

Plato's *Laws* and Cicero's *De Legibus*

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Cicero's Plato

As Cicero tells us¹, Plato's *Laws* is the literary model for his own work *De Legibus*, as is his *Republic* for Cicero's *De Re Publica*. In the case of the *De Legibus*, how much is the influence merely a literary one? At *DL* II 16-17 Cicero remarks that he has made what Plato calls a proemium or prelude to the laws, and Quintus responds:

'I am very pleased that you are concerned with different issues and different ideas from Plato's. What you said earlier was quite unlike his approach, and the same is true of this introduction about the gods. As far as I can see, the only thing you imitate is his literary style.'

Cicero's reply appears to concede this point:

'Wish to imitate, perhaps. For no one is, or ever will be, able to imitate that. It is very easy to render the ideas; I would do that if I were not determined to be myself.'²

Does Cicero the writer go along with Quintus here? In what we have of the dialogue Quintus often takes the position that Cicero the character argues against,³ and here Cicero the character concedes only that he is taking his own line and not merely translating Plato. Indeed Cicero the character opens Book III by saying,

¹ *De Legibus* II 14.

² I use the translation of Niall Rudd, in Rudd and Powell (1998). I have also consulted the translation by Zetzel (1999). I have throughout used the Oxford Classical Text edited by Powell (2006).

³ Notably, on the tribunate and the secret ballot; these differences with his brother remain unresolved. Dyck (2004) pp 28-29 summarizes the presentation of Quintus in the dialogue as impatient and philosophically limited. He 'is a man of opinions and is sometimes contradicted by his elder brother'.

‘Well, then, I’ll follow, *as I have from the start*, the lead of that inspired man whom I praise more often, perhaps, than is necessary, because I regard him with something like veneration.’ (My italics.)

Quintus is mistaken here, in fact, as I hope to show.

Major differences between *Laws* and *De Legibus* are obvious enough. To mention just three: Plato’s lawgivers envisage themselves as setting up a new city which will need new legislation, while Cicero sees himself as returning to a purified version of an older legal system; Cicero is more concerned than Plato about proper forms of religious cult, sharing none of his punitive anxiety about ‘heretical’ theological beliefs⁴; and while both see law as objective and as the form accessible to humans of divine reason in the cosmos, Cicero’s account of this is Stoic rather than Platonic. Cicero is certainly trying to ‘be himself’ rather than to reproduce Plato.

But the relationship of Plato’s *Laws* to Cicero’s *De Legibus* is deeper, and more complex, than that of being the obvious literary model for a conversation about laws, in an attractively described landscape, among three people (one clearly more intellectual, and with more positive ideas, than the other two). This idea is not new, and has been discussed from other points of view.⁵ In this paper I try to locate and explore some points where Cicero follows Plato’s philosophical lead in his own distinctive way.

Plato is mentioned fairly frequently in the *De Legibus*. Some of these references simply reflect Cicero’s generally high esteem for Plato. At I 15 Atticus calls Plato ‘your idol and favourite, whom you revere above all others’, and at II 39 Cicero calls Plato ‘Greece’s greatest thinker and by far her most learned scholar’. Of course it is natural for Cicero to be respectful in a work avowedly referring to a dialogue by Plato.⁶ But it is obvious in the *De Legibus* that he

⁴ As is stressed by Brunt (1989), p 198.

⁵ In this paper I shall not be concerned with issues of Platonist influence on Cicero’s Stoic sources. Horsley (1978) argues for Platonist influence on the account of natural law in Book I; this is effectively criticized by Ferrary (1995), 67-68.

⁶ See Long (1995) for Cicero’s attitude to Plato in general, and DeGraff (1940) for references to Plato in Cicero’s works. In *De Legibus* Plato is mentioned at I 15; II 6 (for the *Phaedrus*), 14, 16, 38, 39, 41, 67, 68; III 1, 5, 32. I 15 is the fullest reference to the Platonic work as a formal model.

knows the *Laws* well.⁷ At several points he refers to passages of Plato's work for points of detail. At II 45, discussing votive offerings to the gods, he takes over, in close translation ('*his fere verbis utitur*') *Laws* 955e – 956b, perhaps because he is following Plato in innovating here.⁸ At II 67- 68 he explicitly refers to Plato for the points that funeral rites are to be referred to experts, and funeral and monument expenses limited. The passage referred to is *Laws* 958 d-e, again rendered fairly closely.⁹ At III 5 he refers to *Laws* 701b-c, though in this case less accurately; he gets across the general idea that people who are rebellious against authorities are like the Titans.¹⁰ At II 41 there is a reference to *Laws* 716d-717a, for the thought that no god wishes gifts from a wicked person, since even good people reject this. And there are also more general references, such as the allusion to the behaviour of theatre-goers, where *Laws* is in mind but not exclusively.¹¹ Plato's work is in the background, but it is visible from time to time, and Cicero is clearly very familiar with it.

Plato's preambles: law, virtue and happiness

In the *Laws*, Plato insists on the originality of having preludes or preambles to the laws, since he wants to insist on the importance of what he takes to have been neglected, namely 'mixing' persuasion with the sanctions of the law, so that citizens will obey it without recourse to sanctions. The preambles themselves are diverse. Sometimes they offer rational backing for a law, as with the long philosophical arguments about god in the Book X preamble to the law

⁷ Rawson (1973) is mistaken in holding that 'there is some doubt if he had read it with care' (p 343), and also in holding the *Laws* itself to be 'chaotic' (n.28).

⁸ Dyck (2004) *ad loc* comments that of Plato's 'specific limitations on dedications, some [are] without any known historical precedent' (pp 371-2).

⁹ Dyck (2004) *ad loc* points out that here the distinction Cicero draws between Athenian custom, just mentioned, and Plato's rules is not as clear-cut as Cicero suggests (p 420).

¹⁰ Dyck (2004) *ad loc*: 'Cicero paraphrases loosely... [he] misremembers Plato's text or adjusts it to the current context' (pp 436-37).

¹¹ *De Legibus* II 38-39 and III 32, where reference seems to be made to both *Republic* and *Laws* for Plato's view of the corrupting effect of music and drama on the audience.

against impiety; people disturbed by argument need to be countered with argument for the appeal to be successful. Sometimes the preambles use rhetoric and appeal to non-rational factors, as with the laws against sexual misconduct, and the laws against murder, where appeal is made to beliefs about the walking spirits of the murdered. Presumably argument is thought inappropriate when dealing with powerful and potentially disruptive non-rational forces. But despite their dissimilarity the preambles try to persuade in a specific and distinctive way, as I have argued at greater length elsewhere.¹²

It is explicitly important to Plato that his citizens of Magnesia live a life which is virtuous, and so happy. The *Laws* not being a work of technical philosophy, this idea is not discussed at an abstract level, but it is frequently stated that the purpose of the city is to enable the citizens to live happy lives, and that the only way for them to achieve this is to live virtuously.¹³ In the *Laws*, unlike the *Republic*, the citizens' lives are organized and directed at every point, from (and before) the cradle to the grave, and it is frequently stressed that citizens' obedience to the city's laws should be both ready and thoroughgoing.¹⁴ How, though, can habits of prompt and deep obedience to the laws produce citizens who are virtuous, rather than citizens who are merely law-abiding, ready to follow orders? Again, the *Laws* not being a work of technical philosophy, we do not find an account of the moral psychology of virtue and happiness, such as the *Republic* offers us. Rather, the gap is filled in a different way, by the preambles.

The preambles display the ethical point of the practice or way of life that the laws structure. The first preamble, to the law of marriage, gives us a good example.¹⁵ The law is that men are to marry between the ages of thirty and thirty-five; otherwise they are to be penalized by fines and loss of status. The preamble develops the idea that it is natural for a human being to

¹² In Annas (2010).

¹³ The city's aim is making the citizens happy by making them virtuous: 631b3-632d7, 718a3-b5, 828d5-829b2. Happiness and virtue are both frequently mentioned as the city's aims.

¹⁴ So much so that Plato stresses that the citizens should be, and think of themselves, as 'slaves to the laws', a theme I discuss in Annas (2010).

¹⁵ *Laws* 721b6-d6.

look further than the span of his¹⁶ own biological life, and to aim at a kind of immortality, as is shown by desire for posthumous fame. It is thus not pious (*hosion*) to break the link of the generations which keep humans going on without end; this would fail to show understanding of a crucial fact about humans, namely, the way in which individual humans look beyond their own lives and see themselves as part of the continuous links of a family.

The preamble aims to persuade by bringing home to people a correct understanding of what it is to be human. Without it, marriage might be a disagreeable, and possibly inconvenient, obligation. A man persuaded by the preamble is more likely to think of getting married as something he just does without prompting at a certain stage of life, in an unforced way, because it is part of living well. He will, judging as a good citizen does, find the idea of family life attractive, and solitary life selfish. He will develop the appropriate family virtues, as well as related dispositions which will be exercised in contexts other than family life (bravery in defence of his family, for example). So in what he does he is following the law, but not merely to avoid the penalties for breaking it, but because of appreciating the objectives of laws that structure family life and the virtues these encourage.

The preambles serve this kind of function, whether large or small. A citizen who follows the laws about hunting¹⁷ will know that he is not allowed to hunt animals with traps or nets, but only with spears, horse and hounds. He will not resent this, however, on the grounds that he could hunt more game otherwise, but will realize that the only kind of hunting worth doing is that which involves some risk and personal danger, and so develops the right kind of courage. Citizens who sell goods in the market will know that they are not allowed to bargain, but must state a fixed price and sell only at that price, and not praise the articles or swear by the gods about their worth.¹⁸ The point of this - one in which Plato is very much an innovator in a culture used to bargaining - is that bargaining is a kind of lying, made even worse when backed up by

¹⁶ This prelude is definitely aimed at men only, despite the (unclear) commitment to women's being citizens of Magnesia.

¹⁷ *Laws* 822d-824c. This law is explicitly an example of the lawgiver's desire to produce obedience to 'unwritten' rules rather than the sanctions of explicit laws.

¹⁸ *Laws* 916d-917e.

oaths by the gods; citizens must not get used to the custom of saying untrue things in order to make a profit, and taking this lightly.¹⁹.

The preamble to the law-code as a whole²⁰ makes the claim that a human should first honour the gods, then his soul before his body and possessions, and that this attitude should direct all his behaviour to family, friends, fellow-citizens and strangers. Honouring the soul is explicated in terms of making virtue one's aim overall, and thus avoiding selfishness and self-assertion. Someone taking this idea to heart would have come to understand that in obeying the laws of Magnesia he was not just avoiding penalties, but coming to have a good life, one educating him to have good priorities. Thus he would come to have a positive attitude to obeying the law: he would see that all citizens should obey the laws not just as a way of not getting into conflict, but as a way of developing virtues and thus living together in a good and valuable way. Living virtuously is thus living according to the laws when you come to understand the ethical aims of the laws.

Plato thinks that the virtuous and happy way of life of the Magnesians can become self-maintaining, passed on from one generation to another without the need for constant lawgiving. Moreover, for good people it will not involve constantly thinking about the laws and their penalties, though they will be obedient to the laws. The more the laws do their work, the less they are needed as ongoing motivating forces for the citizens' behaviour. All of this comes for him from the point that the citizens are not just to be forced to obey the laws; they are also to be persuaded, and they are persuaded by being shown that the laws have an ethical aim, that they structure practices and ways of life within which the citizens develop virtues (family affection, courage, honesty, the right attitude to material possessions).

Plato's lawgivers aim to produce laws which express the wisdom that can also be seen on a larger scale in the direction of the cosmos by reason. They do this not just by setting up a list of rules, but by bringing out the relation of these laws to the virtue and happiness of the citizens. It is because living according to the laws of the best state encourages virtue and so happiness in the

¹⁹ Plato's insistence on fixed prices is astonishing in his culture; it foreshadows the Quakers' much later introduction of fixed prices on the same ground, namely that bargaining involves lying.

²⁰ *Laws* 726e-734e.

citizens that they can be persuaded to obey the laws in a more positive spirit than that of just avoiding the sanctions for law-breaking.

Cicero on law and virtue

Cicero also holds that the statesman's aim is the virtue and happiness of the citizens, as we find at *De Legibus* II 11: 'laws were devised to ensure the peaceful happy life of human beings;...those who first passed such enactments showed their communities that they meant to frame and enact measures which, when accepted and adopted, would allow them to live happy and honourable lives.'²¹ In fragments of the *De Re Publica* Scipio asserts similar claims: '[T]he aim of our ideal statesman is the citizens' happy life (*beata vita*) – that is, a life secure in wealth, rich in resources, abundant in renown and honourable in its moral character (*virtute honesta*).'²² All these passages leave it open what the relation is of virtue to happiness. As is appropriate for a work on political theory, Cicero does not go into the theoretical issues that arise for virtue and its relation to happiness; from the work as a whole it appears that he assumes a general educated consensus that virtue is necessary for happiness, ignoring theoretical complications which might move us to the idea that it is necessary and sufficient.

How does this view of the statesman's aim relate to what Cicero does in the *De Legibus*? He does not take over Plato's practice of having a general preamble to the law-code and then a preamble for each law, though he does have a short introduction to each of the two groups of laws we have (II 15-16, III 2-5). However, he is, I think, proceeding in a way that can reasonably be seen as comparable to Plato's attempt to persuade citizens to obey the laws by showing how

²¹ *Vitamque hominum quietam et beatam.....quibus illi ascitis susceptisque honeste beateque viverent.* The context is that of giving reasons for considering laws which are unjust and harmful not to be laws at all, properly speaking.

²² Fragment VI, Book V of *De Re Publica*, from *Ad Att.* VIII, 11.1. Cf fragment III of Book IV; *Considerate nunc cetera quam sint provisae sapienter ad illam civium beate et honeste vivendi societatem; ea est enim prima causa coeundi, et id hominibus effici ex re publica debet, partim institutis, alia legibus.*

they structure practices which are part of a good life. I will try to show this first by looking at what he does in Book I, then by looking at other persuasive ways in which the system of law is presented. My interpretation of Book I, like any other, is qualified by the fact that our text has gaps at crucial points. I am assuming that nonetheless we can see a coherent development of thought in what we have.

Cicero begins his account of law in a Stoic way:²³ *lex est summa ratio insita in natura, quae iubet ea quae facienda sunt, prohibetque contraria*. ‘Law is the highest reason, inherent in nature, which enjoins what ought to be done and forbids the opposite.’ This and similar formulations are repeated throughout the work. One notable feature is that this accounts for law as right reason commanding which *actions* should be done or not done, an emphasis retained in Cicero’s discussion of the etymologies of the Greek and Latin words for law.

Law, we also find, is right reason, the wisdom of the wise person, which has normative authority because it is *right* reason, a *correct* grasp of what should be done. It is a ‘force in nature’, since the wise person’s right reason is aligned with the directive force of cosmic reason in the universe; although the wise person does not need to be *required* to do what they should, the rest of us do appreciate the directives of right reason as *commanding*. And law distinguishes for us what is right and wrong. *Ea est enim naturae vis, ea mens ratioque prudentis, ea iuris atque iniuriae regula*. ‘For law is a force of nature, the intelligence and reason of a wise man and the criterion of justice and injustice’ (I 19). We also find later, at III 3, a claim that for both cosmic and human law authority, *imperium*, is crucial, a very Roman way of putting the point that the commands of law must be obeyed. Cicero stresses this less than does Plato, possibly because the idea of unquestioned deference to law was more familiar to Romans.²⁴

Cicero then says that the laws are to be framed to fit the kind of state described in the *De Re Publica*, which is why it is important to begin from the highest source of law. It is also important, he says, to plant customary practices, and not everything should have the sanction of

²³ I am concerned with the use Cicero makes of his material, rather than his sources. It seems clear that this account of law in nature derives from works by Chrysippus.

²⁴ He also avoids Plato’s provocative metaphor of slavery to the laws.

written law. At this point, this objective is just part of his general aim, not related closely to the law-code.²⁵

We find further explication of the idea of law in nature, rather than in mere convention. Humans are the only creatures that have reason, and thus can not only exhibit the universal reason that structures the cosmos, but come to understand it. To understand reason properly is to grasp its nature as directive, and so to come to share with the gods a system of directive reason or law, thus participating in a cosmic community of gods and humans. Hence virtue is the same in humans and gods, since in both it is the completion or perfection of their nature. After commenting on how excellently humans have been equipped by nature to make use of their rational faculties, Cicero follows out the thought that, as rational beings, humans are all alike; it is in the ways we go wrong that we differ (and even some of these are generally predictable). He then goes on to the thought, interrupted by a lacuna in the text but fairly clear in outline, that we are by nature apt to share in the community of reason in a co-operative and benevolent way, since rational beings care rationally no more for themselves than for others.

Cicero then turns to defending what he has said about law, and hence justice, in nature, not just to Stoics to but to a broader range of people, namely all who consider virtue to have intrinsic value. He excludes only the Epicureans, who, he claims, think virtue valuable only for pleasurable results, and the Academic Sceptics, on the grounds that, while he respects them, they can make no positive contribution to this debate. Who are the philosophers who *do* think virtue valuable in its own right? Here the ‘Old Academy’ and the Peripatetics are grouped together as holding the same position, and the Stoics are said to hold this too, though in different terms. Even Ariston of Chios is included, although his position is said to be long rejected (an indication that the grouping is meant to be as inclusive as Cicero can make it). It is clear from this grouping that Carneades’ classification of ethical theories, mediated by Antiochus, is in the background.

In what follows Cicero, rather than producing a technical philosophical argument, presents his case to a broader audience by establishing a conceptual connection between law, and so justice, in nature, and the position that the virtues are valuable in their own right, not merely instrumentally. He appeals to our intuitions about virtue to establish that we do in fact agree in

²⁵ *De Legibus* I 20: *serendi etiam mores nec scriptis omnia sancienda*. Dyck (2004) *ad loc* notes that Cicero innovates in using the metaphor in *serendi* positively.

recognizing good and bad – ‘no villain has ever been so brazen as to deny that he has perpetrated a crime’ (40), that to regard virtue as instrumental to some further aim, such as pleasure or self-interest, is to mistake what virtue is, and that not only do we recognize that what is just by nature is different from what actual laws call just, the same is true of goodness and the virtues. ‘Not only justice and injustice are differentiated by nature, but all things without exception that are honourable and dishonourable’ (44).

How is all this connected to natural law? We find out at 42-43 (where unfortunately the text is damaged). Cicero repeats the point that there will be no justice at all if justice is not by nature, and goes on, ‘And that is why every virtue is abolished if nature is not going to support justice. What room will there be for liberality, patriotism and devotion; or for the wish to serve others or to show gratitude? These virtues are rooted in the fact that we are inclined by nature to have a regard for others; and that is the basis of justice.’ Natural law, that is, establishes natural justice, and this, involving the right attitude to yourself and to others, is the source of all the virtues.

We recognize natural law, then, by reflecting on human reason recognizing its role in the cosmos. We come to realize that law has an objective basis in nature, not just in the force of existing human laws. Having a share in natural law unites all rational beings in a community in which they are related to one another by natural justice. So justice, a proper attitude to ourselves and to others in relation to ourselves, has a natural basis. And when we articulate what is involved in having this proper attitude to ourselves and to others, we can see that this is the basis of all the virtues.

And this latter claim about the virtues turns out to have independent support. For Nature, we are told, has given us all shared conceptions (*intelligentiae communes*) which are latent and unarticulated, but which everyone can develop until we achieve clear and distinct knowledge – assuming, of course, that we are not corrupted by pleasure, or misled by specious divergences of opinion.²⁶ Cicero is optimistic here about the way our initially vague and unspecific conceptions

²⁶ Paragraphs 26, 27, 30 and 59 discuss the *communes intelligentiae*. In 26 (Powell’s text) we find that nature gives us *rerum plurimarum obscuras nec satis <enodatas> intelligentias {enodavit} quasi fundamenta scientiae*. In 30 we find *quaeque in animis imprimuntur, de quibus ante dixi, inchoatae intelligentiae, similiter in omnibus imprimuntur*.

of virtue can be developed. At 30 he claims that anybody from any nation can achieve virtue if they follow nature as their guide. At 44-45 he says that it is ‘insane’ to come to think that there is merely a conventional distinction between the honourable and the dishonourable. Someone thinking *that* has clearly failed to articulate their conceptions properly. So ideas about natural law expressed in terms of Stoic theory turn out to have implications about the virtues, and these implications, it emerges, have independent support, for when we properly examine and articulate our shared conceptions of virtue, we realize that they provide support for the claim that law is grounded in nature. Anyone can recognize the virtues, and so can appreciate this connection, though only the wise person will understand it fully.

Examining the idea that law is founded in nature thus leads on to examining virtue and vice, good and bad human character. Logically, according to Cicero, we are now led (52) to discussing not just what is good for us humans, but what is the right answer to the question, what is our highest good? Is it the Stoic answer, that it consists just in virtue, virtue alone being good? Or is Antiochus right, that the Stoics are really agreeing with the ‘Old Academy’ consensus that you can live virtuously and still lack something crucial to the highest good? Cicero agrees with Antiochus here²⁷ - but at this point Quintus, the impatient non-philosopher, is allowed to drag the conversation back to law. Formally, the aborted discussion of the *telos* is a digression (cf 57). But if it is a digression from the main theme, this can hardly be because of the material’s not being relevant to the discussion. If we accept the argument so far, and also accept, as the interlocutors do as a matter of course, that legislation aims at the citizens living a happy life,²⁸ it

²⁷ He uses the Carneadean dilemma which will get such a workout in *De Finibus* III and IV: either the Stoics agree with Ariston’s discredited view, or they are saying the same thing as the ‘Old Academy’ in different terms. But here, like Antiochus in *De Finibus* V, he takes the result not to detach us from all the alternatives but to leave us with the Antiochean one. In *De Finibus* V Cicero, after explicating Antiochus’ position with fulsome oratory, demolishes it decisively (77-86). Cf Annas (2007a).

²⁸ Cf II 11: *constat profecto ad salutem civium civitatumque incolumitatem vitamque hominum quietam et beatam inventas esse leges, eosque qui primum eiusmodi scita sanxerint, populis ostendisse ea se scripturos atque laturos, quibus illi ascitis susceptisque honeste beateque viverent.*

is of the first importance to know whether virtue suffices for happiness, or not, and to have proper grounds for holding either position. It seems that Quintus is introduced to break off the discussion because Cicero finds himself having to explain the Stoic indifferents in order to claim that the Stoics disagree only verbally with the ‘Old Academy’, and this is going too far into technical ethical theory for a dialogue on politics and law.

There is now a lacuna; when the text resumes, Quintus tells Cicero that he is not asking for actual laws, *sed te existimo cum populis tum etiam singulis hodierno sermone leges vivendi et disciplinam daturum*. ‘I expect you, in what you say today, to provide a code of living and a system of training for nations and individuals alike’. Laws are now presented as *leges vivendi*, a code to live by, together with *disciplina*, a ‘system of training’ (or ‘discipline of life’, Zetzel). Cicero’s reply underlines this new point: *sed profecto ita se res habet, ut quoniam vitiorum emendatricem legem esse oportet commendatricemque virtutum, ab ea vivendi doctrina ducatur*. ‘There is no doubt that, as the law should correct wickedness and promote goodness, a code of conduct may be derived from it’. (Or: ‘since law ought to correct vices and encourage virtues, then the knowledge of how to live should be drawn from it’, Zetzel.)

Even recognizing the gappiness of our text, and the qualifications this brings to conclusions drawn from it, I think that it is significant that now, after the discussion of virtue, we find law described not just as right reason telling us what to do and what not to do, but as encouraging virtues and discouraging vices, and as forming a way of life and the characters of the people who live that life. It is at this point that we find that a code of law produces practices and a way of life which forms people’s characters by encouraging some traits and discouraging others. We find, that is, that a code of law is not just a body of rules directing our *actions*, but also what structures a way of life and so forms *character*. Having made this connection, Cicero now concludes the book with an exposition of the importance of philosophy – not just in the broad sense of ‘knowing yourself’ but in the stricter sense of training yourself in ethics, physics and logic in order to acquire true wisdom. This is what is required to become a good person, and so a happy one (59).²⁹

²⁹ See Annas (2007b).

The first part of the discussion of natural law, then, does not stop merely with actions that we are to do and not to do, important though these are. It concludes with virtuous character and happiness, and with the importance of developing your understanding to become a virtuous, and so happy person.

It is clearly important to Cicero to make this connection between law on the one hand and virtue, and so happiness, on the other; he spends a good part of Book I doing it. He is, I suggest, making the same kind of claim that Plato does in the *Laws*, namely that the laws of the best state will encourage virtues and the living of a virtuous and so happy life. For both philosophers, this is why people can be persuaded to obey laws rather than merely made to do what the law commands in order to avoid punishment. The laws of the best state will not just be a bunch of rules and regulations to get people to behave, but will structure a way of life which encourages virtuous character in the citizens and so their happy life.

Cicero, because he can appeal to the more developed Stoic idea of natural law, can do more than Plato does to fill out what it is that the rational person grasps in the cosmos and in law. This is the substance of the discussion in book I. Because natural law is what holds together the community of rational beings in a relation of natural justice, it can be seen as the basis of all the virtues, and so law is connected conceptually more closely to virtue than it is by Plato.

Plato's preambles introduce the element of persuasion as well as that of force into the system of law. Does Cicero have anything that corresponds? It may seem at first as though he does not, given Quintus' sharp rejection of the idea which we saw at the beginning of the paper. Quintus is mistaken, however. The speech he refers to is one of Cicero's brief introductions to the groups of laws, an introduction which he prefaces by saying that he will speak in praise of his laws before reciting them.³⁰ The speech (II 15-16) tells the citizens to hold that the gods are all-

³⁰ II 14. Cicero here compares Plato to actual lawgivers like Zaleucus and Charondas (though he admits that the existence of the former is disputed), and ranges himself with them as an actual legislator in practice, as opposed to the mere theoretician Plato whose system of laws was merely for 'study and amusement'. Cicero here sees himself, as often, as uniting philosophical and political abilities. Compare *de Oratore* I 224-5 (on the practical uselessness of Plato's ideas – though he is thinking of the *Republic*) and III 56-81 (on the regrettable division between philosophy and political oratory).

powerful and providential, and are involved with all we do. This a belief which leads to true and useful convictions, chiefly the appreciation of the regular workings of reason in the cosmos, as well as in humans. It briefly recalls the theme of reason operating in the overall regularities of the cosmos as well as in the laws governing human interaction, a theme Cicero certainly shares with Plato.

Cicero follows Plato in thinking it important that law should make use of persuasion as well as compulsion by force and threats. He does not follow Plato's use of preambles exactly. Rather, for Cicero it is the main argument of book I which serves the function of a general preamble, since it makes the point that natural law is the basis of the virtues, and that this is something which anyone, from any culture, can appreciate. At the beginning of book II there is a recapitulation of the main points about law leading into the brief introduction to the laws on religion. This is what Cicero calls a Platonic preamble, and the brief introduction to the laws on magistrates in Book III 2-5 has the same role, but the function of Plato's great preamble which the Athenian delivers to the citizens of Magnesia in Book V of the *Laws* is taken over in Cicero by the discussion of natural law in Book I.

The laws that Cicero lays out, in books II and III, are also afterwards gone over and discussed in some detail with his interlocutors, in ways that clarify them and enable Cicero to justify them. There is even the dramatic fiction that the interlocutors are voting on them. After the first set of laws, at II 24, Atticus politely requests to be persuaded to vote for them, and we even find the vocabulary of voting tablets and the official formulae for voting Yes or No.³¹ However, Cicero is not giving voting any authority; when both Atticus and Quintus vote against him on the tribunate and the ballot law, he carries on regardless.³² The literary conceit of voting

³¹ The Yes formula, which Atticus mentions, is 'Uti rogas', representing the tablet with VR (the No vote was a tablet with A (=Antiquo)). See Dyck (2004) for the historical details. It is interesting that in the *Republic* Glaucon once represents himself as voting on a law proposed by Socrates (380b3-c10), although in general Socrates and his interlocutors lay down laws for the ideally virtuous city without appeal to anything but philosophical argument about what is best. In the *Laws* there is no pretence that the interlocutors are doing anything like voting on the Athenian's proposals.

³² III 26, 38-39.

is introduced not to give the interlocutors any authority over the legislation but to emphasise, as Plato does in different ways, the point that citizens should abide by laws because these have a reasonable basis that they can in principle become convinced of, not merely because laws are backed up by force.

Cicero in the *De Legibus* is thus, I suggest, following Plato's *Laws* in more than the literary setting. He is presenting a system of law in a way which has taken full account of Plato's point in the *Laws* that laws should be obeyed by citizens who have been persuaded to obey them, rather than just avoiding the sanction of force. Plato makes use of persuasive preambles which are to indicate to the citizens the ways in which practices structured by the laws encourage a virtuous, and so happy, way of life. Cicero uses the Stoic account of natural law to draw conceptual links between an objectively good system of law, resting on nature rather than mere convention, with objectively just relations among people, and hence with the basis of the virtues. This is something which he claims that absolutely anyone can see the rudiments of, though it takes a wise person to articulate fully. Hence the project of presenting law in a persuasive manner appears as a sensible one, indeed one that should be important to a statesman concerned about the virtue and happiness of the citizens.

There are two major points of divergence between Cicero's conclusions and Plato's, both of which are open to explanation both philosophically and also in terms of his Roman background. Firstly, whereas Plato has in mind laws for a particular Greek *polis*, making no assumptions that other cities will be governed in similar ways, Cicero claims that his system of law is 'not just for Romans, but for all good and stable communities' (II 34); his claims are explicitly universal. This does not mean, of course, that he is thinking of a United Nations kind of global community; he is thinking of a universal system of values which is, for him, represented by Rome and its impact on a variety of different societies.

Secondly, he claims that this system of law with universal ethical validity exists already in pretty much complete form, namely in Roman law, which requires only small adjustments to express what natural law requires. This claim is made explicitly: Atticus is pleased that the naturally best laws on religion turn out to be pretty much the laws of Numa,³³ and Cicero comments that there is little or nothing that needs changing in the Roman laws about

³³ II 62.

magistracies, since the Roman state does in fact exhibit the best constitution. He means the constitution of the *De Re Publica*,³⁴ reached at an earlier stage of the Roman republic, not the actual constitution and laws of his own day.

Laws for the best state

But it is just this combination of claims to universal legislation and acceptance of the laws of Rome which has been the basis for persistent claims that Cicero is confused (and even that it may be dawning awareness of this confusion which led him to abandon the work). We can find statements of this in two recent scholars of the *De Legibus*. Andrew Dyck, author of a commentary on the *De Legibus*, objects, ‘How can the law of a particular state claim universal validity?’³⁵ Jonathan Powell, who has produced the recent Oxford Classical Text of the work, finds Cicero wavering between two objectives. ‘It is difficult here not to see a vacillation from one part of the *De Legibus* to another between this universality [of a ‘universal, specimen law-code] and the specifically Roman character of many of the enactments... One gets the impression that Cicero is thinking as he writes, and that he had not fully thought through the issue of how universal he wanted his law-code to be.’³⁶

³⁴ III 12.

³⁵ Dyck (2004) pp 410-411. Cf pp114-115: ‘This is perhaps the most problematical aspect of *Leg.*: in practice the legislation of Books 2 and 3, oriented on Roman institutions, tends to stultify the *universum ius* set up as the ideal in Book 1 with its potential for providing a thoroughgoing critique of existing law.’

³⁶ Powell (2001) p 34. Cf p 35: ‘[T]he law-code of the *De Legibus* is partly a universal code for all well-run states insofar as they conform to the type of the mixed constitution; and partly a set of suggestions as to how things might be improved at Rome. Cicero’s apparent failure to make up his mind between these two purposes is, doubtless, confusing.’

But has Cicero really failed to notice this extremely obvious problem?³⁷ He notes that the general ban on night-time religious meetings would meet reasonable objection if applied to the Eleusinian Mysteries,³⁸ and also notes that some provisions even of the Roman law-code make concessions to realist political compromises.³⁹ So he is far from thinking that a universal law-code can be straightforwardly applied everywhere; proper judgement is needed to take account of different circumstances.

But is this not just itself an example of confusion between the best and the actual? At I 17 Cicero distinguishes firstly the nature of law, then laws by which states should be governed, and only then the laws and commands people have written down, including Roman civil law. Many take this to be a distinction of levels, and the problem to be that we have two kinds of law-code, the universal best or ideal one and the actual specific Roman one, with Cicero distinguishing the levels clearly in theory but wobbling back and forth between them in practice.

The assumption here is that an ideal law-code will be, or be something like, a set of rules in universal terms, while actual law-codes are sets of rules in specific terms, the problem being how we get from the universal set of rules to the specific one. But we have no good reason to think of natural law in this way, as a set of rules like actual laws, only on a different, very very general level. Cicero is clear that law is *summa ratio* in nature and also in the minds of humans (I 18). He more than once makes the move from *ratio* to *recta ratio* to *lex*. Law in nature is right reason in the mind of the wise person, and, as recent debates have underlined, it is simply not obvious that this is supposed to take the form of universal or even general rules or laws.⁴⁰ We

³⁷ Girardet (1983) should have alerted scholars to this point, and to interpretative problems with the ‘universal specimen law-code’ view of natural law. I am grateful to Fritz-Heiner Mutschler for the reference.

³⁸ II 35-36. The upshot is not completely clear, but it appears that Athens has an exception to the law in force at Rome (and presumably elsewhere).

³⁹ III 26: Pompeius in restoring the tribunate correctly took account not only of the best but also the unavoidable (*necessarium*).

⁴⁰ See Mitsis (1992) and (2003), Inwood (2003) and Vogt (2008). Vogt argues that natural law should be understood in terms of the wise person’s reasoning, and not in terms of rules at all. For some criticisms see my (2009).

should therefore be cautious and not import the model of universal rules or laws from which actual laws are to be mysteriously derived.⁴¹

Cicero is discussing not two systems of laws but one, namely Roman law. He is arguing that this system of law has ethical authority which other systems of law lack. But this is not because he is confusing Roman law with some other, universal, system, nor because he thinks it can somehow be derived from some other, universal system. Rather, it is because he thinks that it, unlike other systems of law, expresses (mostly) the correct reasoning, *recta ratio*, of the wise person; this is what shows it to be correct, as against other systems of law which the wise person would not similarly endorse. In Book I Cicero has stressed⁴² that insofar as humans share in right reason, and hence in law, they form a community with one another and with the gods: they have a right understanding, that is, of the nature and role of reason in the universe and in humans. The excellence (in the main) of Roman law is thus endorsed by the reasoning of all wise people, who, insofar as they are wise, form a community of the wise with one another in a way transcending their actual communities. It is in this sense that Roman law (in the main) can be considered to have universal application: it has ethical authority, even where it lacks actual authority, and thus is recognized and endorsed by wise people whether they are Roman or not. This does not, of course, imply that Roman laws as they stand are exactly as they should be, or that even a reformed version should be imposed on everyone. Cicero may be prepared to make an exception to one of his laws for the Eleusinian Mysteries; this is the kind of local adjustment that is quite consistent with his general claims about the universal ethical authority of Roman law.

It is a mistake, then, to think that Cicero is going back and forth between two systems of law, the best and the actual. Rather, he is putting forward an actual law-code as one which expresses the right reason of the community of the wise, mildly revised in what he takes to be ways also endorsed by the right reason of the wise. The result is the nearest anyone can get to the best law-code, and as such, it has ethical authority not just at Rome but everywhere, though this does not exclude adjustments to local circumstances. The endorsement of Roman laws by the community of the wise takes into account something which even ordinary people can appreciate:

⁴¹ Cicero is searching for the *caput* (I 18), *fons* and *stirps* (I 20) of law. Why should we expect these themselves to have a law-like structure?

⁴² See Book I, 23-24 especially.

laws endorsed by right reason favour virtue and discourage vice, and so help to produce a state where the citizens are virtuous, and so live happy lives.

On this interpretation of *De Legibus*, its procedure fits well with that of *De Re Publica*. The laws of *De Legibus* are to be the laws of the best state, that is, the state of *De Re Publica*; in conforming to natural law, and encouraging virtue and so happiness in the state, they express the right reason of the wise person, and this fits with the theme of the *De Re Publica* that what is needed is a *rector rei publicae*, a wise statesman. I follow Ferrary⁴³ in holding that all of Cicero's range of terms, including *optimus civis* and *rector*, indicate that his concern is with a statesman, *politikos*. The statesman's job is not to produce a new system of laws, but to endorse, and to recall citizens to, the laws of the best constitution, which they already have, but are, because of corruption of character, no longer satisfied with.⁴⁴ The laws of the *De Legibus* are to do exactly that.

This raises the issue of what Cicero takes his own standing to be in the *De Legibus*, where, as a character, he takes the lead in proposing the laws and the other two interlocutors merely discuss what he has put forward. Given his knowledge of Stoicism, Cicero can scarcely be taking himself to be a *sapiens*, though he probably casts himself as someone uniting the philosophical and political talents that would be required for the project (and which he takes to be fatally divorced among the theoreticians of Greek culture). He appeals to *doctissimi* (I 18), but he also puts forward a lot of Roman *mos maiorum* without any argument. Here Plato gives him a model. It is not the *Republic*, where Socrates tells us what knowledge of the ideal society would be like, but it is clear from the form and style of the *Republic* that the work itself does not express such knowledge. Rather, the *De Legibus* is much more like the *Laws*. There the Athenian puts forward laws in a conversation with two people who are explicitly unphilosophical, and much of the discussion is not theoretical. In both cases the interlocutors accept that the laws in question do show the wisdom of the divine reason that gods and men share, but they are not themselves philosophers, the prospective audience is taken to be practical people and full explication of the reasoning of the wise is implicitly put off for a more strictly philosophical occasion.

⁴³ Ferrary (1995), pp 51-53.

⁴⁴ Cf Powell (2001).

Conclusion

It is, as we have seen, his knowledge of the Stoic idea of natural law that underlies both of Cicero's notable divergences from Plato: the universality of his claim, and at the same time the fact that he is talking about a particular existing legal system, namely Roman law. We have seen that these two claims are not in conflict; they are perfectly compatible given the Stoic understanding of the kind of claim to universal acceptance that natural law has. It is perhaps the fact that he focusses on Roman law which explains why Cicero, though following Plato on the need for law to persuade and not just compel, does not follow his precise practice with preambles. Cicero is giving us laws which are already established, based on tradition which is already familiar. Plato, in contrast, is putting forward proposals which, though often based on Athenian law, are put forward as improvements for the future, for an envisaged rather than an existing community. Citizens might well be thought to need a general exhortation to obey a new legal code rather than a familiar one.

We do not, at any rate, have to take the abandonment of the *De Legibus* to show that Cicero belatedly realized that the project was confused, since it is not at all confused. Whether it succeeds is another matter altogether, and Cicero is somewhat naïve in many of his claims, though I will not pursue that now.⁴⁵ To Cicero, Roman Republican law embodies natural law because it is a system of law which (with a few improvements) fosters virtues, and discourages vices, and so leads to a happy life for the citizens. Roman laws are already mostly fine; what Romans need to do is to live by them.⁴⁶ And so do other peoples, if they wish to live virtuous and so happy lives.

⁴⁵ At III 39, for example, he says, of his compromise proposal to let the people vote in secret but have the votes available to the optimates, *populo satis licere est* and *lege nostra libertatis species datur, auctoritas bonorum retinetur, contentionis causa tollitur*. These claims, especially the last, are, to say the least, highly contentious.

⁴⁶ Which would require their recovering traditional Roman virtues which Cicero clearly thinks have been lost or compromised in his own day.

There is a later parallel to Cicero in Philo of Alexandria, who also understands natural law in Stoic terms. Philo takes Mosaic law to be a written copy of natural law, and thus to have ethical authority against the laws of the pagans; living by Mosaic law, he claims, fosters virtues superior to theirs.⁴⁷ Philo also sees the issue not in terms of universal rules which are somehow to be applied to particular situations, but in terms of the superiority of the way of life structured and fostered by Mosaic law. Close study would, I think, support the parallel with Cicero, who sees the way of life structured by Roman Republican law as ethically superior to others. (He is one with Philo in seeing his own laws as greatly superior to those of Greeks!). Philo's laws are of course not the product of humans, even of such paragons of virtue as Cicero takes past Romans to have been; for Philo the laws have a divine origin and thus do not require any improvement. There is not likely to have been any influence of Cicero on Philo, but it is interesting that both of them see a particular existing system of law as one that can be defended in Stoic terms as having ethical authority lacking in other systems of law, and thus as actually expressing natural law.

Plato, with his less developed ideas about law in nature, can reasonably be seen as a philosophical, as well as literary model for Cicero's ideas. Cicero succeeds in 'being himself' by rethinking the Platonic connection of law and virtue in a different context, one where he takes advantage of Stoic developments of the idea of law and nature, and where, as a Roman, he looks to the better past rather than, as Plato does, to the better future.⁴⁸

⁴⁷ See *Life of Moses* II 14: 'the laws of Moses alone are firm, unshakeable, immovable, stamped, as it were, with the seals of nature itself'. Cf Najman (2003).

⁴⁸ I am grateful to my audience at Cambridge, and to the audience at the University of Oslo where I presented a paper with some of the material here. I am very grateful to Fritz-Heiner Mutschler for very helpful discussion and written comments.

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