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PIETAS

A Journal of Tradition, Place, and Things Divine



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by Michael Driscoll

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A Lawless Republic

Ben Peterson

Review: Josiah Osgood, *Lawless Republic: The Rise of Cicero and the Decline of Rome* (New York: Basic Books, 2025). 384 pp. Hardcover, \$32.00; Ebook, \$18.99.

In *Lawless Republic*, classicist Josiah Osgood performs several services, drawing on Cicero's speeches and writings. He describes Cicero's career in the law and politics, portrays the operation of criminal courts in the late Roman Republic, and details Rome's descent into political violence by way of a turn to lawfare. His arresting thesis: "At the heart of Cicero's story lies a strange irony: the career of Rome's greatest trial lawyer also demonstrates how the rule of law broke down" (14). Osgood's chronicle of Cicero's rise and republican Rome's decline invites reflection on the question of how to act well in a climate of deteriorating constitutional, legal, and political institutions. The question of how to respond to lawfare and departure from constitutional norms is both enduring and especially applicable to our day.

Osgood's story showcases Cicero's mastery of the arena of Roman criminal courts as a *patronus*, or specialized legal advocate. Rhetoric reigned in the courts. Cicero's scholarly treatments of rhetoric, statesmanship, and philosophy, along with his accounts of cases and related published speeches, are the threads Osgood uses to skillfully weave together explanations of these courts and their processes, descriptions of politics in the late republic, and broader reflection on the rule of law and its breakdown. By learning about Roman courts and the political situation in the first century BC, we learn about Cicero, and vice versa.

Instituted to control the behavior of the highest echelon of Roman society, the senators and equestrians (7), the courts were supposed to contain the centripetal forces of class and interpersonal conflict that could easily release violence and civil war, and had in Rome's recent past, during the conflict between Marius and Sulla in the 80s BC. But the courts offered only a thin shield from these forces.

Osgood explains that in the Roman courts, there were far fewer restrictions and rules about evidence and argumentation than we are accustomed to; prosecutors and defense lawyers often built cases on character assassination or inflation, and conflicts of interest were common (81). Personal involvement in cases was welcome; if you nurse a personal grudge

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against someone, you will do a better job of prosecuting him, so the thinking went (69). Trials were not mainly about physical or testimonial evidence, but about the convincingness of lawyers’ narratives, manipulating the feelings of jurors (all of whom were senators until the reforms of 70 BC), and appealing to larger social and political issues (21–22, 30–32, 38, 73).

Osgood shows Cicero putting the art of rhetoric as he laid out in *De inventione* (31, 46–47) into practice, beginning with his first case defending Sextus Roscius against the charge of parricide. Instead, Cicero sought to pin the crime on powerful people running a real estate swindle (47–48), flipping the tables. Cicero’s use and mastery of the trial as a venue of legal and political contestation reveals much—good and ill—about Cicero’s character, including his skill, ambition (49, 52, 54–55, 312), and courage. He showed skill and courage in prosecuting Verres, a senator, for extortion, but he was also willing to defend Marcos Fonteius, who was probably guilty of the same sorts of abuse of power. He showed no qualms about appealing to ethnic stereotypes to tarnish Gauls’ testimony (107, 115–16). In general, he learned to heap calumny on those he was opposing and to poke holes in cases against his clients, even when they were sound.

If verbal combat in the courts was unregulated, the arena of politics was no different—and in that arena, words ultimately gave way to physical violence and tyranny during Cicero’s lifetime. Cicero’s accomplishments in the forum where trials occurred and his reputation for eloquence and rhetorical brilliance underwrote his rise to the consulship as a so-called new man.

During his consulship in 63 BC, Cicero used his talents as a lawyer and rhetorician, as well as ingenuity, to obstruct Catiline and his co-conspirators’ attempted insurrection. He also, with the help of Cato, successfully lobbied for immediate execution without trial, not exile or lifetime imprisonment as the penalty. One of Osgood’s most interesting observations is that none other than Julius Caesar demurred from the Senate’s decision to vote with Cicero and Cato, and his point that “it almost certainly would have been more prudent to follow Caesar’s recommendation of life imprisonment for the conspirators caught in Rome” (176).

Osgood credits Cicero for seeking to preserve elections and Rome’s republican institutions against the slide to outright tyranny under Caesar and Antony, thwarting the Catiline conspiracy, and preferring to settle political disputes in the courts and by deliberation in the Senate rather than through mob and interpersonal violence. He ultimately paid for his

opposition to Marc Antony in the *Philippic Orations* to the Senate, whom he charged with extending Caesar's tyranny, with his life. But Osgood criticizes Cicero for refusing to countenance the claims of the least well-off in Roman society, and for supporting political violence himself, contributing to the Republic's slide into lawlessness, civil war, and dictatorship (310).

Cicero, an avowed defender of the rule of law, helped set Rome on a course of renewed political violence, of abandoning law as the guarantor of justice, security, and order. After supporting the execution of the conspirators, he later justified the use of gangs and the murder of his enemy Clodius (215). He even placed his vaunted defense of the natural law to use justifying Clodius's murder (278). He celebrated Brutus and his supporters' assassination of Caesar and thought they should have gone further (282). Even if each instance of extralegal violence Cicero supported was justified—which is highly dubious—the point is that each move toward extralegal violence between contestants for power and position fueled and helped to justify the next. And Cicero played in that game.

Cicero (through Scipio) begins *The Republic* with a defense of the active political life, as opposed to the purely contemplative life. "Nature," he says, "has given to mankind such a compulsion to do good, and such a desire to defend the well-being of the community, that this force prevails over all the temptations of pleasure and ease."¹ Moral excellence must be put into practice, and there is no activity that brings one closer to the divine than founding or preserving states.² At times, Cicero did forego ease and pleasure to serve the Roman Republic, but Osgood argues that Cicero's practical political life included a dangerous streak:

In their pursuit of their own ambitions, Roman politicians were increasingly ignoring customary and legal restraints on power.... Cicero himself ... showed a willingness to disregard laws when he thought them unjust or inconvenient. Perhaps there are times when one needs to obey a higher law than the laws of men. But as the escalating rancor and violence in Rome shows, there is a grave danger to civil society when that attitude becomes common. Cicero had helped to bring on forces that would ultimately kill him and destroy the Republic (279).

¹ Marcus Tullius Cicero, *The Republic* in Cicero, *The Republic* and *The Laws*, ed. Jonathan Powell and Niall Rudd, trans. Niall Rudd (Oxford: Oxford University Press, 1998), 3.

² Cicero, *The Republic*, 4.

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If Osgood is right, a simple picture of Cicero as a man who tried nobly but failed to save the republic is mistaken.

The more complicated picture Osgood paints of Cicero is of an ambitious politician who, while advancing a lucrative political career in a legal and political system that rewarded dishonesty, demagoguery, and ruthlessness, left a record of eloquence and occasional courage in defense of the rule of law and republican institutions. That man, though, played his own part in the abandonment of those principles and institutions as he sought his place in the Roman pantheon of power.

Students would do well to pair a study of Cicero’s books and speeches with Osgood’s account of his legal and political career. Osgood provides background and details, such as can be gleaned from Cicero’s writings and speeches, of several of his major cases and political wrangles. Helpfully, Osgood also steps back throughout the book to draw out larger lessons about the rule of law and the enduring challenge of responding to crises, threats, and emergencies, in a way that preserves lawfulness. Cicero’s career raises the question of how to act well, and how to preserve institutions when others are not playing by the rules. Perhaps his life also offers a warning for those who would break rules or engage in retaliatory lawfare to save our republic.

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