

CICERO, THE *AUGURES*, AND THE COMMONWEALTH IN *DE LEGIBUS*

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1. INTRODUCTION

This paper shall investigate the nature of the laws on religion, *leges religionis*, which Cicero presented in Book 2 of his *De Legibus*. It shall focus, in particular, on the provisions concerning the *augures* as one of Cicero's key preoccupations and in relation to which he offered some meaningful innovations. The aims of this study are to shed light upon the reasons why Cicero devotes such an extensive section of his work to this priesthood and to clarify the function that the *augures* play in Cicero's political and philosophical project, as elaborated in *De Legibus*.

The striking position of honour that Cicero assigns to the *augures* in Book 2, in the discussion of the laws *de magistratibus* (which is also evident in Book 3), is usually interpreted as the manifestation of Cicero's personal pride in joining the prestigious priestly college in 53 BCE.¹ The emphasis on augury, therefore, seems to allow Cicero to achieve two aims: firstly, to affirm his own expertise in such a complex art, which is in need of restoration from contemporary neglect in order to halt the decline in specialized knowledge; secondly, to situate himself within the socially competitive world of the elite, creating an opportunity for self-assertion.²

Whilst I do not dispute the importance of the biographical dimension, to which Cicero himself consistently alerts the reader (and to which Cicero the character constantly draws the attention of his interlocutors), I hope to be able to show that his emphasizing of the role of the *augures* in the commonwealth – stressing their *maxima auctoritas* with special emphasis on the working of the assemblies and the obligation to obey their findings – Cicero responds to Clodius' religious programme as outlined in the so-called *lex Clodia de obnuntiatione*. Cicero's response, however, does not only deal with the regulations concerning the auspicial practices of magistrates and *augures*, but also engages with, and counterposes a radically different approach to, the political vision set forth by Clodius.

¹ This opinion, fuelled by Cicero's own self-justification, has been restated in the most recent treatment of augury: Driediger-Murphy 2019, 3. On Cicero's augurate, see Cic. *Leg.* 2.31, with Rüpke 2005a, 1328, no. 3290. For an interesting discussion see Linderski 1972 (= 1995, 231-250, 651-652).

² On the need to defend the craft of the *augures*, see Santangelo 2013, 762; on the function of civil theology in the competitive social dynamics of the elite, see MacRae 2016, 56-59.

Intervening in the contemporary intellectual and political debate on the relationship between augural law and the legislative process – which had come to prominence as a result of the events of 59 BCE – Clodius and Cicero advocate two very different visions of politics. Informed by Platonic-Stoic philosophical notions, Cicero offers a revitalization and consolidation of the role of the *augures* in the commonwealth, which conceptualizes the relationship between religion and politics in an innovative manner. Far from being ‘both parochially Roman and substantially traditional’, Cicero’s project in *De Legibus* illustrates how the creative force of philosophy could inform a solution to a political problem of general interest and of partisan origin.³

2. THE *AUGURES* IN CICERO’S *DE LEGIBUS*

The religious laws of Book 2 seem to cover a rather heterogeneous set of provisions. The overall structure of the book can be outlined as follows: after some important philosophical reflections and the so-called preamble of the law, Cicero selects some elements of the Roman tradition to which he wishes to assign exemplary value, and explains his choices in the subsequent commentary.⁴ This selection covers the manner of approaching the gods (2.19); licit deities and their shrines (2.20); priests and other religious officials (2.21), and miscellaneous provisions (2.22), ranging from the prohibition of women’s nocturnal festivals to, for example, restrictions on offerings of alms and the penalty for the theft of property under divine custody. The commentary on these laws varies considerably in length, as it might omit a law altogether (as in the case of the law on the *sacra priuata* or that on the *Di Manes*) or analyse extensively another (as the law about the deities to be worshipped) or even indulge in lengthy digression (as in the case of the *augures*).

These laws – Cicero wishes to emphasize – are very much congruent with Roman tradition. He has his brother, Quintus, comment that the religious system proposed by the character Cicero ‘is not very different from the laws of Numa and the customs of our country’ (2.23: *non multum discrepat ista constitutio religionum a legibus Numaе nostrisque moribus*, trans. N. Rudd). In response, Cicero explains that, since his laws are meant to establish the mixed and balanced constitution that Scipio has described in *De Re Publica*, if he seems to introduce some new provisions, previously unknown in Rome, Quintus can rest assured that

³ Cf. MacRae 2016, 46.

⁴ Schmidt 1959, 54; Cancik 1995, 298-299; Dyck 2004, 241-242.

their foundation is rooted in the tradition of the ancestors, the *mos maiorum*, ‘which at that time had the force of law’.⁵ Considering the fluid nature of the *mos*, which changed according to the contemporary context to which it was attempting to appeal, Cicero’s legislative innovations (as some provisions concerning the *augures*) derive their legitimacy from the antiquity of tradition.⁶

The laws listed by Cicero that are not in line with Roman practices, or on which Cicero places considerable emphasis, assume a heuristic value since they shed light on Cicero’s life and motives for their introduction to the religious code of law in support of his best form of commonwealth. These laws can be grouped into two broad categories: the first includes provisions against improper kinds of music (2.22.2 and 38-39), against consecration of arable land (2.22.11 and 45), provisions imposing limits on offerings of alms (2.22.4 and 40) as well as on expenditure for funerals and tombs (2.22.16 and 62); the second focuses mainly upon the administration of capital punishment against those failing to comply with an augur’s findings (2.21.6) and the provisions concerning the treatment of those found guilty of sacrilege (2.22.1, 4, 38, 41).

As scholars have observed, many of these innovative laws have some precedents in the Graeco-Roman tradition – either in Plato, or in Greek legislation, or even in early Roman practices that were later abandoned.⁷ Thus, for example, in support of the law that forbids the consecration of land (*Leg.* 2.45), Cicero translates a passage on dedications of offerings to the gods from Book 12 of Plato’s *Laws* (*Laws* 955e5-956b3); on the issue of tombs (*Leg.* 2.67-68), he closely paraphrases a passage appearing later in the same work (*Laws* 958d3-959a1). Cicero also refers to a famous passage in Book 4 of Plato’s *Laws*, much quoted in later antiquity (*Laws* 4.716c-717a), when discussing the prohibition of gifts to the gods by the impious and wicked (*Leg.* 2.41).⁸ His introduction of the offering of alms found its inspiration in early, and now obsolete, Roman practices, while his allusion to the violation of sacred rites is very closely reminiscent of Clodius’ infringement of the ritual of the *Bona Dea* and of his (in Cicero’s mind) outrageous acquittal for it.

Amongst these provisions, however, the innovation that stands out remarkably, and that pertains solely to the Roman context, is the law concerning the *augures*. After briefly touching upon the *pontifices*, the *flamines* and the Vestal Virgins, Cicero explains that those who hold

⁵ Cic. *Leg.* 2.23: *qui tum ut lex ualebat*.

⁶ Cic. *Leg.* 2.16.40. See Powell 2001, 33 and Arena 2015, 221.

⁷ See e.g. Dyck 2004; Annas 2013; Schofield 2017.

⁸ Schofield 2017, 59; Annas 2017, 170. On music see Cic. *Leg.* 2.38-39, with general parallels in Plato’s *Republic* as well as in the *Laws*, and a possible reference at 2.29 to *Laws* 700a7-701d3.

the knowledge of the methods and rites appropriate for private and public sacrifices are the following three main groups of public priests: the *publici sacerdotes* or those presiding over the ceremonies and sacred rites; those who interpret the obscure sayings of diviners and prophets known as the *haruspices* and the intermediaries of Jupiter the Best and the Greatest – the *augures*.⁹

In Cicero's opinion, of these three groups the *augures* – whom he devotes far greater attention to than the other priesthoods – are the most significant: 'the greatest and most prestigious power in the state (*maximum et praestantissimum in re publica*) is that of the augurs, combined, as it is, with political authority (*ius augurum cum auctoritate coniunctum*)' (2.31). Listing their duties a few chapters above (2.21), he states that the *augures* should take *auspicia* and preserve their *disciplina*. 'And the priests', Cicero continues, 'shall pay attention to vineyards and patches of withies and the safety of the people. They shall give prior warning about omens to those who are engaged in the business of war or state, and those groups shall take heed of them (*quique agent rem duelli quique popularem auspiciam praemonent oliquae obtemperant*). They shall foresee the anger of the gods and react appropriately. They shall take measures to neutralise flashes of lightning in fixed regions of the sky, and shall keep free and unobstructed the city and fields and their places of observation. Whatever an augur shall declare to be unjust, unholy, pernicious, or ill-omened, shall be null and void. And if anyone fails to obey, that shall be a capital offence'.¹⁰

Most pertinently to the present discussion, in this list of the legal prerogatives of the *augures*, Cicero emphasizes the requirement of obedience in two ways: firstly, focusing on the particular, he explicitly states that magistrates fulfilling their military and civil duties should follow the *augures'* findings;¹¹ secondly, widening his perspective, he declares that capital punishment should be meted out to anyone who does not follow their *responsa* and *decreta*. There can be little doubt, therefore, that for Cicero the issue of obedience to the *augures* was of paramount importance. These provisions are, in fact, the two innovations that he introduces

⁹ Cic. *Leg.* 2.20. The most important studies of augural law remain Catalano 1960 and Linderski 1986. The most recent work on augury (Driediger-Murphy 2019) does not tackle the topic from this perspective.

¹⁰ Cic. *Leg.* 2.21: *quaeque augur iniusta nefasta, uitiosa dira defixerit, inrita infectaque sunt; quique non paruerit, capital esto*.

¹¹ Dyck 2004, 306-307: contrary to Roman practice, Cicero here provides the *augures* with the right to take the *auspicia impetratiua* in place of the magistrates. Another possible interpretation of this provision, which would be in line with Cic. *Leg.* 3.11, is that Cicero requires the magistrate who takes the *auspicia impetratiua* to follow rigorously the augural *responsum* (thanks to John North for discussion of this point). In either case Cicero strengthens the position of the *augures* in relation to magistrates presiding over a popular assembly. However, Linderski 1986, 2200-2201 maintains that, in line with historical practice, here Cicero instead reiterates the *augures'* right to announce the *auspicia oblatiua*.

regarding the *augures*: the ability, in other words, to take *auspicia impetratiua*, the finding of which the magistrates should follow (effectively putting the *augures* in control of the working of the popular assembly), and the sanction of their prominence in the commonwealth by ensuring that nobody would ever disregard their findings.

As Cicero comments later, in a revealing digression of Book 2, the *augures* are endowed with the power to adjourn popular assemblies (including those convened, he specifies, by the highest magistrates, holders of *imperium* or *potestas*), the power to declare null and void the decisions of these very assemblies, both *comitia* and *concilia*, and the power to interrupt and halt any business whose proceedings has already begun with the simple cry ‘*alio die*’.¹² To make his point even more incisive, Cicero further asks the rhetorical questions: ‘What is more majestic than the right to decide that consuls should resign their offices? What is more awesome than the power to grant or withhold the right to do political business with the people or plebs? Or than quashing laws illegally approved?’. In short, ‘nothing done by any official at home or in the field can receive the approval of any body without their permission’.¹³

The theme, interestingly, returns in Book 3 of *De Legibus*, which focuses on magistracies. Having stated that ‘all magistrates shall have the right to take auspices and to conduct trials’ (3.10: *omnes magistratus auspiciam iudiciumque habent*), Cicero adds the further law by which ‘presiding magistrates shall observe the auspices and obey the official augur’ (3.11: *qui agent, auspicia seruant, auguri publico parent*). It seems that he almost creates a kind of hierarchy concerning *auspicia*, wherein, although all magistrates are entitled to take *auspicia*, in their capacity as officials presiding over a popular assembly they have to submit to the augural expertise of these priests.¹⁴

It is clear from the commentary on these provisions that what Cicero has primarily in mind when talking about *auspicia* in *De Legibus*, alongside *auspicia* of investiture mentioned in regard to the dictator,¹⁵ is their role in relation to the working of popular assemblies, rather than, for example, the *auspicia* that were taken before waging war, crossing a river or even

¹² Cic. *Leg.* 2.31. On the *alio die* formula see also Cic. *Phil.* 2.82-83.

¹³ Cic. *Leg.* 2.31: *quid magnificentius quam posse discernere, ut magistratu se abdicent consules? quid religiosius quam cum populo, cum plebe agendi ius aut dare aut non dare? quid, legem si non iure rogata est tollere...? nihil domi, nihil militiae per magistratus gestum sine eorum auctoritate posse cuiquam probari?.* See Schmidt 1969, 54-57 on the historical accuracy of the passage.

¹⁴ See also Cic. *Leg.* 2.31, with n. 11 above; cf. Dyck 2004, 343 on the issue of the singular *augur* as opposed to the plural *augures* in relation to the college. On this point, Linderski 1986, 2162-2168 is most illuminating. See also Vervaeke 2014, 332-333, 342, who highlights the importance of the presence of the *augures* for the auspices of the magistrates.

¹⁵ On the importance of the *auspicia* of investiture, see also Cic. *Leg.* 3.9.

crossing the *pomerium*.¹⁶ As Cicero points out, the right to take the auspices is intended ‘to allow the adjournment of numerous futile meetings by means of justifiable postponements. Often the gods have used the auspices to check a wrongful initiative on the part of the people’.¹⁷

Later on in Book 3, after his famous discussion on the tribunate of the plebs, Cicero returns to the point of the importance of the *auspicia* in relation to the assembly: ‘This is followed by regulations which we also have in the laws and customs of our state: ‘They shall observe the auspices and obey the official augur’. It is the duty of a conscientious augur to bear in mind that he must be ready to assist on assist on momentous public occasions, that he has been assigned as an advisor and servant to Jupiter the Best and the Greatest (just as officials have been assigned to him to observe the auspices at his command), and that certain specific areas of the sky have been allotted to him so that he may be able to give frequent assistance to the commonwealth from that quarter’.¹⁸ As Cicero has already remarked, in case of uncertainty or conflicting readings between the magistrate, who presides over the assembly, and the augur, who takes the *auspicia*, the highest authority lies in the augur’s judgement.¹⁹

To summarize, in Cicero’s discussion of the *augures* there are three striking features that emerge as important for his project in *De Legibus*: first, it is clear that, in thinking about the role of the *augures* in the life of the community, Cicero has specifically in mind their function in relation to the working of the assemblies, in conducting both their legislative and electoral tasks; second, of their legal prerogatives, Cicero is particularly keen to underline their ability to command obedience from the magistrates as well as from any other member of the community; third, Cicero wishes to underline the active role that the *augures* ought to play especially in case of an emergency for the commonwealth, as in them rests the power to guarantee that its laws are in harmony with the divine and thereby can preserve the stability and safety of the community, as well as the virtuous and happy life of its members.

The *augures*’ power derives from their special relationship with the supreme god, Jupiter. They are, Cicero states, the intermediaries (*interpretes*) of Jupiter, his messengers (*internuntii*) – as he elsewhere calls them – who, through the *auspicia*, convey divine rationality

¹⁶ See Vervaeke 2014, 314-315 and 2015, 209-210 on the importance of proceeding *auctoribus dis* and Driediger-Murphy 2019, 2-3 on the almost omnipresent need for augural consultation in nearly all aspects of Roman public life.

¹⁷ Cic. *Leg.* 3.27: *auspicia, ut multos inutiles comitiatus probabiles impedirent morae; saepe enim populi impetum iniustum auspiciis di immortales represserunt*. Cf. Cic. *Div.* 2.43, 74.

¹⁸ Cic. *Leg.* 3.43: *sunt deinde posita deinceps, quae habemus etiam in publicis institutis atque legibus: auspicia seruant, auguri parento. est autem boni auguris meminisse se maximis rei publicae temporibus praesto esse debere, Iouique Optimo Maximo se consiliarium atque administrum datum, ut sibi eos, quos in auspicio esse iusserit, caelique partes sibi definitas esse traditas, e quibus saepe opem rei publicae ferre possit*.

¹⁹ See n. 13 above.

to the magistrate and the people gathered in assembly.²⁰ Given their special relationship with Jupiter Optimus Maximus, the *augures* have a duty to serve the Republic and act in its defence at a moment of crisis – an obligation from which they must not shy away.

In Cicero's account, therefore, the superiority of the *augures* rests in their special connection with the notion of *auctoritas*.²¹ Their *auctoritas* was, so to speak, a full *auctoritas*, as it derived from Jupiter, who, at the time of their *inauguratio*, had conferred his own *auctoritas* upon them.²² The senators, likewise holders of *auctoritas*, were indeed bearers of a sort of secondary, terrestrial, *auctoritas*, which derived from their *consilium*.²³ Not only was there an etymological connection between *augures* and *auctoritas*, given by the verb *augeo*, which certainly did not escape the ancients,²⁴ but the *augures* also enjoyed a special connection with the ceremonies of the *inauguratio*, which distinguished them from the other priests, since they alone (alongside the *rex sacrorum* and the three *flamines maiores*) were inaugurated before a popular assembly presided by the *pontifices maximi*.²⁵ Most of all, however, the *augures* were the only priests who, as Berthelet notes, had the power to confer actively, fully, and permanently, *auctoritas* through the same ritual of *inauguratio*, be it of temples, people (kings or priests), or ceremonies.²⁶

The magistrates need to increase and perfect their *potestas* with *auctoritas* by taking the *auspicia*, which occurred under the direct, or indirect, direction of the *augures*, as intermediaries of Jupiter, or in second place under the control of the senate.²⁷ 'Indeed, no act of any magistrate at home or in the field can have any validity for any person without their authority'.²⁸

The issue at stake is not so much that augural *auctoritas* is about political power: in this respect, the current debate on the political role of augury as *instrumentum regni*, or expression

²⁰ On the *augures* as *interpretes*, see also Arnob. *Nat.* 4.35. On the *augures* as *internuntii*, see Cic. *Phil.* 13.12. On augury and Jupiter, see Cic. *Div.* 2.72, 78; Cic. *Leg.* 2.20; Livy 1.12.4-7. Linderski 1986, 2226 and n. 312 offers further references. See Valeton 1891, 409 on the connection between Jupiter as the god of the *arx* and the *auguraculum* where the augurs performed their *auguria*. This reading, as discussed in section 3, is more consistent with this digression on the *augures* and the *proemium legis* than commentators have often allowed. See also Linderski 1982, 31-32 (= Linderski 1995, 477-478) and Linderski 1986, 2226-2229.

²¹ On the *auctoritas* of priestly colleges, see Santangelo 2013.

²² Berthelet 2015, 213-219.

²³ Cic. *Leg.* 2.31. An important point to bear in mind is that there was no 'autorité religieuse entièrement distincte de l'autorité civique', because religious authority was shared between Senate, magistrates, priests and popular assemblies: see Scheid 2012a, 110.

²⁴ De Vaan 2008.

²⁵ Linderski 1986, 2215-2222 and 2290-2296.

²⁶ See Berthelet 2015, 218.

²⁷ See Van Haeperen 2012 on the importance of the *auspicia* of investiture and the role of the *augures* and the *pullarii*. Cf. also Vervaeke 2015 and Van Haeperen 2015.

²⁸ Cic. *Leg.* 2.31: *nihil domi, nihil militiae per magistratus gestum sine eorum auctoritate posse cuiquam probari*. Cf. above, n. 13.

of genuine religious sentiment, is not really pertinent to Cicero's project design in *De Legibus*. The issue at stake is rather that the powers of the magistrates, their *imperium* or *potestas*, both at the time of their investiture as well as of their exercise by a magistrate, should always be constituted within the framework of the religious *auctoritas* of the *augures*.

The fundamental function that the *augures* fulfilled in the running of the state, Cicero argues, depended upon their special relation with the deities. The *diuina ratio* of the gods, which also coincides with Natural Law, finds its earthly manifestation through the *auspicia*, whose main purpose (and even utility) in relation to the state is to repress the impetus of the people – their irrational passions – by virtue of which many decisions are made which are unprofitable to the state. The function of the *auspicia*, therefore, consists in acting as a vehicle of divine rationality and curbing those irrational forces that, operating within the Republic, may bring about its destruction. The laws of the best form of commonwealth should ensure that the working of the state is structured in harmony with divine will and sure to incur divine approval. The language Cicero uses is revealing: public priests are required for the proper working of the state as the people are in continual need of the advice (*consilium*) and authority (*auctoritas*) of the *optimates*.²⁹

I suspect there is something more here than Cicero's not rare boastfulness and personal interest in advertising the college of priests which he had joined in 53 BCE – although, of course, this is no doubt part of the picture, as his *excusatio non petita* reveals.

3. THE AUGURES AND DIVINA RATIO

To fully comprehend Cicero's innovation with regard to augury, it is important to consider the aim of his wider project in *De Legibus*. In Book 1, following a Stoic line of argument, the character Cicero maintains that in this work he is uninterested in the trivialities of civil law, understood as a set of rules and regulations that govern mutual relations between citizens: these might be indispensable for practical purposes, but, he claims, they do not contribute much to the furtherance of knowledge (1.14). His main focus, Cicero states, will be the universal law and justice, whose essence must be found in the nature of man and the laws that govern states (1.17). Following the view of the *sapientissimi docti* (whose identity remains unspecified), Cicero maintains that 'law is the highest reason, inherent in nature, which enjoins

²⁹ Cic. *Leg.* 2.30: *consilio et auctoritate optimatum semper populum indigere*. For an understanding of *optimates* as *publici sacerdotes*, see Dyck 2004, 341.

what ought to be done and forbids the opposite. When that reason is fully formed and completed in the human mind, it, too, is law. So they think that law, whose function is to enjoin right action and to forbid wrong-doing, is wisdom'.³⁰ This supreme law, which existed before any written law or any state had been established, is the origin of justice. It is 'a force of nature; the intelligence and reason of a wise man, and the criterion of justice and injustice' (1.19: *ea est enim naturae uis, ea mens ratioque prudentis, ea iuris atque iniuriae regula*). Emphasizing the fundamental notions the interlocutors should all share before the conversation on the actual law-code can begin, Cicero states that all nature is governed by the immortal gods. Since men share reason (*ratio*) with the supreme god (*supremus deus*), and since they share reason with the gods, they must be sharing right reason (*recta ratio*) with them, and since right reason is law, it follows that men, Cicero says, share law with the gods. However, sharing law means also to share justice, and those who share justice are to be regarded as members of the same commonwealth, where they must 'obey the celestial system, the divine mind, and the all-powerful god' (1.23: *parent autem huic caelesti descriptioni mentiue diuinae et praepotenti deo*).

These normative notions of natural law of Book 1 are then followed in what survives of the work by the provisions on religious matters in Book 2 and the provisions on magistrates and government matters in Book 3. The relationship between Book 1, which deals with the universal law, and Book 2 and Book 3, which discuss laws of a specifically Roman character, has been frequently found, to say the least, to be confusing and often described as a muddle.³¹

However, as Annas has convincingly shown, Cicero's project in *De Legibus* is not internally confused. Through the prism of Stoicism, Cicero applies some of Plato's ideas to the universal and developed his position about the connection between law and virtue.³² Elaborating on Plato's ideas of the cosmic reason and law discussed in the Book 10 of the *Laws*, Cicero endows his notions of law with a universal nature that is central to Stoicism. By understanding laws not as a set of rules and regulations about actions, but as right reason in the mind of the wise person and therefore requiring of actions that sustain virtue, Cicero regards

³⁰ Cic. *Leg.* 1.18-19: *lex est ratio summa insita in natura, quae iubet ea, quae facienda sunt, prohibetque contraria. eadem ratio cum est in hominis mente confirmata et confecta, lex est. itaque arbitrantur prudentiam esse legem, cuius ea uis sit, ut recte facere iubeat, uetet delinquere.*

³¹ Powell 2001, 34; Dyck 2004, 114-115, 410-111; Zetzel 2017, xxv-xxvi. This view was influentially put forward for the first time by Reitzenstein 1893, who advocated the idea of a separate composition of Book 1. With a different emphasis, this view was also supported by Schmidt 1959 and Büchner 1961. For a contrary perspective, favouring an integrated reading of the three surviving books of *De Legibus*, see Dörrie 1973; Turpin 1986; Fontanella 2013, esp. 115-132; Atkins 2013, 155-161; Annas 2013, 219-222; Annas 2017, 180-186; Schofield forthcoming.

³² Annas 2017, 187. *Contra* Straumann 2016, 179-180, according to whom Cicero's notion of natural law depends more on Roman legal principles of contract and equity than on Stoicism.

the idealized past of early Rome as a system that embodies natural law more successfully than other systems do; a system in which the *augures* have traditionally played a pivotal role.³³ It is therefore unsurprising – Cicero contends – that the law-code of Book 2 and Book 3 very closely resembles the traditional Roman system,³⁴ if the arguments put forward by Scipio in *De Re Publica* on the nature of the political system of early Rome correspond with the truth.³⁵

Following Plato’s use of the preamble to introduce an element of persuasion in the function of the law in order to minimize the need for compulsion or the threats of force (*Leg.* 2.14),³⁶ Cicero presents his religious law-code of Book 2 for the well-regulated *res publica* described by Scipio, embodying the Stoic idea of the universal community of the rational.³⁷ As the proemium of Book 2 specifies, the *sapientissimi* (whose identity remains unspecified) stated that ‘Law is not a product of human thought, nor is it any enactment of peoples, but something eternal which rules the whole universe by its wisdom in command and prohibition’.³⁸ It is necessary, Cicero claims, that the law, which is *diuina ratio*, is congruent with the reason and mind (*ratio mensque*) of the wise lawgiver and, in order to do so, the *interpretes* of Jupiter play a fundamental role. ‘In their judgement, that original and final law is the intelligence of God, who ordains and forbids everything by reason. Hence that law which the gods have given to the human race is rightly praised, for it represents the reason and intelligence of a wise man directed to issuing commands and prohibitions’.³⁹

Divine mind cannot exist without reason, and divine reason cannot but establish what is right and wrong (2.10: *neque enim esse mens diuina sine ratione potest, nec ratio diuina non hanc uim in rectis prauisque sancendis habet*), as ‘the authentic original law, whose function

³³ Cf. Annas 2017, 168-187.

³⁴ Cic. *Leg.* 2.23 and 3.12: Quintus is made to observe this point.

³⁵ On *auspicia*, see Cic. *Rep.* 2.16: the Romans obey the *auspicia magna cum salute rei publicae*, tracing the habit of taking them *in omnibus publicis rebus* back to Romulus himself. See also *Rep.* 2.17: the *auspicia* and the Senate are defined as *haec egregia duo firmamenta rei publicae*. Cf. Cic. *Vat.* 23.

³⁶ For an interesting discussion on Cicero’s use of the Platonic preamble, see Schofield 2017, 58. On Cicero’s explicit link of his project in *De Legibus* with Plato’s work see Cic. *Leg.* 2.14 (on writing a book entitled *Republic* first and *Laws* second); *Leg.* 2.16 (on adopting a *proemium* to the laws); *Leg.* 2.17 (on similarities and differences of style and content); *Leg.* 2.69 (as literary model); *Leg.* 2.39 and 3.1 (admiration for Plato). On specific references to *Laws* see above, n. 8. On the relation between Plato and Cicero see, most recently, Annas 2013 and 2017; Schofield 2017 and forthcoming.

³⁷ Cic. *Leg.* 1.20; 2.23; cf. 3.12. See Schofield forthcoming.

³⁸ Cic. *Leg.* 2.8: *legem neque hominum ingeniis excogitatum, nec scitum aliquod esse populorum, sed aeternum quiddam, quod uniuersum mundum reget imperandi prohibendique sapientia.*

³⁹ Cic. *Leg.* 2.8: *ita principem legem illam et ultimam mentem esse dicebant omnia ratione aut cogentis aut uetantis dei; ex quo illa lex, quam di humano generi dederunt, recte est laudata; est enim ratio mensque sapientis ad iubendum et ad deterrendum idonea.*

is to command and forbid, is the right reason of supreme Jupiter' (*ibid.*: *lex uera atque princeps apta ad iubendum et ad uetandum ratio est recta summi Iouis*).⁴⁰

Adopting the Stoic notion of natural law, it follows that if the law is the mind of god, which coincides with right reason in the mind of the lawgiver, then the true aim of legislation is indeed the wellbeing of a political community and its members: 'it is agreed, of course, that laws were devised to ensure the safety of citizens, the security of states, and the peaceful happy life of human beings; and that 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; provisions composed and endorsed in this way would, of course, be given the name of laws'.⁴¹ The purpose of a law-code, Cicero comments here, developing a point already announced in Book 1,⁴² is to protect the community and its members in two main ways: first, by guaranteeing their safety and stability; second, by providing them with a *uita quieta et beata*, that is with the possibility to conduct an honourable, virtuous, and happy life.⁴³

'Law', Cicero adds, 'means drawing a distinction between just and unjust, formulated in accordance with that most ancient and most important of all things – nature; by her, human laws are guided in punishing the wicked and defending and protecting the good'.⁴⁴ To achieve this conformity, which is necessary to ensuring the enacted regulations are proper laws and not equivalent to the rules that a band of robbers might pass in their assembly (2.13), Cicero assigns an essential role to the *augures*.

In this interpretative framework, these priests are essential to the enactment of the divine *ratio* in the terrestrial world. As intermediaries between the gods and humanity, their

⁴⁰ Cf. Cic. *Leg.* 2.15: *sit igitur hoc iam a principio persuasum ciuibus, dominos esse omnium rerum ac moderatores deos, eaque quae gerantur eorum geri iudicio ac numine, eosdemque optime de genere hominum mereri, et qualis quisque sit, quid agat, quid in se admittat, qua mente, qua pietate colat religiones, intueri, piorumque et impiorum habere rationem* ('So the citizens should first of all be convinced of this, that the gods are lords and masters of everything; that what is done is done by their decision and authority; that they are, moreover, great benefactors of mankind and observe what kind of person everyone is – his actions and misdemeanours, his attitude and devotion to religious duties – and take note of the pious and the impious').

⁴¹ Cic. *Leg.* 2.11: *constat profecto ad salutem ciuium ciuitatumque incolumitatem uitamque hominum quietam et beatam inuentas esse leges, eosque, qui primum eius modi scita sanxerint, populis ostendisse ea se scripturos atque laturos, quibus illi adscitis susceptisque honeste beateque uiuerent; quaeque ita composita sanctaque essent, eas leges uidelicet nominarent.*

⁴² Cic. *Leg.* 1.37: 'my whole thesis aims to bring stability to states, steadiness to cities, and well-being to communities' (*ad res publicas firmandas et ad stabiliendas urbes sanandosque populos omnis nostra pergit oratio*).

⁴³ In this interpretative framework, with its emphasis on laws, virtue, and the happy life, Cicero's *De Legibus* can be considered, with Annas 2017, 187, a 'thoughtful updating and rethinking of Plato's *Laws*.'

⁴⁴ Cic. *Leg.* 2.13: *ergo est lex iustorum iniustorumque distinctio ad illam antiquissimam et rerum omnium principem expressa naturam, ad quam leges hominum diriguntur, quae supplicio improbos adficiunt, defendunt ac tuentur bonos.*

function is to ensure the participation of the gods in mortal activities. More importantly, however, is their role in guaranteeing that the laws are congruent and in agreement with the divine, so that the universal community of the rational is preserved.

The magistrates endowed with administering terrestrial powers (either *potestas*, in the case of minor offices, or *imperium*, in the case of consuls and praetors), as Cicero specifies in Book 3, ought to obey them. They are the proponents of legislative proposals to the popular assemblies, on which rests the ultimate onus to transform these proposals into laws.

It seems that, rather than being a ‘muddle’, the three extant books of Cicero’s *De Legibus* function coherently in relation to one another and develop the idea of natural law in an organic manner. In this conceptual system, the *augures* fulfil a special role that transcends, as Cicero maintains, the general public function of the *publici sacerdotes*. Discussing their role in his commentary to the religious laws, Cicero prefaces his observations by saying that their function does not concern only religious issue (including private worship), but also pertains to the commonwealth ‘the people’s continual need of the advice (*consilium*) and authority (*auctoritas*) of the *optimates* hold the State together’ (2.30: *continet enim rem publicam consilio et auctoritate optimatum semper populum indigere*). If it is true that in Cicero’s political design, the *augures* ultimately played a central role in governing public life, it is also true that, conceptualizing their function according to these Platonic-Stoic principles, Cicero assigns them the essential duty of enabling *diuina ratio* in the terrestrial political community.⁴⁵

This explains the particular emphasis Cicero places on the role of the *augures*, which elevates them above the other public priests he discusses and additionally accounts for Cicero’s underlining of their specific function in relation to the peoples’ electoral and legislative assemblies. By restraining the passions of the people and ensuring the decisions of the assemblies were attuned to the *diuina ratio* of Jupiter, the *augures* ensured that the laws that governed the political community would provide it with stability and sustain the virtuous life of its citizens.

Various instances can be observed where, as previously mentioned, Cicero accentuates the importance of the obedience of the *augures*. This seems a natural extension of the argument above: to guarantee that the realization of this universal *societas* of men and gods, it is of paramount importance that men do not disregard the findings of the *augures*. However, although this condition is certainly prerequisite to the role of these priests as effective enablers

⁴⁵ For augury as a means of exercising the governing elite’s control over public life, see North 1990 and Fontanella 2013, 51-52.

of *diuina ratio*, it seems to move the discussion from the conceptual, to a more pragmatic, realm. This shift seems reminiscent of the historical context of the time of Cicero's writing, to which I shall now turn.⁴⁶

4. CICERO, CLODIUS, AND CIVIL RELIGION

In accounting for Cicero's change in emphasis regarding the religious structures, and practical aspects relating to, his idea of the best commonwealth, it is important to consider the condition of political chaos and violence of the 50s BCE in Rome, the time when Cicero was composing, or at least conceiving, *De Legibus*.⁴⁷ From the so-called 'First Triumvirate' of 60 BCE and the subsequent consulship of Caesar and Bibulus, or, following Suetonius (*DJ* 20.2), of Julius and Caesar, to 52 BCE, the assassination of Clodius and the sole consulship of Pompey, Rome was facing a situation of political and institutional chaos. No small part in the disruption of Republican political life was played by the use and abuse of the practice of *obnuntiatio* and more generally, the perceived state of decline in auspicial divination.

The case that famously brought the issue of *obnuntiatio* to the fore happened in 59 BCE. Whilst attempting to pass his first agrarian law, Caesar was faced by senatorial opposition and decided to enlist the support of the people to overcome it. Bibulus appeared in the forum on the day of voting with the intent of obstructing by use of *obnuntiatio*. However, he was kept from reaching the platform and forcibly expelled from the forum: his fasces were destroyed and he was covered in dirt. As a result, Bibulus locked himself up into his house, where he spent the rest of the year announcing *se de caelo seruasse* each time an assembly was summoned. However, as Suetonius and Cassius Dio tell us, he did not announce the results of his *spectio* in person, but rather sent his lictors to deliver his *edicta*.⁴⁸

It was largely in reaction to this episode, as scholars have come to agree,⁴⁹ that Clodius passed the so-called *lex Clodia de obnuntiatione*.⁵⁰ The law is notoriously obscure, not least because knowledge of it is mainly gleaned from Cicero's polemic and hyperbolic attacks, alongside the testimony of Asconius and Dio, who, as scholars now seem to agree, do not add

⁴⁶ On the osmotic relation between Cicero's theoretical and political concerns in *De Legibus*, see Dyck 2004, 6.

⁴⁷ On the dates of composition of *De Legibus*, see Schmidt 1969; Grilli 1990; Dyck 2004, 5-7; Pittia 2008.

⁴⁸ Suet. *DJ* 20; Cass. Dio 38.13.6.

⁴⁹ See Mitchell 1986 and, most recently, Ferrary 2012.

⁵⁰ On the validity of Bibulus' sky-watching in 58 BCE, see Driediger-Murphy 2019, 145-147, 158-160, with previous bibliography.

much detail to the picture presented by Cicero.⁵¹ Although Cicero claims that Clodius' law wholly abolished *auspicia* and the right *de caelo seruasse* during assemblies (or at least legislative assemblies), this is contradicted by other evidence provided by Cicero himself, which attests its continuing practice. It seems certain, however, that it abrogated at least some provisions of the two laws – the *lex Aelia* and the *lex Fufia* – in turn, ill-known legislative measures of the mid-second century BCE, which regulated, amongst other things, the procedure of *obnuntiatio* during the assemblies of the people, safeguarding the magistrates' ritual privilege of announcing unfavourable signs against the proceedings of the assembly.⁵² Although interpretations of the exact content of Clodius' law vary considerably, a sustained scholarly consensus is now coalescing around the idea that this measure explicitly enshrined in law the requirement for magistrates to personally announce the omens to the presiding official at an established time and place prior to the assembly's proceedings.⁵³

This law seems pertinent to a debate about the *ius obnuntiandi* of the magistrates and its regulations, on which there was no aristocratic consensus. The *obnuntiatio* of the magistrates was a means of obstruction that a magistrate holder of *potestas* or *imperium* could exercise against another magistrate – who was also a holder of the same power.⁵⁴ The discussion about the legitimacy of its particular practices, opened up by the events of 59 BCE, was a clear sign of the contemporary crisis.⁵⁵ If, on the one hand, Bibulus' behaviour was unprecedented, as he continued to practice his *spectio* at home for the whole year, and announced it via edicts (and supported further by three tribunes of the plebs who acted similarly, retiring to their houses and sending notices that they were watching the sky), on the other, Caesar's disregard of the news that the heavens were being observed could too be legitimately presented as oppositional to traditional practice. As both Linderski and Tatum have observed, albeit with different emphasis, Clodius' law was not in itself revolutionary; if anything, it was rather traditional in aim, wishing to restore a piece of 'sound augural doctrine', while curbing the internecine conflicts within the elite.⁵⁶

⁵¹ See Cic. *red. Sen.* 11; *Sest.* 33.56; *Har. Resp.* 58; *Vat.* 18-21; *Prov. Cons.* 45-46; *Pis.* 9-10; *Asc.* 8C.; Cass. Dio 38.13.6. See Mitchell 1986, 172 and Tatum 1999, 125 on the dependence of Asconius and Dio on Cicero.

⁵² Weinstock 1937; Bleicken 1955, 57-58; Sumner 1963; Astin 1964; Weinrib 1970; Burckhardt 1988, 181-185; Thommen 1989, 242-244; Fezzi 1995 and 1999, 267-274; Beard-North-Price 1998, 109-110; Berthelet 2015, 262, 267-274; Berthelet 2016, 86-87.

⁵³ For a doxographical review, see Mitchell 1986, 172; Tatum 1999, 130-131; Fezzi 1995, 311-319 and 1999, 267-270. For a particular emphasis on the issue of announcing the omens *in praesentia*, see Guillaumont 1984, 76; Mitchell 1986, 175; Tatum 1999, 132; Berthelet 2015, 275; Driediger-Murphy 2019, 144 and n. 59.

⁵⁴ Berthelet 2015, 201-219 and 2016, 90.

⁵⁵ Moatti 1997, 25-54 (= 2015, 10-44) on the interpretation of the concept of 'crisis'.

⁵⁶ Linderski 1965 (= 1995, 71-90); Tatum 1999, 125-133 (quote in the text at 132). See also Berthelet 2015, 274 and 2016, 89-90.

Intervening in a debate over the relationship between augural law and legislative procedures, Clodius' law, in its immediate context born out of these contingent events (or even a partisan act, as some scholars describe it), then progressed to acquire a more generalizing dimension. As Tatum underlines, no one could have been in favour of paralyzing *ad infinitum* the political activity of the assemblies.⁵⁷ In this context, Clodius' measure was an attempt at curbing, by law, the interferences that magistrates could arbitrarily inflict by their *spectio* against the proposal of another politician thereby stalling the decision making process of the assembly. This law, which, as Scheid and Berthelet have recently underlined, concerned the *ius obnuntiandi* of the magistrates, but not that of the *augures* (the latter could interrupt the popular assemblies even when in progress and were concerned with the *auspicia oblatiua*, while the magistrates, concerned with the *auspicia impetratiua*, could only exercise their right of *obnuntiatio* at the very beginning of the assembly),⁵⁸ regulated and attempted to frame the magistrates' communication with the divine by means of a comitial law.

Set within the context of a genuinely reformist programme, the aim of which was the proper working of the commonwealth, Clodius' law could be read, in terms of principle, as imposing an earthly regulation on communicative relations between the gods and the magistrates, who could no longer interfere arbitrarily with the working of politics through the use of *obnuntiatio*.

While, therefore, motivations for the introduction of this law may lie in the attempt to clarify an area of sacred law often subject to confusion and contestation, it seems that, the law's actual implementation advanced an expressly different conception of the commonwealth, broadly defined as a state which assigned primacy to the rule of law, to which all members of the community should be equally subjected and which, thereby, deprived them of the ability to act arbitrarily.⁵⁹

When set in its historical context, it is, therefore, possible to interpret Cicero's emphasis on the *augures* in *De Legibus* not only, or not so much, as a boastful advertising of his priestly college, nor as an ideological reflex of his senatorial prejudice (*obnuntiatio* was often

⁵⁷ Mitchell 1986, 173.

⁵⁸ Cass. Dio 38.13.6: 'he [Clodius] introduced a measure that none of the magistrates should observe the signs from heaven on the days when it was necessary for the people to vote on anything.' See Scheid 2012b, esp. 222 and Berthelet 2015, 259-271. It might well be possible that, since most *augures* had been at some point in their careers also magistrates, Dio, whose imprecise grasp of Republican language and details is well known, has just generally referred to magistrates. However, if, in addition to Dio's testimony, we take into account the direct correlation between the events of 59 BCE and the law of Clodius, it seems plausible to postulate that Clodius intervened on *ius obnuntiandi* of the magistrates.

⁵⁹ For a similar interpretative framework about the censorship, Cicero's other true innovation in the law-code of *De Legibus*, see Arena 2016.

considered a tool of the governing elite to obstruct those policies contrary to its wishes)⁶⁰ and not even as just an attack against his enemy, Clodius, but rather as an actual intervention in political and intellectual debates of the time on how better to structure and govern the *res publica* and the role assigned within it to religion.

In his account, Cicero re-establishes the primacy of the *ius obnuntiandi* of the *augures* over the *ius obnuntiandi* and *ius auspicandi* of the magistrates. Deriving their *auctoritas* directly from Jupiter, these public priests, in Cicero's vision of the commonwealth, come to occupy their powerful position above the rule of law: the *augures* could, if they wished, dismiss a legislative assembly without explanation – the simple cry '*alio die*' was sufficient to interrupt the proceedings. Their superior *auctoritas* was above the *potestas* or the *imperium* of the magistrates, who were always required to obey them, and above the *libertas* of comitial laws, which did not regulate their behaviour.⁶¹

In Cicero's view, these priests, holding a crucial position as intermediary communicators with the gods, were considered foundational for the building of a commonwealth. In *De Legibus* Cicero presented this traditional view of the *augures*' role within a philosophical conceptual framework, allowing him to further emphasize the vital importance of their function, in response to Clodius' policy: it was through the *augures*, who enabled divine participation in the decision-making process, that the commonwealth could be governed by the *diuina ratio* of the immortal gods, thereby establishing the universal community of men and deities, always preserved from the unjust and ruinous impulses of human passions.

The kernel of the debate was the relationship between religion and politics. Neither Cicero nor Clodius denied the interconnectivity of both realms of human affairs.⁶² They rather advanced different conceptions of how this relationship should be articulated. According to Clodius, religion and priests should be subjected to the rule of law, that is, religious power and the modalities concerning the communication with the gods should be subordinate to the ordering and equalizing power of the political, which would curb the arbitrary power of the individual to interfere. However, regulating the *ius obnuntiationis* of the magistrates was not tantamount to undermining the value of the *auspicia impetratiua*; if anything, it was designed to make communication with the gods more effective and less open to manipulation. In

⁶⁰ See Rüpke 2005b, 227-230 for a very effective account of the political use of divination as a tool enabling elites to avoid direct negotiations with the people.

⁶¹ See Arena 2012, 258-276 on liberty and the rule of law.

⁶² On the relation between the religious and political domains, see Scheid 1985 and 2013 (= 2016); North 1989.

Cicero's opinion, on the other hand, the power of the college of the *augures*, based on the divine *auctoritas* of its members, was not subject to any comitial law, passed by Clodius or anybody else for that matter. Civil religion, Cicero seems to affirm in *De Legibus*, was not to be subordinated to civil authority.⁶³

This conception of the mutual relations between civil and religious authorities, analysed through the prism of augury, was at the centre of the contemporary debate on the function of the auspices. In *De Legibus* Cicero has Atticus enquire about the dispute between Marcellus and Appius, whether *auspicia* were designed *ad utilitatem rei publicae* or were rather a form of divination (2.32: *quasi diuinari uideatur posse*). Cicero, or at least 'Marcus', argues in favour of the existence of divination, of which augury is a branch, but 'this art and skill of the augurs', he acknowledges, 'have now vanished as the result of age and neglect'.⁶⁴ In *De Diuinatione* too, he discusses the contemporary state of disarray of augury, lamenting that, contrary to the ancestral past, the auspicial assistant is no longer *peritus*, wild birds are no longer used in the ritual of the *tripudium* and those responsible for watching the sky delegate their task to the *pullarius*.⁶⁵

As the contemporary debate about the relationship between the *societas* of gods and men, as well as the nature of their divine communication flourished,⁶⁶ these issues concerning religion were closely scrutinized and subject to sustained systematization.⁶⁷ Politicians and intellectuals of the time began to categorize religious knowledge, focusing their attention also on the procedures and regulations of augury. In the first century BCE, Lucius Julius Caesar composed a work entitled *Augurales Libri*, Appius Claudius Pulcher one *De Disciplina Augurali*, and Valerius Messalla Rufus produced *De Auspiciis*; while Varro re-organized priesthoods in his *Antiquitates Rerum Divinarum* and Trebatius Testa and Veranius composed works entitled, respectively, *De Religionibus* and *Quaestiones Pontificales*. Furthermore, Cicero himself seems to have composed a treatise *De Auspiciis*.⁶⁸

By responding to contemporary events, whenever issues of contention over the legitimacy of particular procedures and practices arose, these politicians and engaged

⁶³ On the relation between the two spheres, see Scheid 2012a, 110.

⁶⁴ Cic. *Leg.* 2.33: *haec disciplina et ars augurum euanuerit iam et uetustate et negligentia*. On this issue, see also Cic. *ND* 2.9 and *Div.* 1.95 and 2.73-74. On the historical developments of divination, see Scheid 2012a.

⁶⁵ Cic. *Div.* 2.71-74. See also *Div.* 1.25 and 2.36. Cf. Dion. Hal. *Ant. Rom.* 2.6. On Cicero's position, see Beard 1986. On the *pullarii*, see Foti 2011 and Van Haepere 2012.

⁶⁶ Beard 2012 underlines how this debate took place not only in philosophical treatises, but also in public speeches.

⁶⁷ This discussion was also mirrored in well-known stories of early Roman mytho-history: it is sufficient to think about the opposition between the augur *par excellence*, Attus Navius, and the highest of earthly powers, Tarquinius: Cic. *Div.* 1.17; Livy 1.36; Dion. Hal. *Ant. Rom.* 3.70-71.

⁶⁸ On these authors of 'civil theology', see MacRae 2016 and 2017. On Cicero, see Harries 2006, 164-166.

intellectuals begun to systematize existing rules and regulations by selecting, ordering, and, at times, even inventing them, and in the process established the principles at the basis their very *res publica*.⁶⁹

CONCLUSION

Far from simply listing the *augures*' duties, mirroring current practices or framing in legalistic terms traditional Roman religion,⁷⁰ Cicero's discussion of the *augures*' role represents his intervention in an intellectual and political debate of his time. By basing his analysis on Platonic-Stoic reasoning, or, in Cicero's words, drawing his *iuris disciplina ex intima philosophia*,⁷¹ he provides an answer to a political problem of wider interest for the community, exposed by the partisan struggle with his personal enemy Clodius.

As Dyck rightly states 'some of the major innovations Cicero proposes can be seen as a direct response to Clodius' programme'.⁷² However, in so doing, Cicero presents in his response to *lex Clodia de obnuntiatione*, his objection not only to the regulations that Clodius had imposed on the auspicial practices of the magistrates (if not, as it seems more unlikely, of the *augures* too), but also advances a different conceptualization of the commonwealth, based on a conceptual framework radically different from that encapsulated by Clodius' measure - or that Cicero could plausibly interpret as such. In response to Clodius' law – proposing an ideation of the commonwealth that subjected the auspicial procedure of the magistrates to the rule of law – Cicero emphasizes the absolute primacy of the *augures*, to which both magistrates and laws should be subordinate.

Developing further his conception of the state, Cicero made religious *auctoritas* the truly exemplary underpinning of the commonwealth. It was the *auctoritas* of the *augures*, which Berthelet classifies as 'full *auctoritas*', conferred upon them from Jupiter at the time of their *inauguratio*, that, alongside the *auctoritas* of the senators (a somehow 'secondary *auctoritas*', based on their *consilium*), took centre stage in his conceptualization of the best form of commonwealth. Within this interpretative framework, in Cicero's *De Legibus* the world of politics, as encapsulated by the *potestas* and *imperium* of the magistrates and the

⁶⁹ See Moatti 1997, esp. 99-155 (= 2015, esp. 94-163). Liebeschuetz 1979, 24, 27 observes that this was possible because the overarching 'theoretical' principles of state divination were 'hopelessly vague.' See also Driediger-Murphy 2019, 38.

⁷⁰ Tucker 1976, 175. MacRae 2016, 28-52 emphasizes its function of social performance within the context of a competitive elite.

⁷¹ Cic. *Leg.* 1.17.

⁷² Dyck 2004, 17.

libertas of the comitial laws, should be moulded by the divine *auctoritas* bestowed by Jupiter. Additionally, the *augures* were crucially instrumental to the enactment of those laws, whose existence and force were derived from a divinely ordered universe and originated from the divine mind of the supreme god.⁷³

Participating in the contemporary debate on the relationship between augural and comitial law (which, it should be noted, is not strictly the same as the relationship between the *augures* and the magistrates who proposed legislative measures to the popular assembly),⁷⁴ Cicero puts forward his vision of politics that, informed by Platonic-Stoic philosophy, was meant for the *hic et nunc*.

It is only when the commonwealth is firmly situated within the religious framework of the *auctoritas* of the *augures* that a stable functioning of the commonwealth can ensue and a virtuous and happy life for its members be guaranteed. As Cicero says at the end of Book 2, as preserved to us, the establishment of religion is the first stage in the creation of a commonwealth.⁷⁵

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⁷³ Cic. *Leg.* 2.10; see *supra* and Schofield forthcoming.

⁷⁴ Scheid 1985, 27: 'le magistrat est toujours un peu prêtre, et le prêtre un peu magistrat.' North 1986 also underlines that in Rome there was no division between religious and secular powers, despite some important differences between the duties of magistrates and priests, and the expectations placed upon them.

⁷⁵ Cic. *Leg.* 2.69: *sic igitur faciam, et dicam de magistratibus. id enim est profecto quod constituta religione rem publicam contineat maxime* ('So that is what I shall do, and I shall speak about magistrates. For, once matters of religion have been settled, magistrates are surely the most important element in the structure of the state').

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