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Chapter 6

‘Jurists in the Shadows’: The Everyday Business of the Jurists of Cicero’s Time

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1. INTRODUCTION: WHO WAS A JURIST?

It is a matter of dispute whether the Roman jurists of the Republic can be aptly described as such. There was no formalised training for the legal profession nor is it clear how much time the Roman jurists devoted to their profession. Indeed, the jurists of Cicero’s time were amateurs compared to modern jurists. The Roman jurists active during that time could be described most accurately as ‘gentlemen’, men from higher classes who engaged in giving legal advice and representing parties in court due to favours owed to their clients, acquaintances and family members. Legal services were not paid for but nor were they free of charge. Rewards were often made in the form of gifts, bequests or other services. Monetary reward, even the prospect of financial gain, was, although undoubtedly present, looked down upon by the Roman aristocracy. For them, giving legal advice, making accusations, litigating on behalf of others and arbitrating was part of the duties of a vir bonus. Moreover, it was considered necessary to legally assist friends and acquaintances to spread favours before and for elections.¹

2. SOCIETY AND THE LAW

In earlier works² I used to define as jurists men (1) who identified as such, (2) who were called jurists, (3) to whom considerable legal knowledge was attributed and (4) who had left responsa. For the purpose of this chapter I would like to supplement a fifth category: men of whom legal knowledge can be presumed on the basis of their legal work.

I want to define as jurists in the shadows men from a lower social background, who devoted themselves to less illustrious legal work and were therefore, when consulted, seldom mentioned by name. Their activities can be attributed to the following categories: legal representatives, the staff

¹ Cf. Cicero’s remarks on Hirrus in Fam. 8.6 after he lost an important election: ‘Moreover, he, who never appeared in the forum and hardly had anything to do with litigation, is representing generously, though seldom past noon.’
and other advisors of the magistrates, businessmen, and conveyancers. It should be stressed, however, that these categories are neither exhaustive nor exclusive. For example several negotiatores served as procuratores,³ Atticus, a respected businessman, drafted at least two last wills⁴ and private secretaries had official duties when their patron became a magistrate.

2.1 Legal representatives: procuratores and cognitores, advocates and sycophants

Procuratores/cognitores and advocates are generally seen as separate entities. This may be partly due to the fact that according to the prevailing view, lawyers stemmed mostly from Rome’s leading classes, while procuratores and cognitores are assumed to have belonged to the lower classes. Another assumption is that neither procuratores/cognitores nor advocates needed legal knowledge, because legal questions were already accounted for in iure.

Both assumptions are untrue: procuratores especially, who represented others in lawsuits, had to have sufficient legal knowledge.⁵ Sext. Alfenus, procurator of P. Quinctius, who, incidentally, had a higher social status than both Quinctius and Naevius,⁶ showed his knowledge of legal proceedings when he defended P. Quinctius. The negotiator Herennius, a procurator to C. Matrinius, defended Matrinius’ vilici and pastores when they were accused by Verres.⁷ Last but not least, Cicero himself was asked to manage the assets of Sittius tamquam procurator.⁸ Often, though, the terms procurator and cognitor were used as invectives by Cicero against his enemies.⁹ This leads me to believe that, while not all procuratores and cognitores had low social status or a bad reputation, the image of the profession prevented men from the senatorial or equestrian order from declaring themselves as procuratores, even though they fulfilled this duty. A case in point is T. Pomponius Atticus, who managed Cicero’s assets – however, in the Letters to Atticus the term procurator is never mentioned in his regard.

Cognitores, too, possessed considerable legal knowledge. In Satire II.5 Horace advises his reader to act as a defensor and cognitor while advertising legal knowledge.¹⁰ Similarly, Cicero addresses Aebutius as cognitor viduarum, who is learned in law but is considered a jurist only among women.¹¹ If we

³ Treggiari 1969: 104.
⁴ The wills of Terentia and Cicero.
⁵ Frier 1985: 67.
⁷ Cic. Verr. 2.5.15, 2.5.155. Schulz 1997: 264.
⁸ Cic. Fam. 8.11.4.
⁹ Cic. Caecin. 14; Cic. Rosc. Am. 23; Verr. 2.3.78, 178; Phil. 12.18.
¹⁰ Hor. Sat. 2.5.30–8.
put Cicero’s invective against the social climber Aebutius aside,\textsuperscript{12} we can clearly deduce from this passage that Aebutius had decent knowledge of law. He interfered in litigation on behalf of others and was actually quite successful, a fact Cicero himself grudgingly concedes.\textsuperscript{13} Cicero had an equally low opinion of C. Claudius Palatina, the \textit{cognitor} appointed by Verres for Sthenius.\textsuperscript{14} However, the list of occupations listed for Claudius – \textit{sequester, interpres, confector negotiorum, prope conlega Timarchidi}\textsuperscript{15} – implies forensic experience and probably also legal knowledge.

Cicero’s views on the social background of his adversaries also influenced Roman linguistic usage regarding lawyers. While men from the senatorial order were addressed with the reverential term \textit{patronus, advocatus or causidicus} was often used for lawyers who had legal knowledge\textsuperscript{16} or who stemmed from a lower social background.\textsuperscript{17} \textit{Advocati} who were freedmen were not uncommon,\textsuperscript{18} as is illustrated by the examples of L. Aelius, a freedman who accused T. Quinctius Mutto (\textit{Scaur.} 23), an enemy of his \textit{patronus,}\textsuperscript{19} and Voltacilius Plotus, a \textit{libertus} who defended his \textit{patronus} and taught oratory.\textsuperscript{20} Another freedman who acted as advocate did not concern Cicero: ‘Selius may be eloquent enough to prove himself freeborn, I do not worry’.\textsuperscript{21} Last but not least, the freedman Trimalchio mentions advocacy or acting as a \textit{praeco} as a possible career for his son.\textsuperscript{22}

Similarly, sycophants (\textit{quadruplatores, calumniatores}), men who accused others on a professional basis, were not worthy to be called jurists, although serial accusers like Naevius Turpio\textsuperscript{23} or Aelius Ligus, whom Cicero coined a \textit{venalis adscriptor},\textsuperscript{24} often had legal knowledge. Indeed, Cicero himself acknowledges the legal knowledge of the unknown accuser in his defence of L. Cornelius Balbus.\textsuperscript{25}

\section*{2.2 The staff of the magistrates and the magistrate’s helpers}

The staff who helped Roman officials has often been overlooked. The duties of these men (\textit{scribae, accensi, praecones, lictores, accensi, interpres})
included helping in drafting edicts, laws and *senatus consultae*; drafting contracts for the publicans and providing assistance in comprehending and following the numerous laws regulating the duties of the Roman officials. Indeed, Cicero points out, the *apparitores* often knew best where you could find the laws26 and that most of the magistrates only knew as much as the *apparitores* allowed them to know.27 Cicero was not alone in his opinion: the younger Cato, according to Plutarch, tried to curb their influence28 and Philo of Alexandria mentions that Aulus Flaccus Avillius was so knowledgeable as prefect of Egypt that his scribes became redundant.29 Schulz has correctly pointed out that the personnel had a great deal of routine and assisted their magistrate, even more so in the provinces where news and help from Rome needed considerable time.30 Among the *apparitores*, the *accensi*, the scribes and the *praecones* were most closely involved with legal affairs.

The *accensi*, stewards to the higher magistrates, were personally appointed for the magistrate’s term of office and could gain considerable influence on the decision-making processes.31 More often than not they controlled who had access to the governor.32 These men usually had a lower social status. Many of them were freedmen (sometimes even slaves acted as *apparitores*) and it was not unusual for a magistrate to bring his own freedman with him.33 An extraordinary example for such a freedman is Q. Tullius Statius, the *accensus* of Cicero’s brother Quintus:34 Cicero, who apparently disliked Statius,35 complains that due to Statius’ influence Quintus was less accessible and felt that Statius had more responsibility than he was due. Cicero illustrates this impression with an example, namely, when Statius handled his *patronus’* official correspondence.36 Similarly, Verres’ *accensus*, Timarchides, was infamous for acquiring money for Verres, be it by collecting tax money37 or buying art for a low price.38 Additionally, Timarchides was also involved in trials.39 To stress the influence of the *apparitores*, Cicero cites a letter in

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26 See for example *Leg. agr.* 2.13: The public scribes brought Cicero a copy of Rullus’ draft.
27 *Cic. Leg.* 3.46, 48. See also Treggiari 1969: 158.
29 Philo. *In Flaccum* 3.
33 See also Treggiari 1969: 153.
34 Treggiari 1969: 158 thinks that Statius was a private secretary, not an *accensus*, but one who performed public duties.
36 *QFr.* 1.2.1–3, 8. See also Treggiari 1969: 149, 158, 181 and Schulz 1997: 151–3.
37 *Cic. Verr.* 2.3.171, 175.
39 *Cic. Verr.* 2.2.74, 2.3.69.
which Timarchides advises Apronius to acquire influence with the new scribes and *apparitores* to gain the praetor’s respect.\(^{40}\)

In contrast to the *accensii*, scribes were often freeborn, especially those who had more reputable positions like the *scribae quaestorii*. In *Verr. 2.3.184* Cicero portrays the scribes as honourable but socially low-standing people, although some of them used this *ordo* as a means of social climbing (this is also alluded to by Horace).\(^{41}\) Their miscellaneous duties included writing protocols,\(^{42}\) managing the public funds\(^{43}\) (which also gave them the opportunity to appropriate them),\(^{44}\) maintaining the *tabulae publicae*\(^{45}\) and participating in trials and lawsuits.\(^{46}\) Especially for the latter, legal knowledge proved to be useful (one only has to keep in mind the *scriba* Cn. Flavius who published the *fasti*) and some scribes bragged about their legal skills in their funerary inscriptions.\(^{47}\)

Among those with extensive legal expertise was the scribe Sext. Clodius (sometimes referred to as Sext. Cloelius). He assisted Clodius in drafting contracts and laws, for example the contracts with exiles from Byzantium\(^{48}\) and the *lex Clodia de exilio Ciceronis*.\(^{49}\) Others are mentioned by Cicero but it is not clear which proposals and laws he meant.\(^{50}\) Generally, drafting laws was considered a task for the nobility,\(^{51}\) which is why Cicero vehemently attacked Clodius for breaking this noble tradition.\(^{52}\) M. Aemilius Scaurus and L. Licinius Crassus, who descended from established families, helped Drusus in drafting his laws.\(^{53}\) P. Sestius and Visellius both prepared a draft of the law that should have restored Cicero’s rights:\(^{54}\) Cicero himself much preferred the draft that Visellius made for T. Fadius to the draft of Sestius, whom he considered incapable.\(^{55}\) Politicians regularly used jurists to draft

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\(^{40}\) Idem: 2.3.154–7.
\(^{41}\) Hor. *Sat.* 2.5.56–7. It is important to note that Horace was also a *scriba quaestorius* (Suet. *Hor*.).
\(^{42}\) *Verr. 2.5.54*. See Schulz 1997: 105.
\(^{43}\) Cic. *Dom.* 74.
\(^{44}\) Cic. *Pis.* 61.
\(^{45}\) Cic. *Verr. 2.3.184*; Cic. *Dom.* 74.
\(^{46}\) See Kunkel and Wittmann 1995: 111 fn.28 and Purcell 1983: 130.
\(^{47}\) *CIL VI* 1853; *CIL VI* 1819. See Damon 1992: 236 fn.22 and Purcell 1983: 130 fn.22.
\(^{48}\) Cic. *Dom.* 83.
\(^{49}\) Idem: 47f; 83; *Sest.* 133.
\(^{52}\) Apart from Sext. Clodius, Clodius (Cicero’s adversary) used a certain Decimus for drafting laws (Cic. *Dom.* 50).
\(^{53}\) Cic. *Dom.* 50.
\(^{54}\) Cic. *Att.* 3.30.3; 3.23.4.
\(^{55}\) Cic. *Att.* 7.17.2.
laws. P. Sestius helped Pompey in drafting laws, while Balbus helped Caesar in drafting the lex Iulia municipalis. Those who drafted their own laws, like Vatinius, emphasised their achievements. Other drafters of the laws were known to Cicero’s audience but are unknown to modern readers such as the unnamed iure consultus called out in the Philippicae or the auctores responsible for the draft of P. Servilius Rullus.

Verres’ scribes, M. Papirius Potamo and Maevius, also exerted their influence on Sicily. While M. Papirius Potamo, an eques Romanus, who had previously served Caecilius, participated in Verres’ consilium, Maevius had a far more important role in Verres’ dealings. He assisted Verres in bringing in tax money and the delivery of grain and was rewarded for his services with a gold ring, which made him an eques. Last but not least there was Cicero’s own scribe, M. Tullius, who handled his official correspondence and assisted him in preparing his accounts before he left his province.

Other helpers of Verres who had legal responsibility and (presumably) legal knowledge were his praeco Valerius, who was among the judges who decided the lawsuit of Nympho, C. Claudius, an interpres who was already mentioned above, A. Valentius, another interpres, who also acted as publicanus and M. Petilius, a personal advisor of Verres, who functioned as a iudex and participated in another judge’s consilium.

Generally, because of their involvement in public and private auctions, praecones were not held in high esteem by Roman society. However, their influence was substantial, and the function of a praeco represented a chance for social advancement. Sext. Naevius, a praeco and Cicero’s adversary

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56 The scriptor’s intentions were a major point in interpreting the law, too (Cic. Part. or. 134, 136; Cic. Inv. rhet. 2.137, 139), which probably explains why the auctor of a law is quite often named.
57 Cic. Att. 7.17.2.
59 Cic. Vat. 27.
60 Cic. Phil. 2.96.
61 Cic. Leg. agr. 2.98.
62 Verr. 2.3.168.
63 Div. Caecin. 29; Verr. 2.3.137.
64 Cic. Verr. 2.3.171, 175. He also kept some money for himself (Verr. 2.2.170, 2.3.181–7).
65 Idem: 2.3.185. See also Bleicken 1995: 51.
66 Cic. Fam. 5.20.1. On Tullius see Treggiari 1969: 258.
67 Cic. Verr. 2.3.54.
68 See 90.
69 Cic. Verr. 2.3.84; 2.4.58.
70 Idem: 2.2.71, 73.
73 The father of L. Aelius Stilo Praeconinus was a praeco (Plin. NH 33.29). Horace, too mentions being a praeco as a possible career for himself (Sat. I.6.86). On praecones see also Treggiari 1969: 99–101.
in *Pro Quinctio*, is painted in a harsh light by Cicero. At the same time, Bannon has pointed out that Naevius, who had learned to use the legal system to his advantage over the course of his career, is also a good example of a *praeco*.

At this point, it is interesting to note that Cicero used terms applicable to the support staff of a magistrate and other less reputable professions to ridicule jurists: *praeco actionum*, *interpres iuris*, *interpres legum*, *cantor formularum*, *auceptus syllabarum*, and *ministrator*. However, different factors might be at work. On the one hand, *praecones* and *interpretes* dealt, among other things, with legal affairs. On the other hand, jurisprudence was in Cicero’s view all but an ancillary discipline to oratory, a necessary evil an orator had to resort to, if he wanted to win a lawsuit.

A magistrate did not depend solely on his staff. To a certain degree – and this was especially true of governors – he also needed to rely on his subordinates (*tribuni militum*, *praefecti fabrum*, *legati*) and advisors (the so-called *cohors amicorum*).

The *praefecti fabrum* in particular gathered considerable influence. A representative of this group was L. Cornelius Balbus, who served as a *praefectus fabrum* to Caesar in Hispania and Gallia. After Caesar’s governorship he remained his chief advisor, advising him on political and financial matters and helping him to draft laws. More importantly, during the civil war, he and C. Oppius remained in the city and acted as intermediaries between him and his allies. Their power was so great that Cicero bitterly called them ‘kings of Rome’. After Caesar’s death, both transferred their loyalties to Octavian.

Another group of men who had considerable impact on legal and politi-
cal matters were the *legati*. Often they were recruited from family, friends or business associates.87 One of their duties involved the exercise of judicial functions, either exercising jurisdiction themselves88 or participating in the *consilium* of the magistrate.89 Men like Trebatius and C. Matius, a friend of both Cicero and Trebatius,90 acted as legal advisors to Caesar. Another friend of Cicero, the jurist Valerius, was employed by both P. Cornelius Lentulus Spinther91 and Appius Claudius Pulcher.92 At other times the *legati* assisted in drafting enactments and decrees, for example Gaius Longus and Publius who helped L. Sempronius Asellio in drafting his edict.93

Influence on the edict was not limited to *legati*. Verres’ *familiaris* Q. Apronius, a *publicanus*, initiated the edict on *pactiones*94 and it is probable that he influenced other portions of the edict95 as well as the jurisdiction,96 and Cicero often mentions the power Apronius exerted on Verres and the province as a whole.97

2.3 *Negotiatores* and *publicani*

Another group of men whose legal knowledge is rarely recognised were the *negotiatores*, merchants who belonged to the *equites* and who engaged in banking, auctions and (the slave) trade. Most of Rome’s leading class was involved in making money98 but since the senatorial class was forbidden to engage in certain activities, they depended on the *equites* for most of their financial affairs.99 The *negotiatores* differed from the *publicani* whose association Cicero sought and emphasised,100 insofar as Cicero called *negotiatores* those who could or would not accept the lease of taxes.101 Since the *equites* and the *tribuni aerarii* were often called upon as judges in trials and took part in the *conventus civium*,102 they acquired quite a bit of forensic experience and Cicero could single out men like Q. Considius, and M. Iuventius Pedo for

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89 Brennan 2000: 443, 480, 539.
90 Cic. Att. 9.1.12, 14.1, 14.2; Fam. 7.15.
91 Cic. Fam. 1.10.
92 Idem: 3.1.
93 Diod. Sic. 37.8.
94 Cic. Verr. 2.3.36. See also Schulz 1997: 224.
95 Cic. Verr. 2.3.25, 28, 70.
96 Idem: 2.3.23.
97 For example, idem: 2.3.22, 32, 40, 60–2, 106, 178, 228.
99 Cf. the praise for Rabirius Postumus because he strove to enlarge his friends’ assets (Rab. Post. 4).
100 On this topic see Bleicken 1995 and Treggiari 1969: 103.
102 See also Idem: 1995: 32–43.
their experience, their legal knowledge and their fairness in judging. A less than stellar example of this *ordo* was the promagister L. Carpinatius, who assisted Verres in making and selling judgements.

A man whose legal qualifications are often overlooked is T. Pomponius Atticus, Cicero’s most trusted friend, who not only advised him in personal matters but whose duties also included the management of Cicero’s funds. Additionally, he managed the funds of Q. Tullius Cicero, M. Porcius Cato, Q. Hortensius, Aulus Manlius Torquatus and many more.

An area of law he was very often involved in was auctions, since he administered the auctions of Cicero’s various inheritances. He advised Cicero on whether to accept or deny an inheritance, and handled the actual auction. However, he did not take part in public auctions and while he had good contact with the publicans and acted as an intermediary, he never acted as a *praes* or *manceps*. Further legal duties of Atticus included collecting and accepting Cicero’s debts, paying and enforcing the repayment of Tullia’s dowries, and repaying the dowries of Terentia and Publilia. Several letters of Cicero to Atticus are dedicated to the acquisition of some gardens where Cicero wanted to build a monument for his daughter Tullia.

Financial law was but one area in which Atticus’ expertise was visible, however, he had knowledge of inheritance law as well. Cicero asked Camillus and Atticus to assist Terentia in drafting her last will and it is obvious from Att. 12.18a.2 that he also had a hand in formulating Cicero’s will. Interestingly enough, he also handled property law: Cicero instructed Atticus to waive a servitude regarding one of his neighbours. Although Nepos mentions that Atticus never filed a suit on his own account, this does not mean that he never litigated. While he was neither an *accusator* nor a *subscriptor*, he was involved in several lawsuits and assisted Antonius’ wife Fulvia in her lawsuits.

Another jurist whose expertise Cicero often sought was C. Furius Camillus, who specialised in the *ius praedadiatorium*. Cicero consulted him among other jurists in reference to the debts of Valerius, which he wanted to transfer to his

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104 Cic. Verr. 2.2.169–73.
105 Nep. Att. 15.3.
107 Nep. Att. 6.3.
111 Idem: 14.13, 16.2; Plut. Cic. 41.3.
113 Idem: 11.16.5.
115 Nep. Att. 9.4.
116 Cic. Balb. 45.
legatus Q. Volusius.\textsuperscript{117} Camillus was involved in the sale of Milo’s assets.\textsuperscript{118} Together with Atticus he helped Terentia when she drafted her last will.\textsuperscript{119} Similarly, he helped Cicero in drafting his own will.\textsuperscript{120} Like Atticus, he was involved in auctions and accepted payments on Cicero’s behalf.

Bankers, too, had extensive legal knowledge. Horace mentions three faeneratores, Nerius, Parellius and Cicutia, in \textit{Sat. 2.3,}\textsuperscript{121} and makes reference to the ‘knotty contracts’ (nodosae tabulae) of Cicutia, from which few can escape. Taking into account that Porphyrio calls Parellius and Cicutia jurists,\textsuperscript{122} we can reasonably assume that they were not the only bankers who had legal knowledge and used it to the detriment of their clients.

### 2.4 Legal advisors and conveyancers

Legal advisors and conveyancers were jurists who specialised in giving legal advice or drafting contracts autonomously, but who for some reason or other were not viewed as jurists. One relevant factor was the area of law with which these men occupied themselves. If a man was involved in a less distinguished area of law, it soiled his reputation. This is especially true of \textit{ius praediatorium}, because it dealt with the assets of debtors who could not repay their debts. In fact, auctions for indebted persons were so frequent that although they did not deal exclusively with such cases, they were identified with indebtedness.\textsuperscript{123} This also might account for the lack of sources on auctions in the Digest.\textsuperscript{124}

Apart from the men mentioned above there were also those who assisted private men in drafting contracts (for example for dowries, sales or contracts for work); often these men were secretaries and their legal work was just one aspect of their occupation. Others were small town officials and priests.\textsuperscript{125} Many of them were experts in less distinguished areas of the law: Cascellius (father of the famous jurist A. Cascellius) and Furius, who specialised in the \textit{ius praediatorium},\textsuperscript{126} could not expect much respect from their fellow citizens. This did not mean, however, that they had no work. Similarly, areas of law that were deemed too exotic or too useless did not command respect.\textsuperscript{127}

\textsuperscript{117} Cic. \textit{Fam} 5.20.3  
\textsuperscript{118} Cic. \textit{Att.} 5.8, 6.1.19, 6.5.2.  
\textsuperscript{119} Idem: 11.17, 11.21, 11.22, 11.24, 11.26, 11.27, 12.16.  
\textsuperscript{120} Idem: 12.16.  
\textsuperscript{121} Hor. \textit{Sat.} 2.3.69, 75.  
\textsuperscript{122} Porph. In idem: 2.69, 75.  
\textsuperscript{123} Thielmann 1961: 47f.  
\textsuperscript{124} Cf. idem: 81.  
\textsuperscript{125} For examples see Schulz 1997: 136.  
\textsuperscript{126} Cic. \textit{Balb.} 45.  
\textsuperscript{127} A similar problem seems to exist in German scholarship on Roman jurists who devoted themselves to public law.
Things were different with inheritance law. Although ‘normal’ jurists were often asked for responsa in inheritance law, drafting the actual testament was often (not always) the task of freedmen: Polybius and Hilarion, Augustus’ freedmen, are mentioned as helping him write his will.\textsuperscript{128} Later this task fell to the tabelliones.

Another aspect that almost certainly played a role was the social status. Freedmen who gave legal advice (like the title-giving parasite Phormio in Terence’s comedy) or drafted contracts were not considered jurists due to their low social status. Most of these were former scribes, or librarii, who continued to do the same work they had performed as slaves.\textsuperscript{129}

3. CONCLUSION

Who was considered a jurist did not necessarily depend on the legal knowledge of those concerned: Quite contrary to modern perceptions, many factors played a role: The bad reputation of some professions (for example procuratores and cognitores) obscured the forensic experience of those fulfilling these duties. Other men (for example Cicero) may have baulked from declaring themselves as jurists, since for them jurisprudence was always second to oratory. Some were impeded by their origins from being perceived as jurists, others were hindered by their chosen area of law. In sum, the jurists of the late Roman Republic were a very heterogeneous group on which future research is much needed.

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\textsuperscript{128} Suet., Aug. 101.
\textsuperscript{129} Treggiari 1969: 148.