

## Republican Jurists<sup>1</sup>

**Appius Claudius Caecus (“the blind”):** One of the earliest known Republican Jurists who was actively involved in Republican politics. He was *Censor* in 312 BC when, under his supervision, the *Via Appia* was extended south to Capua and the *Aqua Appia* was constructed using funds obtained by raising taxes. He is said to have held this office (illegally) for an unprecedented period of 4 years following a quarrel with his fellow *Censor* which had led to the latter’s resignation. He held the Consulship twice in 307 and 296 BC, when he led a successful campaign against the Etruscans in Italy, and the Praetorship in 295 BC. His constitutional reforms were aimed at increasing plebeian input in matters of state e.g. by allowing plebeians and sons of freedmen to become senators and by changing the voting dynamic in the *comitia* in favour of the plebeians. The traditional account states that his scribe, Gnaeus Flavius, obtained the pontifical calendar as well as a collection of the actions-at-law and made these generally available to the Roman populace. This collection, known as the *ius civile Flavianum* (circa 304 BC), dealt a severe blow, possibly unintentionally, to the pontifical monopoly of the law. There is some controversy concerning the extent of Appius Claudius’ involvement in the publication of this work. Apart from the *ius civile Flavianum*, he is also credited as being the author of a book *de usurpationibus*, but the precise content of this work is uncertain. It is widely believed that this book could not have dealt with the interruption of *usucapio* (the technical meaning of the term *usurpatio*), but must have had a wider scope (possibly concerning the *ius trinocitii*).

See Bauman, *Lawyers in Roman Republican Politics*, pp. 21 – 66.

**Tiberius Coruncanius:** Possibly hailing from Tusculum, he became *Consul* in 280 BC and *Pontifex Maximus* in 254/3 BC, the first plebeian to be elected to this office. Coruncanius was the first jurist to give substance to legal education and he is described as the man ‘*qui primus profiteri coepit.*’ The meaning of this phrase remains unclear, but it is thought to refer to a public activity outside the normal meeting place of the college of pontiffs. It is possible that Coruncanius allowed members of the public and students of law to attend his consultations in his capacity as *Pontifex Maximus* tasked with giving legal advice to citizens. He died in 243 BC. He was the first teacher of law.

See Bauman, *Lawyers in Roman Republican Politics*, pp. 66 – 92.

**Sextus Aelius Paetus Catus (“the clever one”):** *Curule Aedile* in 200 BC, *Consul* in 198 BC and *Censor* in 194 BC. His rapid rise through the ranks of the *cursus honorum*, may have been due to his particular aptitude for the law, the *cognomen* “catus” meaning “clever”. He apparently gave up his public career to devote his time to the study of law and he is sometimes credited with being the first professional jurist in the history of Rome. He is

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<sup>1</sup> Biographies have been compiled using Schulz, F. *History of Roman Legal Science* (Oxford 1946); Berger, A. *Encyclopedic Dictionary of Roman Law* (Philadelphia 1953); Syme, R. *Fiction about Roman jurists*, (1980) 97 ZSS (rA), pp. 78 – 104; Bauman, R.A. *Lawyers and Politics in the Early Roman Empire* (Munich 1989); Bauman, R.A. *Personal names, adoptions and families of Roman jurists*, (1991) 108 ZSS (rA), pp. 1 – 20; Spruit, J.E. *Enchiridium* 4th edition (Deventer 1994); Stolleis, M. (ed.) *Juristen – Ein biographisches Lexikon Von der Antike bis zum 20. Jahrhundert* (Munich 2002); Hazel, J. *Who’s Who in the Roman World* (London and New York 2002); Hornblower, S. and Spawforth, A. (eds.) *The Oxford Classical Dictionary* 3rd revised edition (Oxford 2003).

the author of a work known as the *Tripertita* in which he systematically set out each provision of the Twelve Tables together with his commentary and a discussion of the appropriate action-at-law. He also authored another work, the *Ius Aelianum* in which he discussed the actions-at-law. The *Tripertita* was apparently still in existence in the time of Pomponius and is described as *cunabula iuris* (the cradle of the law).

See Bauman, *Lawyers in Roman Republican Politics*, pp. 121 – 148.

**Marcus Porcius Cato:** Both father and son shared the same name. The father, Marcus Porcius Cato Censorius (234 – 149 B.C.), is a many-sided figure in Roman Republican history who achieved fame not only as an academic, but also as a successful legal practitioner, orator and politician. He was born in Tusculum from a humble family and began his military career in 214 as Tribune, rapidly progressing along the *cursus honorum*, eventually becoming *Censor* in 185 BC (the pinnacle of his public career). Apart from various other works attributed to him (*De re militari*; *Carmen de moribus*; *Ad filium*), he is best known as the author of *De Agri Cultura*, a treatise on agriculture in which legal aspects of many agricultural contracts have been preserved. Morality seems to have been one of his prime concerns and he is known to have introduced punitive measures against the patricians for conspicuous displays of wealth and luxury. Little is known about the life of the son, Marcus Porcius Cato Licinianus. He is known to have been the author of a book, *De iuris disciplina*, a treatise on the *ius civile*. He also seems to have been involved in the introduction of the *Regula Catoniana*.

See Bauman, *Lawyers in Roman Republican Politics*, pp. 148 – 224. On the father, see also Astin, A.E. *Cato the Censor* (Oxford 1978).

**Manius Manilius:** Renowned orator and distinguished jurist who also had a long military career. He was *Proconsul* of Spain in 155/4 BC when he led an unsuccessful campaign against the *Lusitani* and *Consul* in 148 BC when he unsuccessfully besieged Carthage during the 3<sup>rd</sup> Punic War. M. Manilius was the author of a collection of *formulae* for contracts of sale and his works were still read in the classical period. He is cited by Varro in his definition of *nexum* and by Cicero in *The Republic* and in *Brutus*. His works are cited by Pomponius in the Digest.

**Marcus Iunius Brutus:** *Praetor* in 142 BC, author of an introductory work on the *ius civile* in 3 (perhaps 7) books.

**Publius Mucius Scaevola:** Accomplished politician and jurist. *Tribune* in 141 BC when he set up a court to deal with a corrupt former *Praetor*, L. Hostilius Tibulus, *Praetor* in 136 BC, *Consul* in 133 BC, *Pontifex Maximus* in 130 BC. He is one of the lesser known Republican jurists from the illustrious Scaevola family. P. Mucius Scaevola is known to have been an advisor to Titus Sempronius Gracchus and apparently also produced a series of histories (*Annales Maximi*). He died in 113 BC.

**Quintus Mucius Scaevola:** The Scaevola family produced a number of jurists, but none as illustrious as Q. Mucius Scaevola, *Tribune* in 106 BC, *Aedile* in 104 BC, *Consul* in 95 BC, *Proconsul* of Asia in 94 BC, *Pontifex Maximus* in 87 BC. He is credited with being the first Republican jurist to treat the *ius civile generatim* (in 18 books), but there is some debate as to the meaning of this statement. The most plausible explanation is that he was the first to employ the dialectic method in his discussion of the law. He was held in great

esteem by successive generations of jurists and his is one of the few works still to be read in the classical period. He was also keenly interested in classification and wrote a book on legal definitions. He contributed to the development of cautelary jurisprudence and was involved in the development of the *cautio muciana* and the *praesumptio muciana*. He was the teacher of Cicero, S. Sulpicius Rufus and G. Aquilius Gallus.

See Bauman, *Lawyers in Roman Republican Politics*, pp. 340 – 429.

**Aelius Cascellius:** Late Republican jurist who lived during the dictatorship of Sulla. Author of a formula called the *iudicium cascellianum*.

See Bauman, *Lawyers in Roman Transitional Politics*, pp. 117 – 123.

**Servius Sulpicius Rufus:** One of the most influential jurists of the late Republic, who was the student of Q. Mucius Scaevola and who later became the teacher of many prominent jurists of the classical period, such as Alfenus Varus. Servius studied rhetoric in Rhodes and remained a student of philosophy throughout his life, but gave up a career in oratory favour of the legal profession. He held the offices of *Praetor* in 65 BC and *Consul* in 51 BC – only the second Republican jurist to achieve this distinction. Although he joined the faction of Pompey in 49 BC, he was later pardoned by Julius Caesar and subsequently appointed as governor of Greece in 46 BC. He died in 43 BC while on an embassy to Mark Anthony and was honoured with a public burial and a statue. He was a good friend of Cicero, who was impressed by his abilities when they were pitched against each other in the prosecution of L. Licinius Murena for electoral corruption (*Pro Murena*). Servius was a prolific writer of 180 books. He produced the first commentary on the Praetorian Edict, a commentary on the Twelve Tables and some works on sacral law.

See Bauman, *Lawyers in Roman Transitional Politics*, pp. 4 – 65; Stein, P. *The Place of Servius Sulpicius Rufus in the Development of Roman Legal Science*, in *Festschrift Wieacker*, pp. 175 – 184.

**Granius Flaccus:** Contemporary of Julius Caesar. Author of a commentary on the laws of the kings entitled “*De iure Papiriano*”. There is some controversy about the existence of this work.

**Pacuvius Antistius Labeo:** Father of M. Antistius Labeo and a follower of S. Sulpicius Rufus. Not much is known about his activities as a jurist.

**Aulus Ofilius:** Author of an extensive commentary on the Praetorian Edict. He was a student of S. Sulpicius Rufus.

See Bauman, *Lawyers in Roman Transitional Politics*, pp. 71 – 89.

**Quintus Aelius Tubero:** Son of Cicero’s friend and related by marriage to L. Aelius Tubero. His father was appointed as governor of Africa, but was deposed in 48 BC. Both father and son thereafter joined the faction of Pompey. Q. Aelius Tubero fought against Julius Caesar at the battle of Pharsalus, but was later pardoned. He unsuccessfully prosecuted Quintus Ligarius in 46 BC for his co-operation with Juba, but he did not have much of a public career thereafter. He was the author of works on constitutional law (specifically the senate) and the duties of a judge, perhaps also of a series of histories.

See Bauman, *Lawyers in Roman Transitional Politics*, pp. 113 – 117.

**Gaius Trebatius Testa:** Late Republican jurist of equestrian stock, who was a friend and contemporary of Cicero (the *Topica* were dedicated to him) and the teacher of M. Antistius Labeo. He did not hold any public office apart from acting as advisor to Julius Caesar and later Augustus, whom he famously advised on the matter of the informal codicil. He was the author of treatises on the *ius civile* and divine law. He was held in high esteem by other jurists of the period, but he was not cited in the Digest.

See Bauman, *Lawyers in Roman Transitional Politics*, pp. 123 – 136.

**Gaius Aelius Gallus:** Little-known jurist of the late Republic. He was the author of a work on the meaning of legal terms.

**Aufidius Namusa:** One of the last Republican jurists and a student of S. Sulpicius Rufus. He was the author of an extensive work consisting of excerpts from the works of followers of Servius.

**Publius Alfenus Varus:** A jurist possibly hailing from Cremona in Cisalpine Gaul, *Consul Suffectus* in 39 BC. He was a student of S. Sulpicius Rufus and the author of an extensive work, a *Digesta*, in 40 books. He is credited with being the first jurist to use the term “Digest” when referring to a series of ordered abstracts. In the 41 BC he was involved in the confiscation of land for redistribution to veterans. Details are sketchy, but it seems that he either aided Virgil in retaining his land or in obtaining compensation on account of the confiscation.

See Bauman, *Lawyers in Roman Transitional Politics*, pp. 89 – 105.