
TREBATIUS IN PALIMPSEST. NOTES ON CICERO AD *FAMILIARES VII,18*

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The dedicatee of this paper has a past similar to that of the present writer: Having graduated in classics, he spent his working life *in taetra jurisprudentia*, and, if I am not mistaken, learnt to like the trade he happened to be engaged in. I suppose that, just as Scrooge's nephew, he must always have been convinced that somewhere deep down a human being was hidden, waiting to come to the surface. In this somewhat infelicitous metaphor, human beings would be the *bonae litterae*, which are just as necessary for understanding Roman law as a grasp of Roman law is necessary for the classicist to understand classical literature.

The letters of Cicero are an excellent example of the extent to which Roman law was an integral part of the classical world, the study of which is in fact indispensable for any serious student of that world.¹ Among the letters, those to Cicero's lawyer friend, C. Trebatius Testa, form an interesting small corpus, contributing greatly to our picture of the life, work and social position of a Roman jurist in the late Republic. Before discussing one of these letters, let me briefly sketch the life of Trebatius, whose own letters have, alas, not been preserved.

Trebatius lived through almost the entire last century before the birth of Christ and was therefore witness to, and survivor of, the political turmoil accompanying the death of the Roman Republic. When he died, probably not long after A.D. 4, he was at least 80 years old. What there is to know about his life has been put together by P. Sonnet in a dissertation, and summarized in Pauly-Wissowa's *Realenzyklopädie*, with additional notes by A. Berger in one of that work's supplementary volumes.² Nothing of his writing has been transmitted independently or as a fragment in the *Digest*, but indirect references are fairly numerous and most easily accessible in Lenel's *Palingenesia*.³ He must have been a close friend of Horace, who dedicated one of his *Sermones* to him.⁴ "*Trebatii, quid faciam?*" (4-5) echoes a question that must have been put to Trebatius many times over the years.

1 I depart from the editions and translations of Cicero's letters by Shackleton-Bailey.
2 P. Sonnet *Gaius Trebatius Testa* (Giessen 1932); Sonnet *RE VIA* 2251-2261 s.v. Trebatius 7; Berger, S. VII 1619-1622.
3 O. Lenel *Palingenesia iuris civilis*, II (Leipzig 1889), 343-352.
4 Horace *Saturae* II,1, in which Trebatius laconically advises Horace how to write a satire without getting into legal problems.

Seventeen of Cicero's letters are addressed to Trebatius. Cicero had taken the promising jurist under his wing and recommended him to Caesar.⁵ Trebatius was to have accompanied Caesar on the second expedition to Britain, but instead waited for, or joined him in Gaul in Amiens during the years 54-53. Thirteen letters date from those years, and a further four were written in 44. The tone of the letters is familiar; they belong, in Cicero's own words, to the "*genus familiare et iocosum*".⁶

There is in fact much joking and teasing in Cicero's letters to Trebatius. As is to be expected in letters written between friends who are, if not both of them lawyers, at least both very familiar with the world of the law,⁷ the theme is often legal. This creates a twofold difficulty for the reader. A reference to the law is best understood by someone who has first-hand knowledge of the law. The explanatory notes found in editions of Cicero's letters usually manage to solve the problem of understanding such references for the non-legal reader. But in addition to the "technical" problem of which legal institution is meant, there has to be some small variation or word-play for a joke to work. Some of these puns are simply too "deep" for us fully to comprehend Cicero's words as they must have been understood by Trebatius. As a result, we are unable to "translate" the joke into the circumstances upon which it was based. This also makes it impossible in all instances to use Cicero's letters as a source of direct information on the law of his time, which, of course, is what Roman lawyers would have liked to do.

Not that all Cicero's jokes are difficult to comprehend. When it became clear that he was no longer going to Britain, Cicero wrote that Trebatius "would have been the greatest jurist" in that country: "*Profecto nemo in illa tanta insula peritior te fuisset*".⁸ However, that this was no great achievement, was made clear in a later letter: "*Mira enim persona induci potest Britannici iure consulti*".⁹ A similar joke is found in *Familiares* VII,16,3, when Trebatius was in Amiens: "*Constat enim inter omnes neminem te uno Samarobrivae iuris peritiorem esse*." And it is easy to see that Cicero is parodying a legal *responsum* in *Familiares* VII,10,2: "*Quam ob rem camino luculento utendum censeo (idem Mucio et Manilio placebat)*."

5 *Fam.* VII,5,2-3.

6 *E.g. Fam.* II,4,1; *cf. Fiehn RE S. V 195 s.v. Epistolographie.*

7 See, most recently, J. Powell & J. Paterson (eds.) *Cicero the Advocate* (Oxford 2004).

8 *Fam.* VII,10,1.

9 *Fam.* VII,11,2.

Amid the abundance of legal material in Cicero's letters to Trebatius I should like to concentrate on one letter of 8 April A.D. 53,¹⁰ when Trebatius was in Gaul. Despite all the scholarly attention paid to Cicero's letters, there are two passages on which something new may still be said.

1. In the first paragraph Trebatius is admonished to make the most of the period the two friends are separated: "*Itaque, quoniam vestrae cautiones infirmae sunt, Graeculam tibi misi cautionem chirographi mei.*"

Cicero seems to play on *cautio* (*cavere*) and *chirographum*. Both words carry a double meaning. *Cautio* is literally the action of *cavere* in the sense of being cautious ("caveat", "caution"). But *cavere* refers also to the activity of a jurist and the result thereof: a jurist would devise *formulae* – of which more below – but also contracts, stipulations *etcetera*.¹¹ *Chirographum*, of course, means "handwriting", but also "a hand-written document", a "one-sided declaration" and, in particular, a "note of hand", an "IOU". According to Lewis and Short, in Cicero's writings *chirographum* never means "bond, surety or obligation under one's own hand".¹² The *Thesaurus Linguae Latinae* seems to hold differently,¹³ and it is therefore best to keep an open mind.

Shackleton-Bailey translates as follows in his Loeb edition: "And since the caveats you legal gentlemen enter are none too dependable, I am sending you a little caveat in Greek under my own hand", adding in a footnote: "What this was, is doubtful. Some think a letter of advice on how to behave to Caesar, written in Greek for greater security. Rather perhaps an epigram or other literary *jeu d'esprit*."¹⁴ In the commentary of his *editio maior* he explains *chirographi mei* in a similar way: "in my handwriting."¹⁵

I wonder whether this translation is not a little too one-sided. Perhaps we should allow for a sense of deeper legal humour on the part of Cicero and pay greater attention to the combination of *cautio* and *chirographum*. *Cavere chirographum* is known almost literally from legal literature. In *Digest* 46,3,89 we find a fragment from the 29th book of the *Digest* of Q. Cervidius Scaevola (second half of the second century A.D.), the *principium* of which begins as

10 *Fam.* VII,18.

11 P. Krüger *Geschichte der Quellen und Litteratur des römischen Rechts* 2nd ed., (München-Leipzig 1912), 54.

12 C.T. Lewis & C. Short *A Latin Dictionary*, s.v.; so, apparently, H. Merguet *Handlexikon zu Cicero* (Leipzig 1905), s.v., who does not list that meaning.

13 *Thesaurus Linguae Latinae* s.v.: b. "*technice i.q. cautio privatorum*" quoting three passages from Cicero among which this one.

14 D.R. Shackleton-Bailey *Cicero. Letters to Friends I* [Loeb Classical Library 205], (London 2001) 214.

15 *Cicero Epistulae ad Familiares I*, (Cambridge 1977), 342.

follows: "*Ex pluribus causis et chirographis creditor ita cavet: 'Titius Maevius dico me accepisse et habere et accepto tulisse a Gaio Titio reliquum omne ratione posita eius pecuniae, quam mihi Stichus Gaii Titii servus caverat.'*" *Cavere pecuniam/chirographum* is tantamount to guaranteeing the payment of a sum of money by giving a promissory note.

Of course, Cicero does not mean that he owes money, but in my view *cautio chirographi mei* makes more sense if one is not also aware that it can have the notion of guaranteeing a note of hand. I would suggest one looks for an explanation of our passage which departs from that legal notion.

As for *vestrae cautiones infirmae*, again I wonder whether the words do not have a double meaning. On the one hand, these may be the "caveats you legal gentlemen enter", and on the other hand these could be the "guarantees [of obligations] you legal gentlemen formulate".

That said, I, too, am unable to offer a satisfactory explanation of the passage, in which we must make sense of *graecula* as well, and my sole contribution is to ask that greater attention be paid to its legal connotations.¹⁶

2. The second paragraph makes fun of Trebatius reusing charta: "*Nam quod in palimpsesto, laudo equidem parsimoniam, sed miror quid in illa chartula fuit quod delere malueris quam haec <non> scribere, nisi forte tuas formulas: non enim puto te meas epistulas delere ut reponas tuas.*" Shackleton-Bailey's translation reads as follows: "As for the palimpsest, I applaud your thrift. But I wonder what could have been on that scrap of paper which you thought proper to erase rather than not write these screeds. Your forms of procedure perhaps? I scarcely suppose that you rub out my letters in order to substitute your own." In a footnote Shackleton-Bailey adds: "With the usual implication that Trebatius did not know his legal business. Forms of procedure (*formulae*) drawn up by him would be expendable."¹⁷ Here I have less difficulty in agreeing with the translation than with the explanatory note.

16 For similar struggles in the past see, e.g., R.Y. Tyrrell-L.C. Purser *The Correspondence of M Tullius Cicero*, II, 2nd ed., 249 n. *cautiones*; and W. Glynn Williams, in the old Loeb edition II (London 1929), 57: "I have sent you a 'guarantee' in Greek of a sort, — and in my own handwriting", with 56 n. a: "This probably means that Cicero had sent Trebatius a private letter of instructions as to his behaviour towards Caesar, and that, to ensure secrecy, he had written it in such Greek as he could command, and in his own hand." Cf. also H. Kasten *Cicero an seine Freunde* [Tusculum], 2. Aufl., (München 1976), 399 with the note at 972: "Eine griechische Kautio in der Form eines Wechsels: die Worte sind für uns unverständlich." L.-A. Constans, Cicéron, *Correspondance* III (Paris 1950), 165, translates: "Aussi, puisque les reconnaissances de dettes que vous pratiquez sont de mince valeur, je t'envoie une petite reconnaissance en grec", implying a double meaning of *cautio* in the general *Notice* (149), without however making a connection with the advisory practice of the Roman jurists.

17 Loeb edition 216.

First of all, since letters were usually written on papyrus, the passage provides one of the rare testimonies of the practice to wash off papyrus in order to prepare it for renewed use, and of which far fewer examples have come to us than of palimpsest parchment. Cicero, of course, teases Trebatius in suggesting a far greater importance of his letters than of his friend's legal scribbling. I am not so sure, however, that Trebatius' legal incompetence is implied at the same time. In my view, this depends on the *formulae* mentioned. If the word here has its usual meaning of "forms of procedure", it is not difficult to imagine expendable specimens. In a jurist's advisory practice, a client would approach him explaining the particular circumstances of his problem. If the client was advised to go to court, he would have been provided with a *formula*, modelled after the standard *formula* in the praetor's edict but showing all the particulars of the case in hand, such as names of plaintiff and defendant, and also relevant *exceptiones et similia*. I assume the jurist would keep a copy for reference as long as necessary, but once the case was over, this particular copy would no longer have any practical use and the *formula* would be expendable. Indeed, a busy jurist would have a stock of expendable *formulae*. I would suggest that it is not so much Trebatius' legal incompetence, but the legal business itself that is made fun of, though I readily admit that Cicero is not above joking about his friend's professional ability.

De minimis curat Eric Pool, to whom I gladly offer these lines as a fellow-classicist and Roman lawyer.