A LAWYER POKES FUN AT THE LAW

By MARY A. SOLLMANN
Newcomb College

NOT ALL lawyers have a sense of humor, but in ancient Rome there were several who did. Cicero's letters to his friend C. Trebatius Testa abound with jokes on the subject of the law, with the young jurisconsult on the receiving end while his patron, Rome's foremost orator, continued in the same vein would indicate that Trebatius did not take offense. (The Latin quoted in what follows is taken from the Loeb Library edition of the Epitulæ ad Familiares, by W. Glynn Williams [London and New York, 1927-1929]; the English translations are based on the version of Evelyn S. Shuckburgh, The Letters of Cicero [London, 1889-1900].)

It all started when Cicero sent his friend off to Caesar's camp in Gaul with a letter of recommendation describing him as a leader in the profession: familia cum ductit (Fam. 7.5.3). Caesar thanked him, Cicero reported to his brother (Q. fr. 2.15a.3), per

salsa et humaniter: until Trebatius realized that you're much more cautious in the field than at the bar

(Fam. 7.10).

The year 53 B.C. opened with a series of interregna which lasted to July. Fam. 7.11 begins: "If you hadn't left Rome before, you'd certainly do so now, for who feels the need of a lawyer when there are so many interregna? My own advice to all petitioners would be to ask each interrex for two adjournments. [In this way one could get a case postponed indefinitely.] Aren't you impressed with the ius civile I have learned from you?" This quip is followed by a play on the meaning of consul: Consuli quidem te a Caesare scribis, sed ego tibi ab illo consuli malum—"You say you are consulted by Caesar, but I'd prefer his consulting for you!"

Later on in the same letter Cicero adds: "If you stay away any longer with nothing to show for it, I'm afraid not only of Laberius [a noted writer of farces] but even of our colleague Valerius [the jurisconsult]. For a British lawyer would make a wonderful character on the stage!"

Cicero's fondness for puns was notorious. In Fam. 7.16.3 he plays on the double meaning of respondere—"to reply to" and "to give legal advice to": Qui istine veniunt, superbiam tuam accusant, quod negent te percontantibus respondere, perhaps veiling a serious warning not to be snobbish. With this advice compare Fam. 1.10, in which the above-mentioned Valerius—that jurisconsult whom Cicero considered far from iure consultum (Fam. 5.1.1)—is addressed in almost the same words: Quamquam, qui istinc veniunt, partim te superbum esse dicunt, quod nihil respondeas, partim contumeliosum, quod male respondes.

In another letter to Trebatius, Cicero comments on the contradiction inherent in a lawyer's being an Epicurean: "How in the world will you defend the ius civile when [as an Epicurean] you act always in your own interest and not in that of your fellow citizens? . . . And how can you think it right to swear by Jupiter lapis, when you know that Jupiter can't be angry at anyone? And what will become of the people of Ulubrae if you've decided it isn't right to take part in civic business?"

(Fam. 7.12.2.) In Fam. 7.18.3 Cicero jests about Trebatius' position as patron of the little town of Ulubrae, saying that from the villa where he was staying he could hear the noise of the clients whom Trebatius had entrusted to him in his absence: "For at Ulubrae it is certain that an enormous number of frogs have bestirred themselves to do me honor."

In Fam. 7.14.2 Cicero says that Trebatius would write more frequently if he had chosen to make himself thoroughly acquainted with the claims of friendship rather than with those of litigation: benevolentiae quam litium iura perdiscere.

Fam. 7.13.2 contains an elaborate play upon the name of the Gallic tribe of the Treviri and that of the Roman boards of commissioners known as the tresviri: the commissioners of the mint and the tresviri capitales who had charge of prisons, executions, etc. Shuckburgh (op. cit., vol. 1, p. 350, n. 4) thinks that there is a reference to the use of capitalis to mean "deadly," and translates: "But to give you some hint as to what you lawyers call 'securities,' I opine that you should avoid the Treviri; I hear that they are real tresviri capitales—deadly customers:
I should have preferred their being tresviri of the mint!

In Fam. 7.18.2 Cicero teases Trebatius about using a palimpsest: “I wonder what there was on that scrap of parchment that you’d rather erase it than not write what you do—unless perhaps it was some of your legal formulae.”

All this teasing was part of Cicero’s campaign to persuade the young Trebatius, homesick for the city life of Rome, to serve out his term in Caesar’s camp, since it would be well worth his while to win the favor of the general. The value of this effort of Cicero’s is attested by the future career of Trebatius; he became Rome’s leading jurisconsult and in the days of Augustus bore the stamp of imperial approval, as is clear from the role he plays in the Horatian Satire I.1.

Trebatius, homesick for the city life—legal formulae.

The career of Trebatius: he became of Cicero’s is attested by the future of imperial approval, as is clear from ire (2.1) in which we meet him the role he plays in the Horatian Satires. When we meet him again, some twenty-five years after his stay in Gaul.

A charming postscript to the letters which Cicero addressed to Trebatius during his military days is the little note that he dashed off a decade later, one day when he had returned home bene potus seroque, but not too tired to check in his library a point of law that he and his friend had been discussing over their cups. The passages were marked and sent off to prove that “the opinion you said no one held was in fact held by three noted authorities.” But the ending is both a surprise and a tribute: “I, however, agree with Scevola and Testa” (Fam. 7.22).

SUMMER WORKSHOPS—1961

Reports on their 1961 activities have been received from eleven institutions offering Latin Workshops or courses of a workshop nature. Teachers may find the following information helpful in making plans for the summer of 1962.

The University of Connecticut, with an attendance of 8 from 4 states, besides working on pattern practices, completed in outline form a syllabus for the entire seventh-grade program in Latin.

Georgetown University’s Special Latin Program stressed the use of language tapes and the application of modern structural linguistics. The 14 registrants came from 9 states, Canada, and the District of Columbia.

HOLY FAMILY COLLEGE had 20 participants from 5 states, who co-operated in working out teaching units for projector slides, tapes, and stencils, and in preparing tape recordings and visual materials.

At Indiana University the 20 registrants, from 4 states, had the opportunity to take such unusual courses as The Ancient City, Students’ Problems with Latin Poetry, and The Teaching of Latin in the Soviet Union.

Marquette University reports a registration of about 100, from 21 states and Canada, at its Workshop on the Natural Method of Teaching Latin. There were demonstrations by different companies of language-laboratory equipment.

The University of the Pacific offered its 17 students, from 8 states, a special course in Latin conversation.

The Third Latin Workshop at Saint Louis University had an enrollment of 52, from 13 states. Attention was paid to the Natural, Structural, and Traditional Methods.

At the College of Saint Teresa some 31 students from 8 states participated in a composite workshop covering language, methodology, linguistics, mythology, and audio-visual aids.

Tufts University offered its usual courses in the teaching of first-, second-, and third- and fourth-year Latin to 41 teachers from 13 states.

The University of Washington included special courses for teachers in its regular course offerings. There were about 80 registrants for these, mainly from the Pacific coast.

Western Maryland College made a special exhibit of audio-visual materials, textbooks, and teaching aids available to its 49 participants, from 14 states and the District of Columbia.

The total of some 400 reported registrants in these workshops indicates a growing need among Latin teachers for this kind of summer study. In order to help meet this need, the American Classical League will offer its own workshop during the coming summer, in conjunction with the annual Latin Institute. For details, see page 27 of our current November issue, and watch for further information. The May issue will carry the usual list of current opportunities for summer study, in workshops and otherwise.

GIVE THE OUTLOOK

If you have a friend who is a teacher or a lover of the classics, why not give him a subscription to The CLASSICAL OUTLOOK for Christmas? Send in your order at once, and we shall notify the recipient before Christmas, on a Latin Christmas card. Address the American Classical League, Miami University, Oxford, Ohio.
the words for each of the four years are given separately; within each year the inflected words are arranged by declension or conjugation. The price is 50¢ per copy postpaid, 40¢ in lots of ten or more. For information about this mimeographed, stapled pamphlet address Mr. Francis S. Chides, 49 Arlyn Drive, Lakewood, N. J.

NOTES AND NOTICES

MEETINGS

Attention is called to the following meetings scheduled for the present academic year:

December 28-30.—American Philological Association in conjunction with the Archaeological Institute of America, at the Statler Hilton Hotel, Detroit, Mich. Host institutions are the University of Michigan, Wayne State University, the Ann Arbor and Detroit Societies of the AIA, and the City of Detroit.


March 23-24.—Eta Sigma Phi, Indiana University, Bloomington, Ind. April 19-21.—Classical Association of the Middle West and South, at Memphis, Tenn. Hosts are Memphis State University, Southwestern at Memphis, and the Latin teachers of West Tennessee.

ITERUM PU

The Alexander Lenard translation into Latin of A. A. Milne’s Winnie the Pu (shortly to be reviewed in THE CLASSICAL OUTLOOK) has come out in a reading by Dudley Fitts on a long-play Pathway of Sound record (POS MXXXVII).

OHIO SCHOLARSHIPS

The Ohio Classical Conference offers teachers in all secondary schools in Ohio a scholarship of $500 for summer study at the American Academy in Rome, the American School of Classical Studies at Athens, or the six-week session of the Vergilian School at Cumae. The Conference also awards two scholarships worth $100 each for study at any summer Latin institute or for summer graduate study in the United States. Write for application blanks to the Secretary, Mr. Lorimer Robey, 3341 E. Monmouth Rd., Cleveland 18, Ohio. Applications must be returned by January 1, 1962.

JCL CHAIRMEN

Miss Jessie Chambers, Federations Chairman of the National Junior Classical League Committee, announces the following additions to the list of JCL state chairmen published on page 18 of our current October issue: Delaware.—Mrs. Reta Ryan, Caesar Rodney School, Camden; Mississippi.—Richard Lybarzer, 356 Manship St., Jackson (Co-chairman); New Hampshire.—Mrs. Beverly Tenney, Antrim; South Carolina.—Clare T. Jackson, Box 468, Fort Mill.

LATIN REVIVED

Word comes from Mrs. Mildred W. Van Fleet, of the Rogers High School in Toledo, Ohio, of the reinstatement of the classics at Toledo University under Professor Frederic M. Wheelock, and of the resultant formation of a new classical group, the Toledo Area Classicists.

CERTAMEN POETICUM

Professor Harry C. Schnur, of Iona College, has the distinction of being the first American in fifty years to win the international Latin poetry contest conducted since 1846 by the Royal Netherlands Academy of Sciences in Amsterdam. Professor Schnur placed first with a poem entitled "Iter ad Septentriones."

FINANCIAL REPORT

The Ohio Classical Conference received $9,688 in subscriptions, $10,000 for a year-end fund, $390 for the recently completed quarter, and miscellaneous contributions of $410. These summed to a total of $22,388. The Conference also received $1,810 in reimbursements from the American Classical League. The Conference's expenses amounted to $103,106, leaving a balance of $11,896 after the payment of the year-end fund, to be used for the next year's activities.

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JCL FACTS AND FIGURES

By M. D. LaFountain

Membership Chairman, National JCL Committee

It is interesting to note the astounding growth of the Junior Classical League in the last ten years. In 1951, after fifteen years of existence, the League's membership had reached only 12,000, in 500 chapters. But in the next five years total approximated 40,000 in 1000 chapters, and now, in 1961, the figures are 85,000 in 1550 chapters. That is an average increase of 7000 per year since 1951, and prospects for reaching the 100,000 mark in the near future are excellent. Without doubt the one factor most responsible for this record is "activity"; JCL is an organization of young people, and young people like activity.

In recent years Latin Week has become a prominent feature in many states. Often it starts out with a proclamation by the governor. Most chapters observing Latin Week set up a program for the entire week, with day-to-day features both within and outside the school. Sometimes this week of special activity culminates in the annual state convention. The subject of JCL conventions is of particular importance. During the past school year there was a total of 43 such conventions: 1 national, 33 state, and 9 regional. In round numbers, 1000 chapters were represented at these conventions, with 12,127 delegates plus 1520 sponsors in attendance. Thus about two thirds of all the chapters sent delegates, and one fourth of the entire membership attended some JCL convention during the year.

Participation in a convention, especially the national one, with all the accompanying advantages — travel, sightseeing, life on a campus, the acquisition of friends from other sections of the country, expanding horizons, and the opportunity for service — is an education in itself, to say nothing of the benefits and inspiration of several days in close contact with classical affairs.

Texas had its first state convention 21 years ago, and Washington was 8 years later, but according to the records the majority of states began holding conventions 7-12 years ago. This information tends to indicate that the convention has been an important link in the ten-year growth of the League. Several of these con-

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ventions have now expanded to a two-day program, and it is evident that these sessions are fast becoming more and more popular.

A large number of states now have their own JCL publications, and the list is growing all the time. The same is true of individual chapters. This year, at the publications workshop of the national convention, a list of JCL publications was undertaken. Though this list is by no means complete, the present moment, the National Historian will work on it throughout the year, so that at the next national convention a complete roster of such publications may be available to all, and thus afford a means of interchange of ideas between states and chapters.

While on the subject of publications, let us note here some quotations taken from the editorial pages of The Johns Hopkins University: "High school and college students by the hundreds of thousands are again learning *ano, amas, amat*." This paper also points out that "A survey of June 1961 graduating seniors of three of the largest high schools in the United States brought forth the astounding result that a majority of the students believed it imperative that to make progress in any field of endeavor today one must have a working knowledge of Latin, and those who did not take Latin already regretted it."

Latin now ranks as the second most popular language in our high schools, and it is a fact that not only has the number of students in Latin courses increased in the last half dozen years, but there has also been a considerable rise on a percentage basis, or, to put it another way, the proportion of states with increased Latin enrollments is eight to one.

The national JCL publicity campaign cannot be overlooked, for it too is an activity of great importance. At the end of its third year it had progressed to the point where the six hundred articles submitted would be enough to fill a forty-page newspaper, with the result that JCL activities are constantly kept before the public.

Practically all Latin students are headed for some institution of higher learning, and the time eventually arrives when applications must be filled out and sent in. Invariably these applications ask for character traits, and one of these traits is "qualities of leadership." What does JCL offer along these lines? There are 1550 chapters, and most chapters have a minimum of five officers. In addition there are nearly fifty state federations, besides the national organization, all of which must be staffed. Furthermore, state and national chairmanships require additional leaders on all three levels, so that it becomes evident that the League does provide abundant leadership opportunities to nearly ten thousand students. It would be a difficult task for any secondary-school organization to beat or even equal this record.

Therefore, JCL'ers and sponsors alike, be proud and thankful. Be proud that you are a part of an organization which is doing so much for the classics, for it is generally conceded that the Junior Classical League has been highly instrumental in maintaining and even increasing interest. Be thankful that JCL provides for you a subject of proven importance, the door to the land of opportunity through higher education.

THE "TITLES" OF CICERO'S FIRST CATILINARIAN

By Robert J. Barnett, Jr.
Chapel Hill, N. C.

Whenever a class begins to read Cicero's First Catilinarian, they find on the first page a title that should not be there.

An examination of the scholarly editions of the speech available to me reveals that the title prefixed to the oration varies from one edition to another. For centuries editors have chosen as a title one of the descriptive phrases handed down from antiquity. Yet they have not seen fit to explain their practice in critical apparatus or elsewhere, as may be verified by an inspection of the editions of Gruterus-Gronovius (1692), Oli- vetus (1758), Leclerc-Lemaire (1828), Long (1856), Baiter-Kayser (1862), Mueller (1896), Clark (OCT) (1905), and Reis (Teubner) (1931). The Delphin edition (Ernestiun, 1830), although it does not explain its title of M. Tullii Ciceronis in L. Catilin primi habita in senatu oratio XIX, does add in the apparatus: "haec Oratio inscribatur In vectivarium in L. Catil. lib. 1," and quotes two MSS. The correct title of any work is ideally the one given by the author. With regard to a number of works from antiquity, such titles are often difficult or even impossible to discover. It is very likely that Cicero did not give a title to his First Catilinarian. In referring to it he uses no title, only descriptive phrases (cf. Att. 2.1.3, Or. 129, Marc. 6, Pis. 5). Moreover, the lack of uniformity among the ancient citations demonstrates that the oration had no original title. Schanz-Hosius' Geschichte der römischen Literatur (fourth edition, 1.406) can only suggest that the four Catilinarians seem to have been known collectively to later antiquity as Invecticae, and Lloyd W. Daly ("The Entitulature of Pre-Ciceronian Writings," Classical Studies in Honor of W. A. Oldfather [Urbana, III., 1943], p. 20) goes so far as to say that Latin orations did not have titles even in Cicero's day.
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Thus it is not a question of deciding which is the correct title for the First Catilinarian, but of discovering the source of the titles in use. Such a source—or really sources—is to be found in antiquity. The ancients, including Cicero himself, in referring to this first oration against Catiline used some descriptive phrase which rendered obvious the piece in question. The 1933 Teubner text prints among the "Testimonia" references by ancient authors that could serve as titles. The relevant portions of these citations are as follows:

1) "septima qua Catilinam emissii" (Cicero, Att. 2.1.3);
2) "orationem habuit luculentam atque utilem rei publicae" (Sallust, Cat. 31.6);
3) "Gracchi, quorum Cicero meminit in invectivis" (Commentator on Lucan 1.167);
4) "quam habuit in Catilinam in senatu" (Asconius on Pis. 4. Clark p. 6);
5) "contra Catilinam in senatu" (Quintilian 12.10.61); and
6) "in invectivis" (Priscian, in Keil, Grammatici Latini 3.417-34).

According to the same text, the MSS contain the following: CA—"In Lucum Catilinam liber primus"; C—"Incipit tullius invectivarum in catilinam"; I—"M. T. C. invectivarum liber I"; E—"M. T. C. invectivarum liber primus in Catilinam," A—"Inc. liber M. T. C. invectivarum in Catilinam," J—"Invectivarum in Cat.", I—"Incipient Invectivae"; Freemulli detereot"—"in Cat. oratio prima."

Finally, here are the citations used by the ancient grammarians: "Libri in Cat." and "Invectivarum libri."
The titles most commonly printed today are "Oratio in Catilinam Prima Habita in Senatu" and "Oratio Qua Catilinam Emisit Habita in Senatu."

THE LEGAL PROCEDURES OF CICERO'S TIME

By Mrs. Florence S. FitzGibbon
Shades Valley (Ala.) High School

It is customary to speak rather glibly of the great contribution of Cicero in the field of law. The following discussion will present some of the typical legal procedures of Cicero's time in both civil and criminal law, with a glance at their historical development and their influence on modern procedure. It will also touch upon the evolution of the modern lawyer in his functions as agent, as advocate, and as jurisconsult.

As the beginnings of law and order in Rome sprang from the primitive authority of the king over fas and ius, so lawyers, as a class, had their beginnings in the consilium of the king. This group, the college of pontifices, had an early monopoly of jurisprudence, because it alone had the necessary knowledge to give advice on such matters.

The breakdown of this priestly control began with the publication of the Law of the XII Tables, 450-449 B.C. It was completed by the opening of the pontifical college to plebeians about 300 B.C. Significantly, the first plebeian pontifex maximus was also the first one to argue and expound questions of law before those desirous of learning.

The pontificates left two traditions of far-reaching effect. To the governing classes they left the idea that the world of law was a branch of statesmanship worthy of their endeavor and a public service to be given freely. To the people they left a tradition of unquestioning acceptance of learned opinion in matters of law.

As time advanced, the Law of the XII Tables, that terse, practical, and painfully accurate exposition, needed changing to adapt it to new conditions. This change could be accomplished either by fresh legislation or else by adjustment through interpretation and practice. Generalizing, one can say that for private law the Romans chose the latter method, whereas development in criminal law came about largely through statutory changes.

The difference between the two types of civil procedure in use among the Romans—the older form, known as per legem actionem, and the newer per formulam type, created to meet changing conditions—lay largely in the first of the two stages into which all civil procedure was divided. This first stage, known as in iure, occurred when the litigants appeared before a praetor, whose function was to organize the issue and empower a trial authority acceptable to both parties. Although the praetor's power ended here and he was incompetent to try a case himself, nevertheless he exercised considerable influence on its outcome, for during this first stage he could, at his discretion, deny the plaintiff any forms of action he considered improper, grant exceptions to the defendant, or place limits of liability. The second stage, called in iudicio, followed these preliminaries; here the issue as previously organized was decided by a lay authority, a forum or an appropriate panel. Legal actiones were rites with stereotyped acts and utterances assigned to the praetor and to the parties. The slightest change in the wording could invalidate the suit. Thus it is recorded that one case for damages was lost because of the substitution of vites succisae for arbores succisae in a dispute over a vineyard. Before, however, condemning the inflexibility of this ancient procedure, the modern critic should be reminded that in 1900 the Supreme Court of Missouri upset a murder verdict because the prosecutor in his indictment wrote "against the peace and dignity of state" rather
than "against the peace and dignity of the state."

A *legis actio* could be initiated only by the injured party. In early times the *res* in dispute had to be produced in court or actually inspected by the court. By Cicero's time, however, a symbolic object could be brought before the praetor, and the contest would be opened by having the plaintiff grasp it and assert his legal right to it. The defendant would then also grasp the object and repeat the same words. At this point the praetor would order both to release the object of contention, and assertion of grounds of the claim would begin. Each party would put up a set amount of money, depending on the value of the claim, interim possession would be decided by the praetor, and the case would be *in iudicio*.

The formulary process, on the other hand, was based on an edict, or announcement, by each praetor on taking office of the relief he was prepared to give and the conditions under which it would be granted. Although theoretically there were no limits to the changes a praetor might introduce into his edict, as a matter of practice each praetor took over his predecessor's edict as a whole, with only a few additions or omissions. By the end of the Republic the Praetor's Edict had reached considerable size and fixity. It contained a number of *formulae*, expressions of law applicable to particular cases. Thus the plaintiff's claims as stated in a *legis actio*, "Aio te mihi dare oportere," became embodied in a praetor's formula as "Si paret Numerius Negidium Aulo Agerio dare oportere," with Numerius Negidius and Aulus Agerius serving as stereotyped names for Dan Defendant and Peter Plaintiff respectively.

Besides giving civil procedures a simpler form, the use of the Praetor's Edict had several other important effects. For one thing, it added elasticity to the administration of justice. The issue was reached by informal debate before the magistrate *in iure*, and was embodied in written instructions to the *iudex*, ordering him to condemn or absolve the defendant according to his findings. Technically, both parties still had to agree to the formula, but in practice they were governed by the Praetor's Edict, since a defendant who was obstinate about accepting a formula could be declared *indefensus* and lose his case.

A further influence of the formulary procedure was its advancement of the legal profession. Lawyers helped the praetor draw up his edict. They also helped the plaintiff choose the correct formula for a question. The defendant, too, needed legal help to state grounds for refusing to accept a particular formula, or for inserting an exception. The *index* often gave a statement of the case to a legal expert, who would then issue a *responsum*. These *responsum*, though unofficial, had binding authority and were instrumental in the growth of what we now term case law.

Along with the increase in the lawyer's importance as jurisconsult there was a strengthening of the idea of representation, or agency. As the Roman state grew, so did the need for agents, since the litigant might live at a distance from Rome. By modern standards, to be sure, the Roman concept of agency was rather imperfect. To secure unity of responsibility, so that a judgment would be final, the judgment was given in the name of the attorney. Thus if Lucius Titius was agent for the plaintiff, Aulus Agerius, the formula would read, "If it is proved that Numerius Negidius ought to pay Aulus Agerius ten thousand sesterces, O Judge, condemn Numerius Negidius to pay to Lucius Titius ten thousand sesterces."

Also pertinent to the status of lawyers is the question of remuneration. Originating from a noble and priestly class, the advocates and patrons gave their services freely, as an obligation owed to dependents. This tradition was re-enforced both by statute and by the fact that under the Republic advocacy opened the door to political honors, and ambitious men of wealth and rank could afford to despise monetary remunerations. By the end of the Republic the statute was honored more in the breach than in the observance, and further legislation on the subject was necessary.

An echo of these Roman statutes is found in the English attitude that the barrister's fee is an honorarium or voluntary present. A junior barrister's gown contains a vestigial pocket, a relic of a pocket into which the honorarium was supposed to be slipped when the lawyer was not looking. And if his fee is not paid, an English barrister may not sue for it, as may his colleague, the solicitor.

Criminal law, like civil law, fell under the general concept of *ius*, and as such stemmed originally from the absolute power of the king, but as early as 509 B.C. the *Lex Valeria* declared the citizen's right to appeal to the people (*pro vocatio ad populum*) from a death sentence. The result of this right of *pro vocatio* was to make one or the other of the great assemblies the criminal court for all the more serious cases. Although these were originally courts of appeal from a magistrate's decision, customary law dictated that a magistrate, instead of pronouncing a death sentence, go directly to the people and permit the case to be tried before the *iudicium populi*.

The scope of true criminal law under the Romans was much narrower than the modern concept of it. One reason was the power of the *paterfamilias*. As head of the family he had jurisdiction over his children, his wife, and all his dependents, including, of course, his slaves. Punishment by death or exile was possible at his discretion, but for more serious questions a council of family advisers was considered essential. For slaves, no formal trial was necessary. In fact, the murder of a Roman citizen in his own house by whatever hand was avenged by the summary execution of all the household establishment of slaves.

Another reason for the limited scope of Roman criminal law was the fact that some of the commonest offenses, theft, for example, were classified under civil procedure. Roman private delicts, as they were called, included wrongs to the physical person or honor, and unlawful appropriation of or damage to property.

Dissatisfaction with the criminal procedures just outlined brought certain changes. As early as 122 B.C., the *Lex Aelia repetundarum* established a *quaestio*, or special commission, as a sort of court, for cases of extortion. The presiding magistrate was a civil magistrate, normally a praetor, and instead of a single *index* a panel of jurors was provided.
Under Sulla, further reforms resulted in the establishment of quaestiones perpetuae for a number of offenses. Each of the Leges Corneliae defined one or more offenses and laid down the procedure by which a qualified citizen before a court consisting of a large jury. From the sentence of these courts, no appeal to the people was permitted.

A list of the crimes for which quaestiones existed in Cicero's day reveals a preponderant interest in offenses directly affecting the State. First, there was maiestas, a crime against the majesty or sovereignty of the people. In addition, there were vis publica, or seditious violence; ambulatio, which covered not only bribery in election but also the organization of electoral clubs; crimen repetundarum, or extortion; peculatus, the embezzlement of state funds; sacrilegium; and corruptio iudicis. Certain crimes chiefly affecting the individual were also placed under the jurisdiction of such courts. These included murder, fraud, and certain iniuriae such as assault and housebreaking. Although the laws establishing these courts formed a closely connected group, there was no real attempt at codification. For instance, an accuser might choose to prosecute either under peculatus or under crimen repetundarum.

No discussion of Ciceronian criminal procedure would be complete without mention of the juries, their selection, their method of reaching a verdict, and some abuses of the system. In Roman procedure the body of prospective indices at first consisted entirely of senators, but early in Cicero's era the senatorial jurors had been supplanted by members drawn from two other divisions of the upper classes, eligibility being determined by the amount of property owned. The whole body, consisting usually of over one thousand names, was arbitrarily divided into decuriae, and a decury was assigned to a praetor for a particular case. Selection of the trial jury was then made by lot, and the number was further reduced by challenges from both parties. The strength of these juries usually ran from fifty to seventy-five men, a feature which gave the trial something of the flavor of a public meeting and helps explain the importance of oratory in the success of a trial lawyer.

The verdict, which was probably arrived at without consultation, took one of three possible forms: "Absolvo," "Condenmo," or "Non liquet." A majority of votes decided the verdict, but an "absolute majority" was required for condemnation. If this was not secured, the accused was acquitted, even though some of the non-condemnatory votes might have been "Non liquet." A verdict of "Non liquet" led to a renewal of the case, a procedure which had to be repeated until the court reached a verdict of "guilty" or "not guilty." As a precaution against repeated renewals, the Lex Aelia made jurors giving a verdict of "not proved" more than twice in a single case liable to a pecuniar penalty.

Cicero and other writers of the period give ample evidence that the corruption of jury panels was always a threat to justice. The successful prosecution of a provincial magistrate was often difficult under the early senatorial juries, for this group of nobles, a number of whom might anticipate provincial service in the near future, was prone to deal leniently with a fellow aristocrat brought to trial for extortion. In the trial of Verres, Cicero reminded the panel that they, as senators, were on trial no less than the defendant.

Details of the trial of Milo show the elaborate precautions taken in certain cases to guard against bribery. All three hundred sixty of the jurymen assigned to the court were summoned to hear the evidence. On the last day of the trial, eighty-one were chosen by lot and the rest dismissed. After these eighty-one had heard the speeches of opposing counsel, each side struck off fifteen names, and the remaining fifty-one gave the verdict.

A peak—or, more appropriately, a depth—of infamy was apparently reached by the jury which tried Clodius for sacrilege. So general was the assumption that the jurors had been bribed by Crassus that when, at one stage of the trial, they asked for an armed guard, the question was raised, "Why? Are you afraid of being robbed of your money?"

The new system of courts, in spite of its defects, marked an advance in jurisprudence and statutory development. The importance of the quaestiones perpetuae may be viewed from three different angles: from the point of view of procedure, they substituted an accusatorial method for the inquisitorial form; from the point of view of substantive law, they gave a better definition of crimes and penalties; and from the political viewpoint, they meant the breakdown of the judicial function of the assemblies.

In conclusion, stress should be placed on the positive side of Roman achievements in the field of law and order. In spite of many human shortcomings in their administration of justice, the Romans of the Ciceronian period advanced the development of law and the legal profession. Here, as elsewhere, the Romans laid well the foundations upon which our modern world has been built.

BOOK NOTES


Some time ago the Modern Library sponsored an edition of the Basic Works of Cicero assembled by Moses Hadas. Now Penguin Books has issued another Ciceronian anthology, translated by the prolific Michael Grant. Though in a different way, this new selection might also be termed "basic," for it is focused on two aspects of Cicero's character that Professor Grant considers fundamental to his importance for the modern world: his opposition to tyranny and his belief in human cooperation. To illustrate the first, the volume includes the First Verrine, twenty-four letters, and the Second Philippic; to illustrate the second, De officiis 3 and De senectute.

Professor Grant is a skillful translator, as is known from his version of the Annals of Tacitus (Penguin, 1956) and his Roman Readings (Penguin, 1958). That he is an equally skillful interpreter of antiquity for the layman is clear from such works as his Roman Literature (Cambridge University Press, 1954) and his Roman History from Coins (ibid., 1958). Both qualities are again displayed in the present volume, the latter in the long general introduction (pp. 7-32) and the full prefatory remarks and footnotes that accompany the individual selections. Every effort has been made to insure comprehension: abundant cross references, a chronological list of Cicero's extant works, five genealogical tables, a glossary of technical terms such as "auspicies" and "sestercie," five excellent maps, and an "Index of Personal Names"; there are even four pages in the introduction on dealing with the Greek philosophical schools referred to by Cicero.

Perfection is difficult to attain, and this book is no exception. In a second
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edition note might be taken of the following: "than," not "that" (p. 170, 1. 18); "Publius Calpurnius," not "Public Calpurnius" (p. 184, l. 20); "brother-in-law," not "Brother-in-law" (p. 240, fn. 1); "as," not "than" (p. 241, l. 27); inconsistencies in geographical nomenclature ("Arcanum" and "Thurium" in the text, pp. 77-74, but "Arcae" and "Thurii" on the maps); omissions from the maps (Marina, Ventimiglia, Vibo Valentia) and the index (Archonanthius); and the omission of identifying notes on Sisichoros and Democritus (p. 222). Most serious, perhaps, is the choice of the Second Philippic, which simply does not read well in English: disjointed and ranting, it deserves W. C. A. Ker's comment in his edition of the Philippics: "The speech has, in all times and countries, been regarded as a masterpiece of eloquence and invective. . . The invective is undoubtedly, but some readers may think that it degenerates not seldom into mere scolding. And of eloquence the speech . . . contains no such fine passages as are found in some of the other Philippics" (Loeb Classical Library, 1926, p. 63 and fn. 1).

It is nevertheless true, by and large, that this little volume does Cicero justice, and still smarting from Jerome Carcopino's Cicero: The Secrets of His Correspondence (New Haven, 1951) will rejoice at honest and forthright characterizations such as "this highly intelligent but far from superhuman personality" (p. 7) and "... he was a liberal; indeed he is the greatest ancestor of that whole liberal moderate tradition in western life which is at hazard today" (p. 11). —K. G.


Each of the two volumes here under consideration is the admirable fulfillment of an urgent and long-standing need. Livy has not had an English translation intended for the general reader since 1859, when the Bohn Classical Library published that by Spillan and Edmonds, and even the version prepared by B. O. Foster for the Loeb Classical Library goes back, at least for the first period, some forty years. Similarly, there has been no comprehensive study of the historian in English since W. W. Capes' Livy in 1879.

Mr. de Selincourt has already supplied the Penguin Classics with spirited translations of Herodotus and of Arrian's Life of Alexander the Great. He repeats his performance for Livy's dramatic account of Rome's beginnings, its growth under the seven kings, and its first century as a republic, with the misuse of the decemviri, the war with Veii, and the climactic invasion of the Gauls in 390 B.C. His version captures both the epic sweep of the original Latin, with its shifts between domestic dissension and foreign warfare, and its essential modernity (for Livy was writing for contemporary readers), and even its subtle hints at characterization in the episodes for which Livy is famous. This is no slavish rendition, but one which does not hesitate to change and to expand when such procedures are helpful. Thus peritus rerum popularium (3.51.9) becomes "who had a good working knowledge of mob psychology" (p. 225); quonam ore (3.71.7) becomes "Can you beat that for impertinence!" (p. 248); and concordia donum pacem etiam foris praebuit (4.7.1) becomes "there was no political dissension and — consequently — no threat of foreign invasion" (p. 261).

That there are places where the critical reader may differ with the translator cannot come as a surprise: thus ferociter (3.16.8) is hardly "galantly" (p. 107); "Algidus" and "Janiculum" are frequently treated as if they were towns instead of hills; and first names are arbitrarily dropped or kept. Nor are occasional misprints serious; I have noticed only four. In a few places, however, there are actual errors: at 3.42.7 M. Fabius, Cae sonis fratre becomes "Fabius's brother Caeso" (p. 137); at 3.33.5 quin minus ferociter . . . adversaretur becomes "as being likely to offer vigorous opposition" (p. 204); at 3.35.11 and again at 3.41.30 M. Rabuleius becomes "Manlius Rabuleius" (p. 206 and 211); and at 4.45.4 Ae quorum iam velut anniversarii armis ad seuerat civitas becomes "The Aequians had by now grown to expect a war every year" (p. 303), where it is clear from the context that civitas refers to Rome.

There are no notes to speak of—indeed they are not needed. The index is so brief as to be of little value, and the absence of any sort of map is much to be regretted. On the other hand, Mr. de Selincourt's eight-page introduction—sprightly, critical yet appreciative, and informative—is just what the Livy-less reader needs.

Mr. Walsh, who is Lecturer in Humanity and Ancient History in the University of Edinburgh, pursues much the same aim, but for the classicist, his book being replete with scholarly footnotes, abundant quotations in Greek and Latin, a five-page "Select Bibliography," and a nine-page index. As Mr. Walsh says, "To evaluate the book-scholar's achievement it is necessary to study him primarily in relation to the theories of historiography which he adopted and to the sources which he followed" (p. x). Accordingly, after a brief presentation of "The Personal Background," two chapters are devoted to "The Tradition of Ancient Historiography," and "Livy's Historical Authorities." The titles of the remaining chapters will sufficiently indicate their emphasis and scope: "Religious, Philosophical and Moral Preconceptions," "Roman Historically Characterized," "Livy's Historical Methods," "Livy's Literary Methods," "The Narrative: Literary Genres," "The Speeches," "Livy's Latinity," and "Conclusion: Livy as the Historian of Rome."

Judicious in its use of modern Livy scholarship, perceptive and fair in its assessment of Livy's faults and virtues, adequate in its coverage (one would welcome an additional chapter devoted to the structural organization of the Ab urbe condita), Mr. Walsh's study has done for Livy what has recently been done for Vergil by W. F. Jackson Knight (Roman Vergil, London, 1944), for Juvenal by Gilbert Highet (Juvenal the Satirist, Oxford, 1954), for Ovid by L. P. Wilkinson (Ovid Recalled, Cambridge, 1955), and for Tacitus by Ronald Syme (Tacitus, Oxford, 1958)—something that should be done periodically for every great author. Each generation needs its own synthesis of previous scholarship and, perhaps more important, its own re-evaluation of literary worth.

—K. G.


Leonard Cottrell is well known for his archaeological popularizations of the ancient world, e.g., Lost Cities and The Bull of Minos. The reviewer hopes they were more deserving of success than is this biography of Hannibal. It is true that Mr. Cottrell writes vividly, even romantic-
ally, and his idea of combining his narrative with a sort of travelogue based on a personal repetition of Hannibal's trek from Spain into Italy frequently lends immediacy to his writing. The bulk of the book, however, is a conflation of Polybius and Livy (both of whom are quoted extensively) accompanied by occasional reflections and conjectures on the part of the author—is a glaring example of what happens when a layman tries to turn specialist. (There are, of course, examples just as glaring of specialists who have no business writing for the general public.) In addition to dozens of inexcusable misprints, there are all kinds of inaccuracies which must be laid to the author's account, and which severely limit the book's usefulness. Thus legends such as that of Hannibal swearing eternal hate for Rome at the age of nine are accepted as fact (p. 11); historical problems such as that of the Ebro treaty between Rome and Carthage are presented as if the facts were definitely known (p. 141); the word "suffer," the Carthaginian for "consul" or "chief magistrate," is regularly interpreted as "senate"; the impression is frequently given that the Roman consul was an appointed general; the Roman army was "made up of . . . farmer-citizens" for centuries after the time of Hannibal (p. 23); and the speeches addressed to their armies by Scipio and Hannibal before Ticeinus are shifted to just before the battle of the Trebia (pp. 89-91). There is also poor co-ordination between the maps and the narrative, and the index shows the same inaccuracies and misspellings as the text. e.g., "Aegitnium," Cape "Econmus," "Nero, Cornelius Claudius.", This reviewer is not sure what Mr. Cottrell's last is, but he should stick to it.

—K. G.


Some time ago this reviewer had the pleasure of commenting on that excellent historical novel, The Sword of Pleasure, by the British classicist Peter Green (The Classical Outlook XXXVI, April, 1959, p. 80). It is an equal pleasure to call attention to a series of essays by the same author, and characterized by the same freshness of approach, the same spriiteliness of manner, and the same delightful style of writing. In part they are reprints from History Today and the Times Literary Supplement; two of them were originally given as lectures; and one is based on a B.B.C. Third Programme script.

Dr. Green has strong convictions in matters classical, few of them orthodox but all of them worth hearing. They are most in evidence here, perhaps, in his opening discussion of "The Humanities Today" and in the final essay, an iconoclastic "study of tradition and method in translating classical poetry" in the shape of an examination of "Some Versions of Aeschylus." But they are also visible in his preference for Herodotus over Thucydides ("Clio Perennis") and for Epicureanism over Stoicism ("The Garden and the Porch"), in his attitude toward "Imperial Caesar" and toward Nikos Kazantzakis' Odysseus, and in his high esteem for Terentius Varro as a satirist. From a literary point of view, the long analysis of "Roman Satire and Roman Society." with its breadth of coverage (Ennius, Lucilius, Varro, Horace, Phaedrus, Persius, Petronius, Martial, and Juvenal) and its unorthodox appraisals, is probably the most important, while "Venecia Clerk Ovye" may well prove to be the most controversial, for few will agree with the author's "personal verdict" on Ovid: "He wrote his most valid and immediate poetry in the Amores and the poems of exile. Most of what came in between, whatever its incidental virtues, was a progressive retreat from poetic honesty into Alexandrian pedantry and politically-inspired escapism or trimming" (p. 135). Less so, but just as stimulating, are the remaining three pieces, "Homeric Patterns," "Hodge on Helicon: A Study of Hesiod and His Society," and "Two Gentlemen of Rome: The Elder and the Younger Pliny."

The book is beautifully printed and bound as well as beautifully written. It should make a welcome gift for a classically minded friend, and a wonderful prize for a thoughtful student.

—K. G.


It seems appropriate to comment together on three books published within six months of each other and all intended to acquint the general public with the achievements of efficient Rome and the indebtedness to her of the modern world. All three are the works of British scholars, and all three are eminently readable.

Professor Dudley's The Civilization of Rome (a paperback original) presents the entire history of the Romans, from prehistoric times to A.D. 476. The breadth of its coverage is amazing: within an absorbing narrative of the historical events practically all the important aspects of Roman civilization receive consideration and interpretation. Other good features include a liberal sprinkling of Latin terms, all translated; a glossary of technical terms such as "times" and "tribunes"; and sixteen pages of photographic illustrations, well chosen and, in view of the small format, remarkably distinct.

Unfortunately, there are defects, too, which seriously impair the book's value as a reference work. Thus the proofreading has been careless, to say the least: the early Republic rested "on a mortal basis of loyalty . . . and obligation" (p. 25); Augustus' virtues are "clenency, value, justice, and piety" (p. 126); Vergil may have "served with Octavian and Antony in 49 and 48 B.C." (p. 144); etc. The index is exceedingly meager, as is the list of place names and their equivalents; the bibliography is a bit old-fashioned, and in any case too scholarly for a work of this sort (the text, likewise, makes considerable demands on the average reader). The four maps, finally, though useful enough, are not given page numbers in the table of contents, so that it becomes a major problem to locate the one you want as you read. These, however, are all defects that can easily be remedied in a second edition, which, it is to be hoped, will soon be forthcoming.

In The World of Rome, by Professor Grant, the publishers have given us a magnificently equipped volume that is a worthy companion to C. M. Bowra's memorable The Greek Experience. Both books are unusual in that they are concerned mainly with the history of ideas in political, social, and economic institutions, in religious beliefs and philosophical movements, and in the fine arts, including literature, sculpture, painting, and architecture. Thus the introductory "Historical Sketch" in
the present work is limited to a scant twenty pages, with the bulk of the space being devoted to the presentation and analysis of Roman culture. Realia, too, play a negligible role in this panoramic view of the spiritual and intellectual development of the ancient world.

Physically, this is a sumptuous volume. There are 64 pages of extraordinarily fine photographs, to which constant reference is made in the text—which, in addition, contains 45 illustrative drawings. There are a genealogical table, 7 good maps, 7 excellent bibliography “for further reading,” and a satisfactory index. Only the notes are inadequate for the general reader, who will not be able to interpret half the abbreviated authors and titles (here too occurs the only serious slip I have noted: Professor Jotham Johnson, of New York University, becomes “Johnson and Jotham” [p. 304]).

More limited in scope than The Civilization of Rome (it covers only the years 133 B.C.-A.D. 217) and less universal in its coverage, Professor Grant’s work will appear most to those who, already somewhat acquainted with the more obvious aspects of Roman antiquity, wish to penetrate more deeply into the ethos of the Roman Empire.

Romans, finally, is an oddity. In format, it looks like a book for children. Almost square in shape, and thin, with a powder-blue jacket, it appeals largely to the eye, for each page, in addition to the text, is filled with the most delightful, whimsical drawings, maps, diagrams, and charts, done in powder-blue (like the page headings and the marginal comments that supplement the text) and black (like most of the print). The effect is that of a humorous picture-book. Yet the text—quite reminiscent of The World of Rome—is straightforward, serious, and adult throughout: a bird’s-eye view of the immense span of time from 1000 B.C. to A.D. 476. With each page forming a unit (e.g., “The Sabines,” “Towards Imperialism,” “Cleopatra Fails,” “Virgil and Livy,” and “Epigrams and Education”), the kaleidoscope whirs before the reader’s eye without mirabile dictu—causing giddiness or discomfort: compression does not lead to confusion; what is said is self-explanatory and, as an introduction to the Romans, completely adequate. The contradiction between text and illustration is nowhere alluded to. It may have been intentional. At any rate, its effect is intriguing, even charming.

It is regrettable that here too there are several serious errors, e.g., “The Gauls burst in on the Senate in session” (p. 17, of the year 390 B.C.), or “Then Rome . . . attacked Saguntum” (p. 24, of the year 219 B.C.).

-K. G.

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