Review

Ernest Metzger

Cicero's Law: Rethinking Roman Law of the Late Republic. Edited by Paul J. du Plessis. Edinburgh: Edinburgh University Press. 2016. x + 241 pp. ISBN 978-1-4744-0882-0.

Modern Roman lawyers sometimes have difficulty talking about Cicero, unsure whether he'll be admitted to the conversation, or with what conditions. Dr. du Plessis's hope is to make the conversation better and Cicero more appreciated. For a time scholars gave most of their attention to system and legal doctrine, and they doubted Cicero's value as a source for, and about, the law. But their attention was too narrow, according to the argument of this book, because they avoided thinking about the wider effects of society on law. Dr. du Plessis suggests that a better focus than system and doctrine, and a field of inquiry in its own right, is legal culture: "'Roman legal culture' will be used to describe all those phenomena (including the economic) that can be related, whether directly or indirectly, to the workings of the law in the late Republic." This is an expansive definition which obviously admits Cicero, though how widely is the question the twelve essays in this book attempt to answer.

The essays divide broadly into (I) those which cast light on law and legal sources, with the aid of Cicero, and (II) those which explain Cicero and his works.

I.

Olga Tellegen-Couperus and Jan Willem Tellegen ("Reading a Dead Man's Mind: Hellenistic Philosophy, Rhetoric and Roman Law") take up *voluntas testatoris* and the reasoning employed by jurists to interpret it. We can presume to have knowledge of the testator's intentions only if those intentions are truly knowable, and that requires Stoic confidence in the power of reason. But the jurists, the authors argue, were not so confident as this. They did

Roman Legal Tradition, 13 (2017), 1–4. ISSN 1943-6483. Published by the Ames Foundation at the Harvard Law School and the Alan Rodger Endowment at the University of Glasgow.

not, in this instance, search for the one right answer. Their discussions are framed rather as a search for a more probable intention. The authors therefore take exception to a current of opinion that characterizes juristic reason as Stoic, and note this has distorted our understanding of the *Causa Curiana*.

Christine Lehne-Gstreinthaler ("'Jurists in the Shadows': The Everyday Business of the Jurists of Cicero's Time") would admit as jurists a host of clerks, advisers, and professionals who had knowledge of the law but worked anonymously and uncelebrated. These included representatives and advocates, magistrates' staff, and some equestrian businessmen. Lehne-Gstreinthaler is attempting to free the term "jurist" from the limits given it by legal science, though of course the roles she identifies are important whether we call them jurists or not. The piece is well supported by examples and sources, Cicero and others, and should be a fixture of student reading lists.

Michael C. Alexander ("Multiple Charges, Unitary Punishment and Rhetorical Strategy in the *Quaestiones* of the Late Roman Republic") restates and expands his thesis that multiple charges were normal in the criminal courts of Cicero's time, and that punishments were unitary. The two facts should be considered together: to prosecutors, multiple charges provided multiple paths to a unitary punishment. Other explanations for multiple charges tend to diminish their significance, e.g., the explanation that these trials were essentially political, or the explanation that it was principally rhetorical conventions that made multiple allegations attractive and useful.

Catherine Steel ("Early-Career Prosecutors: Forensic Activity and Senatorial Careers in the Late Republic") collects the evidence of twenty criminal trials to support a thesis on prosecutors and public life; her period is 149 (first *quaestio*) to 49 (civil war). The evidence suggests that prosecutions were frequently undertaken by young men aspiring to a public career. The setting was socially elevated and clubby. The individual trials are set out in a chronological table, giving the details of each trial but also indicating whether each prosecutor enjoyed a subsequent forensic career.

II.

Philip Thomas ("A Barzunesque View of Cicero: From Giant to Dwarf and Back") continues a thesis from an earlier piece where he introduces the historian and polymath Jacques Barzun (d. 2012). Barzun, long sympathetic to the twentieth-century

relativism in morals,[1] put forward the related historiographical view that persons and events present different faces to succeeding generations. To Thomas this gives the opportunity to draw a line under old Roman law views, in particular the view that defines the professional roles of jurist and orator so narrowly. Thomas asks us to reimagine the roles and consider Cicero's works with new eyes, in particular the *Topica*, which Thomas suggests could stand as Cicero's promised work on the civil law.

Benedikt Forschner's focus ("Law's Nature: Philosophy as a Legal Argument in Cicero's Writings") is the character of Cicero's argument: in places Cicero uses philosophical arguments that were nevertheless accepted as legal arguments. Cicero explored the nature of the law and, though in the main a Stoic, departed from Stoic doctrine in distinct ways, ways which are discernible in his arguments, mainly in the *pro Milone*, but elsewhere also. Forschner perceives that Cicero adopted a transcendant view of law, a rational law shared by men and gods but imperfectly (and unevenly) realized in men. Men in whom rational law was wholly unrealized were no better, and sometimes worse, than animals. This is the conception of men and law that Cicero levels at Clodius: justice turns not on Clodius' formal legal posture, but on his irrational, animal state of mind and his deserving "expulsion" from the community of men. In closing Forschner speculates that similar arguments appear in a handful of juristic texts.

Yasmina Benferhat ("Cicero and the Small World of the Jurists") asks us to see Cicero as a man of action who estimated usefulness to the state higher than service to the intellectual closet of the civil law. Cicero expressed specific and sometimes condescending views about the best career for a late republican jurist, favoring a public life near centers of power. In doing so he perhaps contributed, unknowingly, to the new concentration of state authority.

Matthijs Wibier ("Cicero's Reception in the Juristic Tradition of the Early Empire") offers three theses on Cicero's later reception. First, jurists sometimes engaged with Cicero in the same way they engaged with other jurists; three Digest texts accept Ciceronian decisions as worthy of citation alongside the decisions of jurists. Second, in his history of Roman jurisprudence Pomponius elevates jurists and diminishes Cicero (sometimes distorting his works) as a reaction to polemical attacks on jurists by advocates. Third, Pomponius and Gellius indirectly

[1] See J. Barzun, *Darwin, Marx, Wagner: Critique of a Heritage* (Boston 1947) 379–403.

compliment Cicero in praising the jurist Labeo as an able philosopher: an act of displacement, Labeo for Cicero, the author suggests.

Drawing on the remarks of Pomponius and Celsus (*filius*) and later imperial pronouncements, Jill Harries ("Servius, Cicero, and the *Res Publica* of Justinian") draws attention to an oddity of legal historiography in the Empire: the continuity of the law from the Republic onwards is strongly defended notwithstanding an utterly discontinuous constitutional history. Harries notes in particular the very careful and even tendentious treatment of Servius Sulpicius Rufus: presented as a significant jurist and a valuable source for other jurists, his republican profile is ignored. The jurists were, Harries says, elites who found stability even in times of great constitutional change.

In several speeches (*pro Sulla*, *pro Balbo*, Verrines) Cicero spoke up for members of Italian communities and praised their underlying Romanness. For this purpose he downplayed the details of citizenship and emphasized instead the morals and traditions they shared with the Romans. His praise is significant, Saskia T. Roselaar argues ("Cicero and the Italians: Expansion of Empire, Creation of Law"), because it marks the uneasy relations with the Italian communities and a grudging extension of the *ius civile*.

The *de Inventione* and the *Rhetorica ad Herennium* speak directly about the roles of the principal players in a civil trial. Jurists were indispensable to decisions on the civil law, advocates were flexible in choosing definitions to suit, and criminal jurors had a duty to interpret the law. Jennifer Hilder suggests ("Jurors, Jurists and Advocates: Law in the *Rhetorica ad Herennium* and *de Inventione*") that these sources should be accepted more widely as historical evidence of the legal culture.

III.

The essays are very much on the mark set by the editor, and the quality is high. The book is for scholars, but advanced students learning methodology or studying the history of Roman law scholarship will find the book useful too.