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CONSTRUCTING AUTHOR AND AUTHORITY: GENERIC DISCOURSE IN CICERO'S *DE LEGIBUS*

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Atticus: *Lucus quidem ille et haec Arpinatium quercus agnoscitur, saepe a me lectus in Mario. Sin manet illa quercus, haec est profecto; etenim est sane uetus.*

Qvintus: *Manet uero, Attice noster, et semper manebit. Sata est enim ingenio; nullius autem agricolae cultu stirps tam diuturna quam poetae uersu seminari potest.*

Atticus: Indeed I recognize that grove and this Arpinate oak, which I've often read about in the *Marius*. If that oak still stands, it must be this one; for old it certainly is.

Quintus: Of course it stands, my dear Atticus, and it will always stand, for it has been planted in the imagination. Indeed no farmer's cultivation can produce a plant as long-lasting as that which is sown by the verse of a poet. *De legibus* 1.1

The image of the Marian oak[1] begins *De legibus* with almost postmodern abruptness. This is in part due to the absence of an authorial preface, such as the long statement of purpose partially preserved in *De re publica* 1.1–14, which leaves *De legibus* without a chronological or situational frame of reference. The result is that the treatise begins in a particularly Platonic fashion, as the contemplation of an object in the natural landscape proceeds into a discussion of its symbolic meaning, setting up the dichotomy between perception and reality, *ficta* and *vera*, the past and its memory. The scene is a direct echo of Plato's *Phaedrus*, where Phaedrus asks whether the plane tree by the river Ilissus is truly the place from which Boreas abducted Orithyia (*Phaedrus* 229b ff.). Socrates responds that he lacks the leisure comprehensively to disprove all popular stories, and prefers to

[1] The *quercus Mariana* refers to Cicero's poem about Gaius Marius, and may be the oak by which Marius allegedly received an omen that predicted his return from exile (*De div.* 106.2). The date of Cicero's *Marius* has been debated, but it was most probably written in the early 50s after Cicero's own recall (cf. A. R. Dyck, *A Commentary on Cicero,* De legibus (Ann Arbor, MI, 2004), 57 ff.). Cicero often invoked Marius as a fellow Arpinate and saviour of the state (cf. *De red. pop.* 10, *De leg* 2.6) and used Marius' exile as a parallel to his own (cf. *De div.* 1.59, 2.140). The political ramifications of Cicero's use of Marius' memory (which inevitably brings up the question of Caesar) await more rigorous investigation. For a representative existing study, cf. T. F. Carney, 'Cicero's picture of Marius', *WS* 73 (1960), 83–122, as well as R. J. Evans, *Gaius Marius. A Political Biography* (Pretoria, 1994), with updated bibliography.

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spend his time learning to 'know himself' rather than thinking about irrelevant things. Like Socrates, Marcus is uninterested in arguing about the historicity of the oak, since it belongs to popular memory and is therefore not subject to historical verification. But, unlike Socrates, Marcus does not consider the question to be irrelevant to his discussion. On the contrary, he is eminently interested in considering the similarities and differences between poetry, history, jurisprudence, and philosophy, before proceeding into a dialogue *De legibus*. For Cicero, the question of the *quercus Mariana* is ultimately a question of literary genre, because defining his genre and stance in *De legibus* is his first priority.

Despite the lack of an explicit preface,[2] the opening sections of the dialogue (1.1–20) clearly function as a statement of purpose, devoted to defining, explaining, and justifying Cicero's *modus operandi*. The *quercus Mariana* initiates a series of *recusationes*, as Quintus and Atticus suggest various projects for Marcus to pursue, all of which Marcus rejects with Socratic coyness, explaining why he does so in each case, but letting the attempts continue. It is significant that Cicero devotes such a long and elaborate discussion to explaining why he is not writing historiography, or a treatise on jurisprudence, or subscribing to any one philosophical school (1.1–37). This suggests that a profitable way of making sense of the proem to *De legibus*, and relating it to the rest of the work, is in terms of genre discourse and generic self-definition.[3]

To the extent that every genre is a mode of communication, with its own vocabulary and conventions, Cicero's success as an author depends on signalling the vocabulary that his audience needs to activate in order to understand his meaning. By opening *De legibus* with a

[2] It is not necessary to see the lack of a personal preface in *De legibus* as a feature of incompleteness because the task of situating/defining Cicero's project is accomplished in the course of the proem; it is relevant that Plato's *Nomoi* have no preface either. On the questions of date and completeness, cf. Dyck (n. 1), 52 ff., as well as S. Benardete, 'Cicero's *De legibus* I: Its Plan and Intention', *AJPh* (1987), 295–6, and E. Rawson, 'The Interpretation of Cicero's *De legibus*', in idem, *Roman Culture and Society. Collected Papers* (Oxford, 1991), 125 ff., for discussion and bibliography.

[3] This is the approach of R. Nicolai, '*Opus oratorium maxime*: Cicerone tra storia e oratoria', in E. Narducci (ed.), *Cicerone. Prospettiva 2000. Atti del Symposium Ciceronianum Arpinas* (Florence, 2000), 105–25. For other (in my view less satisfactory) interpretations of Cicero's *recusationes*, cf. Benardete (n. 2), Rawson (n. 2), and Dyck (n. 1) ad loc. for discussion and references. It seems to me that all attempts to see the proem in non-generic terms problematize elements that make better sense if seen as generic discourse. On this point, Nicolai's analysis of Cicero's *recusationes* as generic self-definition is, I think, to be preferred. He does not, however, consider the socio-political significance of different genres at Rome, which is necessary for an accurate assessment of Cicero's political meaning. Here, the relationship between text and context is crucial.

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sequence of *recusationes*, Cicero immediately makes his audience genre-conscious. He warns his audience that he will not be operating in any single genre, while the act of *recusatio* invokes the semantic fields of multiple genres, which Cicero can then exploit simultaneously. Cicero's objections to individual genres are in each case significant, and his freedom in invoking different genres is in itself a statement of originality and intellectual independence. The generic discourse in the proem is instrumental in Cicero's construction of his literary framework in *De legibus*, which is both comprehensible to his audience, in its self-definition against pre-existing genres, and distinctly original, as a sum of its parts. Considering that Cicero's subject is Roman constitutional law, and that any literary work by a senior statesman necessarily had political ramifications, his literary originality and intellectual independence translate into a statement of political authority.

In this paper, I intend to consider the socio-political semantics of different literary genres, as well as the historical context of *De legibus*, in order to assess the political ramifications of Cicero's literary choices. I will begin by addressing the significance of genre in Roman literary culture, in order to create a framework for discussing Cicero's impulse to negate pre-existing genres and manipulate genre conventions. I will then return to the text of *De legibus*, to see how the series of *recusationes* in the proem uses generic discourse to define Cicero's project in the treatise. I hope to show that, because Cicero the author and Cicero the politician are co-extensive in a treatise on constitutional law, the literary task Cicero constructs in *De legibus* also implicitly constructs an authoritative political position for its author.

Although the framework of *De legibus* is inspired by Greek models, its preoccupation with defining its terms is unmistakably Roman. Considering how sensitive Roman society was to social roles, and modes of communication appropriate to different social contexts, it is not surprising that Roman literary culture was also particularly sensitive to literary genre. In addition to being diversified in form, subject matter and style (epic, historiography, comedy, lyric poetry, natural history, etc.), Roman literary genres were defined by the social contexts of their production (for example, state commemoration, public entertainment, patronage, etc.) and possessed different types/levels of social value.[4]

[4] On the socio-political significance of historiography at Rome, and of genre in general, cf. U. Walter, 'Die Botschaft des Mediums: Überlegungen zum Sinnpotential von Historiographie im Kontext der römischen Geschichtskultur zur Zeit der Republik', in G. Melville

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The history of Latin literature has offered suggestive evidence for recent theories that the social value of literary production at Rome was connected with its ability to stake claims on the past.[5] This line of thought proceeds from the fact that Roman social hierarchy was based on ancestry and asserted itself through various mechanisms of commemoration (for instance, funeral laudations, public monuments, cultivation of *imagines*, oral tradition, etc.). Therefore, because Roman social prestige was articulated according to a highly developed system of appeal to memory that was pre-literary, it seems logical that the development of literature should attach greater socio-political weight to genres that were more effective in performing the same function of strategic commemoration of the past. Hence, in terms of its political utility, it would make sense that comedy and lyric poetry ranked low on the prestige scale, epic and historiography high. It is indicative that historiography was, for many generations, the only literary genre practised to any extent by the Roman political elite, since it was a medium in which they could efficiently make claims on the past (by memorializing the deeds of their ancestors, for example) and thereby assert their place in the social hierarchy. Therefore, in considering the impact of Roman pre-literary *Geschichtskultur* on the ways in which different types of literary production conferred different degrees of social prestige, it is significant that historiography had developed as the genre of the ruling class and consequently had prestige value that connoted socio-political authority.

Ultimately, of course, the social value of literary production was inseparable from the social status of the author, which could to some extent outweigh the intrinsic authority of the genre. There was a fundamental difference between a history by a high-ranking senator such as L. Cornelius Sisenna and a history by a political nonentity attached to the Valerii. Only the former had the authority to write contemporary political history, which became an authoritative source on the Sullan period well into the Late Republic, while the latter wrote *ab urbe condita* at great length and was criticized for the inaccuracy of his figures. But, in spite of the high authority inherent in

(ed.), *Institutionalität und Symbolisierung. Verstetigungen kultureller Ordnungsmuster in Vergangenheit und Gegenwart* (Köln-Weimar, 2001), 241–79. On the social context of the development of other literary genres, cf. most recently S. M. Goldberg, *Constructing Literature in the Roman Republic. Poetry and its Reception* (Cambridge, 2005) for discussion and bibliography.

[5] Cf. Walter (n. 4), *passim* and n. 1 for bibliography on this subject.

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historiography, no history could compare in weight with a *commentarius* by Sulla, or indeed Caesar.[6]

Considering that any literary publication[7] by the Roman political elite was inherently a reflection of the author's social status and political stance, it was important for author–audience communication to occur in a controlled environment. No statement that reflected on one's political image could afford to be misunderstood, which might explain why the few literary genres the elite considered worthwhile and appropriate to practice operated according to firmly established conventions. That Annalistic historiography had particularly conservative generic strictures (for example, chronology by annual magistracies, lists of portents, etc.) is related to its self-definition as the genre of national history – notionally, the collected *res gestae populi Romani* – that derived its authority from a supposed tradition of documentary evidence, in which the ruling elite had traditionally inscribed (as well as allegedly fabricated) the *res gestae* of their ancestors.[8] Ancestral claims on political authority were, of course, the bane of the *novus homo*, who had no socially consequential ancestry, although he could make a virtue of necessity and question the legitimacy of prestige based on ancestral connections.

The political context for historiography at Rome should make us wary of Cicero's statement, in *De legibus* 1.10, that historiography is a *munus senectutis* and incompatible with an active political career. It is important to recognize the built-in political semantic of historiography in order to give a balanced assessment of Cicero's remarks on

[6] *Commentarii* emerged as a literary genre among prominent politicians in the first century and were notionally meant to serve as raw material for historians (cf. Hirtius, *BG* 8 pr. 5; Cic. *Brut*. 262, *Ad Att*. 2.1; Plut. *Luc*. 1.4). In practice, this meant that *commentarii* had minimal literary strictures and allowed the author to transfer his extratextual authority completely to the text. Cicero clearly appreciated the usefulness of the *commentarius* and wrote one on his consulship (in Greek), although his attempts to inspire histories met with little success (cf. *Ad Att.* 1.16.15, 1.20.6, 2.1.2, *Ad fam.* 5.12). That Caesar's *commentarii* were spoken of as a definitive account, with which the wise preferred not to tamper (Cic. *Brut* 262, Hirtius, *BG* 8 pr. 5), illustrates the potential of the *commentarius* as a primary emplotment of events and a direct expression of the political authority of its author. Cicero, in fact, speaks of the authority of his own *commentarius* (which allegedly intimidated Posidonius and the Greeks) in similar terms (*Ad Att.* 2.1.2). On Caesar and the genre of *commentarii*, cf. J. Rüpke, 'Wer las Caesars bella als commentarii?', *Gymnasium* 99 (1992), 201–26.

[7] Here, I use the word 'publication' to mean intended public circulation, i.e., outside one's home and circle of *proximi* (Cicero's *anekdoton*, for example, would not qualify). Of course, to some extent, any visible action was a public statement in the unremittingly competitive social world of the Roman Republican elite. It is not trivial that Cicero's relationship with his socio-political environment was particularly dynamic (and unstable) – hence the need to articulate and rearticulate his political identity, which he was able to do with great variety and skill. Therefore, in many ways, literary expression suited him perfectly.

[8] For bibliography on the annalistic tradition, cf. Walter (n. 4), n. 51.

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the genre. Cicero was clearly sensitive about Roman historiography functioning as elite family history, and commented acerbically on the *plures consulatus* and *falsi triumphi* in elite funeral laudations that corrupted the historical record (*Brutus* 62).[9] By questioning the documentary basis of Annalistic historiography, Cicero targets the source from which the genre derived its authority, which, in turn, served as the symbolic basis for the socio-political authority of the Roman elite. Similarly, his frequent criticisms of the work of the Roman annalists as stylistically retrograde, low-quality history (for instance, in *De leg.* 1.5–7, *De or.* 2.51–53) implicitly undermine elite claims on the past. Therefore, his assertion that historiography and politics are incompatible is a deliberate exaggeration for the purposes of *recusatio*. It makes little sense as an objective statement, since it was precisely active politicians who had traditionally dominated the field (L. Cornelius Sisenna being a notable example from the 70s) – which is in part why Cicero's criticism of Roman historians focuses on their style, which was his own *forte*. Naturally, in not writing history, Cicero sought to explain his decision in ways that privileged his viewpoint – which is, after all, what a *recusatio* is meant to do.

That Cicero did not write history in the 50s means that writing history did not offer him sufficient political utility.[10] This may have been for various reasons: as discussed, historiography was laden with literary conventions and political connotations more than any other genre, and did not provide a built-in means for discussing one's own achievements. Cicero clearly found poetry and *commentarii* more congenial for self-commemoration: he wrote a *commentarius* in Greek as well as a poem *de consulatu suo c.* 60, the *Marius* in the early 50s (most probably after his recall), and a three-volume poem, *De temporibus suis*, *c.* 54.[11]

[9] Cf. R. T. Ridley, '*Falsi triumphi, plures consulatus*', *Latomus* 43 (1983), 372–82.

[10] If it is generally useful to consider Cicero's literary production in terms of political utility, it is particularly apt for his work of the late 50s, when his literary output was clearly oriented towards his position in politics. That the Neoterics made poetry their occupation and *nugae* their trademark was a demonstrative gesture against political utility – one of several a(nti)political stances that emerged in the Late Republic (including also the neo-Epicureans) of which Cicero did not approve. On the 'emancipation of poetry', cf. E. Narducci, 'Le risonanze del potere', in G. Cavallo, P. Fedeli, and A. Giardina (eds.), *Lo spazio letterario di Roma antica* (Rome, 1989), ii.561 ff.

[11] When and to what extent this poem was published is uncertain; we know that Caesar read the first book and gave lukewarm comments (*Ad Q. Fr.* 2.16.5), but Cicero does not express firm plans for the poem's publication (*Ad fam.* 1.9.23). For the view that the poem never achieved a wide circulation, cf. S. J. Harrison, 'Cicero's *De Temporibus suis*: The Evidence Reconsidered', *Hermes* (1990), 455–63.

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Considering his political situation in the late 50s, to reactivate the memory of his *res gestae* was what Cicero needed most. After the renewal of the triumvirate at Luca in 56, Cicero found himself high and dry, having overestimated his ability to destabilize Pompey and Caesar's alliance. It was clear that he was intending to undermine Caesar's agrarian legislation, in proposing to revisit the Campanian question in the Senate in May; he had also attacked Vatinius at a time when Caesar's enemies were seeking to revoke his Gallic command, which depended on Vatinius' bill. After the conference at Luca in April, Cicero immediately received a warning from Pompey (*Ad Fam.* 1.9.9); he did not speak at the meeting on Campania (*Ad Q. Fr.* 2.7.2). The years following 56 can be seen as a period of political realignment, during which Cicero renegotiated his position between Caesar, Pompey, and the optimates. In particular, he spent 56–54 atoning for his previous hostilities: he praised Caesar in his speech *De provinciis consularibus* (June, 56) and proposed a fifteen-day thanksgiving for Caesar's Gallic achievements; he also made a point of reconciling himself to his former enemies, notably, by defending Vatinius in 55 and Gabinius in 54. Gabinius had been instrumental in his exile and his conviction, despite Cicero's defence, made a further mockery of Cicero's situation. Therefore, after his forced political volte-face in 56, Cicero struggled to rehabilitate and publicly reasserte his political position throughout the late 50s, for which purposes historiography was evidently less than ideal.

Instead, Cicero produced a three-volume poem *De temporibus suis*, and a corpus of treatises *De oratore*, *De republica*, and *De legibus*, between 55 and 51. All three treatises are political in nature, but approach political subject matter by way of rhetorical theory (defining the role of the orator in the ideal state in *De oratore*) and political philosophy (establishing a practical ideology for the state and its laws in *De republica* and *De legibus*). Because these genres had no established tradition in Latin, Cicero was in each case able to forge his own literary framework, which enabled him to articulate his political stance with full authorial control.[12] Not unlike Horace, Cicero made

[12] Rawson very astutely interprets the Arpinate setting of *De legibus* as a statement that 'even, or indeed particularly, an Arpinate may speak with *auctoritas* on Roman politics' (Rawson (n. 2), 131. In the context of this discussion, it is possible to elaborate on Cicero's meaning: an erudite and cosmopolitan yet very proudly Arpinate *novus homo*, but one who belongs to an *antiquissima* Italian *stirps*, and who is able to combine Cato's ultra-Italian rhetoric with a Greek philosophical framework, and strategically to appropriate the memory of Marius as a fellow Arpinate (but not as, for instance, a military autocrat), is uniquely suited to speak with *auctoritas* on Roman politics. In his literary production, Cicero was skilled at having and eating multiple cakes.

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the most of the fact that he was being both innovative and traditional in importing Greek ideas and adapting them to a Roman context. By asserting that Greek philosophical models were a superior means for analysing Roman political institutions, he privileges his own (non-ancestral) claims to speak with authority on Roman tradition. Similarly, by appropriating the *summi viri* of the Republic as characters in his dialogues to give voice to his political ideas, Cicero implicitly creates his own privileged connection to the *mos maiorum*.

This is an extremely powerful way of constructing his authority – literary as well as political, because, as we have seen, the two are interconnected. It also means, however, that Cicero needs to be painstakingly clear in defining his literary framework, which derives its distinctiveness and versatility from its synthesis of Greek and Roman, as well as historical, philosophical, antiquarian, and other elements. Because Cicero's new framework is an amalgam of existing frameworks, to communicate his meaning effectively he must signal with what generic sensibilities his dialogues should be read at any given point. In his political treatises, Cicero gets remarkable mileage out of exploiting multiple genres, and choosing from their wealth of connotations what it is useful for him to adopt, or to reject pointedly, in articulating his political stance. But, to make this stance convincing, he needs to define, explain, and justify his literary choices.

The issue of genre becomes particularly important in the treatise *De legibus*, where Cicero is dealing with a subject that had traditionally been dominated by an entire discipline of professionals. If, in *De oratore*, Cicero was expounding the universal significance of his own sphere of expertise,[13] and, in *De re publica*, he was breaking new ground by introducing Plato and political philosophy, as well as drawing on his own political experience, jurisprudence was a territory in which Cicero had limited authority.[14] Much as he liked to play up his legal knowledge (even threatening, facetiously, that he could become a jurisconsult overnight on a busy week, *Pro Mur.* 28), it is an important fact that he was trained as an advocate, not a jurisconsult, which meant that he was not technically qualified to give legal

[13] Cf., in particular 3.23, on *eloquentia* as a general concept of universal value and ubiquitous importance; the orator is, of course, its consummate master. For a discussion of Cicero's treatment of *eloquentia* 'in its wider sense', cf. P. A. Brunt, 'Cicero and Historiography', in M. J. Fontana, M. T. Manni Piraino, and F. P. Rizzo (eds.), *PHILIAS KHARIN. Miscellanea di studi classici in onore di Eugenio Manni* (Rome, 1980), i.324 ff.

[14] For example, notwithstanding his augurship after Crassus' opportune death in 53, Cicero's authority on pontifical law was clearly tenuous; for this reason, Book II in fact focuses little on religious laws, or, when it does, takes refuge in antiquarian research (cf. Rawson, 'Cicero the Historian and Cicero the Antiquarian', in idem (n. 2), 67–8).

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opinions. In Cicero's time, with increasing circulation of wealth and booming investment in property and urban real estate, legal consultation was highly coveted as a professional service – so much so that many jurists seem to have dispensed with the *cursus honorum* altogether.[15] There were also large-scale legal experts: Servius Sulpicius Rufus, for example, was the top legal authority at the time and allegedly left an improbable patrimony of 180 books. Therefore, we should be wary of Cicero's statements that, in his day, jurisprudence had become a purely utilitarian profession, with no interest in legal philosophy and constitutional law,[16] since this is precisely the niche that he intends to occupy in *De legibus*. It is imperative for Cicero to distinguish his task from jurisprudence, in which he has limited expertise, and to privilege his own angle on Roman law (via political philosophy), in order to create an authoritative position for himself and his treatise.

With these issues in mind, it is time to return to the proem itself, and to examine in detail how the initial series of *recusationes* functions in constructing Cicero's literary task in *De legibus*, and thereby in constructing his political authority.

From the first exchange (1.1–3), Cicero makes it clear that we are talking about genre: despite the Platonic echoes, the focus of the discussion is poetry, or, more specifically, the role of the poet. Unlike the Platonic plane tree, the *quercus Mariana* is not simply an artefact of cultural memory but a poetic construct, which testifies to the power of poetry to preserve in memory what no longer exists in nature (*multaque alia multis locis diutius commemoratione manent quam natura stare potuerunt*, 1.2). More interestingly, however, poetry has the power to 'memorialize' what never actually existed.[17] It is important that Atticus' question is not whether the eagle's flight out of the oak is a true story, but whether Marcus has taken it from popular tradition or invented it himself (1.3). Marcus retaliates by asking whether it is true that Atticus' houses in Rome and Athens are on the

[15] On the jurists' withdrawal from the *cursus honorum* cf. F. Schultz, *History of Roman Legal Science* (Oxford, 1946), 43. Cicero naturally played this card against Servius Sulpicius Rufus in *Pro Murena*, as evidence that the legal profession had no political utility and conferred no consular *dignitas* (*Itaque, ut dixi, dignitas in ista scientia consularis numquam fuit, quae tota ex rebus fictis commenticiisque constaret, gratiae vero multo etiam minus*, 28).

[16] Cf. *De leg.* 1.14 ff., *Pro Mur.* 23 ff. – the latter being an orchestrated and somewhat disingenuous attack.

[17] On poetry as a creator of tradition, cf. Nicolai (n. 2), 111 ff. His point that Cicero's discussion of genre is ultimately concerned with establishing his authority to interpret the past (111–112, 118) relates compellingly to the argument that Roman political authority was articulated through claims on the past and *mos maiorum* (cf. Walter [n. 4], *passim*).

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sites of Romulus' deification and Orithiya's rape, and warns Atticus against inquiring too pedantically into such traditions (*ne nimis diligenter inquiras in ea quae isto modo memoriae sint prodita*, 1.4). Thus, Marcus takes the Socratic line (cf. *Phaedrus* 229c–30a) and ignores the fact that Atticus has asked him an entirely different question. So Atticus persists: the subject matter of the *Marius* cannot be compared to folklore – it refers to historical events that are recent and relevant enough for people to be concerned about their truth-value; moreover, because Cicero is dealing with recent events that happened in his hometown, people expect him to tell the truth (*veritas a te postulatur*). Marcus immediately responds to the charge: he does not want to be considered a liar, but in this case those *nonnulli* who think that he is lying are ineptly demanding the truth as if he were a witness, not a poet.[18] Hence, by Socratically setting up a hypothetical group of readers with false expectations, Cicero precludes his audience from misunderstanding the genre of his work.

In addition to making a neat Platonic parallel, establishing the Arpinate setting of the dialogue,[19] and invoking the memory of Marius, the *quercus Mariana* also provides a convenient segue into a generic discussion of historiography, which offers Cicero significant political mileage. The *Marius* is a poem about historical events – hence the generic confusion of those hypothetical readers who expect all of its features to be verifiable. So it follows, Atticus innocently asks, that there are different rules for history and poetry (1.5)? Of course, replies Marcus, because poetry operates with a view to *delectatio* and history to *veritas* – although both Herodotus, the father of history, and Theopompus incorporated *fabulae*. Once again, this does not mean that Herodotus and Theopompus are telling lies; *fabulae* are not strictly speaking false, but, like poetry, are a type of information that is not subject to historical standards of verification. Here, Cicero may be distinguishing between information of factual and paradigmatic value,[20] the former belonging notionally to historiography, the latter to poetry – although in practice both operate in both, since there can

[18] I am not convinced that the phrase *non ut a poeta sed ut a teste ueritatem exigant* (1.4) is talking about a separate kind of *veritas* that belongs to poetry (*contra* Dyck (n. 1), 66). Syntactically, *veritas* is the prerogative of the *testis*, the poet being placed in that role by mistake, and the subsequent distinction between poetry/*delectatio* and history/*veritas* echoes this idea. It is not that Cicero is implying that poetry and popular tradition have no truth-value (as we would say) – rather, that judging them by the standards of *veritas* is meaningless because *veritas* is not part of their generic rules. Cicero is making a technical distinction.

[19] On the Arpinate setting as a 'véritable manifeste municipal', cf. C. Nicolet, 'Arpinum, Aemilius Scaurus et les Tullii Cicerones', *REL* 45 (1967), 276–304.

[20] cf. Nicolai (n.2) 112, 118.

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also be *exempla* and *fabulae* in histories and poems about historical events. That Cicero defines the generic boundary between history and poetry, and then immediately blurs it, illustrates his point that generic boundaries are not set in stone. This foreshadows the fact that in *De legibus* he intends to be crossing several: both *veritas* and *delectatio*, factual and paradigmatic knowledge, for example, are guaranteed.

Atticus then asks the next logical question: why doesn't Marcus write history? Here, the chorus of readers-with-false-expectations make their reappearance – they demand that Marcus write history; in fact, they think it is his duty (*munus*) to celebrate the state that he has saved from ruin (*ut ea quae salva per te est, per te eundem sit ornata*, 1.5).What follows is the well-known tirade against Roman historiographers (1.5–6),[21] meant to massage Marcus' ego and proclaim (though not in his own voice) his superior qualifications for writing Roman history (eloquence, erudition) – be it *de Remo et Romulo* or about contemporary events. It is significant that both the deficiencies of previous Roman historians and Marcus' virtues as a potential Roman historian are discussed in terms of literary style, and not in terms of *veritas*, which of course privileges Cicero's own area of expertise and implicitly puts him in a position of authority to redefine the standards by which historiography should be judged.

Having asserted his superiority over the Annalistic tradition, and used this opportune moment to recall his own contributions to history (1.5, 1.8), Cicero delivers his punch line: Marcus is actually not at leisure to write history, which would require him to be free from all business and pressing concerns (*et cura vacare et negotio*, 1.8) for an extended period of time – implying of course that Marcus does not intend to be out of the political arena (or indeed back in exile) in the near future. It is not inappropriate to remember what Socrates said about having no leisure for irrelevant pursuits: Cicero relegates historiography to his retirement, which is when he also plans to be engaged in even more important and fruitful activities (*uberioribus atque maioribus*) such as philosophy, as well as dispensing venerable advice

[21] Atticus' objections to Roman historiography are predominantly stylistic and echo Antonius' speech in *De or.* 2.51 ff. The possibility of viewing these criticisms as Cicero's attack on elite claims to political authority has been briefly discussed. The nuances and ramifications of this idea are too wide-ranging and complex to be addressed in this paper. It is also worth considering whether Cicero's *recusatio* of history in *De legibus* is not an implicit *recusatio* of singing Pompey's praises (which Atticus expects him to do in *De leg.* 1.8). In December 52, Cicero was resentful about the outcome of Milo's trial and relished defeating Munatius Plancus Bursa against Pompey's wishes (*Ad fam.* 7.2). It is perhaps no accident that Pompey's *lex Iulia provincialis* sent him to Cilicia six months later.

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(1.10).[22] Thus, Cicero invokes the semantic field of historiography and establishes his authority to operate in the genre. That he then refuses to limit himself to historiography is a twofold declaration of independence: he makes it clear that both his *munus* as an author (that is, his genre) and his *munus* as a politician (the two being co-extensive) are entirely his prerogative to define.

Marcus' next point of *recusatio* is the legal profession, at which point Cicero is careful in choosing his target: it is specifically legal consultation (denoted by *ad ius respondendum*, 1.12) and, more generally, private law (*ius civile*) against which he is defining his task (1.14).[23] His precise wording of 1.14 is worth examining in detail. Having set up a Platonic *locus amoenus* and an atmosphere of *delectatio*, he now distances himself from any personal involvement or subjectivity: the discussion that follows is to be objective and philosophical. Hence, the precise identity of the legal experts (*summos fuisse in ciuitate nostra uiros*) being criticized for their circumscribed views is deliberately elided. The formulation of Cicero's criticism is deft: it is not the legal experts *per se*, but their very profession (*munus*, again) that is trivialized by comparison to *ius universum* and *ius ciuitatis* (natural and constitutional law), which are to be Marcus' subject. Naturally, Marcus cannot deny the value of *ius civile* in everyday life – to do so would alienate an audience for whom *ius civile* was a staple, while an understanding of universal law had little actual utility. But Marcus can privilege ideology over utility in terms of its greater philosophical value, and appeal to the inclinations of his senatorial audience to profess their commitment to ideological pursuits. By admitting the practical importance of the legal profession, then trivializing its philosophical value (*id autem in cognitione tenue est, in usu necessarium*), Cicero absolves himself from dealing with a subject for which he is unqualified (and in which he is consequently uninterested). Furthermore, by attributing the practitioners of *ius civile* with no greater motive than social ambition (*sed hoc ciuile, quod uocant, eatenus exercuerunt, quoad populo praestare uoluerunt*),[24] he both

[22] For *uberiora et maiora* referring to philosophy, cf. Nicolai (n. 2), 115.

[23] On the different types of law and legal practitioners, cf. D. Johnston, 'The Jurists', in C. Rowe and M. Schofield (eds.), *The Cambridge History of Greek and Roman Political Thought* (Cambridge, 2000), 616–34, with updated bibliography.

[24] Here, I am inclined to interpret *praestare* as 'excel' (preferred by Du Mesnil, Merguet, and Girardet, cf. Dyck [n. 1], ad loc.) and not as 'be useful' (preferred by Dyck). The sense is then identical to 2.47 (*sed iuris consulti, sive erroris obiciendi causa quo plura et difficiliora scire videantur, sive [quod similius veri est] ignoratione docendi…)* and echoes Cicero's frequent statements about the inability of *ius civile* to confer the equivalent of senatorial *dignitas* (cf. esp. *Pro Mur.* 28).

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undermines their claims to social prestige and privileges his own. That Cicero casts himself in a philosophical role, above and beyond everyday materialism and the struggle for social recognition, is a striking (and, from our point of view, interestingly hypocritical) way of expressing his political authority.

Having described, and successfully rejected, the tasks he does not intend to perform in *De legibus*, Cicero arrives at his intended *modus operandi* – political philosophy – although, as we will see, his use of this genre also comes with an implicit *recusatio*. In 1.15, Atticus states his own generic expectations (that is, not those of a hypothetical audience) about what Cicero should discuss (*atqui, si quaeris ego quid exspectem…*). According to Atticus, he should continue in Plato's footsteps and, having written about the ideal state, write about its laws. But Cicero is determined to define his own task. He consents to adopt a Platonic disposition for the purposes of discussing the *fons legum et iuris* (1.16), although his discussion of natural law will draw mainly on Stoic notions. With philosophy as his weapon, Cicero strikes a final blow at the authority of legal consultants: it is ignorance of the law, and not knowledge, that leads to litigation (*potius ignoratio iuris litigiosa est quam scientia*, 1.18), for true knowledge must begin with philosophical understanding.[25] Hence, Cicero's first priority will be to examine the nature of universal law and justice, of which *ius civile* is only a meagre subset that he will also cover in due course (1.17). By professing a commitment to legal philosophy that transcends the utilitarian concerns of the jurists, Cicero is able to display his erudition in the best possible light: he is not practicing sophistry or gratuitously showing off his knowledge; rather, he is doing for the Roman state what it has not done for itself. Because of a general disregard for ideology in his day and age, Greek philosophical models have never been applied to Roman institutions; hence, Cicero plans to take the best from Plato and the Stoics to establish the philosophical foundations from which a proper understanding of the law can proceed.

But philosophy, too, is only a tool in Cicero's belt (although arguably the most important one) and does not encapsulate the goals of his project. Despite being the *mater omnium bonarum rerum* (1.58), and the culmination of the proem, Cicero makes it clear that philosophy is also a means, and not an end in itself. He is determined, for example, to keep the contentious Academy at bay:

[25] On Cicero's use of philosophy as a means of constructing a proper basis for knowledge, cf. Nicolai (n. 2), 118 ff.

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Perturbatricem autem harum omnium rerum Academiam, hanc ab Arcesila et Carneade recentem, exoremus ut sileat. Nam si inuaserit in haec, quae satis scite nobis instructa et composita uidentur, nimias edet ruinas. Quam quidem ego placare cupio, submouere non audeo.

And let us ask the new Academy – the one founded by Arcesilaus and Carneades – to be silent on the subject, since it contributes nothing but confusion to all these issues. For if it intrudes into what we think we have aptly constructed and arranged it will only be counterproductive. At the same time, I wish to conciliate this school of thought and do not dare to eliminate it from the discussion entirely. 1.39

Cicero's method of 'silencing the troublemaker' is not so much a statement of academic Scepticism[26] as a delimitation of the role philosophy is to play in Cicero's treatise. Philosophy may be his credo and his guiding principle, as *sapientia* in the general sense, but as a discursive genre it does not define Cicero's task in *De legibus*, which is not a systematic philosophical investigation. Hence, Cicero's denial of any specific philosophical affiliation: in response to Atticus' taunt that he is subscribing to Stoic thought to the point of losing his intellectual independence (*et scilicet tua libertas disserendi amissa est, aut tu is es qui in disputando non tuum iudicium sequaris, sed auctoritati aliorum pareas*, 1.36), Marcus insists that he is merely trying to be as thorough as possible in setting up a philosophical basis for his discussion of law, so that it can be useful to states and peoples (*ad res publicas firmandas id est ad stabiliendas res sanandosque populos*[27] *omnis nostra pergit oratio*, 1.37). Once again, Cicero draws attention to the fact that he does not represent any single school of thought in *De legibus*, or, if he does, it is for the specific purpose of laying philosophical foundations, which are meant to be universal anyway. The key words are *libertas disserendi* and *auctoritas*, which Atticus calls into question and Marcus promptly defends. Thus, Cicero makes an explicit connection between discursive freedom and authority, in case there is any doubt about what his endless *recusationes* intend to demonstrate.

Ultimately, Cicero's use of philosophy in *De legibus* is calibrated for a Roman audience. Hence, Cicero does not identify himself with any one philosophical school and approaches Greek philosophical concepts with Roman practical wisdom: it is his goal to inculcate the principles necessary to practise law in the best interests of the state.

[26] Here I must disagree with the conclusion reached by W. Görler regarding this passage, although the rest of the discussion is stimulating: cf. W. Görler, 'Silencing the Troublemaker: *De legibus* 1.39', in J. G. F. Powell (ed.), *Cicero the Philosopher* (Oxford, 1995), 85–114.

[27] There is a textual problem; cf. J. G. F. Powell (ed.), *M. Tulli Ciceronis De re publica, De legibus, Cato Maior de senectute, Laelius de amicitia* (Oxford, 2006), ad loc.

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That Cicero implicitly seeks to assert his authority in the Roman political arena means that the ideology he so elaborately sets up in Book I is ultimately a practical one. Hence, after the philosophical principles have been introduced, utility re-enters the picture – except that Cicero's commitment to universal law means that he is serving the interests of states and peoples, not of mere individuals (distinguishing him, once again, from the jurisconsults). More precisely, Cicero's task is to improve the philosophical knowledge of individuals, in order to help them reap the benefits of justice by organizing their states in their best collective interests – all of this Cicero presents in accessible everyday language (*populariter interdum loqui necesse erit*, 1.19; Quintus: *sed te existimo cum populis tum etiam singulis hodierno sermone leges uiuendi et disciplinam daturum*, 1.57). This is a multiple *captatio benevolentiae* for the reader of *De legibus*: not only are Cicero's arguments based on principles that are natural and universal (and therefore incontrovertible), he is using philosophy in order to make law and justice understandable/accessible to everyone (at least notionally, 1.33). Unlike annalistic historiographers, who make history unreadable (1.6–8), and unlike the jurists, who monopolize knowledge of the law in order to exercise influence (1.14, 2.47), Cicero means to help the Roman people get to 'know themselves' (1.58–63) and their own potential to operate in an ideal state with an ideal legal system.

This construction of literary and ideological purpose is a masterpiece of discursive skill, since the purpose of *De legibus* is ultimately both political and self-serving for its author. Like Socrates, Marcus believes that justice and utility are inseparable entities (1.33) – an elegant transition from philosophy to contemporary politics. Having set up a philosophical framework for the ideal constitution in Book I, Cicero spends the rest of the treatise dealing with the Roman legal system, with the implication that the Roman legal system has the potential to approach the ideal, if it operates according to Cicero's philosophical precepts. It is on the authority of these precepts that Cicero analyses current Roman legal practice and proposes various reforms, putting himself and his political agenda in an ideologically privileged position. His presence is, on many occasions, implicitly built into the Roman legal system: *intercessor rei malae salutaris civis esto* (3.11). Having, through literary self-definition, established his qualifications to comment on Roman law from a philosophical standpoint, Cicero establishes for himself a position of prestige and authority with respect to the Roman state.

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This brings us back to the beginning. That Cicero meticulously situates *De legibus* in relation to pre-existing discursive genres in the proem allows him to construct a literary framework that is a unique combination of generic features, and an operating system of which he is in complete control. His literary signature lies somewhere in between historiography, law, poetry, and philosophy – but no single genre can denote him truly. In addition to making a statement of political *auctoritas*, Cicero's intellectual independence and *libertas disserendi* are an expression of identity, which was in literature, perhaps even more than in politics, uniquely his own.

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