

# Cicero's orientalising rhetoric of law in the *De legibus*

Autor(en): **Rothkamm, Jan**

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# Cicero's Orientalising Rhetoric of Law in the *De legibus*\*

By Jan Rothkamm, Paris

*Abstract:* This study analyses Cicero's theory of persuasive legislation as developed in the dialogue *De legibus*. It discusses three criteria selected by Cicero from standard rhetorical theory – *verba prisca*, *brevitas*, and *prooimia* – as well as their adaptation to the particular task of drafting laws. Special attention is drawn to the fact that these criteria are not only features of Cicero's own fictive law codes in book 2 and 3 of the *De legibus*, but also of real laws, including very ancient ones from the Eastern Mediterranean, Asia Minor, and the Fertile Crescent.

## I. Date of composition and background

In all likelihood *De legibus* was written at the end of the 50s. An allusion to the death of Clodius, combined with the fact that Atticus starts to be called “Atticus”, suggests that the main drafting took place somewhere between 52 and 50.<sup>1</sup> More important than the exact date of composition is the relation with the work that immediately preceded *De legibus*, *De re publica*. In late 54, Cicero received criticism for having chosen a historical setting for that dialogue (*ad Q. fr.* 3.5.1), and while he did not implement the advice immediately, he applied it to the later dialogue, speaking now under his own persona to his brother Quintus and his best friend Atticus on the family estate. Notwithstanding the changes in atmosphere that result from this decision – the discussion in *De legibus* is more intimate and less formal –, both dialogues remain closely connected to each other in terms of content.<sup>2</sup>

In *De re publica* 3.4, a carefully arranged list of *laudandae civitates* – at the beginning of a sentence only partly preserved – illustrates the geographical scope of Cicero's political thinking: *quod si aut Italiae Latium aut eiusdem Sabinam aut Volscam gentem, si Samnium, si Etruriam, si magnam illam Graeciam collustrare animo voluerimus, si deinde Assyrios, si Persas, si Poenos, si haec [\*\*\*]*. While it is evident that Cicero was not as familiar with the Near East as he was with the regions of Italy or Magna Graecia – relying in the case of Persia, for

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1 See *leg.* 2.42; P. L. Schmidt, *Die Abfassungszeit von Ciceros Schrift über die Gesetze* (Rome 1969); D. R. Shackleton Bailey, *Onomasticon to Cicero's Treatises* (Stuttgart 1996) 21.

2 On the question where exactly the line between *rep.* and *leg.* was originally drawn, see the apparent reference to *leg.* 1.41, not *rep.*, in *Att.* 7.2.4; cf. also A. Lintott, *Cicero as Evidence* (Oxford 2008) 436–437.

example, on literary accounts such as Xenophon's *Cyropaedia* (*fam.* 9.25.1) –, the drawing of so direct a parallel is nonetheless striking: A fragment on the “ugliness” of Sardanapalus from the same book suggests that Assyria was not referred to for ornament only, but discussed about at some length.<sup>3</sup>

Complaints about a lack of time and motivation in the summer of 51 have traditionally led scholars to assume that the proconsulship in Cilicia prevented Cicero from undertaking any serious projects,<sup>4</sup> and that *De legibus* was left behind in Rome, unfinished. But it is not excluded that Cicero formulated or at least refined parts of his ‘Asiatic’ theory of legal rhetoric while actually being in Asia.<sup>5</sup> Law 3.9.4 seems to describe almost literally his experiences in 51–50: *imperia potestates legationes ... ex urbe exeunto, duella iusta iuste gerunto, sociis parcunto, se et suos continento, populi sui gloriam augento, domum cum laude redeunto*. Now Cicero left Rome, he conducted military operations, “spared” his local allies, constantly referred to his own moderate spending, restored (at least in his own eyes) the “glory” of Roman occupation after the mismanagements of his predecessor, and finally – as the whole enterprise turned out to be, rather unexpectedly, a success, also in terms of personal development – he went home, hoping for a triumph (*cum laude*).<sup>6</sup>

What is not referred to in the law, but of some relevance for the dialogue, is the rôle of a proconsul as a judge and drafter of the provincial edict: In autumn 51, shortly after his arrival, Cicero tried to make his predecessor Appius believe – apparently in order not to offend him – that he had brought the text of his edict already prepared from Rome, without changing much in response to complaints (about Appius) expressed by the local population.<sup>7</sup> It would be similarly naïve to assume that *De legibus*, simply because it is about Roman institutions, must have also been written in or around Rome.

3 Fr. 6a Powell (*vitiis multo quam nomine ipso deformior*), attributed by Ferrary to Laelius’ speech 3.21–34.

4 See D. R. Shackleton Bailey, *Cicero’s Letters to Atticus III* (Cambridge 1968) 216 on the equine metaphor *non habeat satis magnum campum* (*Att.* 5.15.1): “in Asia C.’s talents and energy are like stalled horses”.

5 Cf. A. R. Dyck, *A Commentary on Cicero ‘De Legibus’* (Ann Arbor, Mich., 2004) 7: “in Cilicia he may conceivably, to the degree possible, have continued the writing”.

6 For military action in the footsteps of the great Alexander, see *Att.* 5.20.3; for *sociis multo fidelioribus utimur quam quisquam usus est*, *ibid.* 5.18.2; for no-*sumptus* aka *lex-Iulia* references 15.3.2; 13.3; 16.1.2; 7.32.6; 6.7.2 etc.; in *Att.* 6.6.4, Cicero speaks about his *παλιγγενεσία*.

7 *Romae composui edictum; nihil addidi* (*fam.* 3.8.4). As a brother of Clodius, Appius had opposed Cicero’s return in 57. Cicero criticises his political decisions implicitly in the letters to the Senate (*fam.* 15.1.5), overtly in those to Atticus (5.15.2; 16.2; 17.6; 6.1.3), but never, it seems, in public (cf. *Att.* 6.6.1 *dum in provincia omnibus rebus Appium orno*).

## II. Verba prisca

Before pronouncing the first set of laws (2.19.1–22.16), Marcus announces a change of style from the *sermo familiaris* to a presentation *legum voce*. Asked by his brother for clarification, he explains: *sunt certa legum verba, Quinte, neque ita prisca ut in veteribus XII sacratisque legibus, et tamen, quo plus auctoritatis habeant, paulo antiquiora quam hic sermo est. Eum morem ... consequar (leg. 2.18).*

At first glance, *legum verba* seems to refer to technical language, as in a rejoinder by Quintus to a metaphorical allusion by Marcus to *usucapio*, *possessio*, and *terminos pangere* in book 1.<sup>8</sup> From the illustration *ut in veteribus XII sacratisque legibus*, however, it soon becomes clear, that the reference is to archaic language more in general and to the times of an overlap of the sacral with the civil sphere.<sup>9</sup> Interestingly, the remark about the *finis* of *verba prisca* – *quo plus auctoritatis habeant* – recalls the criticism Cicero had received about *De re publica*, as already referred to above: *multo maiore auctoritate illis de rebus dici posse si ipse loquerer (ad Q. fr. 3.5.1).*

If archaic language translates into greater *auctoritas*, why does Marcus announce only a moderate form of it (*paulo antiquiora*)? Most likely for the fear of *obscuritas*: Laws were notorious for being difficult to understand by the very communities that had once adopted them, and the two examples mentioned by Marcus were prominent illustrations of the phenomenon in Rome.<sup>10</sup> Besides, authentic archaic language could easily have offended the ear of a cultivated Roman of the first century as *horridior*, i.e. not polished enough,<sup>11</sup> thus undermining the effect it was expected to bring about, that is, heightened respect and reverence.

It is not known whether Cicero thought about altering the outward appearance of his laws. Of a much older legal monument, the Code of Hammurabi, an original copy is still extant (the stone stela now in the Louvre), which reveals a number of features adopted by the royal craftsmen to impress the reader, including an archaic writing direction (from right to left) and the use of old-fashioned

8 See leg. 1.56 *iam nunc a te verba usurpantur civilis iuris ac legum, quo de genere exspecto disputationem tuam.*

9 XII is Cujas' emendation for the codd. *ex (h)i(i)s*, cf. *et in pontificum libris et in XII tabulis (de orat. 1.193)*. On the concomitance of "Rechtssprache mit der priesterlichen", "zumal für die älteren Zeitepochen", see E. Norden, *Aus altrömischen Priesterbüchern* (Lund 1939) 12, 72, 75; also J. Linderski, "The Augural Law", *ANRW II.16-3* (Berlin 1986) 2247, who points out the absence of "a separate collection of [augural] terms".

10 Cf. Diodorus 12.35.3 on Diocles' laws (presumably not *the* Diocles) τοὺς νόμους γεγραμμένους ἀρχαίᾳ διαλέκτῳ δοκεῖν εἶναι δυσκατανοήτους; Quint., *inst.* 1.6.40 *Saliorum carmina vix sacerdotibus suis satis intellecta*; Gell. 20.1.4–5 on the *obscuritates* of the Twelve Tables.

11 See esp. in *Brut.* 68 (*antiquior est huius sermo et quaedam horridiora verba Cato*), 83 (*vetustior et horridior ... quam Scipio Laelius*), 117 (*oratione durus incultus horridus Tubero* [not the jurist, but the 2c. Tubero of *rep.* 1]), 238 (*non valde nitens, non plane horrida oratio C. Licinius Macer*), 268 (*verba non horrida sane L. Cornelius Lentulus Crus*).

signs (over-explicit to the point of revealing in some cases their pictographic origin).<sup>12</sup> Although tentative and not always conclusive, a category of ‘epigraphic’ spellings could explain in Cicero’s case a number of readings that have puzzled medieval copyists and modern commentators alike, such as *non<tii>* (2.22.7) and *relinquo<n>to* (3.7.3), *<c>osci<s>centur* (3.10.6) and *cesoris* (3.11.13).<sup>13</sup>

The picture is less blurred in the case of a revival of an older and more correct *mos* of pronouncing (or spelling) certain words. The drafter(s) of the Codex Hammurabi, for example, took especial care of the Aleph, the guttural click that easily falls out of or off a word, very visibly accounted for by Ū-signs, I.A-ligatures and E,<sup>14</sup> while they rejected at the same time more recent linguistic developments such as *ina* for *in* (out of a false analogy with *ana*) or *-šina* for *-šin*.<sup>15</sup> In a similar manner, Marcus restores the *v* originally present in *deus* and *aetas*,<sup>16</sup> and refers in a list of punishments to *vinclis*, as if modern *vincula* were “fettters” not fast enough.<sup>17</sup>

- 12 Differentiate ‘archaic’ Sumerograms, such as GAL.BŪR “giant snake” ii.55 or NUMUN “seed” v.1, written phonetically *ú-šu-um.gal* and *ze-ru* in AO (although not in ii.13) from later ‘short-hand’ Sumerograms, such as BM’s É and NUN for *bi-tim* and *ru-bu-um* on the stela ii.66; iv.32. As to the writing direction, it had changed on tablets to left-to-right on horizontal lines, although the old style appears to have been preserved for royal inscriptions, cf. H. Schaudig, *Die Inschriften Nabonids von Babylon und Kyros’ des Großen* (Münster 2001) 82–83 for the neo-Babylonian cylinders excavated in an upright position.
- 13 *Non<tii>* is Vahlen’s emendation for the mss.’ *non*. Powell adopts it as *nuntii*, although he calls Vahlen’s spelling in “Cicero’s Adaptation of Legal Latin”, *Aspects of the Language of Latin Prose* (Oxford 2005) 143 “a plausible suggestion”, cf. *pronuntiatio* in the *lex repetund.* (CIL I<sup>2</sup> 583) 42, 47 (“E 32”). – *Relinquo*, based on *relinquot o* in *B* against *relinquonto* of the rell., has been adopted by both Vahlen and Powell, in spite of *relinquonto* (ω) in 3.9.6. – *B*’s †e|scicenturo† has been understood as *consciscentur* already in the 16c. editions by J. Bade, but the form with *co-* is Vahlen’s restoration (“posui”), cf. *cosol cesor* (along *consol censor*) in the *Elog. Scip.* (CIL I<sup>2</sup> 7–9) or *cosoleretur* after *consoluerunt* in the *S. C. de Bacch.* (*ibid.* 581) 1, 6, 9, 18. Powell rejects it, in spite of the fact that *con-* is found in none of the mss. before *-sci-*. Dyck (n. 5) 470 “wonders whether the omission of the nasal ... may go back to Cicero’s dictation”. In the *ThLL* and the *OLD*, *coscisco* continues to be presented as “archaic”. – *Cesoris* is close to the oldest mss. (*c(a)esoris* in *B* and *A*, then mistaken for *cesaris* in *H* and *L*), but has again been banned by Powell to the app. crit. “*cesoris* fortasse scribendum erat”, this time because of *ensoris* (ω) 3.7.3.
- 14 Cf. *ú-šar-bí-ù-šu*, *ib-bi-ù*, *ib-ni-ù-šu* etc. (i.15, 17; ii.15); *rē’ûm* and *lē’ûm* (i.52, 63); *wa-ši-e-im=ma* (i.42).
- 15 See R. Hasselbach, *Sargonic Akkadian* (Wiesbaden 2005) 167–168 and on the stela in *Igigi* i.14 (*i-na* AO); in *kibratim* i.18 (*i-na* AO); in *karašim* iv.13 (*ina* Roth) etc. BM corrects the particularly offending *i-na* i.20, but not those of the third addition iv.60, 61, 66, nor v.22. Cf. also the crude simplification of *i-nu-mi-šu* (i.27; v.25) to *in-a u<sub>4</sub>-mi-šu* in AO. As to *-šina*, where a case for *paulo antiquiora* could be made (given that the original pronunciation was /-sin/, Hasselbach, *ibid.* 153), cf. *šu-ba-ti-ši-in* iv.15 and *iš-di-ši-in* iv.42 (*-ši-na* BM).
- 16 See 2.19.1, 7; 20.2, 3; 21.10; 22.2 and 3.7.3; 9.1, respectively; *aevitas* features prominently in the Twelve Tables I.3.
- 17 See law 3.6.2 *multa vinclis verberibusve coerceto*; the combination with *verberibus* already in *de orat.* 1.194 *vinclis, verberibus* (some of the younger codices have *vinculis*) and in *rep.* 3.33 [= 34] *vinculis verberibus* (due to the transmission of the text via Augustine, but see also *e*

Third, there is the use of archaic in the sense of poetic and elevated language, as in the Codex Hammurabi in expressions such as *šulūl mātim* “shadow (= protection) of the land”, *nagab uršim* “source (= totality) of wisdom”, *dadmū* “dwellings” (for the “people”, *nišū*, that dwell there), or “growler” for “rebel” (*nābiḥum*).<sup>18</sup> Similarly, Marcus employs *iurgium* for *lis* (2.19.9), *famulus* for *servus* (2.19.9; 22.4), “sinner” (*sons*) for “delinquent” (3.6.5), as well as three of the four archaisms Cicero had recommended in *De oratore* 3.153, that is, ‘*prolem*’ aut ‘*subolem*’ aut ‘*effari*’ aut ‘*nuncupari*’.<sup>19</sup> As in the case of the ‘epigraphic’ spellings, some of these expressions were so rare that their meaning appears to have escaped already the Old Babylonian copyists, e.g. *na-bi-ḪI*, a hapax.<sup>20</sup>

To avoid the impression of *oratio horrida* or outright incomprehension on the part of the reader Cicero adopted various strategies. First, there is no indication in the codices that he would have preferred to see his much-loved *habento* spelt with *hap-*, as on the Lapis niger (if correctly restored by Stroux), or the law *Sacra sollemnia obeunto* 2.19.8 with *sollempnia*, as in Cato’s speech against L. Veturius.<sup>21</sup> More in general, Marcus seldom combines an archaic stem with an archaic ending or vice versa. Forms of *olle*, for example, are frequently employed, but always with the more familiar endings of *ille*, never as *ollus*, *olleis* or *oloes*.<sup>22</sup> With regard to finite verbs, it is usually the stem that is well-known from prose,

*corporum vinculis* in the *Somnium*, *ibid.* 6.18 [= 14]). The law about minor magistrates 3.6.5 *vincla sortium servanto* (Powell) appears in various older editions (e.g. Vahlen<sup>1,2</sup>, Ziegler, de Plinival) with *vincula*, apparently an error, as the form is never discussed in the apparatus critici.

- 18 See on the stela ii.48; iv.10, 25, 59. *CAD N/1* lists *nagbu* in the sense of “totality, all” separately as a “poetic term”. For the “bab.lit.” register of *da-ad-mi*, see von Soden, *AHW*; also Schaudig (n. 12) 56 “sicherlich gehobenes Babylonisch”.
- 19 Given identical meanings, the first pair is found in one and the same law, 3.7.3 *suboles ... censesto ... prolem describunto*. In *rep.* 2.40, Cicero softens *proles* by *quasi*, but not in the solemn atmosphere of the *Somnium rep.* 6.27 [= 23]. *Effata* is used by Cicero in 2.21.4 *templa ... effata habento* in a sense explained by Varro, *ling.* 6.53 and 7.8, as well as in the circular expression *fatidicorum et vatium effata incognita* 2.20.5, which is perhaps better read – with Vahlen and & *fata* in *B* and *A* – *ecfata*, contrast modern *ex oraculo ... effatus rep.* 5.1 with older *ex oraculo ecfatam div.* 1.81.
- 20 AO’s *na-bi-i* may indicate the loss of an aleph, but BM’s *na-[b]i-um* appears to be simply wrong, cf. R. Borger, *Babylonisch-assyrische Lesestücke II* (Rome 2006) 10 “wohl korrump”. For the interpretation of the term as “growler”, see G. R. Driver/J. C. Miles, *The Babylonian Laws I* (Oxford 1951) 40; von Soden, *AHW*, derives the word from *nabā’um* “etwa: aufsteigen, aufsprudeln” (as said of the Tigris); cf. also the renderings of נבי and נבי as “prophet” and “bark (of dogs) ... fig. of helpless prophets” in the *BDB*.
- 21 See J. Stroux, “Die Foruminschrift beim Lapis niger” *Philol.* 86 (1931) 467, 491 and Festus p. 466 Lindsay (= *ORF*<sup>4</sup> fr. 72), respectively. *Habento*, as in X.4 of the Twelve Tables discussed in *leg.* 2.59, encounters in Marcus’ laws 2.19.9; 21.4; 22.15; 3.7.3; 8.2; 10.1.
- 22 Only plural forms are found, mostly masc. (*olli*, *ollis*, *ollos*, cf. 2.19.7; 21.2; 22.16; 3.7.2; 8.2; 9.3; 11.10), but also *olla* (2.19.7; 21.11). The ablative *ab oloes* is mentioned by Festus p. 17 Lindsay. *Olleisque hominibus* is found inter alia in the *lex de XX quaest.* of 81 (*CIL I*<sup>2</sup> 587) i.5. Cicero will have known *ollus* from the formula ‘*ollus leto datus est*’ cited by Varro, *ling.* 7.42, cf. law 2.22.15 <su>os leto dato<s> divos habento.

then ‘adorned’ by an *-(n)to* ending characteristic of law,<sup>23</sup> except for occasional *faxit* or *iudicassit* (in lieu of *fecerit*, *iudicaverit*) in dependent clauses.<sup>24</sup> Another harmless mutation is the return to *verba simplicia*, as in the case of *cernere* for *decernere*.<sup>25</sup>

A strategy more puzzling for the modern reader is the mix of old and new forms: The *loed-* of *loedis publicis* 2.22.2, for example, reappears in the clausula of 3.7.1 suddenly modernised as *ludorumque sollemnium*, although the laws of book 3 elsewhere abound in *oe-*forms such as *oenus*, *oesus* or *coerari* (3.9.2; 10.7; 10.8). In contrast, older *duellum* is consequently employed in the third (9.2; 9.4), but alternates with *bellum* in the second book (21.2; 21.7).<sup>26</sup> Sometimes the change occurs within a few lines: *pianto* 2.21.10 is followed by *expianto* 2.22.1, *divos* 2.19.1 by *deus* 19.2, and the original reading of *plures in plura* 3.6.5 may have been *plures im ploera*.<sup>27</sup>

- 23 A more exotic form of the *-(n)to* class is *appellamino* in law 3.8.2, where an ending originally created for the singular of deponentia – cf. *antestamin<o>* in the Twelve Tables I.1 (as the likely conjecture for Porphyrio’s †*antestamInigitur*†) or *nei habeto nive fruimino* in the *Sent. Minuc.* (*CIL* I<sup>2</sup> 584) 32 – is employed for the passive plural of an active verb (*iique ... appellamino*). Often denounced as “mißratener Archaismus” (Stolz/Schmalz *ap.* Leumann/Hofmann [1928] 308) or a “false archaism” (W. de Melo, *The Early Latin Verb System* [Oxford 2007] 64 n. 6), the form has been defended by D. Daube, *Forms of Roman Legislation* (Oxford 1956) 59–60 (“Cicero may well have known ... a law where *famino* ... meant ‘there shall be saying’ in the sense of ‘they ... shall say’”), cf. also the characterisation as “künstlich archaisierend” by Leumann himself (1977) 571.
- 24 *Faxit*, as in 2.19.2, is regularly found in the Twelve Tables (I.15, 18; VIII.2; XII.2 Crawford); for the subjunctive denoting (legal) eventualities, cf. Hor., *serm.* 2.3.38 *cave faxis / te quicquam indignum*; the ending was originally long (Leumann § 451.2), the shortening of *-it* “still in progress 200 B.C.” (de Melo [n. 23] 4 n. 4). *Dixerit* in law 21.5 (for the mss.’ *defixerit*) suggests that Cicero normally tried to avoid the form in case of a potential confusion with ‘normal’ *dixit*. If Tourneboeuf alerts the reader that *iussit* 2.21.8 stands for *iusserit* (as in 3.8.1; 9.4), one wonders why he proposed to emend *cleperit* 2.22.5 to *clepsit* and not to *clep<s>erit* (as Minuziano had, still followed by de Plinval); because of the *rapsit* which follows, or because of Livy’s *si quis clepsit* 22.10.5? The equivalent for non-consonantal verbs (model *amassim*) is less problematic, as the stem is not concealed by the sigmatic extension; except for *habe<s>sit* 2.19.3 (Minuziano’s emendation), these forms mainly encounter in book 3, note the beautiful passive *turbassitur* 3.11.5.
- 25 *Cernere* is frequently employed in book 3 in the fixed expression (*quodque*) *senatus creverit* 3.6.5; 8.1; 9.2; 9.4.
- 26 By excluding *belli* from law 2.21.7 (“*delevi*”) and adopting *ibid.* (the admittedly beautiful) *duella disceptanto* (“*bella fort. duella*”), Powell would effectively have banned *bellum* from both sets of laws. But coherence is not Cicero’s sole criterion, cf. his translation of Plat., *Leg.* 12 (956a3, 7) in *leg.* 2.46: *πολέμων ὄργανα* is rendered *duelli instrumenta*, but *ἀλλ’ ἢ πρὸς τὰ πολέμων nisi a bellicis insignibus*.
- 27 Dyck (n. 5) 312 holds, following Fugier, that *piare* is no archaism at all, but only rarer (a theory already suggested for *famulus*, in the tradition of Wilhelms, *ibid.* 298). *Divus/deus* is an old contrast, cf. *divum deo* in the first line of the *Carmen saliare*, as cited by Varro, *ling.* 7.27. *Plures im ploera* is Vahlen’s reading in his 1860 study (*Gesammelte philologische Schriften* I [Berlin 1911] 537, 11) and his first edition (1871), repeated with *imploera* (fully to match *B*) in the second (1883) (“*conf. pro Tullio* 20 ... *immeo*”).

It is possible that Cicero would have defended these irregularities in the same way as he explained in *Orator* 159 the lengthening of *con-* before *s* and *f* (but not before other consonants): *consule veritatem: reprehendet. Refer ad auris: probabunt*. The ‘music’ of the laws was certainly important, if they were meant to be learned by heart, something Cicero had done for the Twelve Tables as a boy.<sup>28</sup> The line *templa liberata et effata habento* 2.21.4, for example, would have been less easy to pronounce with *ecfata* from 20.5, and the law 22.8 *impius ne audeto placare donis* would not have come to a conclusion as smooth as *iram deorum* with *divorumque iras* from 21.3. Besides, real legislation displayed similar aberrations, not only the laws of the revered past, but also of Cicero's own times.<sup>29</sup>

### III. Brevitas

The *eum morem*-sentence actually reads in full: *eum morem igitur, cum brevitate, si potero, consequar*.<sup>30</sup> Although announcements to be brief can be misleading in Cicero's writings,<sup>31</sup> a continuation of the sentence, loosely connected to the previous one by non-adversative *autem*, suggests that Marcus is this time serious about *brevitas*: *leges autem a me edentur non perfectae – nam esset infinitum – sed ipsae summae rerum atque sententiae*. Two, almost identical reactions by Quintus at the end of each law set confirm the impression that conciseness is important for the rhetoric of law: *conclusa quidem est a te, frater, magna lex sane quam brevi* and *quam brevi, frater, in conspectu posita est a te omnium magistratuum descriptio* (*leg.* 2.23; 3.12).

In a letter to Atticus of spring 50, Cicero illustrates what he means by the concentration on *ipsae summae rerum*. About the edict for the Cilicians he writes:

*breve autem edictum est propter hanc meam διαίρεσιν, quod duobus generibus edicendum putavi; quorum unum est provinciale, in quo inest de rationibus civitatum, de aere alieno, de usura, de syngraphis, in eodem omnia de publicanis;*

- 28 See *leg.* 2.59 *discebamus ... pueri XII ut carmen necessarium, quas iam nemo discit*. Aelian, *Varia Hist.* 2.39, describes the practice of the children of Crete, the island famous for its legal conservatism in the Eastern Mediterranean, to learn the laws of their community μετά τινος μελωδίας.
- 29 See, apart from the examples of the third and 2c. quoted in n. 13, *olleis legibus illeis regionibus* in the *lex Furf.* of 58 (*CIL* I<sup>2</sup> 756) 3, to be compared with later *his legibus hisque regionibus* (*CIL* XII 4333) ‘ii’ 8–9.
- 30 *B*'s *potero* instead of *potuero* (as originally in *A*) has been adopted, to create a bit of suspense, cf. *Att.* 8.4.2 *semper enim ‘si potero’, ‘si ante suscepta causa non impediar’* and, for other examples, *fam.* 1.9.10 *summam ... tibi, si potero, breviter exponam*; *leg.* 2.34 *reddam vero [sc. cetera], et id si potero brevi* (but see also *faciam breviter si consequi potuero, ibid.* 3.49).
- 31 “Brevis responsio non fuit,” remarked e.g. Paolo Manuzio (*ap.* Shackleton Bailey, *Epistulae ad Familiares* I [Cambridge 1977] 365) as to the opening lines *faciendum mihi putavi ut tuis litteris brevi responderem* in one of Cicero's letters to Appius (*fam.* 3.8.1), followed by a long and angry defence of the decisions taken as the new proconsul.



*alterum quod sine edicto satis commode transigi non potest, de hereditatum possessionibus, de bonis possidendis, magistris faciendis, <bonis> vendendis, quae ex edicto et postulari et fieri solent; tertium de reliquo iure dicundo ἄγραφον reliqui. dixi me de eo genere mea decreta ad edicta urbana accommodaturum, itaque curo, et satis facio adhuc omnibus (Att. 6.1.15).*

Before the drafting, Cicero seems to have reread all the material that could be included in his text and then to have reorganised it in order to throw out a whole section that would have produced but redundancies.<sup>32</sup> Whether the division of the laws in *De legibus* is equally neat, is more difficult to say, as the dialogue does not seem to have been preserved in full and was very likely left unfinished by Cicero himself.<sup>33</sup> Still, the fact that the two laws sets of book 2 and 3 amount in the format of the Oxford Classical Texts series to no more than four or five pages each is not a minor achievement.

For the sake of conciseness, Cicero rejected the fussy legal language of his day and instead followed the style of the Twelve Tables, renowned for their “absolute brevity”.<sup>34</sup> At the same time, he appears to have been reluctant to renounce the habit of producing beautiful and appealing prose as opposed to technical language in general.<sup>35</sup> While this compromise often led to felicitous outcomes – as in the case of the majestic conclusion *o<lli>s salus popul<i>suprema lex esto* (3.8.2) without *-que* (as in 3.7.2; 9.3; 11.10)<sup>36</sup> or the forceful ellipsis *periuarii poena divina exitium, humana dedecus* (2.22.6) without *esto* (as in the preceding law)<sup>37</sup> –, some of the solutions do not fully convince: The anachronistic use of *ast*, for example, may betray a rather desperate search for linking options within a framework that was by nature arid and asyndetic.<sup>38</sup> In

32 See A. J. Marshall, “The Structure of Cicero’s Edict”, *AJPhil.* 85 (1964) 188: “The implication is that the normal edict was longer, did not include only these two *genera*, and hence contained the third one written out in full. Moreover, the specialized vocabulary of the passage indicates that Cicero is here describing, not the actual divisions of his written text, but the method employed to effect this cut in his edictal material.”

33 The unfinished status of the work remains the best explanation for the omission in the list *div.* 2.1–4. *Macr., Sat.* 6.4.8 refers to a fifth book *De legibus*, but this finding cannot be confirmed independently and may reflect an earlier stage of the dialogue(s), cf. n. 2 above.

34 See Gellius 20.1.4 *eas leges* [sc. *duodecim tabulas*] *eleganti atque absoluta brevitate verborum scriptas*; Fr. Schulz, *History of Roman Legal Science* (Oxford 1946) 96: “In contrast to the Twelve Tables the later *leges* are written in a circumstantial, clumsy, pedantic, and meticulous style, the purpose of which is to achieve complete certainty and to leave nothing to juristic interpretation”.

35 Cf. Powell (n. 13) 131 on “rhythmical practice” and “sentence structure” in Marcus’ laws “characteristic of Cicero but very uncharacteristic of legal texts”.

36 The correction of *populo* ( $\omega$ ) to *-li* is Minuziano’s, but *ollis* for *oius* is only found in the margin of *Par. lat.* 15084, f. 30.

37 Lambin’s *<esto>* is not necessary in this context and perhaps no emendation at all, see Norden (n. 9) 61; Daube (n. 23) 108.

38 Traditionally, as in the provision *cui auro dentes vincti es<u>nt ast im cum illo sepel<i>et uretve, se fraude esto* from the Twelve Tables (X.8) discussed in *leg.* 2.60, *ast* is used for the se-

general, however, Marcus' laws can count as *sententiae* in both senses of the word, i.e. "a judicial pronouncement" as well as "a terse and pointed observation" (*OLD* s.v., sense 5 and 6).

Interestingly, in the case of law, a less explicit formulation is not necessarily the less clear.<sup>39</sup> Compare for example § 73 of the *lex Ursonensis* (*CIL* II<sup>2</sup> 5.1022) xxiii

*Ne quis intra fines oppidi colon(iae)ve, qua aratro circumductum erit, hominem mortuom inferto neve ibi humato neve urito neve hominis mortui monimentum aedificato. Si quis adversus ea fecerit, is c(olonis) c(oloniae) G(enetivae) Iul(iae) sestertium V milia d(are) d(amnans) esto, eiusque pecuniae cui volet petitio persecutio ex <h>ac <lege> esto. Itque, quot inaedificatum erit, Iivir aedil(is)ve dimoliendum curanto. Si adversus ea mortuus inlatus positusve erit, expianto uti oportebit.*

with the matching provision from the Twelve Tables (X.1), as discussed by Cicero *De legibus* 2.58:

*Hominem mortuum in urbe ne sepelito ne urito.*<sup>40</sup>

While the modern, provincial drafter obscures the legal message by preliminary definitions, the formulation of sanctions, procedural details and the discussion of further eventualities, the ancient Roman legislator goes straight to the normative essence. It is obvious that Cicero was first and foremost interested in the latter, and it is not excluded that he read – and subsequently presented to us – the Twelve Tables from a philosophical point of view, i.e. selectively and irrespective of legal practice.

cond part of the protasis "and (if) then", i.e. as a sub-condition, cf. M. H. Crawford, *Roman Statutes* II (London 1996) 611 (*ad* I.17). Cicero, in contrast, who in general avoids *si* (found in 2.2.18; 3.9.2 only), esp. at the beginning of a law, employs it in 2.19.7 for the third element of a cumulative series (*divos et eos qui caelestes ... sunt colunto et ollos quos endo caelo merita locaverunt ... ast olla propter quae datur homini ascensus in caelum*, corrected by Minuziano 'back' to *et*, and still rejected by G. Pascucci, "Aspetti del latino giuridico", *Stud. Ital.* 40 [1968] 31 as "un falso arcaismo") and in book 3 regularly for simple eventualities (3.9.2 *ast* [a si B et A] *quando ... discordiae ... escunt*; 9.3 *ast quando consulis ... nec (e)r(unt)*; 10.3 *ast potestas par maiorve prohibessit* [cf. in 6.2 with *ni*]; 10.7 *ast* [aut  $\omega$ ] *quid erit*; 11.5 *Ast quid turbassitur*). One wonders, however, whether Atticus and Quintus, while listening to the flow of the laws, would have applied the logical criterion that strictly.

39 For the danger of *obscuritas* lurking behind *prisca* as well as *pauca*, cf. – amongst many others examples – *ac.* 1.43: *Breviter sane minimeque obscure exposita est ... a te, Varro, et veteris Academiae ratio et Stoicorum.*

40 The correction of *ne urito* to *neve urito* in A (only) is so obvious from the context – *quod autem addit 'neve urito', indicat non qui uratur sepeliri, sed qui humetur* – and from legal language in general (cf. n. 23) that it should *not* be adopted until confirmed by independent sources, cf. Powell in his apparatus "*ne urito* rell., fort. recte".

Once the question of linking via *-que*, *-ve*, *et* or *ast* has been put aside as a mainly aesthetic feature, absolute brevity implies that separate words stand for separate normative entities and that expressions which elsewhere would have been considered as synonymous, are to be looked at with scrutiny. The protasis of law 2.22.5, for example – *sacrum sacrove commendatum qui clepsit rapsitque* –, covers, not one, or two, but four cases, i.e. two different objects subject to two different actions.<sup>41</sup> This phenomenon, viz. that a concise wording is not *per se* irreconcilable with a precise wording, also helps understand why laws could be described as both short and “refined” (*elegans, subtilis*).<sup>42</sup>

#### IV. Prooimia

On the third and most complex feature of legal rhetoric – the addition of a prologue to the laws –, Marcus’ explanation is unfortunately a confusing and rather misleading one:

*Sed ut vir doctissimus fecit Plato atque idem gravissimus philosophorum omnium, qui princeps de republica conscripsit, idemque separatim de legibus eius, id mihi credo esse faciendum, ut priusquam ipsam legem recitem, de eius legis laude dicam; quod idem et Zaleucum et Charondan fecisse video, cum quidem illi non studi et delectationis sed rei publicae causa leges civitatibus suis scripser<i>nt; quos imitatus Plato videlicet hoc quoque legis putavit esse, persuadere aliquid, non omnia vi ac minis cogere (leg. 2.14).*

First, the technical term *prooimion* is absent from the entire description. Marcus uses it only later (2.16), when his first *laus* has come to an end: *habes legis prooemium; sic enim haec appellat Plato*. While it is true that Plato introduced the notion of προοίμια νόμων in book 4 of the *Laws*,<sup>43</sup> the term that best describes his persuasive devices is παραμυθία (ἢ, or παραμύθια, τά) “encouragement”, be-

41 For the relation of *clepere* to *clam* and the original meaning “to hide or conceal (sth., or *se*)”, see Varro, *ling.* 7.94. Lambin’s emendation of *rapsitque* to *rapsitve* looks again strangely pedantic and perhaps runs counter to Cicero’s (secretly moralising) intentions, cf. the particularly loose *Spartae, rapere ubi pueri et clepere discunt rep.* 4.3, also Plaut., *Pseud.* 133–134 *ubi data occasiost, rape clepe tene / harpaga bibe es fuge*. For *sacro commendatum*, cf. Cicero’s refusal of a request in Febr. 50 *Graecis querentibus, ut in fano deponerent [sc. the money] postulanti-bus non concessi (Att.* 5.21.12).

42 For *subtilitas* as the opposite of *brevitas*, cf. *rep.* 2.42 *id persequar si potero subtilius* (note *per-* instead of *con-*). In *Brut.* 35, Cicero nonetheless characterises Lysias as *subtilis scriptor atque elegans* (seconded by Quint., *inst.* 10.1.78), which in turn recalls Gellius’ word about the “elegant ... brevity” of the Twelve Tables (see n. 34). Consequently, Charondas’ laws are not necessarily the longer for this lawgiver having been γλαφυρότερος ... τῶν νῦν νομοθετῶν (Aristot., *Pol.* 2.11 = 1274b8).

43 The designation, however, is not as original as Marcus (and Plato himself, by self-references like προοιμιασάμεθα, ὡς νῦν λέγομεν 724a3) tries to make us believe, cf. Aristoph., *Equit.* 1343: τούτοις ὁπότε χρήσαιτό τις προοιμίους (if not a particularly bawdy joke of the sausage seller) and H. Görgemanns, *Beiträge zur Interpretation von Platons Nomoi* (Munich 1960) 38:

cause in the example of book 4 – the equivalent to Marcus' *caelibes esse prohibento* (3.7.3) –, the respective part came *after*, not before the law, and because in book 5 the first law, μὴ γαμεῖν πλούσιον πλουσίου, consisted of the prooimion only (προ- to what?, one might then ask).<sup>44</sup>

The reformulation of Plato's critical observation οὐ γὰρ πειθοῖ κεραυνόντες τὴν <ἀν>ἀ<γκ>ην<sup>45</sup> νομοθετοῦσιν, ἀλλ' ἀκράτῳ μόνον τῆ βία (722c1–2) as *legis ... esse, persuadere aliquid, non omnia vi ac minis cogere* at the end of the paragraph is also marred with inconsistencies. Although Plato may have read the codes of Zaleucus and Charondas before writing his own laws,<sup>46</sup> he never imitated them in this respect; much to the contrary, he believed (by the way: falsely) that his combination of verbal encouragement and severe punishments had never been tried by any lawgiver before.<sup>47</sup> Consequently, *quos imitatus* cannot refer to Plato's indebtedness in terms of theory (only to what all three lawgivers did in practice) and has to be separated from *putavit*.

Third, the two authorities mentioned besides Plato, Zaleucus and Charondas, are more or less legendary lawgivers. The context of a remark in a letter to Atticus (6.1.18 *quis Zaleucum leges Locris scripsisse non dixit?*) reveals that Cicero personally did not believe in the historical existence of Zaleucus. Marcus' argument *commemorant vero ipsius cives, nostri clientes, Locri* therefore primarily serves to separate historical truth from historical tradition – as he explains himself: *sed sive fuit sive non fuit, nihil ad rem; loquimur quod traditum est* (*leg.* 2.15). Cicero is merely (or mainly) interested in the prologues *as* attributed to the two lawgivers. The special problem with Charondas in this context is that Diodorus has not yet a prologue for him (just laws), and that the prologue Stobaeus has, looks even less authentic than the one commonly attributed to Zaleucus.<sup>48</sup> It is

“Der ... Ausdruck [προοίμια νόμων] soll überraschen, nicht als Neuprägung, sondern als paradoxe Anwendung eines musikalischen Terminus, geradezu als Wortspiel.”

44 *Leg.* 4 (721b6–d6): law (b6–7), followed by the ‘prooimion’ (b7–c8) and the sanction. Regarding marriages of the rich, the Athenian rejects a formulation as law (supposedly with a sanction attached) as “ridiculous” (γελοῖα 773c7; the resulting special prooimion is described in 773e5 as παραμύθια). In book 11, Plato ‘clarifies’ that his παραμύθια are not παρα- to μύθια, but προ- to a law: τῷ πρὸ τοῦ νόμου μύθῳ (927c7), translated by Ficino as *hoc ante legem exordio*, see E. B. England, *The Laws of Plato II* (Manchester 1921) 543.

45 The codd.’ μάχην is defensible only if part of a “poetical quotation” (England [previous note] I 266). Ast’s ἀνάγκην is the widely accepted emendation (the alternative being Badham’s ἀ<ρ>χήν), although Ast was apparently unaware of the echo in Cicero’s dialogue: “Ficinus et Cornarius verbo *minas* reddiderunt, quod quomodo μάχη significare potest?”

46 E.g., the rule according to which creditors cannot enforce the debt in the event of a debtor’s default by confiscations is ascribed by Theophrastus (as excerpted by Stobaeus 4.2.20) to both Charondas and Plato (ὡσπερ Χαρόνδρας καὶ Πλάτων p. 130, 23–24 Hense), see *Leg.* 8 = 849e8–10.

47 *Leg.* 4: τῶν δὲ ὄντως νόμων ὄντων, οὓς δὴ πολιτικούς εἶναι φαμεν, οὐδεὶς πώποτε οὔτ’ εἶπέ τι προοίμιον οὔτε συνθέτης γενόμενος ἐξήνεγκεν εἰς τὸ φῶς, ὡς οὐκ ὄντος φύσει 722e1–4.

48 Although in the case of Zaleucus, the “striking verbal resemblances” between the two versions “make highly probably a common [that is, pre-Diodorian] source” (Fr. E. Adcock, “Early Greek Lawgivers”, *CHJ* 2 [1927] 104), none of the two prologues directly reflects sixth- or 7c.

from Charondas, however, that Marcus quotes in his *laus* to the laws of book 3<sup>49</sup> – but he then calls his source “Charondas’ laws” (*ut Charondas in suis facit legibus*) and not “prooimion to Charondas’ laws”, as Stobaeus would do (Χαρώνδᾶ Καταναίου Προοίμια νόμων), very much in tune with our historical reconstruction, but very much at odds with Cicero’s attempts to rely on Charondas as an authority on *prologues*. The upshot of the whole discussion seems to be that Zaleucus and Charondas, rather than being important in themselves, stand for an older tradition of lawgivers that reaches back to the early first millennium, when the Mediterranean was still under stronger influence from the Orient.<sup>50</sup>

Finally, there is the question whether *lex* in *ut priusquam ipsam legem recitem, de eius legis laude dicam* refers to a single law or a collection of laws. For the Near Eastern tradition, the answer is clear-cut: a whole code or collection of laws. In Cicero’s case, it is more complicated, as the laws are split into subsets, and because Marcus chooses a more general *prooimion* for the laws of book 2, and a more specific one for the laws of book 3.<sup>51</sup> At first sight, this looks like another move to align himself with the *vir doctissimus* Plato, who developed, in his usual part ingenious and partly chaotic way, a theory of *prooimia* to single laws, the παραμήθια mentioned above.<sup>52</sup> But besides Plato himself, no other ancient author (Cicero included) dared to adopt this curious sandwich approach.<sup>53</sup> Marcus’ final allusion to Plato in *leg. 3.1 – laudemus igitur prius legem ipsam,*

practice: “les idées exprimées sont trop philosophiques, le style trop recherché, la langue trop récente” A. Delatte, *Essai sur la politique pythagoricienne* (Paris 1922) 179 (who suspects *ibid.* 183–184 Pythagorean reformers, such as Timares for Locroi or Theocles for Rhegion, to have acted as revisors and drafters).

49 The words *ut eos colant diligentque* (*leg. 3.5*) clearly recall εὐπειθοῦντας καὶ σεβομένους Stob. 4.2.24 = p. 152, 2 Hense, even if the formula ascribed to Charondas is enriched by καθάπερ πατράσιν.

50 Cf. Dyck (n. 5) 281: “The idea of a preamble to laws is, however, even older than Cicero indicates and probably goes back to Near Eastern models.” The image of Zaleucus as “a shepherd”, for example – “according to Aristotle quoted in a scholium to Pindar, *Ol. XI.17*” Adcock (n. 48) 100 –, can be compared with the Oriental (now Christian) tradition of describing lawgivers as “guardians of the(ir) flock”, Sumerian sipad (PA.LU).

51 Cf. Dyck (n. 5) 280: “The initial impression is that this matter is meant to apply to all the following laws, not just those of Book 2 ... ; however, at 3.1 a new *laus legis* is introduced specifically for the laws on magistrates”.

52 Cf. Kl. Schöpsdau, *Platon: Nomoi Buch IV–VII* (Göttingen 2003) 246: “Zur Argumentation des Atheners ist anzumerken, daß er den Begriff des Gesetzesproömiums in diesem Abschnitt nacheinander in gleitender Verschiebung auf Texte verschiedener Art und verschiedenen Umfangs anwendet”; Görgemanns (n. 43) 43 formulated even more politely: “Mit dem Begriff ‘Proömion’ hat sich inzwischen ein Wandel vollzogen”.

53 See Daube (n. 23) 80: “Cicero does not take over this part of Plato’s scheme. After the general ‘prelude’ to a section, he states the laws of that section without any specific explanations”; I. Männlein-Robert, “Prooemion”, *HWRh VII* (Tübingen 2005) 255: “Die in den Nomoi entworfene Theorie Platons, der zufolge in Analogie zu den musikalischen Nomoi auch vor die gleichnamigen Gesetzestexte P(roömien) zu stellen seien ... setzt sich in der Antike nicht durch”.

*veris et propriis generis sui laudibus*?<sup>54</sup> – is therefore better explained as awareness of standard rhetorical theory and the well-known *vitium* of *exordium vulgare*, i.e. one that would have worked also in other cases.<sup>55</sup>

The *laudibus propriis*-criterion ultimately leads back to Aristotle's famous ambiguous statement δεῖ δὲ ἢ ξένα ἢ οἰκεῖα εἶναι τὰ ἐνδόσιμα τῷ λόγῳ (*Rhet.* 3.14 = 1415a7–8). As correctly guessed by Vater, this sentence is merely a transition to connect the older tradition of ξένα- or *praeter rem*-prooimia – tolerated by Aristotle still for ἐπίδειξις –, to the doctrine of *ante rem*- or made-to-measure prefaces, which would become the standard in later classical rhetorical theory, with its greater emphasis on overall argumentative coherence.<sup>56</sup> For law, however, *praeter rem* always retained its original dominance.<sup>57</sup> Ancient people, irrespective of their whereabouts, were apparently not capable of imagining many things – and especially not many *different* things – that could have come 'before' or could have stood 'above' their laws.

How does Marcus use the repertoire of exordial topoi developed over many centuries in his two *legis laudes*, esp. the first and more general one of book 2? The reference to a timeframe *a principio* is a translation of πρῶτον in the first sentence of Zaleucus' prooimion, of which Marcus paraphrases also the other elements.<sup>58</sup> The

54 *Leg.* 5: δεῖ γάρ, ὡς φησιν Κλεινίας [in fact not Kleinias, but the Athenian], ἔμπροσθεν τοῦ νόμου προοίμιον οἰκεῖον ἐκάστω προτιθέναι 772e2–3.

55 See *Rhet. ad Her.* 1.11; Quint., *inst.* 4.1.71. In a letter to Atticus (16.6.4), Cicero nevertheless admits to keeping a *volumen prohoemiorum* for his philosophical writings, out of which he is wont to choose (*ex eo eligere soleo*), a habit then leading to the error of attaching the same one twice – and a request to replace it: *tu illud desecabis, hoc adglutinabis*.

56 J. S. Vater, *Animadversiones ... ad Aristotelis libros tres rhetoricorum* (Leipzig 1794) 180 “Hoc enuntiatio transitur ad prooemia orationum iudicialium”. Aristotle's doctrine in *demonstrativis* is summarised by Quint., *inst.* 3.8.8: *prooemia esse maxime libera existimat ... et longe a materia duci .. et ex aliqua rei vicinia*. On coherence, see Cic., *de orat.* 2.325 *conexum autem ita sit principium consequenti orationi, ut non tamquam citharoedi prooemium adfictum aliquid, sed cohaerens cum omni corpore membrum esse videatur*; also Quintilian's rejection of an *exordium quod causae non cohaeret* as “unrelated” (*separatum*) *inst.* 4.1.71.

57 Indirect proof for the looseness of the link between prologues and laws is the possibility of a separation, either of the prefatory matter – see e.g. VAT 10079 (= KAV 190) for what must have been a beautiful scholarly edition of the prologue to the Code of Hammurabi (as Neoplatonists would study 715e–716b independently from Plato's *Laws*) – or of the legislative part, see J. J. Finkelstein, “A Late Old Babylonian Copy of the Laws of Hammurabi”, *J. of Cuneiform Stud.* 21 (1967) 42 on the colophon of BM 78944+78979 implying that “the laws circulated as a text without the prologue”; for Attica, P. Traywick, “ΘΕΟΙ and ΑΓΑΘΗ ΤΥΧΗ in Headings of Attic Inscriptions”, *Harv. Stud.* 73 (1969) 327 (“the absence of headings from decrees recorded in ancient authors probably means that headings were absent also from archive copies, the original secretarial drafts”); for the 3c. *Dikaiomata* on P. Hal. 1, G. Ries, *Prolog und Epilog in Gesetzen des Altertums* (Munich 1983) 103 (“Bestandteile dieser Art ... sehr wahrscheinlich vom Abschreiber als für die Praxis irrelevant unterschlagen”); the Codex Justinianus, ironically, announces the cut in the preface itself (*de Novo Codice componendo*) 2: *resecatis ... supervacuis, quantum ad legum soliditatem pertinet, praefationibus*.

58 Compare *sit igitur hoc iam a principio persuasum civibus* (*leg.* 2.15) with the version preserved by Diodorus 12.20.2 (δεῖν τοὺς κατοικοῦντας ἐν τῇ πόλει πάντων πρῶτον ὑπολαβεῖν καὶ

redundancies Diodorus produces when introducing Zaleucus' text – ἐξ ἀρχῆς ... καινήν ... ἤρξατο ... πρῶτον ... εὐθύς (12.20.1–2) – illustrate the logical abyss a writer can fall into when having to refer 'right in the beginning to the beginning of a(n entirely) new beginning'. In the Near Eastern tradition, with its more narrative prologues, the solution to this problem was the use of the "when ... then"-device, Sumerian  $u_4 \dots u_4.ba \dots$ , which in Akkadian became *inu(ma) ... inūmišu*, and was translated into Greek as ἐπεὶ ... τότε.<sup>59</sup> Its ultimate aim was not so much to describe a linear historical development, but to convey – as in the case of Biblical  $\text{וְיִשְׂרָאֵל}$  – the idea of eternity or at least relative eternity, that may have started at some point in the past, and would then go on forever.<sup>60</sup>

The opinion citizens should be convinced of from the outset – *dominos esse omnium rerum ac moderatores deos* (*leg.* 2.15) – also recalls a sentence by one of the three authorities on prologues, namely Plato's ὁ δὴ θεὸς ἡμῖν πάντων χρημάτων μέτρον ἂν εἴη μάλιστα καὶ πολὺ μᾶλλον ἢ πού τις, ὡς φασιν, ἄνθρωπος (716c4–5).<sup>61</sup> Cicero, however, is not interested in providing detailed proof for the existence of the gods or in enforcing belief in them,<sup>62</sup> as he follows the older tradition of prologues as *praeter rem-ἐπίδειξις*. His gods are the object, not of philosophical debate, but of praise (*laus*). Laelius and Scipio, in a discussion about Aratus' of Soli maxim' Ἐκ Διὸς ἀρχώμεσθα *De re publica* 1.56, stress that this praise is undisputed among most people and that it is appropriate, insofar as the *res* that follow are also "great"; similar advice, this time related to a *παροιμία*, can be found in the

πεπεῖσθαι) and by Stobaeus 4.2.19 (τοὺς κατοικοῦντας τὴν πόλιν καὶ τὴν χώραν πάντας πρῶτον πεπεῖσθαι χρὴ καὶ νομίζειν pp. 123, 13–124, 1 Hense).

59 See Code of Ur-Nammu (Ni 3191) i.31, 36 and Code of Hammurabi (stela) i.1, 27; for the Greek version, the Antiochus inscription referred to in the final section of this paper (*OGI* 383) 36, 44.

60 Although  $\text{ו}$  is not a literal translation of ἐπεὶ, it is at least the equivalent expected in the West-Semitic formulary, compare Aramaic  $\text{וּשְׁשִׁיבַרְבַּי}$  "In the third month" (Akkad. *Simānum*, cf. Esther 8:9) with the Greek incipit Ἐπεὶ Λυκίας ξαδράπης ἐγένετο Πιζώδαρος on the trilingual Xanthos stela (*Fouilles de Xanthos* VI). For the eternal outlook, see a.o. εἰς τὸν ἀεὶ [χρό]νον in the regulations for the Artemiria from Eretria (P. J. Rhodes/R. Osborne, *Greek Historical Inscriptions 404–323 BC* [Oxford 2003] no. 73, 43–44) or εἰς τὸν ἅπαντα χρόνον on the Rosetta stone (l. 36).

61 Ὡς φασιν is directed against Protagoras, which in turn explains the choice of μέτρον, cf. *Theait.* 152a2–3 φησὶ γάρ που 'πάντων χρημάτων μέτρον' ἄνθρωπον εἶναι. *Dominos* may have been inspired by ἀρχή in Plato's actual incipit 715e8–716a1 ὁ μὲν δὴ θεός, ὡς περ καὶ ὁ παλαιὸς λόγος, ἀρχὴν τε καὶ τελευτὴν καὶ μέσα τῶν ὄντων ἀπάντων ἔχων (with μέσα as the "moderating" forces?). 'Zaleucus' and 'Charondas' use the more philosophical term αἴτιος (apparently not epideictic enough for Marcus): θεοὺς ... αἰτίους ὄντας ἀπάντων ἡμῖν ἀγαθῶν τῶν κατὰ λόγον γιγνομένων p. 124, 5–6 and τὸν θεὸν ... αἴτιον πάντων τούτων p. 150, 2 Hense.

62 Contrast Plato's τὰ μὲν δὴ προτεθέντα τρία, θεοὶ τε ὡς εἰσὶν, καὶ ὡς ἐπιμελεῖς, καὶ παρὰ τὸ δίκαιον ὡς παντάπασιν ἀπαραίτητοι *Leg.* 10 = 907b5–6 as the summary of a proof starting in 903b4, followed by a law against ἀσέβεια with punishments ranging from five years imprisonment to a life, or a death, sentence.

opening lines of the prologue attributed to Charondas.<sup>63</sup> The relevance of the topic for law is confirmed, independently and from earlier on, by Greek inscriptions: ΘΙΟΣ or ΘΕΟΙ regularly appear as headings to laws and decrees from the seventh century onwards, and the writing in spaced, not stoichedon, letters, across the entire moulding, make these ‘one-word’ prologues even more stand out (although not less difficult to interpret).<sup>64</sup> Similar to the drafters of Near Eastern law, who supplemented the reference to the highest god (An) by .gal “the great” or *šīrum* “the first-rank”, in order to render it more explicit and extraordinary,<sup>65</sup> Cicero would describe the *animal ... quem vocamus hominem* in *De legibus* 1.22 as “created” (*generatum*) *a supremo deo*.

Of the four elements of Genesis 1:1 – בראשית א *A principio* ברא *generatum* אלהים *supremus deus* – one is still left, the traditional reference to the universe as “heaven and earth” אֵת הַשָּׁמַיִם וְאֵת הָאָרֶץ. It encounters inter alia in the prologue to the Code of Hammurabi in Enlil’s standard epitheton *bēl shamē u eršetim* “master of heaven and earth” (i.4–5) and at the beginning of Zaleucus’ prooimion (as preserved by Stobaeus 4.2.19): θεοὺς εἶναι ἀναβλέποντας ἐς οὐρανὸν καὶ τὸν κόσμον καὶ τὴν ἐν αὐτοῖς διακόσμησιν καὶ τάξιν (p. 124, 1–3 Hense). Cicero does not disappoint the reader in this respect, and offers examples both for the more down-to-earth אֵת הָאָרֶץ and the more elevated κόσμος-variant in two fairly parallel rhetorical questions that reiterate one of his fundamental philosophical tenets: *quid est autem, non dicam in homine, sed in omni caelo atque terra, ratione divinius?* and *quid est enim verius, quam neminem esse oportere tam stulte arrogantem, ut in se rationem et mentem putet inesse, in caelo mundoque non putet?* (1.22; 2.16). Although the logically correct reply to these questions in a, say, dialectical discussion would be “nothing”, the expected answer in the festive context of Marcus’ *laus* is obviously a great “yes” or ἀμήν.

63 Τὸς βουλευομένως καὶ πράσσοντάς τι ἀπὸ θεῶν ἄρχεσθαι χρή· τὸ γὰρ ἄριστον, ὡσπερ ἂ παροιμία φατί, τὸν θεὸν ἦμεν αἴτιον πάντων τούτων pp. 149, 15–150, 2 Hense.

64 See θίός ολοιον for late 7c. Dreros (R. Meiggs/D. Lewis, *A Selection of Greek Historical Inscriptions* [Oxford 1969] no. 2), ΘΙΟΙ added to the Great Code of Gortyn (*IC IV.72*, cf. nos. 65, 78, 80), and for Athens, Traywick (n. 57) 326 (ΘΕΟΙ “rather flourished [as a legal heading, from the mid-5c.], and finally predominated, down to the first century B.C.”). As to the sense, various suggestions have been made: relation to procedure (“the proper religious exercises had been performed” A. G. Woodhead, *The Study of Greek Inscriptions* [Cambridge 1959] 39; “perhaps reflecting the prayer with which the proceedings in the assembly began” Rhodes/Osborne [n. 60] xix); positive invocation (“clearly implies a hoped-for divine sanction for the business in hand” A. S. Henry, *The Prescripts of Athenian Decrees* [Leiden 1997] xi); negative invocation similar to a curse on a *kudurru* (cf. Buck’s interpretation θίός ὄλοι ὄν “May God destroy him” *ap. Meiggs/Lewis loc. cit.*), although this implication was later “forgotten” (according to R. L. Pounder, “The Origin of ΘΕΟΙ as Inscription Heading”, *Studies Presented to Sterling Dow* [Durham, North Car., 1984] 249).

65 See in the Code of Lipit-Ištar (AO 5473) 1 [u<sub>4</sub> An] gal (as restituted by W. Sallaberger, “Der ‘Prolog’ des Codex Lipit-Ištar”, *Gerechtigkeit und Recht zu üben* [Wiesbaden 2009] 13) and in the Code of Hammurabi i.1 *i-nu An* | *ši-ir-um*; but see also u<sub>4</sub> An.né (*tantum*) in the Code of Ur-Nammu (Ni 3191) i.31.



### V. Epilogue: Cicero's encounter with the ambassadors of Asianism

A certain Antiochus, who ruled over the kingdom of Commagene in the first century and descended (via his mother) from Ptolemaic and Seleucid rulers as well as through his father from Darius the Great, set up a νόμος in order to care for his spiritual well-being after his death. German archaeologists discovered the inscription in 1890. Stylistically, the text is firmly rooted in the tradition just described, displaying ἐπεὶ δὲ ... τότε δὴ in the prologue, and, at the end of the law, a literal translation of *awīlum šū lū LUGAL lū EN lū ENSÍ*, as known from the epilogue to the Code of Hammurabi, into Greek as ὅστις τε ἄν βασιλεὺς ἢ δυνάστης.<sup>66</sup>

Eduard Norden, who seems first to have heard about it from August Brinckmann,<sup>67</sup> decided to include the whole text in his panoramic study *Die antike Kunstprosa*, in order to illustrate the second of the two *genera Asiatica* described by Cicero in *Brutus* 325 as *non tam sententiis frequentatum quam verbis volucre atque incitatum, quali est nunc Asia tota, nec flumine solum orationis sed etiam exornato et faceto genere verborum*. In his analysis, Norden attempts to show that many of the features of what he presents to the reader as “Prunkstück rhetorischen Könnens” – “die langen rollenden Perioden”, the linking via οὐ μόνον ... ἀλλὰ καί, hyperbata in the manner of εἰς χρόνον ἀνέγραψεν αἰώνιον, or the clausula of *esse videatur* – are characteristic, not of Aeschylus of Cnidus or Aeschines of Milet, or of *Asia tota* (as Cicero had said in the *Brutus*), but of Cicero himself.<sup>68</sup>

What Norden does not mention is the fact that the Roman proconsul and the Near Eastern potentate were in touch with each other in the winter of 51/50. Although they do not seem to have met in person,<sup>69</sup> Antiochus sent ambassadors to Cicero in Cilicia, in order to brief him on the latest military developments. From Tarsus Cicero reports back to the Senate in Rome: *legati a rege Commagene ad me missi pertumultuose neque tamen non vere Parthos in Syriam transisse nuntiaverunt* (*fam.* 15.4.3).

The description of the style of the ambassadors is remarkable: Initial irritation about their confusing and potentially suspicious manner of presenting the

66 For ἐπεὶ ... τότε, see n. 59 above; the parallel to the Code of Hammurabi has been pointed out by Ries (n. 57) 99–100.

67 See Norden's letter to Brinckmann of January 12, 1910: “Stilgeschichte was dein Lieblingsstudium; das imponierte mir gewaltig, als du mir mal deine Sammlungen zu Polybios zeigtest oder mal auf manierierte Stellen im Axiochos und der Antiochos-Inschrift hinwiesest” ed. W. A. Schröder, *Der Altertumswissenschaftler Eduard Norden* (Hildesheim 1999) 130–131.

68 See Norden, *Die antike Kunstprosa* I (Leipzig 1898) 145 n. 2 “Aus Cicero ist derartiges jedem geläufig”. Apart from Brinckmann, other eminent philologists shared Norden's opinion at the time, see *ibid.* p. 140 n. 1 “Von H. Diels ... weiß ich es durch mündliche Mitteilung”.

69 A fragment of a letter to Pansa was once believed to refer to Antiochus (see R. J. Rowland, “Cicero and the Greek World”, *TAPhA* 103 [1972] 457), until Kr. Weyssenhoff proposed as the more likely reading *de A<mp>io fecisti humaniter*, adopted by Shackleton Bailey in his later Teubner edition (Stuttgart 1988).

facts gives way to the discovery of their overall honest and peaceful intentions.<sup>70</sup> Similarly, Cicero would praise in *Brutus* the “astonishing word-flow” of the second Asiatic genre (*admirabilis orationis cursus*), but at the same time criticise both *genera* as over-excited and “childlike” (*aptiora sunt adolescentibus, in senibus gravitatem non habent*).

The balanced judgement about the Oriental ambassadors may also serve as a motto and guideline for those who are interested in following the comparative approach outlined in this paper: Elements of classical Greco-Roman rhetoric are found in the Near Eastern sources seldom in their usual order, and often in no order at all (*pertumultuose*). This does not mean that they should be discarded as false or irrelevant (*neque tamen non vere*) for a comprehensive history of rhetoric and law.

Correspondence:

Jan Rothkamm

39 rue Daguerre

F-75014 Paris

j.rothkamm@orange.fr

70 Rumours existed about the king's *minor fides* as a Roman ally (*fam.* 15.1.2), but Cicero seems to have acted undisturbed by them.