A Losing Philosophy: Legal Argument and Jurisprudence in the *Pro Milone*

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* *ius naturae* – natural or understood law, unofficial but universally accepted as ‘just’, also bear some relation to *mos maiorum*
* *ius civile* – the *leges* proper, statute law that was instituted through a *plebiscitum* or vote of the popular assembly
* *ius honorarium* – *edicta* of the praetors, later also of the *aediles* and the provincial magistrates
* *prudentes*/*jurisconsulti* – jurists; people who were versed in the technicalities of the law itself
* *advocatus­ –* the “lawyer” of the ancient world – acted as a speaker and representative in criminal or civil court. This is Cicero’s occupation.
* *responsa ­*– legal opinion of a jurist, written or unwritten
1. *de Legibus* 2.9

*Legem neque hominum ingeniis excogitam nec scitum aliquod esse populorum.*

The law was neither thought up by the ingenuity of man nor is it some resolution of the people.

1. *de Legibus* 2.10

*Erat enim ratio prefecta a rerum natura et ad recte faciendum inpellens et a delicto avocans, quae non tum denique incipit lex esse, cum scripta est, sed tum, cum orta est; orta autem est simul cum mente divina.*

There once was reason, accomplished by the nature of things, which drove toward what must be done by rights and away from transgression, which did not become law when it was written, but when it then sprung forth; indeed, it sprung forth at the same time with the divine mind.

1. *Pro Milone* §10

*est igitur haec, iudices, non scripta, sed nata lex, quam non didicimus, accepimus, legimus, verum ex natura ipsa adripuimus, expressimus, ad quam non docti sed facti, non instituti sed imbuti sumus, ut, si vita nostra in aliquas insidias, si in vim et in tela aut latronum aut inimicorum incidisset, omnis honesta ratio esset expediendae salutis.*

So it is this, judges, not a written but a natural law, a law which we did not learn, acquire or read, but rather seized and pressed out from nature herself – a law in which we were not schooled but for which we were made, in which we were not trained in but was instilled in us, that, if our life had fallen into some danger, if it had fallen to force and the arms of either ne’er-do-wells or those that had it out for us, that any means of securing our safety would have been right to undertake.

1. *Pro* *Milone* §43

in Milone qui etiam nunc reus est facti aut praeclari aut certe necessarii, an in Clodio qui ita iudicia poenamque contempserat ut eum nihil delectaret quod aut per naturam fas esset aut per leges liceret?

In Milo, who even now is the defendant in a matter either noble or at least necessary, or in Clodius, who had so disdained justice and punishment that nothing had pleased him which either nature deemed *fas* or the laws permitted.

1. *Pro* *Milone* §77

*P. Clodium interfeci, eius furores, quos nullis iam legibus, nullis iudiciis frenare poteramus…*

I have killed Publius Clodius, whose rages we were unable to bridle, neither by laws nor by lawcourts…

1. *Brutus* 153

*quod numquam effecisset ipsius iuris scientia, nisi eam praeterea didicisset artem quae doceret rem universam tribuere in partis, latentem explicare definiendo, obscuram explanare interpretando, ambigua primum videre, deinde distinguere, postremo habere regulam qua vera et falsa iudicarentur et quae quibus propositis essent quaeque non essent consequentia. hic enim adtulit hanc artem omnium artium maximam quasi lucem ad ea quae confuse ab aliis aut* ***respondebantur*** *aut* ***agebantur****.*

Because knowledge of the law itself would have accomplished nothing, if one did not already have that art which teaches to render the whole thing into parts, to explain the latent and to define it, to explain the unclear and interpret it, which first sees the ambiguous and then distinguishes it, and finally what has a rule by which it judges truth or lies, and which conclusions are from what premises and which are not. This art, the greatest of all arts, he bore as though into the light, those things which were confused by others either by legal responses or by trial.

Bibliography

Cicero. “Pro Milone.” *Perseus,* Tufts University. (translation is my own)

Cicero. “Brutus.” *Perseus,* Tufts University. (translation is my own)

Cicero. “De Legibus.” *Perseus*, Tufts University. (translation is my own)

Clark, Mark Edward, and James S. Reubel. “Philosophy and Rhetoric in Cicero’s Pro Milone.” Rheinisches Museum Fur Philologie, no. 128 (1985): 57–72.

Forschner, B. (2016). Law’s Nature: Philosophy as a Legal Argument in Cicero’s Writings. In Du Plessis P. (Ed.), *Cicero's Law: Rethinking Roman Law of the Late Republic* (pp. 50-68). Edinburgh: Edinburgh University Press.

Girardet, Klaus. Die Ordnung der Welt: Ein Betrag zur philosophischten und politischen Interpretation von Ciceros Schrift de Legibus. Wiesbaden, 1983.

Melchior, Aislinn. “Twinned Fortunes and the Publication of Cicero’s Pro Milone.” Classical Philology 103, no. 3 (2008): 282–97.

Nörr, D. (1978) ‘Cicero-Zitate bei den Klassischen Juristen’. *Ciceroniana: atti del III colloquium tullianum*. p.111-150

Wibier, M. (2016). Cicero’s Reception in the Juristic Tradition of the Early Empire. In Du Plessis P. (Ed.), *Cicero's Law: Rethinking Roman Law of the Late Republic* (pp. 100-122). Edinburgh: Edinburgh University Press.