

[www.ridrom.uclm.es](http://www.ridrom.uclm.es)

ISSN 1989-1970

[ridrom@uclm.es](mailto:ridrom@uclm.es)

**RIDROM**

Derecho Romano,  
Tradición Romanística y  
Ciencias  
Histórico-Jurídicas

REVISTA INTERNACIONAL DE DERECHO ROMANO

---

**Iván Siklósi, *A kincstalálás római jogi, jogtörténeti és modern jogi kérdésköre (=Treasure Trove in Roman Law, in Legal History, and in Modern Legal Systems)* Patrocinium, Budapest, 2016, 211 págs.**

**József Benke**

Senior Assistant Professor of Private Law

Universidad de Pécs

email: [benke.jozsef@ajk.pte.hu](mailto:benke.jozsef@ajk.pte.hu)



belike internationally<sup>4</sup> the first researcher who dedicated a whole monograph of such extent to the topic's Roman law investigation using the comparative method rather widely for analyzing the afterborne continental and Anglo-Saxon legal regimes' rules in the Middle Ages and in the modern era as well. The new book of *Siklósi* is not a simple composition of his preliminary Hungarian<sup>5</sup> and international<sup>6</sup> studies on the theme but an autonomous work providing his novel results, too.

2. The book is composed of three main chapters, the most corpulent first one of which is about the issue's rich Roman law

---

<sup>4</sup> Recently see Alfonso AGUDO RUIZ, *Régimen Jurídico del Tesoro en Derecho Romano*, Universidad de La Rioja, Dykinson, Madrid 2005, 144 p.

<sup>5</sup> See Iván SIKLÓSI, *A kincstalálásra vonatkozó szabályozás fejlődése a római császárok rendeleteinek tükrében* (=The Development of the Regulation on Treasure Trove Concerning the Constitutions of Roman Emperors), in: *Jog-Állam-Politika* 7/1 (2015) p. 27sqq; Iván SIKLÓSI, *A kincstalálásra vonatkozó szabályozás történetének főbb csomópontjai a középkorban és az újkorban* (=Major Medieval and Modern Nodes in the History of Regulation on Treasure Trove), in: *Jog-Állam-Politika* 8/1 (2016) p. 77sqq; Iván SIKLÓSI, *A kincstalálás római jogi történetének főbb csomópontjai, különös tekintettel a Paul. D. 41, 1, 31, 1 töredékre* (=Main Turning-Points in the Roman Law History of Treasure Trove in Consideration of the Fragment of Paul. D. 41,1,31,1), in: *Acta Facultatis Politico-iuridicae Universitatis Scientiarum Budapestinensis de Rolando Eötvös nominatae* 51 (2014) p. 181sqq.

<sup>6</sup> See Iván SIKLÓSI: *Treasure trove in Roman law, in legal history, and in modern legal systems: A brief summary*, in *Journal on European History of Law* 6/2 (2015) p. 97sqq.







*Pampaloni*<sup>7</sup>, *Perozzi*<sup>8</sup>, *Rotondi*<sup>9</sup>, *Bonfante*<sup>10</sup>, *Schulz*<sup>11</sup>, *Appleton*<sup>12</sup>,  
*Lauria*<sup>13</sup>, *Nörr*<sup>14</sup>, *Mayer-Maly*<sup>15</sup>, *Scarcella*<sup>16</sup>, *Busacca*<sup>17</sup>, *Marchi*<sup>18</sup>,

---

<sup>7</sup> See Muzio PAMPALONI, *Il concetto giuridico del tesoro nel diritto romano e odierno*, in: Studi giuridici e storici pubblicati per l'VIII centenario della Università di Bologna, Roma 1888, p. 101sqq.

<sup>8</sup> See Silvio PEROZZI, *Contro l'istituto giuridico del tesoro*, in: *Monitore dei Tribunali. Giornale di legislazione e giurisprudenza civile e penale* 31 (1890) p. 705sqq.; *Tra fanciulla d'Anzio e la Niobide. Nuovi studi sul tesoro (art. 714. cod. civ.)*, in: *Rivista di diritto commerciale* 8 (1910) p. 253sqq.

<sup>9</sup> See Giovanni ROTONDI, *I ritrovamenti archeologici e il regime dell'acquisto del tesoro*, in: *Rivista di diritto civile* 2 (1910) p. 310sqq.

<sup>10</sup> See Pietro BONFANTE, *Corso di diritto romano. La proprietà*, II/2, Torino 1968, p. 127sqq; *La vera data di un testo di Calpurnio Siculo e il concetto romano del tesoro*, in: *Mélanges P. F. Girard*, I, Paris 1912, p. 123sqq; *Scritti giuridici vari II. Proprietà e servitù*, Milano 1918, p. 904sqq.

<sup>11</sup> See Fritz SCHULZ, *Fr. 63 D. 41, 1 (Zur Lehre vom Schatzerwerb)*, in: *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung* 35 (1914) p. 94sqq.

<sup>12</sup> See Charles APPLETON, *La trésor et la « iusta causa usucapionis »*, in: Studi in onore di Pietro Bonfante, III, Milano 1930, p. 3sqq.

<sup>13</sup> See Mario LAURIA, *Dal possessore del tesoro all'inventor'*, in: *Labeo* 1 (1955) p. 21sqq.

<sup>14</sup> See Dieter NÖRR, *Ethik von Jurisprudenz in Sachen Schatzfund*, in: *Bullettino dell'Istituto di Diritto Romano 'Vittorio Scialoja'* 75 (1972) p. 11sqq.

<sup>15</sup> See Theo MAYER-MALY, *Der Schatzfund in Justinians Institutionen*, in: P. Stein / A. D. E. Lewis (ed.), *Studies in Justinian's Institutes in Memory of J. A. C. Thomas*, London 1983, p. 109sqq; „*Thensaurus meus*“, in: *Studia in*

Knütel<sup>19</sup>, Heras Sánchez<sup>20</sup>, Ortega Carillo<sup>21</sup>, Agudo Ruiz<sup>22</sup>, Klingenberg<sup>23</sup>) carefully, and did not omit to precisely criticize

---

honorem Velimirii Pólay septuagenarii, Szeged 1985, p. 283sq; „Ducente fortuna“, in: R. S. Bagnall / W. V. Harris (ed.), *Studies in Roman law in memory of A. Arthur Schiller*, Leiden 1986, p. 141sq.

<sup>16</sup> See Agatina Stefania SCARCELLA, *Una nuova concezione del tesoro alla luce del C.I. 10.15.1*, in: *Atti dell'Accademia Peloritana dei Pericolanti* 58 (1989) p. 188sq.

<sup>17</sup> See Carlo BUSACCA, *Qualche osservazione sulle innovazioni introdotte dai 'Dioi Fratres' nel regime giuridico del tesoro*, in: *Studi in onore di Angelo Falzea*, IV, Milano 1991, p. 133sq.

<sup>18</sup> See Eduardo Cesar Silveira MARCHI, *A 'fanciulla d'Anzio' e o instituto do tesouro*, in: *Index* 25 (1997) p. 365sq.

<sup>19</sup> See Rolf KNÜTEL, *Arbres errants, îles flottantes, animaux fugitifs et trésors enfouis*, in: *Revue historique de droit français et étranger* 76/2 (1998) p. 206sq; *Von schwimmenden Inseln, wandernden Bäumen, flüchtenden Tieren und verborgenen Schätzen*, in: R. Zimmermann / R. Knütel / J. P. Meincke (hrsg.): *Rechtsgeschichte und Privatrechtsdogmatik*, Heidelberg 1999, p. 569sq.

<sup>20</sup> See Gustavo Raúl DE LAS HERAS SÁNCHEZ, *Adquisición del tesoro en el Fuero de Cuenca: bases romanas y evolución posterior*, in: *Actas del II Congreso Internacional y V Iberoamericano de Derecho Romano. Los derechos reales*, Madrid 2001, p. 53sq.

<sup>21</sup> See Antonio ORTEGA CARILLO, *El concepto romano de tesoro y el artículo 352 del Código civil*, in: *Estudios jurídicos in memoriam del profesor Alfredo Calonge*, II, Salamanca 2002, p. 739sq.

<sup>22</sup> In addition to his monograph (see Fn. 3 above) see Alfonso AGUDO RUIZ, *La definición del tesoro en las fuentes jurídicas romanas*, in: *Revista electrónica*





works of greater importance — especially that of *Backhaus*<sup>24</sup> and *Knütel*<sup>25</sup> (p. 81–86). After these issues, the next sub-chapter clearly and accurately encompasses the defensible and verifiable standpoints of the Roman jurists of pre-classical and classical era with respect to that of *Paulus* concerning our primary sources (p. 86–89). This is then followed by a valuable substantial explanation on the effects of these variable standpoints of the Roman jurists to such theoretical questions of the analyzed subject as the theory of possession and that of the acquisition of property (p. 89–94). I summarize here the author's main standpoint, and, if I can, I will give another view, too.

As an introductory core issue or a “prelude” (p. 89–90), *Siklósi* states that according to our primary sources, “*corpus*” may have had two different meanings such as “genuine”, in other words “standard” or “full” *corpus* and “ingenuine”, so to speak “substandard” or “not full” *corpus*. The distinction depends on the diverse matters of facts of each case. According to this, an ingenuine *corpus* occurs when the landholder, i.e. the land's

---

<sup>24</sup> See Ralph BACKHAUS, „*Casus perplexus*“. *Die Lösung in sich widersprüchlicher Rechtsfälle durch die klassische römische Jurisprudenz*, München 1981, p. 146-149.

<sup>25</sup> See Rolf KNÜTEL, *Von schwimmenden Inseln, wandernden Bäumen, flüchtenden Tieren und verborgenen Schätzen*, in: R. Zimmermann / R. Knütel / J. P. Meincke (hrsg.): *Rechtsgeschichte und Privatrechtsdogmatik*, Heidelberg 1999, p. 571-574.





the different prior opinions of classical jurists. The author examines the Hadrian-constitution's afterlife, thus its fundamental modifications by *Marcus Aurelius* and *Lucius Verus* on the basis of Callist. D. 49,14,3,10 and D. 49,14,1 *pr.*, and its partial renovation by emperors *Zeno* and *Leo* in 474 AD (cf. CTh. 10,18 and C. 10,15) as well. *Siklósi* also analyzes a constitution of *Alexander Severus* (*Hist. Aug.; Vita Alex.* 46,2), according to which, a part of the treasure belonged to the finder, but when the treasure was too precious, a part of it belonged to the imperial authorities. *Siklósi* calls this law "obscure" and states that its background and exact content is uncertain. Although the author examines the standpoints e.g. of *Bonfante*<sup>26</sup> and *Busacca*<sup>27</sup>, he ignores to schedule a theory based upon merely speculative assumptions.

The Roman law chapter's last subitem (p. 125–128) analyzes the Justinianic law, which implemented solely the Hadrian-constitution (Inst. 2,1,39), and partially saved the constitution of *Gratianus*, *Valentinianus*, and *Theodosius* from 380 AD (CTh. 10, 18, 2), and which abstracted away the constitution of *Leo* and *Zeno*. *Siklósi* discovers that the cited paragraph of the Institutions consists of seven different cases, which were

---

<sup>26</sup> See Pietro BONFANTE, *Corso di diritto romano. La proprietà*, II/2, Torino 1968, p. 135.

<sup>27</sup> See Carlo BUSACCA, *Qualche osservazione sulle innovazioni introdotte dai 'Dioi Fratres' nel regime giuridico del tesoro*, in: Studi in onore di Angelo Falzea, IV, Milano 1991, p. 154.













