It is a truth universally acknowledged that reading general introductions about matters relating to one’s own field of interest reveals surprising facts. In a recent introduction to the history of legal interpretation from Antiquity to the present day, the birth and development of Western legal science is credited to Quintus Mucius Scaevola Pontifex (c. 140–82 BC), Roman consul for the year 95 BC. We learn that he established Roman jurisprudence as a distinct science and thus caused a revolutionary change in Western jurisprudence. Intellectual rigour, rationalisation, and organisation raised Roman jurists to the level of professional lawyers and gave jurisprudence the status of science.

On closer examination one finds that the author has relied on a selection of well-known Romanists, like Frier, Schulz, Stein and Watson, as his sources. Despite the fact that they unanimously give Quintus Mucius special credit, some confusion remains about the exact nature of his accomplishment. Fritz Schulz praises the dialectical method of Quintus Mucius: ‘... for Roman jurisprudence it proved to be verily the fire of Prometheus’. Peter Stein says that he was ‘The earliest jurist to provide clear evidence of the influence of the Greek methods ...’. Bruce Frier informs us that as the innovator of the hypothetical case, Quintus Mucius is ‘the father of Roman legal science and of the Western legal tradition’, because he is ‘undeniably the earliest jurist to have significant impact on the juristic tradition of Rome’ and his ‘intensity marked a quantum leap in legal science’.

Something very interesting is going on here. Who is this man and how do we
know that he is the father of the Western legal tradition? What is this legal tradition they are talking about?

The purpose of this article is to analyse the different threads of the tradition woven around Quintus Mucius Scaevola Pontifex (hereafter Quintus Mucius), statesman, old Roman hero, leading jurist and the supposed founder of the science of law. This inquiry is divided into three parts. First I aim to present the Roman layers of evidence concerning the life and works of Quintus Mucius. Secondly, the interpretative tradition formed through centuries of legal historiography is introduced. Finally, an alternative interpretation of the preceding material is advanced.

If we are to examine whether a historical person originated a tradition that has continued unto the present day, we should first decide on a matter of definition: what kind of science are we looking for? In our case, there are essentially two options. The first is that we should deduce how the Romans defined legal science as compared to mere jurisprudence. This can further be divided into two additional questions: how the Romans themselves defined it5 and how modern researchers have reconstructed the Roman conception6? The second option embraces the

5 The Roman definition of iuris scientia is rather vague. See D. 1,1,10,2 (Ulpianus): ‘Iuris prudentia est divinarum atque humanarum rerum notitia, iusti atque inusti scientia’; see also Paulus D. 45,1,91,3: ‘esse enim hanc questionem de bono et aequo: in quo genere plerumque sub auctoritate iuris scientiae perniciose, inquit, erratur’. The famous passage of Celsus in Ulpian’s D. 1,1,1, lpr. ‘ius est ars boni et aequi’ has brought into the discussion also the possible distinction between ars and scientia. See also Cic. top. 7,31.

6 There is an abundance of literature on the matter, but recently the discussion has centred on the possibility of finding some objective criteria for legal science. F. Senn, Les origines de la notion de jurisprudence, Paris 1926; G. La Pira, La genesi del sistema nella giurisprudenza romana, 4 articles, subtitles: 1: Problemi generali, in Studi in onore di F. Virgili, Siena 1935; 2: L’Arte sistematrice, Bullettin dell’Istituto di diritto romano “Vittorio Scalzoja”, 42 (1934), p. 336–355; 3: Il metodo, Studia et Documenta Historiae Iuris, 1 (1935), 319ff; 4: Il concetto di scienza, Bullettin dell’Istituto di diritto romano “Vittorio Scalzoja”. 44 (1936–37), p. 131–159; Schulz, History (supra, n. 3); J. Stroux, Römische Rechtswissenschaft und Rhetorik, Potsdam 1949; T. Viehweg, Topik und Jurisprudenz, Munich 1953; M. Kaser, Zur Methode der römischen Rechtshistorie, Göttingen 1962, only to name a few. La Pira (Il concetto, p. 131) eloquently describes Roman jurisprudence as the foundation of the great scientific building of law. Viehweg has questioned whether Roman jurists developed a science in general. Bretonne has pointed out that Viehweg denies the scientific nature of Roman legal science only because it does not fulfill his Aristotelian criteria; M. Bretonne, La logica dei giuristi di Roma, Labeo, 1 (1955), p. 77. Horak, Flume and Waldstein have disputed at length the nature of logic used by Roman jurists. Horak has strongly criticised the use of anachronistic models of legal science, such as Waldstein’s use of Leibniz and Flume’s use of Savigny; F. Horak, Rationes decidendi, Innsbruck 1969; W. Waldstein, Konsequenz als Argument klassischer Juristen, Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Rom. Abt., 92 (1975), p. 26–31. F. Horak, Die römische Juristen und der ‘Glanz der Logik’, in Festschrift für Max Kaser zum 70. Geburtstag, Munich 1976, p. 29–38. Already in 1955, Hoetink warned of the use of anachronistic models and concepts. He admits that the Roman legal historians should employ some concepts of modern law, but cautions against the influence of the systematic tradition; H.R. Hoetink, Les notions anachroniques dans l’histoireographie du droit. Tijdschrift voor Rechtsgeschiedenis, 23 (1955), p. 1–20. Giaro attacks as anachronistic neopositivism even the concept of science used by Horak, because all attempts at proving the scientific nature of Roman jurisprudence only mirror what the observer deems to be scientific. Giaro himself thinks that the Roman jurists could not care less whether their activities could be considered scientific or not; T.