerequisites for the exercise of the actions in question. This is the starting point for the work we are reviewing, which goes beyond the distinction, already addressed, between the *directa* and *contraria* actions, as the author apparently perceives the existence of the two different *actiones* as more decisive and closely bound to historical reality. This goes beyond the theoretical structure of just a single institution viewed as unique from a dogmatic perspective; in fact, the author suggests that there is not just one single concept of *negotiorum gestio* in the Roman sources, but in fact various concepts, such as the *procuratio omnium bonorum*, the curatorship, or the spontaneous interference in the affairs of another, and in each case it would be based upon differing objective and subjective circumstances. On the other hand, the characteristic *ius controversum* of Roman jurisprudence explains why we can see more than one argument reflected in the sources, and also explains why a series of very diverse situations are found in the ample *formula* of the *actio negotiorum gestorum in ius ex fide bona*. The author feels that the problems encountered in determining the prerequisites for the exercise of these *actiones* is related to the abandonment of its formulary origin, that is to say, in the isolation of the reflection of the jurisprudence in the procedural sphere, which implies a certain denaturization of the institution when attempting to construct a hypothetical unitary "modello classico."

Upon this methodological basis, which is clearly worthy of praise and a distinct demonstration of his profound knowledge of the reality of classical law, Finazzi develops the four central chapters of the work, each one of them dedicated to one of the key aspects of the problem from the traditional perspective.

In the second chapter, "Negotia gerere" (49–100), he begins by analysing the concept of *negotia*, in order to proceed with the examination of the second element of the syntagma which gives its name to the title, that is to say, the verb *gerere* and its significance in the sources. With reference to the first of these concepts, he establishes that in the *actio in factum*, the *negotium* can only

be an act meant to prevent negative consequences for the person who has not presented himself at the correct point in the procedure, having been properly summoned. Meanwhile, in the *actio in ius*, the *negotia* can be of various types, from the payment of another person's debt, to the legal representation of the plaintiff in the process, excluding illicit acts. With respect to the second concept, effective administration, Finazzi also takes into account the duality of *actiones* in the sphere of *negotiorum gestorum*, and conducts a complete analysis of the various doctrinal perspectives on the matter. The difficulties derive from the various meanings of the verb *gerere* within the Roman sources, particularly in the renowned text found in D.50.16.19 (Ulpian 11 *ed.*), in which the viewpoint of Labeo is given, according to which *gerere* must be confined to the acts accomplished *sine verbis*. However, it is also clear that the situations that give rise to the exercise of the *negotiorum gestio* actions elude this limitation due to their intrinsic nature, exhibiting a wider understanding of *gerere*. The author resolves this issue appropriately by placing Labeo's opinion in context and interpreting it, following the example of Albanese, as a *de facto* activity. Thus, Finazzi concludes that this is the reason why the *negotia gerere* could take place in an *agere*, in a *contrahere*, or in a *gerere*, if we employ the terminology of Labeo.

In the third chapter (101–358), the author centers his attention on the so-called "presupposti soggetivi delle *actiones negotiorum gestorum*." In his extensive examination, which essentially constitutes a monograph within the work, he explores the doctrinal *status quaestionis* and various terminological aspects (Section I), in order to clarify the subjective previous conditions from a diachronic perspective. The author does not attempt to offer an inert image of this aspect of the institution, but instead provides a complete analysis from the time of Labeo through to Justinian (Section II). Examination of the problem caused by the error regarding the identity or existence of the principal is left to one side by the author, at least concerning the *negotiorum gestio* of a posthumous *non nato* (Section III), although this could have been included in the general diachronic analysis.

Finazzi's conclusions underline the complexity of the result produced by his analysis. For example, the *alienitas* of the *res gesta* is considered indispensable despite the doubts derived from D.3.5.48(49) (Afric. 8 *quaest.*), D.5.3.50.1 (Pap. 6 *quaest.*) and D.17.1.22.10 (Paul 32 *ed.*). Regarding the motivation to manage the *res aliena*, jurists present a number of differences that break the uniformity of this issue. Thus, for Labeo, the desire to act with the interests of another in mind is an indispensable prerequisite

for the employment of the *negotiorum gestio* actions. Nevertheless, this prerequisite is not supported by other jurists (very clearly Ulpian), who include the *sui lucri causa* and *depraedandi causa* acts in this model, that is to say, *gestiones* for one's own interests despite being aware that the matter concerns another. This line of argument appears to be the only one supported by the imperial chancellery, at least according to the material that has been transmitted via the various compilations.

Another subjective element could be the *voluntas alium sibi obligandi*, as a foundation for the demand of the *gestor* to cover costs, unequally valued by the various jurists. Therefore, while Ulpian does not expressly value this, in Paul's opinion it constitutes a primary element for the exercise of the *negotiorum gestio* actions. Due to this, according to the author, the only indisputable factor for the exercise of the civil action is that the matters belong to another person, the *alienitas*. As for the remaining distinguishable subjective factors, the opinions of the jurists are certainly not uniform, and here we can highlight Paul's interest in defending the importance of intentional elements of the *gestio*, as opposed to the general opinion in the jurisprudence, which demonstrates the predominantly objective conception of the institution in post-classical and justinianic law.

As we have seen, the author examines separately the problem of error in the identity or existence of the *dominus rei gestae*, an aspect which is interpreted with greater uniformity in the jurisprudence, as it is considered irrelevant at least from the late classical period.

The fourth chapter (359–500) is dedicated to the examination of the *alienitas* of the *negotia* performed, that is to say, the transactions carried out by the *gestor* must concern someone else. The chapter is divided into six sections, which gives an idea of the complexity and range of the themes that are addressed. The general aspects are dealt with first, including an analysis of the doctrinal *status quaestionis* (Section I). It continues with an analysis of the *alienitas* of the affairs in the sources (Section II), the imputation of the *gestio* (Section III) and its divisibility (Section IV), as well as the administration of hereditary *negotia*, and matters pertaining to prisoners of war (Section V), ending with the author's conclusions (Section VI).

There is a notable contrast between chapter three, which is constructed based on the thinking of the various jurists and its diachronic analysis, and chapter four, whose internal structure is based around an examination of the problem, and separated into problems or issues. This does not mean to say that the approach

is incorrect or unjustified, given the complexity of the sources, but one would expect the same successful methodology to be employed within each epigraph or section in chapter four.

With reference to the results, it is worth highlighting the difference between the praetorian action — which assumes the procedural representation of an absent individual — and the civil action, which involves, for example, the *negotiorum gestio* for a deceased person when there is no heir and the inheritance does not yet have an owner. It is, therefore, in the field of the civil action where the work of the jurisprudence will be carried out, with a view to clearly defining the effective *alienitas* of the transactions being managed; it is there where subjective indicators are not uncommon, as can be seen when analysing the opinions of Sextus Pedius, Papinian, and Ulpian. The consideration of the *contemplatio domini* and the *ratihabitio* when defining the *alienitas* of the transactions is attributable to Sextus Pedius, which must also be combined with objective data depending on the interpretation of D.3.5.5.11 (Ulpian 10 *ed*.). The perspective of the jurisprudence is also the basis for the formulation of conclusions in relation to identifying the *dominus negotii*. Labeo's contributions are significant in this area, as is his influence on jurists such as Julian, Africanus, and Pomponius, who offer various tools for using *contemplatio* as a factor in *alienitas*. Regarding the *res* that is partially *aliena*, Finazzi's view is that the *actio negotiorum gestorum* may only be exercised when it is possible to determine the proportion of the matter that corresponds to the other individual and, as a general rule, in the remaining cases the use of a divisionary action is necessary. Regarding the issue of the management of the affairs of a prisoner of war, a different solution is expounded, first, where the principal returns, in which case the solution supposes that he has never been captive, or second, where he dies in enemy hands, in which case the management of the affairs will affect the heirs depending on their being *necesarii* or not.

Chapter five (501–607) is the last chapter *per se*, given that chapter six is dedicated to the formulation of general conclusions, as noted above. This chapter, which is divided into two sections, deals with the objective requirement par excellence: the *utilitas* of the management as a legitimizing factor for the exercise of the *negotiorum gestio* actions. As in the previous chapter, the author gives an analysis that is divided into different themes or topics, for the purpose of clarity, but to the detriment of the diachronic examination of the opinions in the jurisprudence. This does not, however, mean that he adopts an *a priori* approach, as he does not lose sight of the perspective of the jurisprudence, or leave any

key issues aside. Firstly he examines the non-requirement of the *utilitas* of the *gestio* in procedural *formulae*, despite the fact that classical jurisprudence — from Labeo onwards — claims the benefits of the service as an alternative to other subjective criteria such as the ratification of the actions of the *negotiorum gestor*. Regarding the meaning of *utilitas*, this must contain *necessitas* but also covers other assumptions. The author emphasizes that it must be given at the beginning of the *gestio*, as the matter can come to nothing without the intervention of the *gestor*, or not produce the benefit desired by the agent, according to the general opinion of the jurists. Another widespread conception of the jurisprudence excludes the relevancy of the *utilitas* if the *dominus negotii* had expressly prohibited the management of his affairs, regardless of the benefits that accrued. In any case, the definition of *utilitas* for each specific case would be the responsibility of the judge, even though objective models of standard behaviour for this issue had not yet been established, based around the abstract figure of the *bonus paterfamilias*. For Finazzi, the objective criterion of *utilitas gestio* somehow displaces the importance that could be given to the intentions of the *dominus negotii*, which is taken into account in a supplementary manner for questionable cases, for example when the *gestor* has incurred sumptuary expenses.

The intention of this review is to offer a wide impression of the density and complexity of an exemplary work of great importance for understanding the Roman legal legacy in the private law sphere. The extremely high quality of this monograph and its significant content of suggestions is gratifying to Romanists, and it is certainly not lacking in personal and original perspectives on the major questions relating to the exercise of the *negotiorum gestorum actiones*. Finally, I would like to emphasize that Finazzi executes a methodologically impeccable study, and would like to highlight above all the quality of the doctrinal analysis and the treatment of sources.

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