Chapter 5

Cicero and the Small World of Roman Jurists

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1. INTRODUCTION

What does it take to be number one? What did it take in Rome in the late Republic to be the best among the politicians and senators? How did one go about achieving the most brilliant career? These were questions that the young Cicero had in mind, without any doubt,¹ as he started his *cursus* studying law, rhetoric and philosophy. Similarly, these are questions we need to keep in mind when attempting to understand his judgement of the Roman jurists of his time: Q. Mucius Scaevola, Servius Sulpicius Rufus, Gaius Trebatius Testa. It explains why his testimony, though valuable as can be considering that we do not have that many clues about them, must be considered cautiously: he is not objective, not because of his well-known pride, but because he sees law through the prism of his ambition and determination to achieve immortal glory.

For him it was clear that law was not enough and jurists could not expect to have a brilliant career merely because of their knowledge. Cicero was an advocate, the greatest advocate Rome had in the late Republic from 70 BC onwards. He had studied law with the best, but law alone, in his view, was not sufficient to reach the top. Thus modern scholars must apply this filter when attempting to reconstruct the lives of those jurists he knew and assessing their importance in Roman society of the late Republic. The same caveat applies to his views on generals. Cicero considered it useful for the state to have great officers who won battles and wars, but he was convinced that it was not enough to pretend to be the best, and we can assume it was not only because he knew he could never compete with a Pompey or a Caesar. It was also because he believed that a leader had to be more than a victorious general, just as he believed that a jurist could not be a leader with a knowledge only of law.

Once we bear this in mind, we can study the main jurists who lived in or around Cicero’s time. Mucius Scaevola was his master in the study of law, until he died; then Cicero had to study with another member of this family. Servius Sulpicius was a colleague, one of the few *consulares* who, alongside

¹ Cf. Cic. QFr. 3.5.4.
Cicero, were still alive after Caesar’s death. The two men grew closer after Caesar’s death, shortly before Sulpicius also died. The last one survived Cicero: the young Trebatius was one of his pupils before becoming a friend of Caesar and later of Augustus.

This chapter will not focus on their careers, since much is already well known, thanks to W. Kunkel’s and Richard Bauman’s works. Instead, we will demonstrate how Cicero considered them, and what it tells us about the evolution of the social position of jurists in Rome in the late Republic. We are interested in subjectivity, not in an objective presentation of Mucius Scaevola, Sulpicius Rufus and Trebatius’ careers, even if sometimes these themes overlap. The order will be chronological because it reflects the evolution: first Scaevola, then Sulpicius, and last but not least Trebatius.

2. QUINTUS MUCIUS SCAEVOLA AUGUR

The earliest examples of jurists in Cicero’s circle were Q. Mucius Scaevola Augur and his cousin the Pontifex, his masters in the study of civil law. The Augur was consul in 117 BC, and died in 88 or 87 BC; his cousin, who was much younger, was consul in 95 BC before going to Asia as proconsul. Cicero had studied around two or three years with the Augur, before briefly studying with the Pontifex, who was killed in 82 BC.

One would expect a positive description of these two figures in Cicero’s works harking back to a golden age of the Roman jurists, but the reality is more complex. Indeed Scaevola is praised in De Republica: he is a doctus adulescens, which likely refers to his studying civil law, even if Cicero, through Laelius, who was Mucius’ father-in-law, had already pointed out that law was not enough to solve political crises. His name is the first to appear in the treatise De Amicitia where he is praised:

And so it came to pass that, in my desire to gain greater profit from his legal skill, I made it a practice to commit to memory many of his learned opinions and many, too, of his brief and pointed sayings.

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2 See Kunkel 1967.
3 See Bauman 1983.
8 Idem: 33.
9 Amic. 1: ‘itaque multa ab eo prudenter disputata, multa etiam breviter et commoditae memoriae mandabam fieriique studiabam eius prudentia doctior.’ All English translations are based on those readily available online at sites such as Lexundria, LacusCurtius, and the Perseus Digital Library.
There is also an allusion to Mucius Scaevola at the beginning of the *De Legibus*, and of course he is one of the main characters of the *De Oratore*, as if he were a kind of totem. Mentioning Scaevola the Augur allowed Cicero to place himself in glorious continuity starting with his political ideal Scipio Aemilianus Africanus, but does it prove he really had a good opinion of his masters?

The answer might seem positive when we read Cicero’s judgement of the Augur in the *Brutus*: ‘*iuris civilis intellegentia atque omni prudentiae genere praestitit*’. The Pontifex too is praised as *ingenio et iustitia praestantissimus*. An even better indication may be found in the correspondence when Cicero is sent to Cilicia in 51 BC, since he constantly refers to Mucius’ example, and not only because he writes to Atticus, who had been one of his students too. Mucius had been propraetor in Asia, in 115 BC, and could be used as a model to govern a province. Cicero emphasises that he was in charge for only nine months, enough to play the game of the traditional *cursus* but without any excess... The proconsul of Cilicia used Mucius’ edict in his province:

> I, however, have a proviso in my own edict of equivalent force, but less openly expressed (derived from the Asiatic edict of Q. Mucius, son of Publius) – ‘provided that the agreement made is not such as cannot hold good *ex fide bona*’, I have followed Scaevola in many points, among others in this – which the Greeks regard as a *charta of liberty* – that Greeks are to decide controversies between each other according to their own laws.

The problem here was the difficult coexistence between the administration and the merchants in a Roman province. Cicero tried to protect himself, wishing to avoid excesses, but he also wanted to minimise any possible future complaints from the *publicani*. He had not forgotten the problems faced by Mucius Scaevola when he returned from Asia, and he had them in his mind:

> For my part, I shall not cease to defend your decrees: but you know the ways of that class of men; you are aware how bitterly hostile they were to the famous Q. Scaevola himself.

10 *Leg.* 1.13.  
12 *Amic.* 1.  
15 *Att.* 6.1.15: ‘*ego tamen habeo isodunamoun sed tectiorem ex Q. Muci P. f. edicto Asiatico, EXTRA QVAM SI ITA NEGOTIVM GESTVM EST VT EO STARI NON OPORTEAT EX FIDE BONA, multaque sum secutus Scaevolae, in iis illud in quo sibi libertatem censent Graeci datam, ut Graeci inter se disceptent suis legisb.*’  
16 *Fam.* 1.9.26: ‘*Equidem non desinam tua decreta defendere, sed nosti consuetudinem hominum: scis, quam graviter inimici ipsi illi Q. Scaevolae fuerint.*’
This then is the first serious criticism: being a jurist, and a great one, did not prevent you from having problems in your official career. Scaevola had to defend himself in a trial against Albucius, which he did brilliantly. One could add that the other Scaevola was murdered during the civil war between Marius’ partisans and Sulla. This was another example or counter-example that Cicero constantly had in his mind:

If, on the other hand, I keep my ground and find some footing on this side, I shall have done what L. Philippus did during the tyranny of Cinna, as well as L. Flaccus and Q. Mucius. Though it turned out unhappily in the case of the latter, he used, nevertheless, to say that he foresaw the result (a result which did actually happen), but preferred it to approaching the walls of his native city in arms.17

A slight reproach is also visible here, even if Cicero considers Mucius’ point of view as certa quaedam illa Muci ratio atque sententia: being a specialist in civil law was not enough for political life in Rome. But there were other criticisms too: first, good knowledge of law alone was not enough to win a trial. This does not apply to the Augur who successfully defended himself against Albucius,18 but to his cousin. Cicero explains that Scaevola eagerly took all the clients who came to him,19 even if he was not the best person to defend them, and he reminds us of two times where Scaevola was not good enough, though the circumstances would have required it: first when pleading for his close friend Rutilius:

Q. Mucius too said much in his defence, with his usual accuracy and elegance; but not with that force, and extension, which the mode of trial, and the importance of the cause demanded.20

Mucius was not able to save his friend from an unjust exile, because he was not brilliant enough. Cicero is, in effect, indirectly praising his own genius for eloquence, and then his ability to be a great statesman thanks to his eloquence. In another case, the causa Curiana,21 Mucius lost the trial pleading against Crassus, though this kind of case was his speciality:

For he urged a great variety of arguments in the defence of right and equity, against the literal interpretation of the law; and supported them by such a numerous

17 Att. 8.3.6: ‘at si restitero et fuerit nobis in hac parte locus, idem fecero quod in Cinnae dominatione (L.) Philippus, quod L. Flaccus, quod Q. Mucius, quoquo modo ea res huic quidem cecidit; qui tamen ita dicere solebat se id fore videre quod factum est sed malle quam armatum ad patriae moenia accedere.’
18 Cf. Brut. 102.
19 Cf. idem: 155.
21 See Harries 2006: 100ff and Harries 2013: 109 – it was a trial in the 90s about a contested will and it involved M. Curius.
series of precedents, that he overpowered Q. Scaevola (a man of uncommon penetration, and the ablest jurist of his time) though the case before them was only a matter of legal right.\textsuperscript{22}

It is one thing to know the civil law very well, but another to use it efficiently. Cicero considered Servius a better jurist than Mucius because he not only knew law, he also knew how to use dialectics and was a brilliant orator as well.\textsuperscript{23} The difference probably lay in the fact that law was a family matter for the Scaevolae: they began acting as lawyers when the civil law was a kind of heirloom reserved for a few families. Cicero never says it clearly but the way he describes another Scaevola, adopted by the Crassi, is quite clear:

For he had contracted an affinity with that accomplished speaker Servius Galba above-mentioned, by giving his daughter in marriage to Galba’s son; and being likewise himself the son of Mucius, and the brother of P. Scaevola, he had a fine opportunity at home (which he made the best use of) to gain a thorough knowledge of the civil law.\textsuperscript{24}

In fact, when Cicero criticises Scaevola by praising Servius, one must appreciate that he in effect praising his own model: this is particularly obvious in the \textit{De Oratore} when Crassus affirms that the best jurist will be defeated by the orator who has learned just enough law to seem keen on it. But one must study the way in which Cicero really considered Servius Sulpicius Rufus to prove this.

\section*{3. SERVIUS SULPICIIUS RUFUS}

Servius Sulpicius Rufus\textsuperscript{25} comes second in our study, and there is a considerable gap between him and Scaevola. First, they are separated by two generations with all that this implies: Mucius was born around 160 BC, Servius around 105 BC. In second place, Servius’ career was far less brilliant that that of Scaevola. But why should this be so? The \textit{Pro Murena}, famously delivered in 63 BC, provides valuable explanation. It became tradition in the late Republic to start a trial against another candidate to the consulate who had been elected while you had been defeated. The competition had become all the fiercer after Sulla had increased the numbers of all magistracies, apart from the consulship (though their numbers were eventually increased first

\begin{itemize}
\item \textsuperscript{22} \textit{Brut.} 145: ‘Ita enim multa tum contra scriptum pro aequo et bono dixit, ut hominem acutissimum Q. Scaevolam et in iure, in quo illa causa vertebatur, paratissimum obrueret argumentorum exemplorumque copia.’
\item \textsuperscript{23} Idem: 151–4.
\item \textsuperscript{24} Idem: 98: ‘nam et cum summo illo oratore Ser. Galba, cuius Gaio filio filiam suam conlocaverat, adfinitate sese devinixerat et cum esset P. Muci filius fratremque haberet P. Scaevolam, domi ius civile cognoverat.’
\item \textsuperscript{25} See Harries 2006: 116–26, who sees him as a man of transition.
\end{itemize}
by Caesar and then through the use of consules suffecti). Servius, furious at having been beaten, accused his victorious competitor, Murena, of bribery.

The Pro Murena is the speech that Cicero delivered to defend Murena, his main reason being the stability of the state at a risky time with the threat of Catilina never far off. As already known, Cicero never hesitated to caricature his adversaries in a trial: the dancer, the puer delicatus, the meretrix, the awful mother-in-law, all the stereotypes were good and used if necessary. So, it comes as no surprise when he presents Cato, who then assisted Servius, as a psychorigid Stoic, or Servius as a narrow-minded jurist. But, beyond the exaggerations, Cicero really meant them.

The Pro Murena is also a valuable source for us for knowledge of Servius and of Cicero’s real view of the jurists. At the outset it should be noted that Servius was never lucky in his career, even if this statement requires greater nuance. In 74 BC he was quaestor in Ostia, which could not have helped him to get many clients. Then as a praetor in 65 he was in charge of the trials de peculatu, which was politically pretty embarrassing:

What department was it that your lot gave you? A disagreeable and odious one. That of inquiry into peculation, pregnant on the one side with the tears and mourning apparel of the accused, full on the other side of imprisonment and informers. In that department of justice judges are forced to act against their will, are retained by force contrary to their inclination. The clerk is hated, the whole body is unpopular. The gratifications given by Sulla are found fault with. Many brave men, – indeed, a considerable portion of the city is offended; damages are assigned with severity. The man who is pleased with the decision soon forgets it; he who loses his cause is sure to remember it.

Was this a matter of chance? We could agree to some extent, even if it is well known that there were special ways to help chance along when balloting for a magistrature or a province. Servius indeed suffered from the political context: he was sacrificed in 63 BC on the altar of the raison d’état and it took more than ten years for him finally to be elected consul, because of the Triumvirate. Caesar might have thought of him in 59 BC for a tandem with the Pompeian Gabinius, but he finally chose Calpurnius Piso, which is quite interesting. Piso and Servius had nearly the same profile – they belonged to the Roman aristocracy, even if Servius was a patrician while the

26 Cf. Mur. 18.
27 Idem: 42: ‘Quid tua sors? Tristis, atrox, quaestio peculatus ex altera parte lacrimarum et squaloris, ex altera plena accusatorum atque indicum; cogendi iudices inviti, retinendi contra voluntatem; scriba damnatus, ordo totus alienus; Sullana gratificatio reprehensa, multi viri fortes et prope pars civitatis offensa est; lites severe aestimatae; cui placet obliviscitur, cui dolet memini.’
28 Cf. Cic. Att. 2.5.2.
29 We could also surmise that Servius’ connection with Caesar had started much earlier than stated.
Calpurnii Pisones were a plebeian family reaching the consulate for the first time only in 212 BC, and both men were moderate – but Piso was considered a better option politically speaking, and not only because of his daughter.

Nevertheless, as Cicero emphasises, it was not only chance: it was law. Servius chose to be a specialist of civil law30 and Cicero hints in the Brutus31 he did so after he realised that he could never compete with Cicero himself. We can surmise that he had also understood that he would never be able to compete with a Pompey for military glory, and he refused to be governor of a province after his praetorship. The Pro Murena is a speech about the three main ways32 to reach the top in Rome: Cicero had to glorify the militia, for the sake of his client, even if he could not help praising his own choice of eloquence,33 and the law was the loser of the three.

What were the arguments? Law is hard work with many sources of trouble and not much benefit: so said Cicero. It was not possible to acquire a good network of clientes who would vote for you later, by being a legal expert. A second important point would be the recent diffusion of civil law, which allowed everybody to learn it through books, and of course Cicero pretended it was so easy to learn that anyone could quickly become a specialist:

Nor has any one any right to be considered skillful in law, because there cannot be any difference between men in a branch of knowledge with which they are all acquainted. And a matter is not thought the more difficult for being contained in a very small number of very intelligible documents. Therefore, if you excite my anger, though I am excessively busy, in three days I will profess myself a lawyer.34

More seriously, Cicero contested the utility of a science that was limited to the Roman sphere and even caused trouble there: jurists were an obstacle to the good use of law, according to him, because of a mix of tricky ways of changing old laws and the abuse of archaisms. This was indeed a good way to make people laugh at jurists – a long tradition from Aristophanes to Racine’s Les Plaideurs, not to mention other authors. But we can consider Cicero meant it, as a broader reflection on Rome’s history and development.

30 On law and Servius in the Pro Murena, see Michel 1975: 95.
31 Cf. Brut. 151. See Summer 1973: 97 and 155–6 – he speculates that Servius was born in 105 BC.
32 Cf. Ov. Her. 3–6. See Wiseman 1971: 119 on the three ways and 120 on Servius: though a patrician, Servius came from a family that had not given any consul to Rome for probably two generations, since Servius’ father remained an eques, and his grandfather was nulla illustri laude illustratus, cf. Cicero, Mur. 16. One might nevertheless surmise that his grandfather had done the cursus honorum and been an honourable though an unremarkable magistrate.
34 Idem: 28: ‘Peritus ideo haberi nemo potest quod in eo quod scient omnes nullo modo possunt inter se discrepare. Difficilis autem res ideo non putatur quod et perpaucis et minime obscuris litteris continetur. Itaque si mihi, homini vehementer occupato, stomachum moveritis, triduo me iuris consultum esse profitebor.’
To sum it up, the small world of jurists was narrow: their intellectual pursuit was narrow, their activities were narrow, and their lives could only be narrow. And if by chance you were not narrow-minded when you chose to be a specialist of civil law, then law was going to make of you a narrow-minded person: that is what can be inferred from the excellent analysis of Sulpicius’ electoral campaign for the consulate. Instead of thinking positively and trying to make people vote for him, as a jurist he reacted by bringing a trial against Murena when he understood he was going to be beaten:

I often told you, Servius, that you did not know how to stand for the consulship; and, in respect to those very matters which I saw you conducting and advocating in a brave and magnanimous spirit, I often said to you that you appeared to me to be a brave senator rather than a wise candidate. For, in the first place, the terrors and threats of accusations, which you were in the habit of employing every day, are rather the part of a fearless man; but they have an unfavourable effect on the opinion of the people as regards a man’s hopes of getting anything from them, and they even disarm the zeal of his friends.35

The correspondence is another source for Cicero’s view of Servius. Although the judgement is sometimes positive, especially in the months preceding Servius’ death, globally the portrait corresponds to what the Pro Murena had shown. A first notable phase is around 51–49 BC: eventually Servius was consul in 51 BC, perhaps thanks to Caesar, if we admit that there was a political share not only in the repartition of the censorship that year – Piso was a Caesarian while Appius Claudius was close to Pompey – but also in the choice of the consuls. Then it would suggest that Marcellus was the candidate of Caesar’s opponents, while Servius was officially neutral36 but actually a Caesarian.

Caelius does not hesitate to criticise Servius, even if gently, by calling him a cunctator,37 which, as Fabius’ example showed, would not be seen positively in Rome. He probably knew Cicero would agree. In fact, Servius had attempted to preach for peace by delivering an important speech on the past civil wars in Rome, as Cicero recognises much later,38 without much success.

At the beginning of the civil war, Servius chose to remain in Rome, officially still neutral although his son Servius junior was serving in Caesar’s

35 Idem: 43: ‘Petere consulatum nescire te, Servi, persaepe tibi dixi; et in eis rebus ipsis quas te magno et forti animo et agere et dicere videbam tibi solitus sum dicere magis te fortem accusatorem mihi videri quam sapientem candidatum. Primum accusandi terrores et minae quibus tu cotidie uti solebas sunt fortis viri, sed et populi opinionem a spe adipiscendi aver- tunt et amicorum studia debilitant.’
36 Cf. Att. 7.3.3.
37 Cf. Fam. 8.10.3: ‘Nosti Marcellum, quam tardus et parum efficax sit, itemque Servius quam cunctator.’
38 Cf. idem: 4.3.1 (September 46 BC).
armies against Pompey. And he agreed to come to the senate once Caesar had entered Rome, which Cicero could not help criticising, even if indirectly:

And, in fact, I should myself have written to you before to warn you that your going to the senate – or rather to the convention of senators – would have no result, had I not been afraid of annoying the man who was urging me to imitate you. Him indeed I gave clearly to understand, when he asked me to attend the senate, that I should say precisely what you said about peace, and about the Spains.

Cicero’s portrayal of Servius is filled with irony – his colleague prefers his little bed in Rome – and pretty full of contempt. Cicero first considers him to be a coward, then criticised him for being an eternal jurist, evaluating the positive and the negative:

I never saw anybody so completely beside himself with fear; and yet, by Hercules, he feared nothing that was not a legitimate object of fear: ‘Pompey was angry with him, Caesar no friend to him: the victory of either one or the other was alarming, both because of the cruel nature of the one, the unscrupulousness of the other, and also because of the financial embarrassment of both, which could be relieved from no source except that of the property of private persons.’ And these remarks were accompanied with such floods of tears, that I wondered they had not run dry from such protracted misery.

Though choosing to go their separate ways, since Cicero found a boat to go to Greece and Servius joined Caesar’s side in Italy, the two men kept in touch. When Servius took the charge in Achaia that Caesar had given him, Cicero agreed and never hesitated to send him letters of recommendation. In an interesting letter of September 46 BC, when Servius was in Greece,
Cicero wrote that their two specialisms – eloquence and civil law – were suffering:45

For your professional knowledge – eminent and unrivalled as it is – no sphere much better has been left than for mine. Wherefore, though I do not presume to advise you, I have persuaded myself that you also were engaged in pursuits which, even if they were not exactly profitable, yet served to withdraw the mind from anxiety.46

The truth was that Cicero and Servius were among the few surviving consulares at that time, and it probably helped Cicero to appreciate Servius’ qualities, which he then praised when writing to Torquatus,47 even if Caesar’s death and the necessity to make choices again could reactivate old reproaches. Cicero again criticised Servius’ cowardice just after the Ides of March,48 describing him once more as the eternal jurist:

Servius, however, the peacemaker, and his young secretary seem to have undertaken a mission and to be on their guard against all possible quibbles of the law. However, what they ought to have been afraid of was not ‘the joining hands in legal claim’, but what follows[.]49

Notice the use of the pejorative diminutives – librariolus and captiunculae – and also the ironic mention of a legal formula: Cicero is being very sarcastic here. This did not last: the two men both acted against Antony’s abuses, first when Servius obtained from the senate an agreement that Caesar’s writings (true or false) should not be used after his death to legitimate Antony’s measures. Cicero, missing the absence of Servius in September 44 as he began his battle against Antony in earnest, described him as summa auctoritate et optime sentiens.50 Once back in Rome, Servius helped Cicero in his efforts to promote Octavian51 against Antony. But a big difference remained between Cicero and Servius, who tried again to play the go-between for peace52

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45 He writes the same in Brutus, also written in 46 BC: cf. Brut. 22.
46 Fam. 4.3.4: ‘Tuæ scientiae excellenti ac singulari non multo plus quam nostræ relictum est loci; qua non equidem te moneo, sed mihi ita persuasi, te quoque in isdem versari rebus, quae, etiamsi minus prodessent, animum tamen a sollicitudine abducerent.’
47 Cf. idem: 6.1.6 and 6.4.5. But Cicero never forgets to underline the difference in political choices: cf. idem: 4.6.3 (Caesar is no enemy of Cicero but a friend of Servius).
49 Idem: 15.7 (end of May 44 BC): ‘Servius vero pacificator cum librariolo suo videtur obsisse legationem et omnis captiunculas pertimescere. debuerat autem non “ex iure manum conservum” sed quae sequuntur.’
50 Fam. 12.2.3 (letter to Cassius).
51 Cf. ad. Brut. 1.15.7.
52 Cf. Phil. 9.7: Servius Sulpicius Rufus had played a key part in the senate to ensure that an embassy should be sent to Antony, who was besieging Decimus Brutus in Modena in order to negotiate a peace agreement, instead of proclaiming Antony hostis, which Cicero would have preferred.
although Cicero did not agree with that policy at all.\textsuperscript{53} The ninth \textit{Philippic} contains praise for Servius, who died at the beginning of 43 BC returning from Modena where he had tried to play the go-between between Antony and the senate\textsuperscript{54}, in order that a statue be obtained for him. This \textit{laudatio funebris} could not of course contain anything negative and so Servius is praised as one of the greatests jurists of Rome:

The praise of all mortals will forever celebrate his wisdom, his firmness, his loyalty, his admirable vigilance and prudence in upholding the interests of the public. Nor will that admirable, and incredible, and almost godlike skill of his in interpreting the laws and explaining the principles of equity be buried in silence. If all the men of all ages, who have ever had any acquaintance with the law in this city, were got together into one place, they would not deserve to be compared to Servius Sulpicius.\textsuperscript{55}

The \textit{Brutus} already had offered the same praise of Servius as the greatest specialist of civil law. But maybe one of Cicero’s last remarks was nearer to what he really thought: Servius was a man whose life had been spent \textit{sanc{t}issime honestissimeque}, and he had been often useful to the state as well as a simple citizen than as a magistrate.\textsuperscript{56} ‘Often’ did not mean always, and could remind us of all the times Cicero criticised Servius . . .

4. GAIUS TREBATIUS TESTA

Our third case is Gaius Trebatius Testa\textsuperscript{57} who we meet mostly in Cicero’s letters, first in 54–3 BC when the young jurist was sent to Gaul to Caesar’s headquarters, then during the civil war. It is a difficult case because Cicero’s presentation is far from being complete: a short time in a long life, first, since Trebatius was born around 75 BC if not around 80 BC, and died after AD 4 under Augustus, whom he assisted. A second problem is connected with politics: Trebatius was a Caesarian, which we know thanks to other authors, but Cicero does not seem to be willing to see or to appreciate it.

\textsuperscript{53} Cf. idem: 8. 20–1. The whole sixth and seventh \textit{Philippics} are a criticism of the embassy.

\textsuperscript{54} Cf. idem: 9. 5–9, 13. 20 and 29, 14.4.

\textsuperscript{55} Idem: 9.10: ‘Semper illius gravitatem, constantiam, fidelem, praestantem in re publica tuenda curam atque prudentiam omnium mortalium fama celebrabit. Nec vero silebitur admirabilis quaedam et incredibilis ac paene divina eius in legibus interpretandis, aequetiae explicanda scientia. Omnes ex omni aetate, qui in hac civitate intellegantiam iuris habuerunt, si unum in locum conferantur, cum Ser. Sulpicio non sint comparandi.’

\textsuperscript{56} Idem: 15.

\textsuperscript{57} Trebatius has not been studied extensively: we have first Sonnet, who wrote the entry for the Pauly–Wissowa (\textit{RE} 7), around 1930. See Kunkel 1967: 28 fn.44 and Bauman 1983: vol. 2, 125ff; and D’Orta has published several studies (1984–5, 1987, 1990, 1991). Recently Harries 2006 has studied Trebatius among other Roman jurists. See also Benferhat 2005: 274–81. Sources for Trebatius’ legal works are to be found in Bremer 1896: 376–424.
But at the same time it is a very interesting case because Trebatius was a young thing and Cicero at his peak when he wrote: so he did not have to hide what he really thought about lawyers, and thus we have a frank point of view without the respect due to a master – Scaevola – or the politeness due to a colleague, Sulpicius. When Cicero recommends him to Caesar, in April 54, Trebatius has already studied law with his master Cornelius Maximus: ⁵⁸ *familiam ducit in iure civili singulari memoria, summa scientia.* ⁵⁹ These qualities are listed second after personal virtues: honesty, a sense of duty. This might be the first evidence of Cicero’s view about a good knowledge of law: it was not enough to win the favour of Caesar, who was in need of men he could trust. At the same time we can assume that this presentation was also tactical, since Cicero knew that Trebatius’ big advantage was his legal education.⁶⁰

The initial reactions of Trebatius, as Cicero criticised the jurists – *ineptias istas et desideria urbis et urbanitatis* ⁶¹ – are interesting because they are a sign of an evolution: the young jurist does not want to leave Rome and the city life, where he knows he is at his best. It is very amusing to see Cicero trying to give Trebatius the traditional *cursus* ⁶² with a mission in a general’s staff, just like he had done in his youth in Pompeius Strabo’s *castra*, ⁶³ though we know Cicero himself did not like this at all. But Trebatius decided to refuse to play the game: Cicero hints at this with the expressive verb *extrudere* ⁶⁴ to remind the young man of his own efforts to convince him.

Trebatius kept on refusing to play the game by declining first the offer to be a *tribunus militaris*, though Caesar had made it comfortable (this post usually allowed an individual to have their first experience of commanding men in the army and being a member of the *consilium* where the decisions were taken⁶⁵):

> and at the same time I wondered why you despised the profits of a military tribuneship, especially as you are exempted from the labour of military duty.⁶⁶

Then he refused to go to Britain with Caesar.⁶⁷ What could seem bold and was indeed interpreted this way by Cicero might have been mere realism:

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⁵⁹ Cic. *Fam.* 7.5.3.
⁶² Cf. idem: 7.17.2.
⁶⁷ Cf. idem: 7.17.3; 7.16.1; 7.10.1–2.
Trebatius was aware that his best way to serve Caesar was his competence in civil law. But the problem was spring and summer were commonly used for military expeditions: so it took many months (too many according to Trebatius who seems to have been a bit impatient at the beginning) and the coming of winter usually devoted to civil affairs before the mission began to look attractive.

We can observe then a serious misunderstanding between Cicero and his ‘protégé’. Cicero, faithful to tradition, thought it was better for Trebatius to leave Rome and Italy, in order first to get some money,\(^{68}\) and second to be on good terms with Caesar, probably not only for his own sake: in the usual game of \textit{beneficia}, or the exchange of mutual favours/services, Trebatius could play the part of go-between between Caesar and Cicero, who could also get some news this way about the situation in Gaul. But sending Trebatius to Caesar had another consequence: the perfect match between the general and a good jurist, which prefigures the monarchic system under the Empire.

Cicero didn’t realise it: when he describes Trebatius under the charm of Caesar,\(^{69}\) he was not surprised since Caesar was intellectually a most seductive man. The brothers Cicero could have attested it.\(^{70}\) He was even a bit jealous, pretending Trebatius seemed all the more good at law since he had no real competition in Gaul.\(^{71}\) Actually the young man was sent to the \textit{Tresviri}\(^{72}\) with Labienus, at the end of the winter 54–3 BC to solve legal problems, which Cicero hints at in his famous letter about Trebatius’ conversion to Epicureanism:\(^{73}\) his main activities were a mix of law and war.

This letter is also interesting because of the mention of Pansa. Later we see Matius mentioned as a new close friend of Trebatius,\(^{74}\) but we must not forget the most important event: after fourteen months in Gaul, Trebatius was close to Caesar himself.\(^{75}\) To sum it up, as a friend of Pansa, Matius and Balbus, too, Trebatius was at the very core of the Caesarian system.

This should be on our mind when we read letters written during the civil war: Trebatius appears always as a go-between, alone or with another Caesarian, between Cicero and Caesar. It starts in February 49 BC, as we can

\(^{68}\) The hints are pretty numerous: cf. idem: 7.7.1; 7.9.2; 7.16.3; 7.11.2–3; 7.13.2.

\(^{69}\) Cf. idem: 7.16.1: \textit{inlectus}. The change was obvious since Trebatius started to make jokes, being in a much better mood. cf. idem: 7.11.2.

\(^{70}\) Cf. Cic. \textit{QFr.} 3.1 for example.

\(^{71}\) Cf. Cic. \textit{Fam.} 7.10.1.

\(^{72}\) Cf. idem: 7.13.2.


\(^{74}\) Cf. Cic. \textit{Fam.} 7.15.2: ‘in C. matii, suavissimi doctissimique hominis familiaritatem venisti.’

\(^{75}\) Ibidem: ‘te esse Caesari familiarem.’

\(^{76}\) He might have noticed the young man already in Rome since he was there when Cicero chose to send Trebatius to Caesar proposing to take one of his friends onto his staff, cf. Cic. \textit{Fam.} 7.5.2, and he kept an eye on him for the whole year (54 BC).
see in a letter to Atticus, Caesar used Trebatius to try to convince Cicero to stay in Rome when Pompey was leaving with almost all the senators. For Cicero Trebatius was no Caesarian: he described him twice as a good citizen, bonus vir et civis, which means a Republican. It seems it was an illusion: Trebatius was one of Caesar’s go-betweens and it is not surprising to find him in Rome with Sulpicius Rufus with whom he shared an interest in law but he was also a consularis that Caesar needed badly in the city. Trebatius as a jurist could be useful to convince Sulpicius as well as Cicero to stay in Italy and maybe even help Caesar.

He was probably also useful in coming up with solutions to the economic situation in Italy with the debt problem, and he also played the part of political advisor as well, as Suetonius tells us when relating how Caesar did not get up for senators as they were arriving:

Some think that when he attempted to get up, he was held back by Cornelius Balbus; others, that he made no such move at all, but on the contrary frowned angrily on Gaius Trebatius when he suggested that he should rise.

But we do not see it in Cicero’s letters: nevertheless his testimony is important because it shows us a Trebatius who was then an important piece of Caesar’s strategic team: the men who played their part in the shadows, with technical competences and a real ability to serve as intermediaries. They actually often worked in tandem: Oppius with Balbus, Hirtius with Pansa, Trebatius with Matius.

After Caesar’s murder, Trebatius appears again in Cicero’s letters from the year 44 BC. It seems he had a house in Rome on the Lupercal, but also some properties in Velia thanks to his father. Cicero keeps on juxtaposing his own model – eloquence over all – with that of Trebatius’ specialisation in civil law: he offers him the Topica, written at the beginning of the summer, trying to convert him to rhetoric. Law appears to be something hard to learn:

I send you this book from Rhegium written in as clear a style as the subject admitted. But if certain parts appear to you to be somewhat obscure, you must reflect that no art can be learnt out of books without some one to explain it and without

77 Cf. Cic. Att. 7.17.3.
78 Cf. idem: 10.1.3 and 10.11.4: ‘vir plane et civis bonus.’ Nevertheless Atticus has a curious expression (cf. 9.9.4): ‘nihil bene sperat’. That could mean Trebatius had no good hope about the situation, at a time when Pompey was leaving Italy for Greece, or if we consider the adverb bene as a political code refering to the boni, it could mean Trebatius was a Caesarian from Atticus’ point of view.
79 Cf. Cic. Fam. 4.1.1.
80 Cf. Cic. Att. 13.23.3.(?)
81 Cf. Suet. Caes. 78.
82 Cf. Cic. Fam. 7.20.1.
some practical exercise in it. You will not have to go far for an instance. Can the art of you jurisconsults be learnt out of books? Though there are a great number of them, they yet require a teacher and actual practice.\textsuperscript{84}

But in fact Trebatius was already far too advanced on his own path: as a close friend of Matius, he was probably helping the young Octavian. He plays once more the role of an intermediary between Matius and Cicero in October 44 BC, that is not only between two men but also between two political camps: Cicero supports the Republicans around Brutus and Cassius, while Matius remains faithful to Caesar and has started to support his legal heir Octavian\textsuperscript{85} with the organisation of the \textit{Ludi Victoriae}. He was then already a first-class jurist, as Cicero admits, in a joke about a discussion over dinner:

Accordingly, though I returned home full of wine and late in the evening, I marked the section in which that question is treated and caused it to be copied out and sent to you. I wanted to convince you that the doctrine which you said was held by no one was maintained by Sextus Aelius, Manius Manilius, Marcus Brutus. Nevertheless, I concur with Scaevola and Testa.\textsuperscript{86}

To be put at the same level as Quintus Mucius Scaevola Augur was indeed an accomplishment.

5. CONCLUSION

What did it take to be number one in Rome? That was our primary question and the answer is this: from Caesar to at least Theodosius it took a general assisted by jurists. There were three ways in the \textit{Pro Murena}: the \textit{militia} kept playing the most important part, since armies were used not only against external enemies to obtain power, but also against citizens. Whatever Servius and Cicero might have hoped, and they were like twins (as said in the \textit{Brutus})\textsuperscript{87} united in the thought that the time of civil lawyers had finally come, the generals never lost their power and influence.

Cicero’s eloquence and Servius’ civil law both needed peace to flourish: nevertheless, eloquence died the day peace was ensured by the victory of one man and the advent of the Principate. Tacitus\textsuperscript{88} in his \textit{Dialogue} clearly states this after a century of monarchy in Rome. Meanwhile, the jurists, by adapting their careers to the new deal, maintained real importance in the exercise of political power. What Cicero had said to defend Murena about the civil law being of no use except in Rome proved wrong with the advent of the

\textsuperscript{84} Fam. 7.19.1.
\textsuperscript{85} Cf. idem: 11.28.6.
\textsuperscript{86} Idem: 7.22 (possibly written in 46 or 44 BC). See Fraenkel 1957: 67–8.
\textsuperscript{87} Brut. 150.
\textsuperscript{88} Dial. 36–41.
Roman Empire. Roman civil law became the civil law of an Empire and then the matrix of European laws much later.

What emerges here is a time in the late Republic when there were various experiments to try to answer to the need for changes that the Romans could feel: some tried to get power using civil law as a speciality, some tried to be number one by intellectual genius and eloquence, some solved the problem with their armies. Cicero unwittingly helped the real revolution, that is to say the coming of the Principate and the end of the Republic: he did not see Trebatius and Caesar as precursors of a new way to exercise power. And so came the result towards the end of 43 BC first with his own execution, then in the following centuries: game over . . .

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