

**HOLINESS AND HUMANISM:
A COMPARATIVE-RELIGIONS COMMENTARY ON BOOK 2 OF CICERO'S LAWS,
WITH SPECIAL REFERENCE TO CONFUCIANISM AND CHINESE THOUGHT.**

BY

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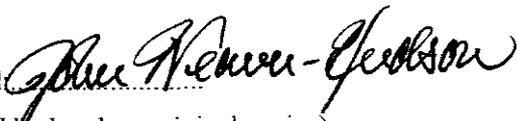
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DECLARATION

I, JOHN WEAVER-HUDSON, declare that this thesis entitled,

HOLINESS AND HUMANISM:
A COMPARATIVE-RELIGIONS COMMENTARY ON BOOK 2 OF CICERO'S LAWS,
WITH SPECIAL REFERENCE TO CONFUCIANISM AND CHINESE THOUGHT

represents my own work, both in conception and execution, and has not been submitted to any other institution for any degree purposes.

Signed: 
(signed by hand on original copies)

Dated: 7 October 2007

ABSTRACT OF THESIS

After a brief introduction, a new translation of *De Legibus II*, and prolegomenal remarks, the commentary discusses in Cicero's sequence: how place connects to ancient times and traditions (4), God's Law and his judgment on human laws (5-6), tension between Roman religion and Greek philosophy (7), and the setting forth of Cicero's code of religious law (8). The code covers whom to worship (9), the power of Cicero's own priesthood (10), religion and political unity (11), social justice and religious rites (12), Cicero's digression on a turf-war between augurs and pontifices and priestly responsibility for religious law alone (13), the rites of death (14), and the prospect of immortality (15).

Excursuses within the commentary include: holy reason as *imago Dei* in humans; dialogists' family and friendship; legitimacy of law in Confucianism; the supreme God and His/Its relation to lesser deities, especially Minerva; hyperphilologism and ancient holist theology (hence reference to current African philosophy and theology and to modern religious traditions), Cicero's anti-Platonism/anti-utopianism, parallel Confucian-Mohist enmity, and the common substrate of family and family rite; mistaking propriety for agnosticism and tacit knowing for unbelief; reliability of the canonical texts; the sages' descendants and classical explicators; tyranny as the sin of parricide; Roman priesthoods with reference to the religious power of women; family religious rites; the augural priesthood and its liberationist implications.

Selected interpretive issues meriting further enquiry follows: the integrity of theology in *DL2* and aspects of classical Confucianism; Cicero's theological language and the use of translations; *theological anti-totalitarianism in Cicero and his contemporary Han Dynasty Confucians*; scholarly contempt for Cicero and its civic-theological implications; late-dating of *DL* as buttress of its civic-theological character; Isocrates as anti-Platonic paradigm of theological political praxis; the distinctiveness of our sages over against mediaeval philosophical theology in the West and China; and anti-imperialist theology in Viet Nam and Cicero's *Philippics*. The conclusion offers encouragement in civic-theological resistance to tyranny, the role of humane reason in theology, and the present applicability of aspects of the theology of Cicero and that of Confucius.

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N.B.: Chinese, Japanese, Korean, Magyar, and Vietnamese names are *more suo*. Wade-Giles romanisation is used with tones; romanisations in quotations are unchanged. Unromanised Chinese terms are given at first occurrence wherever possible. Italics in quotations have been added for emphasis. Translations from the Latin and imperial Greek are this writer's.

INTRODUCTION

As in forensic investigation, so in theological thesis-writing: one must look for motive, means, and opportunity. The *Motive* for this thesis is to provide a theological commentary on Book II of Cicero's *Laws* through the lens of classical Confucian texts. Neither Cicero nor Confucius has been given his due as a theologian. Their wholehearted and whole-minded civic engagement has led many to see the diamond from one angle alone and miss the glory of the refracted spectrum of colours. Both have suffered under imputations of unbelief, agnosticism, or secularity: equally erroneous and equally hermeneutically blind. Cicero was a priest and Confucius saw himself as a missionary of Heaven. Neither man was a professional theologian, but both speak of God or gods routinely. The term theology has often been reserved to West and South Asian religious traditions; this is arbitrary. The intense political involvement of both our Sages has led to a reductionism which sees them only as politicians or as political philosophers. Using the senior to interpret the junior places both within the category of civic theology: neither purely transcendental nor systematic shūkyōteki theology, nor the crass manipulation of religion to serve dehumanising ideological ends.

The *Means* is a section-by-section commentary on *De Legibus* II using classic Confucian texts (Confucius, Mencius, Hsuntze, and Han Dynasty writers) to show common interests in political ethics, rites, theologically-based resistance to tyranny, human liberation, God-given natural law, and a practical henotheism against the backdrop of ostensibly polytheistic cultus. While many have written comparing the Confucian Sages to Greek philosophers, no one has made any extended comparison of ancient Chinese and ancient Roman thought in general or theological reflection in particular. This imbalance leads to comparing the incomparable: engagé civic theologians of multicultural great societies—the orbis terrarum and all-under-Heaven—to the speculative theoretical writers of narrow, exclusivist, ethnic States. Here, empire speaks to empire—but against imperialism; deep love of home and family echoes from China's eastern seaboard to the hill-country of Italy—but without parochialism or arrogance. Here, breadth of spirit and depth of particular devotion are harmoniously united. Similarly, disciplinary distinctions between theology and philosophy were unknown to our Sages; reference has been made to theological texts from living religions, particularly western monotheisms, and to present-day African philosophy. The goal is interculturality, not hegemony; a full-scope of theology, not interdisciplinarity; the rectification of terms by the rehabilitation of two ancient theologians, seeking thereby to restore after modern disciplinary fracture and hermeneutical theft theology's crown as queen of the sciences and her universal voice.

The *Opportunity* is manifold. After a thorough review of ancient texts and copious secondary

material, incorporating the same into the limited scope of a brief commentary, interpretive issues and launching-points for future study by better scholars are adumbrated. Cicero and Confucius declare faith in God's moral mandate in the affairs of humans, the non-negotiable value and *intrinsic God-given preciousness of the human being*, so that the *ubuntu of praxis and the humanism of scholarship* are united in their writings, and both to indispensable sacred rite, engaging for justice' sake the holiness of God, silhouetted by natural theology apart from special revelation (cf. Romans 1-2). Both ancient Sages stalwartly resisted tyranny and the subversion of religion by self-deifying totalitarians: Confucius paid with poverty and exile, Cicero, with his life. Both affirmed *against all odds and against all comers the sacred worth of the human personality*, the sacred bond of family and friendship, and the sacred immortality of the human soul. In them hope and humanism and holiness meet: not yet Gospel, but far from despair. We are privileged to enact as scholarly rite the hearing of their ancient voices. May the readers of this attempt to usher them into the presence of the Sages discover in the living words of Cicero and Confucius the living voices of *their contemporaries in freedom and devotion*. *The least of scholars bids you welcome to the presence of the greatest of natural civic theologians*. Let us listen together!

TRANSLATION OF CICERO'S *DE LEGIBUS*, BOOK 2

[1] **Atticus:** We've walked far enough. You need to make a new beginning of your talk. Don't you want us to shift over and concentrate on the rest of our discussion sitting on the island in the Fibrenus? I think that's the name of the river.

Marcus: Sure! I'm awfully fond of using that spot to mull something over or write something or read.

[2] **Atticus:** In fact, particularly since I've just now arrived, I can't get enough. I despise opulent country-houses and marble sidewalks and inlaid ceilings. You know those toy aqueducts, which people like *that* call Niles or Euripuses—who wouldn't make fun of them once he saw *these* things? When you were rambling on a little while earlier about law and justice, you kept referring everything back to Nature. Likewise, Nature rules in these very things we seek out for relaxation and the mind's delight. That is why I used to wonder, since I thought there was nothing around here except rocks and hills, taking my cue from your speeches—and poems—I used to wonder, as I've said, why you were so utterly taken with this place. *Now* I'm amazed that you'd ever want to be anywhere but here when you're away from Rome.

[3] **Marcus:** Right. Whenever I can get away for a few days, especially at this time of year, this is the pleasant healthful ambience I'm after—but I rarely get the chance. It pleases me—no surprise—for another reason which doesn't affect you in the same way.

Atticus: What's the reason, then?

Marcus: Speaking frankly, this is ancestral turf for my brother and me. Here we came from the most ancient lineage; here are the family rites, the clan, and the many relics of our ancestors. What else? Take a look at that country place as it is now, remodelled more extensively by our father's effort, who, since he was in uncertain health, spent almost his whole life here in literary pursuits. When my grandfather was alive and the place was an old-fashioned little farm house, like Curius' rondavel up in the Sabines, I was born on this very spot, as you ought to know. For this reason there's a certain *je ne sais quoi* here, hidden in my mind and sensibilities, by which perhaps this place pleases me more, exactly as it is written that [Odysseus], the smartest man ever, rejected immortality to see Ithaka again.

[4] **Atticus.** That strikes me as a compelling reason for you to come here so eagerly and love this place; I myself—no kidding—have been more entranced just now by that country estate and all this territory where you were born and brought up. *We're* moved who knows how by the very places where there are traces of those whom we love or admire. *Our* old Athens actually doesn't delight me as much by magnificent public buildings and the elegant artifacts of ancient times as by meditation upon excellent men, where each one used to live, to take his seat in assembly, to debate. I even gaze eagerly upon their tombs. Likewise, from now on I will love even more the spot where

you were born.

Marcus. Well then, I'm glad to have shown you what I would just about call my cradle.

[5] **Atticus.** I'm just as glad to know it. What was it exactly you said a little while earlier that this place—I took you to mean Arpinum—was your very own ancestral turf? You can't have two countries, can you? Or is it all one shared home country? Unless maybe the country of that wise man, Cato, wasn't Rome, but Tusculum?

Marcus. For God's sake, I think that for him and for all small-town people there are two countries, one by nature and one by citizenship, just as that Cato, though he was born in Tusculum, was naturalised into Roman citizenship. Though a Tusculan by origin, he was a Roman by citizenship; he had one country by geography and another by jurisprudence. Before Theseus ordered all your Athenians to relocate from the countryside into the so-called *ἀστυ*, they were at the same time townsmen of their own places and Athenians as well. We take as ours the home country where we were born *and* the one by which we have been naturalised. But it is necessary for the one to come first in our affection, where the name "republic" and universal citizenship are found, for which we ought to die, to which we ought to give ourselves completely, and to which we should entrust and consecrate everything of ours. Still, the country which gave us birth is sweet to us in about the same way as the one which took us up. So I'll never ever deny that this one here is my fatherland, although that one is larger and includes this one.

[6] **Atticus.** So our friend Pompey—and I was listening—established in court, when the two of you were Ampius' defence team, that our Republic can give most deserved thanks to this town, because her two defenders arose from here. I'm already convinced that this motherland of yours is your fatherland too!

Well, we got to the island. Nothing could be finer! Here, it's as if the river Fibrenus is split by a prow. Divided evenly into two parts, it washes up to these banks, and after rushing quickly past, at once it flows back together and encircles just enough (dry ground) for a medium-sized wrestling-ground. Once this is brought off, as though it had the duty and the honour to construct an outdoor lounge just for us and our discussion—suddenly it plunges into the Liris! Just as if it had entered a patrician family, the Fibrenus loses its more obscure name and makes the Liris much colder. I've never run across a chillier stream, although I've met many a river. I could barely test the water with my foot as Socrates did in Plato's *Phaedrus*.

[7] **Marcus.** That's quite true. Still, that Epirote Thyamis of yours, which I constantly hear about from Quintus, I think concedes nothing to this one in pleasantness.

Quintus. You said it! Watch out—don't get the idea that anything is more splendid than our friend Atticus' Amaltheion, and those plane-trees. But, if it seems good to you, let's sit down together here

in the shade and return to the topic of discussion from which we wandered away.

Marcus. You insist quite splendidly, Quintus, although I thought I'd escaped! I can leave nothing owed to you regarding these points.

Quintus. Get going! We decree that the whole day belongs to you.

Marcus. "From Juppiter the Muses' origin," just as we started with Aratus' song.

Quintus. So what?

Marcus. The starting-point of our discussion must now likewise be taken from the same Juppiter and the rest of the immortal gods.

Quintus. That's really the best way, brother. It should be done just so...

[8] **Marcus.** So, before we approach particular laws, we ought to look again at the force and nature of Law; although we have to re-echo it in everything, from time to time we might stumble into mistaken language and neglect the force of reason by which our laws must be defined.

Quintus. By God, you're right. That's the straight Tào of teaching.

Marcus. So I see that the wisest have been of the opinion that Law is neither puzzled out by human ingenuity nor is it any particular positive law of various nations. It is instead an eternal *je ne sais quoi* which rules the entire world in the wisdom of its commanding and forbidding. The wisest used to say that basic Law of last resort equalled the Mind of God requiring or prohibiting everything by reason. Consequently that Law which the gods have given to the human race is rightly praised; for it is the suitable reason and mind of a wise person, suitable for bidding and forbidding.

[9] **Quintus.** You've already touched on this several times. Before you come to national laws, please explain the force of that Law of Heaven, so the floodtide of custom doesn't swamp us and sweep us into the usual clichés.

Marcus. Since we were little, Quintus, we've learned to label "if one summons to court" and other things of that sort "laws." In fact, we must understand it this way: This and other requirements and prohibitions by nations have the power to summon to things done rightly and to deflect from sins; This power is not only older than the epoch of nations and states, but of the same "age" as God who defends and governs heaven and earth. [10] Divine Mind cannot exist without reason, nor can divine reason lack this power to give sacred definition to rights and wrongs. Even though it had never been *written* that one man must take his stand on a bridge against all the forces of the enemy, and order the bridge at his back demolished, nevertheless we will maintain that Cocles did a deed of such great valour (acting) equally in accord with Law and command. If when Lucius Tarquinius was king Rome had no written law about rape, (will we not reckon it) against eternal Law that Sextus Tarquinius brutally raped Lucretia, Tricipitinus' daughter? *Reason* was there, set forth by the nature of things and pushing toward right action, and calling away from crime. *Reason* did not

begin to be Law only when it was written down, but long ago, when it arose. It arose when divine Mind arose. Therefore the true and chief Law, apt to command and apt to forbid, is the right Reason of Juppiter most high.

[11] **Quintus.** I agree, brother, that what is proper and true < and eternal as well > does not sink or swim with written codes by which statutes are recorded.

Marcus. Therefore, just as that divine Mind is supreme Law, likewise, though extant in [any] human being, it is perfected in the mind of a Sage. Things variously and transiently codified by nations bear the title of “laws” more out of courtesy than as a matter of fact. They teach by rationales like this that every law which in fact can properly be called law is praiseworthy. Certainly, it is agreed that laws are devised, both for the well-being of citizens and states and for the safe, quiet, and happy life of human beings, and (it is agreed) that those who first sanctioned statutes of that sort showed nations that they were going to write down and promulgate things by which, having been devised and enacted, they were to live happily and with integrity. Such things were composed and put into effect. Obviously, they were labeled “laws.” From this, it can equally be understood that those who codified corrosive and unjust decrees for nations, when they acted against the way they had promised and claimed (to act), promulgated anything you like *except* “laws.” It can be seen plainly that in the specific term “law” it must be understood that there the force and intention of just and true judgment subsists. [12] I ask you then, Quintus, just as they were used to do: if a state lacks an element, and exactly because the state lacks it, the state is to be considered no state at all; must not that element be counted among the things which are good?

Quintus. Sure, absolutely.

Marcus. So isn't a state lacking law to be considered nonexistent?

Quintus. It is impossible to speak otherwise.

Marcus. Therefore, it is necessary to count law among the very best things.

Quintus. I agree completely.

[13] **Marcus.** What about the many things decreed corrosively and pathogenically among nations? They no more attain the name of “law” than if bandits had enacted certain “laws” by their own agreement. For if the ignorant and inexpert prescribe lethal substances in place of healthful ones, (such substances) can no more be called physicians' prescriptions than a pernicious thing can be called a law, nor would it count as national law, even if the nation had accepted whatever sort of corrosive thing you like. Therefore, law is the distinction between what just and what is unjust, set forth on the pattern of the chief and most ancient nature of all things, at which all (real) laws of human beings aim, which impose punishment on wrongdoers, but vindicate and defend good folk.

Quintus. I understand you quite clearly. In fact, I don't think that any other law ought to be held or

even *said* to be “law.”

[14] **Marcus.** So you think that the Titian and Apuleian laws are no laws at all?

Quintus. Right along with the Livian, in fact.

Marcus. Properly so, especially these which were repealed by the Senate with one sentence in a single instant! The Law whose force I have explained cannot be abolished or repealed.

Quintus. Obviously the laws you will propose will be the kind which will never be repealed?

Marcus. On condition that you two accept them, certainly! But I think I ought to do as Plato did, that most learned man and the most burdensome of all the philosophers, who first prescribed a *Republic* and did the same thing separately about his *Laws*. So, before I read the exact law into the record, I will sing the praises of Law. I see that Zaleucus and Charondas did the same thing, although they wrote laws for their states, not for intellectual interest or for amusement’s sake, but for the sake of (their) republics. Plato clearly copied their view that law entailed persuasion, not just compelling everything by violence and threats.

[15] **Quintus.** What about Timaeus’ denial that there ever was a Zaleucus?

Marcus. But Theophrastus < says > there *was*, hardly a worse source in my view, and a better one in many people’s opinion. In fact, my *clientes* the Locrians, his own fellow-citizens, commemorate him. Whether he existed or not is beside the point; I’m talking about what was handed down. Citizens must be persuaded at the outset that the gods are lords and governors of all things; that what transpires does so by their judgement and at their nod; that they are deserving of the very best from the human race, and observe what sort of person each human being is, what he accomplishes and what crimes he commits, with what attitude and reverential action he honours religious obligations—pointedly noting the observant and non-observant. [16] Minds steeped in such things certainly won’t shy away from true and practical insight. What is more true than this? Nobody dare be so idiotically arrogant as to think that reason and mind exist in him and not in Heaven and earth, let alone that the things which the pinnacle of ingenious intellect barely understands are set in motion at random! Who would count as fully human some one not driven to gratitude by the arrangements of the stars, the alternations of the days and nights, the orderliness of the months, and the (earth’s) produce brought forth for our enjoyment? Since whatever has reason excels whatever lacks it, it is also *nefas* to say that anything excels the Nature of the universe—the Reason which must be confessed to dwell in it. Who would deny that these insights are practical, thoroughly grasping how many engagements are solidified by oath-taking, how great the benefit of the rites of treaty-making, how many people are summoned back from the brink of crime by fear of the gods, and how hallowed the fellowship of citizens with the gods intermingled among us as judges and witnesses?

You've got the preamble to the law. That's what Plato calls it, anyway.

[17] **Quintus.** I sure do, brother! I'm totally enchanted by your veering off into different topics and a different perspective than that guy. Nothing could be more different from him than what you said earlier or specifically this exordium about the gods. The only thing you copy is the speaking style.

Marcus. *Want* to, maybe—whoever successfully imitated Plato? Translating his notions is child's play. If I didn't want to be my own man lock, stock, and barrel, I could have done that. Why bother just saying the same things paraphrased?

Quintus. D— straight! Truly, as you yourself just said, I prefer you to be your *own man*. Set forth now, if you please, your very own laws about religious rite.

[18] **Marcus.** In fact, I will set them forth—well, as best I can. Though topos and topic are both *en famille*, I will promulgate the laws in legal language.

Quintus. What on earth is that?

Marcus. There is settled legal language, Quintus, not so ancient as in the Twelve Tables and Inviolable Laws, but just a bit *old-fashioned* and adding prestige to *modern* style. So I'll follow that pattern—and be brief about it—if I can. I'm not proclaiming laws in polished form—endless labour!—just highlights of content and perspective.

Quintus. So stipulated. Well? We're all ears!

[19] **Marcus.** They must draw near to the gods purely, focussing piety, forsaking plenty. God is His own avenger against any one doing otherwise.

Let no one have gods on his own, new or imported, without public approval; at home they must worship (gods) < they have received as worshipped > in due form by the fathers.

They must have shrines < in the cities >; they must have sacred groves out in the country and dwellings for the Lares.

They must preserve the rites of their families and ancestors.

They must worship the gods—both those always ranked as heavenly beings and others whose worthy deeds installed them in heaven: Hercules, Liber, Aesculapius, Castor, Pollux, Quirinus; as well as things on whose account ascent into heaven is bestowed upon a human being: Mind, Virtue, Reverence, Loyalty. There must be shrines for their renown, but none for the vices.

They must perform the sacred rites. They must put aside disputes on holidays, and observe holidays among the household (slaves) when work is finished. It is stipulated that holidays occur at the change of seasons. [20] The priests must offer publicly the specified produce and berries in specified sacrifices on specified days. Likewise, on other days they must devote the abundance of milk and offspring. To prevent mistakes, the priests must define the specified

protocol and time of the year. They must determine in advance which victims are proper and pleasing to each god.

There must be < other > priests for the rest of the gods: pontifices for all, flamines for designated gods. Vestal virgins must guard the eternal fire of the public hearth in the City. So that these public and private rites take place decently and in order, the ignorant must get the information from the public priests. There must be three kinds (of priests): one kind presiding at ceremonies and rituals; another interpreting the unknown utterances of prophets and seers to which the Senate and people accord official status.

The interpreters of Juppiter Best and Greatest, the public augurs, must anticipate future events by signs and auspices and maintain this skill. [21] They must augurise vineyards, osier-beds, and the popular welfare. Those who wage war or conduct official business The augurs must take auspices in advance; those who wage war or conduct official business must obey. They must anticipate the gods' anger and make preparations. They must make sense of lightning in the designated sections of the sky. They must preserve unobstructed lines of sight, and keep City, countryside, and designated vantage points set aside for a holy use. Whatever an augur shall declare unjust, nefas, or ethically corrupt is invalid and tainted. Death penalty for the disobedient!

The fetials must be arbitrator-ambassadors for truces and ratification (of peace treaties). They must negotiate about going to war.

Prodigies and portents must be referred to the Etruscan *haruspices* if the Senate orders it. Etruria must teach her leading men the skill. They must propitiate the gods they determine, and avert disaster portended by lightning and lightning-struck things.

There must not be sacrifices by women at night except for ritually proper observances for the nation's benefit. They must not initiate anybody except into the Greek cult of Ceres, as is customary.

[22] Inexpiable sacrilege must be counted hostile to pietas; the public priests must expiate what can be expiated.

In the public games which occur, whether with chariot-races and physical contests or with song, flute-playing, and harp-playing, they must regulate the people's exuberance and link it with respect toward the gods.

They must preserve the best of the ancestral rites.

Nobody may solicit contributions except the "slaves" of the Idaean Mother. They may do so only on the sanctioned days.

Whoever steals and hauls away a sacred thing or anything on deposit in a sacred foundation

equals a parricide. For perjury the divine punishment is destruction, the human punishment, dishonour. The pontifices must punish incest with the supreme penalty. Nobody bereft of pietas dare try to buy off the gods' wrath with gifts. Vows must be performed carefully; there must be a < divine > penalty for a violated < divine > law.

No one may consecrate a field. Consecration of gold, silver, and ivory must be limited. Private rites must remain permanently. The laws [or rights] of the sainted dead must be holy. One's own dead must be reckoned divine [kuèi/shén]. Mourning expenses for them must be limited.

[23] **Quintus.** You finished off the Great Law short and sweet, brother. However, it seems to me that this constitution of the rites scarcely differs from Numa's laws and our customs.

Marcus. You don't say! Since in the earlier books on the Republic Africanus seemed to carry the day for our old Republic as the best of all, isn't it necessary to set forth laws congruent with that best of Republics?

Quintus. Of course! I absolutely agree.

Marcus. Well then, you must expect laws which keep faith with the very best *fā* of a republic. If by chance I propose laws which do not exist now nor ever existed in our Republic, they will still be almost exactly our ancestors' custom which was then valid as law.

[24] **Atticus.** Therefore, if you please, recommend that exact law so that I can say "as you ask."

Marcus. No kidding? *Atticus*? You won't quibble?

Atticus. Absolutely not. I'll vote 'no' on nothing of any importance. I'll yield the floor to you on minor matters—if you like.

Quintus. That's my position, too.

Marcus. Careful! This could get long-winded!

Atticus. Get on with it! We've nothing better to do...

Marcus. The law orders "draw near to the gods purely"—in mind, obviously, embracing all we are. It doesn't abolish purity-regulation for the body, but it must be understood that since the mind excels the body by far, if approaching with a clean body is observed, all the more with clean minds! Bodily impurity is removed with a splash of water or a few days' passing, but intellectual infamy neither fades with a long passage of time nor can it be washed out with all the whitewater streams you like. [25] When it orders "piety focussed and plenty forsaken," it means that integrity is pleasing to God and over-spending must be removed. What for? We want poverty and wealth to enjoy equal standing even among human beings. Why debar poverty from approaching the gods by extra costs for holy rites, especially when nothing would be less pleasing to God himself than that the way of his propitiation and worship not stand open to all? Since no judge but God himself is appointed as avenger, rite seems reinforced by fear of looming punishment.

To worship “one’s own private gods, whether new or imported” brings in confusion of religious obligations and rites unknown to our priests. [26] Resolved: “worship the gods revered by the ancestors”, if the ancestors themselves obeyed this law.

I find that “there are to be shrines in the cities”. I do not follow the Persian magi, on whose authority Xerxes is said to have burned down the Greek temples for quarantining the gods within walls, to whom all things ought to lie open and free, and whose temple and home is this entire world. To increase pietas toward the gods, we and the Greeks do better by wishing the gods to be our fellow-residents in our own cities. This viewpoint makes rite useful to the State, if there’s any truth in the elegant saying of most learned Pythagoras, that both pietas and rite are best understood intellectually when we devote ourselves to religious observance. Thales, wisest of the Seven Sages, also said that human beings ought to consider everything perceptible as full of gods. Everyone would be purer, just as they are most pious inside shrines. Conventional wisdom supposes that the gods have a sort of visibility to our eyes as well as to our minds. [27] “Sacred groves in the country” have the same rationale. Also, the rites of the Lares must not be rejected, part of our ancestral tradition, established in full view of estate and farmhouse and observed by slaves as well as masters.

< It is proper > to preserve family and ancestral rites, defending them as obligation handed down by the gods themselves, since antiquity is nearest to the gods. Because Law orders us to worship people who have been deified, such as Hercules and the others, it demonstrates that all people’s souls are immortal, but those of the brave and the good are divine. [28] It is really good that Mind, Reverence, Excellence, and Loyalty be deified. There are temples officially dedicated to all of these at Rome, in order to make those possessing these virtues—as all the good do—feel that real gods are billeted in their souls. How disgusting it was at Athens, on the proposal of the Cretan Epimenides after the expiation of the murder of Cylon, that they set up a shrine to Savagery and Shamelessness. It is proper to deify virtues, *not* vices. The decrepit altar on the Palatine to Fever and the one on the Esquiline to Bad Luck must be destroyed, and everything similar repudiated. If names must be devised, better such names as Conquering Vica and Powerful Pota and Resolute Stata, and Juppiter’s cognomina like Reverser-of-Retreat and Invincible, and things worth pursuing: Safety, Honour, Prosperity, and Victory. Since the soul is spurred on by the prospect of good things, Hope was properly deified by Calatinus. Luck should be deified too: Today’s who is strong every day, for she is strong on all days, Provident for providing help, Random who indicates uncertain results, bringing assistance, or Random, in which is denoted more uncertain outcomes, or Firstborn (our) companion from birth. < † >

[29] Then, the scheme of ferial and festal days has respite from lawsuits and squabbles for the free,

and respite from work and labor for slaves. The arranger of the year ought to schedule these (days) at the conclusion of farmers' agricultural work. Pertaining to the time, in order that the offerings of sacrifices and of the offspring of the flocks may be preserved which are specified in the law, a pattern of intercalation must be maintained scrupulously; this was expertly instituted by Numa, (but) ruined through the negligence of later pontifices. Now that ought not be changed from the established things of the pontifices and *haruspices* about sacrificing to each god the corresponding victims: to which (god) full-grown (victims), to which sucklings, to which females, to which males. Many priests for all the gods and particular priests for particular gods make it easy for legal responsa and for the enactment of the rites. And since Vesta comprises as it were the hearth of the city, (as in Greek she is called by the name Hestia, nearly the same name we use), virgins ought to preside at her worship, making it easier to keep watch and ward over the fire and making women aware that female nature is capable of complete purity.

[30] What follows really pertains not only to rite but even to the condition of the state, since apart from those who are publicly in charge of rites people cannot satisfactorily discharge private rites. The people's ongoing need of the nobility's competence and prestige is the glue of the State. The priests' job description omits no righteous rite. Some must propitiate the gods, others preside at sacred solemnities, others must interpret the predictions of seers—but not too many lest they mushroom infinitely—and *nobody* outside the college of priests should know which predictions are officially sanctioned.

[31] Augural jurisdiction, combined with political power, is the greatest and most prestigious in the State. I don't feel this way because I am in fact an augur, but because that's how we *must* think! If we inquire about legal authority, what is greater than power to dismiss assemblies and councils set up by the highest possessors of *imperium* or other high dignitaries, or to invalidate their decisions? What is more serious than to derail work-in-progress, if one augur has said "on another day"? What is more grand than to be able to decree that the consuls ought to quit their magistracy? What has greater religious precision than to give or withhold the right of joint action with the plebs or the people? What (is better) than to abolish laws proposed illegally, as the Titian Law by a decree of the augural college, as the Livian Laws on the instructions of consul and augur Philippus? Nothing domestic or military can be enacted by the magistracy or approved without some augur's approval.

[32] **Atticus.** Come on now, I see those things and I admit that they are great; but in your college there is a great dispute between Marcellus and Appius, the best of augurs, for I looked it up in their books. The one contends that the auspices were set up as a useful device for the State, and the other thinks that your skill can really foretell the future. I wonder what you think about this.

Marcus. *Me?* I think there *is* divination, which the Greeks call μαντική, and this exact part about

birds and other omens is our skill. If we admit that gods exist, that by their Mind the universe is governed, that they are concerned about the human race and can point out to us indicators of future things, I don't see why I ought to deny that divination exists. [33] What I have stipulated is real; what we want necessarily follows. In fact, our Republic is full of lots of examples of augurs' predictions that proved true—amazingly enough—as are all kingdoms, peoples, and nations. The reputation even of Polyidus, Melampus, Mopsus, Amphiaraus, Calchas, or Helenus could not have been so great, nor so many nations retained a like reputation to this very day, such as the Phrygians, Lycaonians, Cilicians, and especially the Pisidians, unless antiquity demonstrated that these things were reliable. In fact, our own Romulus wouldn't have founded Rome after taking auspices, nor the name of Attius Navius bloomed in recollection for so long, unless all these people had uttered many amazing things quite accurately. No doubt the augurs' art and science has now faded away through obsolescence and neglect. I concur neither with the one who denies the science ever existed in our college, nor with the other who thinks it exists just now. Among our ancestors I think it was twofold. Once in a while it was applied in a State emergency, but very frequently in policy-making. [34] **Atticus.** By God, I believe that's so! I absolutely agree with that line of reasoning. On with the rest of it!

Marcus. Sure! I'll lay out the rest as concisely as I can. The law of war follows. In beginning, waging, and concluding war, justice and good faith should prevail utterly. There should be public interpreters of these things, sanctioned by law. I think it is stated plainly enough in the law itself about the religious obligation of *haruspices*, expiations, and propitiations.

Atticus. I agree, since this whole discussion revolves around religious obligation.

Marcus. Titus, I really wonder how you could accept or I could criticise what comes next.

Atticus. On what?

[35] **Marcus.** On night-time sacrifices by women.

Atticus. I really do agree, especially since in the law itself the solemn public sacrifice is excepted.

Marcus. What happens to our Iacchus, our Eumolpids, and those revered secret rites, if we actually abolish night-time rituals? We are giving laws not only for the Roman people, but to all worthy, stable nations.

Atticus. I suppose you exempt those in which we ourselves have been initiated?

[36] **Marcus.** I will indeed exempt them. It seems to me that your Athens has given birth to many renowned and godly things, and applied them to human living. Nothing is better than those secret rites by which, from a life of rural know-nothings, we have been schooled to a wide sympathy and tamed. Just as we know the initiations, as they are called, so we actually know the precepts of life. We have understood not only the pattern of happy living but even of dying with a better hope. The

comic poets illustrate what I take umbrage at in night-time rites. If such depravity were normalised at Rome, what would that fellow have done, who thrust his premeditated lust into a sacrifice where even an unintentional momentary [male] glance is taboo?

Atticus. Of course you must propose such a law for *Rome*, but don't wreck *our* customs!

[37] **Marcus.** I'll go back to my own laws. On these matters, it must be decreed most rigorously that the clear light of day protect women's reputation in public opinion. They should be initiated into Ceres' rite only in the Roman observance. The old official action of the Senate proves our ancestors' sternness about this kind of thing, along with the consuls' investigation and negative findings reached with the army's help. In case *we* appear overly harsh, in central Greece Diagondas the Theban cancelled *all* night-time rites by a permanent law. Aristophanes, the wittiest poet of Old Comedy, lampoons new gods and all-night vigils for worshipping them. He has Sabazius and some other immigrant gods convicted and deported by the State.

A public priest should relieve fear by his advice when an accident is expiated. He is to condemn the arrogance of introducing things which make holy rites hideous, ruling it blasphemy.

[38] Since public games are split between theater and circus, there should be physical contests set up in the circus—running, boxing, wrestling, and horseraces—until a decisive victory; let the theater flourish with song, lyre, and flute, provided these abide by specified legal limits. I agree with Plato that nothing so easily infiltrates weak and soft minds as different styles of singing. Their great impact for good or ill beggars description. Song excites the bored and bores the excited, unleashing and then reining in emotion. Preservation (or not) of ancient song was the deciding factor for many city-states in Greece. Their morals collapsed into degeneracy in time with the music, either becoming depraved by this charming corruption, as some think, or once their austerity killed itself by other vices, there was room even for this mutation in their altered ears and minds. [39] This is why the wisest and by far the most learned man of Greece was terrified of this collapse. He said it was impossible for the canons of music to be altered without alteration of civil law. *I* see no reason to panic, nor do I make light of the matter. I do see that audiences once accustomed to be filled with Livian and Naevian melodies' enjoyable austerity now scream, roll their eyes and get whiplash in time with the twistings of the tunes. Once upon a time ye olde Hellas harshly punished that (nonsense), anticipating far in advance how the rot ever so subtly worms its way into citizens' minds by evil fads and evil teachings—suddenly demolishing entire States!—*if* it's really true that stern Sparta ordered any strings more than seven to be cut from Timotheus' lyre.

[40] Next, the code stipulates that the best hereditary rites must be preserved. When the Athenians consulted Pythian Apollo about which rites they ought especially to keep, the oracle uttered "those which were in ancestral custom." When they returned, saying ancestral custom often changed, and

asked which of the varying customs should be followed, it replied “the best.” Absolutely true! What is *best* must be counted most ancient and nearest to God.

I have abolished taking up collections apart from a few limited days for the Idaean Mother. It fills minds with superstition and squeezes households dry.

A temple-robber is fined not only for theft of sacred property but of safe-deposits made at a sacred place, current practice at many shrines. [41] It is said that Alexander deposited money in a shrine at Soli in Cilicia, and that the renowned Athenian Clisthenes, afraid for his own property, put his daughters’ dowries in trust to Samian Juno.

Obviously, by this point there can be no argument about perjury or about incest. The impious must not try to placate the gods with gifts, hearing Plato exclude any doubt how God will react, when no good human being would want a scoundrel’s largesse. Enough is said in the law about careful attention to vows, especially the contract-vow by which we obligate ourselves to God.

In fact, penalty for a flouted religious obligation has no legitimate counter-plea. Should I use here the examples of criminals? The tragedies are full of them. I would rather cite what’s right in front of our faces. Although I fear that this recollection may seem to be more than a man could bear, since my conversation is with the two of you, I won’t hold back anything. I trust that what I say is welcome to the immortal gods, not wearisome to people.

[42] When I was banned, all lawful rites were polluted by rotten citizens’ crime, our family Lares desecrated, a temple to License built where once their niche had been, and I who had guarded the shrines was driven off. With your minds’ eye look around quickly at the consequences—but why name names? When everything I owned was stolen and razed, I did not let the city’s guardian-goddess be raped by the godless! I carried her away from my house to her own father’s house! In the judgement of the Senate, of Italy, and at length of all nations I carried out the rescue of the Fatherland! What more glorious thing could befall any human being? And those whose crime assaulted and battered the rites? Some of them lie scattered and dispersed. Among the rest, those who had been the ringleaders of these crimes and impious beyond the others, not only lacked <no> torture and dishonour <in> life, but even burial and funeral-rites according to protocol!

[43] **Quintus.** Yes, yes, brother, I *know* all that, and give the gods their soldiers’ due, but all too often we see somewhat different results.

Marcus. Quintus, not only don’t we accurately assess divine penalty, but we are swept away by conventional wisdom into error and fail to perceive the truth. We weigh people’s misery by death and physical pain or mental anguish or losing in court, which I admit are common to humanity and happen to many good men. There is a harsh penalty for crime: its intrinsic damage is greatest, above and beyond its consequences. We see people who never would have been our personal enemies

unless they hated the fatherland; burning by turns with greed, fear, and remorse whatever they did; now dreading, now scorning the rites; they wrecked the judiciary, bribing men—*not gods!* [44] I'll rein myself in and chase this no further, since I secured worse punishment of them than I had intended! To say no more, divine penalty is twofold, consisting of mental tortures for the living and of such a reputation for the dead, that their destruction is approved, not only with the good sense but the great joy of the living.

[45] I utterly agree with Plato that “fields ought not be consecrated”. If *only* I can translate, he uses just about these words: “The earth, like the hearth in our homes, is holy to all the gods; no one dare re-consecrate it. Gold and silver in cities, whether in private hands or in shrines, is a thing arousing envy, while ivory, extracted from a lifeless corpse, is scarcely a reverent gift to a god. Now bronze and iron are tools of combat, not of a shrine. Any sort of wooden object you like cut from one piece of wood may be dedicated, and likewise a stone object in common shrines, or textiles requiring no more than one month's labour for a woman. The colour white is especially fitting for a god, especially in textiles, but in other votive gifts also. Dyes should be absent except in battle-standards. Birds are the most divine gift, and paintings finished by one painter in a single day. Other offerings must be according to this example”.

These things suit him. I do not regulate other things so rigidly, swayed both by human limits and adaptation to the times. I predict that agricultural production will deteriorate if some superstition arises about cultivation or using iron implements.

Atticus. I understand completely. grasp these things clearly. Permanent rites and the rights of the departed still remain.

Marcus. What a memory, Pomponius! I totally forgot all that!

[46] **Atticus.** *That* I believe. I remember them and I'm waiting for you, especially since they pertain to pontifical *and* to civil law.

Marcus. Indeed. There are many decrees and rescripts by the best experts in the field. Wherever our talk leads me, I'll deal with whatever matters of civil law arise—as far as I'm able—but in such a way, as one learns whence each point of law is drawn, that it's easy for anyone with a modicum of brains to get the gist of any new case or consultation, once you know where to look it up.

[47] However, legal experts, either to introduce confusion and make things appear more complicated and harder to grasp, or, more likely, because of ignorance of teaching-method—there's a knack to know something and a knack to teaching it—tend to split up into infinitesimals what amounts to a single concept. So the Scaevolae, both of them pontifices and legal experts, make a mountain out of this particular mole-hill. Publius' son [Scaevola Augur] says “Father always used to tell me that nobody makes a good pontifex unless he knows the civil law”. The whole thing?

Come now! Beyond the religious angle, what's building code or riparian rights or what have you to a pontifex? That's a *narrow* angle: rites, vows, festivals, tombs, and all that. Why do we make these into such great things, when the rest are so very small? On the rites, a broader field, one sentence suffices: (rites) must be preserved always and from the start passed down in families. I settled this in my law "sacred things should be permanent". [48] These laws were made pursuant to pontifices' authority to keep the rites' memorial from dying when a paterfamilias dies, and imposing them on anyone who received a bequest when the paterfamilias died. When this one thing sufficient to grasp the rationale was codified, countless others sprang up to fill the jurisconsults' books.

They enquire who is specifically required to perform the rites. The situation is quite equitable concerning the nearest heir who "replaces" the departed. Then, whoever gets as much by the death or will as all the other heirs combined. They enquire who is specifically required to perform the rites. The situation is quite equitable concerning the nearest heir who "replaces" the departed. Then, whoever gets as much by the dead man's death or testament as all the other heirs combined. This is also in order; for it is tailored to the specific point which is set forth. Third, if no one is a designated heir, whoever held most of the dead man's property when he died [does the sacra]. Fourthly, if no one gets anything, the largest creditor must protect the rite. [49] The person of last resort is anyone owing money to the dead man who has not paid off the debt to anyone; treat him as though he received the outstanding debt as a bequest. I learned this from Scaevola. It was not codified thus by the ancients. In fact, they taught in these words: "bound to the rites in three ways—by inheritance, or if one receives most of the money, or, if most of the money is in specific bequests one gets anything that way". I follow Scaevola! [50] Everything depends upon this, you see, that the pontifices want the rites linked to the money, and think the feasts and ceremonies must be assigned to the same people < who ended up with the money >.

The Scaevolae find that when the estate is broken up, if specific bequests are not written into the will, and those receiving specific bequests take less than the total left to all the heirs, they are not obligated to perform the rites. They interpret this point differently about a gift. A gift the paterfamilias approved, made by someone under his authority, is valid; a donation made without his knowledge is invalid unless he later approves it. [51] Many little questions are spawned once this framework is in place. Cannot anyone able to think figure them out by himself easily enough by referring to it? If someone took less to avoid being duty-bound to the rites, and later on one of *his* heirs claims for *himself* the sum foregone by the original heir, relinquished sum, and the later cash-value plus the original heir's total exceeds the amount left to all the other heirs, the (later) claimant alone is duty-bound to the rites without co-heirs. Remarkably, they painstakingly allow someone bequeathed too much to avoid ritual obligations to release the heirs from the will using the "per aes

et libram” legal fiction to re-classify the bequest as though it had never been made!

[52] On this point and on many others I ask you, Scaevolus, pontifices maximi and very brilliant fellows in my own opinion, why you want to conflate pontifical and civil law, destroying pontifical lore by positive law? Rites are linked to money by pontifical authority, not by any law. So, if you were *only* pontifices, pontifical authority would remain, but the more expert you become in civil law, the more one discipline drives out the other. P. Scaevola, Ti. Coruncanus, and other pontifices maximi have determined that those getting as much as the other heirs combined are duty-bound to the rites. Pontifical law is on my side; civil law adds nothing. [53] The section on division (of an estate) is written ever so carefully. One hundred nummi may be deducted—a pretense discovered to liberate money from the burden of the rites! What if the testator had been at pains to guard against that? Mucius himself, a legal expert and pontifex too, advises the legatee to take less than the total left to the other heirs combined. Better experts used to say the legatee was bound no matter what he got. Again he is liberated from the rites. None of this pertains to pontifical authority. It’s taken straight from civil law. They loose the heir from the will “per aes et libram”. It’s the same situation: as though the money had not been bequeathed. If the legatee arranged to receive the exact amount bequeathed as though he were owed it under a contract, as though the money were not... †

[54] † ...a really learned man—Accius was his best friend. I think he reckoned December the last month of the year, just as the ancients did February. He also thought it essential to piety to honour the dead with the largest sacrifices. [55] Graves possess so much holiness that they call it nefas to inter one outside the clan and its rites. A. Torquatus made this ruling for the Popillia clan in the good old days. In fact, the memorial days, which are named for death [denicales, nex] because they belong to the dead, would not have been labelled feasts—like the holidays in honour of the other residents of heaven—had our ancestors not wanted those who had departed this life to be numbered among the gods. The law must schedule them on days without private or public feasts. The whole body of pontifical lore declares them a great and holy ceremony. We need not exhaustively explain the limit on family mourning, how to sacrifice castrated sheep to the Lar, how to cover the amputated bone with earth, the applicable rubrics about the sow-sacrifice, or when the tomb begins to *be* a tomb and is cloaked in holiness.

[56] I think the most archaic burial was what Cyrus used in Xenophon. The body is returned to the earth, settled and buried as though wrapped in its mother’s blanket. We hold that our King Numa was interred with the same rite hard by the altar of Fons. We know the Cornelian clan used burial within living memory. In victory, Sulla ordered C. Marius’ buried remains to be scattered in the Anio. Had he been as wise as he was emotional, he would not have gone mad with such bitter hatred. [57] For all I know, he was afraid that this could happen to his own body, making him the

first among the patrician Cornelii who wanted to be cremated. Ennius intones over Africanus: “here he is buried”. Truly they are said to be buried who are interred. Regardless, their tomb is not [rite-bound] until the rubrics are kept and the pig is slaughtered. It is now common practice that all who are entombed are said to be “buried”, which once applied only to those covered by thrown earth; pontifical lore confirms that custom. Until a lump of earth is cast upon the bones, the site of the body’s cremation is not rite-bound; once it is cast, the ashes are legally “buried” and the earth is “burial earth”. At long last it is compassed by many holy rites. In the case of someone killed on ship-board and dumped into the sea, P. Mucius ruled the family ritually clean, because a bone did not stick out above ground; a sow was required of the heir, a three days’ festival ordained, and a female pig slaughtered as expiation. For one who died at sea of natural causes, the ruling was the same, but without the expiation and festival.

[58] **Atticus.** I see what is in pontifical lore. Is there anything in civil law?

Marcus. Really not much, Titus, and not unknown to you, I suppose. It looks more to tomb-law than to the rites. In the Twelve Tables the law says “neither bury nor burn a dead person in the City”. I believe † ...or because of the danger of fire. Since it adds “nor burn”, one who is cremated is not entombed, but one who is buried.

Atticus. What about the renowned men buried in the City after the Twelve Tables?

Marcus. Titus, I believe they were either those awarded this for civic virtue prior to this law, like Poplicola and Tubertus, an honour lawfully kept by their descendants, or those exempted from the laws because of civic virtue, like C. Fabricius. But < just as > the law forbids entombment in the City, the pontifical college ruled that there is no right to construct a tomb on public property. You know the temple of Honour outside the Colline Gate. Anecdote had it that there was once an altar there. A tablet was discovered nearby. “Honour’s” was engraved upon it, to whom the temple had been consecrated. Although there were many graves on its site, they were excavated because the college had ruled that public property could not be encumbered by private holiness.

[59] Other provisions in the Twelve Tables to lessen funeral expenses and lamentation are taken almost word-for-word from Solon’s laws. He says: do no more than this: do not shape the pyre with an axe. You know what follows. As boys we learned the Twelve Tables as a set-piece, but nobody learns them now. Therefore, spending is limited to “three small veils, a purple tunic, and ten flute-players”. It cuts short mourning. “Women must not gouge their cheeks nor stage a *lessus* at a funeral”. The old interpreters Sextus Aelius and Lucius Acilius said that they did not quite understand this, but suspected some sort of funeral garb. To Lucius Aelius, *lessus* was a mournful ululation, as the very sound suggests. I judge this more plausible. Solon’s law forbids just that.

These praiseworthy things are nearly universal for élite and masses alike. It is quite natural that

class-distinction be abolished in death. [60] The Twelve Tables abolished other funeral customs which exaggerated grief. “Don’t collect a dead man’s bones to stage a funeral later”: < I suppose it must have happened often that one rite was transformed into many and many lectisternia set up, or else the law wouldn’t have prohibited it. > It excepts death in battle or while travelling. These additional provisions are in the laws: about anointing, that slave-anointings and drinking-contests are rightly abolished, so they must have existed; “no expensive perfume-sprinkling, no long garlands, no censers”. Let’s skip those matters. Their import is that decorations for valour belong to the dead, because the law directs that the crown “For Valour” is conferred without fraud on the one who earned it and upon his father. Although this law said “add no gold to [the pyre]”, < look > with what *ubuntu* another law makes an exception: “there is no fine for burying or cremating someone with gold dental work intact”. At the same time, observe that burial and cremation are distinguished. [61] There are two more tomb-laws, one on other people’s buildings, another on the actual tombs. The first forbids building a pyre or mound closer than sixty feet from another’s building without his consent due to the danger of fire to buildings. The other forbids squatter’s rights to the *forum*, the entry to a tomb, or the mound. This protects tombs’ legal standing.

We have these in the Twelve Tables plainly according to nature, the norm of law. The rest is custom: public notice must be given if a funeral includes games, the presider at the rites may use an attendant and lictors, [62] praise-songs of men honoured in a *contio* are to be recited to the accompaniment of flute-music called *neniae*, as the Greeks call mournful songs.

Atticus. I am glad that our laws conform to nature, and I am utterly charmed by our ancestors’ wisdom. Set a limit on tombs as upon other expenses!

Marcus. You insist rightly. I trust you saw the “progress” of spending on C. Figulus’ tomb! Many ancestral proofs survive of how little greed there used to be for that sort of thing. Under this heading, our legal experts order expense and mourning removed from the rites of the deified dead, finding it essential to limit the grandiosity of tombs. [63] The wisest legists have not ignored these matters. They say Athenian tradition claims this burial-law has been in force ever since Cecrops! When the next of kin finished the rite and the earth was laid over, it was sown with crops, as if a mother’s gentle embrace were granted to the dead, and the soil made ritually clean by crops could be returned to the living. A feast followed, which the immediate family entered crowned, before whom a praise-song about the dead man was declaimed—if there was something true to say, since it was taboo to lie—and all was done decently and in order. [64] Later on, as Demetrius of Phaleron reports, lavish funerals and displays of mourning crept in. They were abolished by Solon’s law, which our decemvirs took almost verbatim into Table X. The general law and the rule on the three veils are Solon’s. It even quotes him on lamentations: “women must not gouge their cheeks nor

stage a *lessus* at a funeral”.

There’s no more in Solon on tombs beyond “do not destroy them or inter a stranger”. There is a fine “if anybody desecrates, defaces, or smashes a mound (I guess that’s what *τύμβος* means), monument, or column”. Later, because of the huge tombs we see in the Ceramicus, the law stipulated that “no one may build a grander tomb than what ten men construct in three days.” [65] It disallowed adornment with stucco, erecting so-called herms, and eulogies of the dead except at State funerals—and then only by the official eulogist. To limit the wailing, mobs (men or women) were broken up, since crowds worsen grief. [66] This is why Pittacus utterly forbade any stranger to join in a funeral. Demetrius says grandiosity of funerals and tombs grew almost to what now exists at Rome. He reined this in by law. You know this man was not only quite learned, but a citizen of a *republic*, most skilful in defence of the citizenry. He limited spending both by fines and timing, ordering pre-dawn burials. He restricted new tombs, wanting nothing atop the mound of earth save a little column no taller than three cubits, a table, or a bowl. He assigned a special magistrate to enforce this.

[67] Your Athenians did these things. Let’s look at Plato, who referred funeral protocol to experts on the rites, a precedent we maintain. He also said these things about tombs: He forbade any cultivated land or any *potentially* arable land to be diverted for tombs. Only the sort of land would do, which might receive the bodies of the dead without harm to the living—and cram it as full as possible. No one living or dead may diminish land which can bear fruit and provide us with food like a mother. [68] He forbids tombs to be built higher than what < five men > can finish in five days, and more stone to be installed than allows for a eulogy of the dead inscribed in no more than four heroic verses, which Ennius calls long. Thus we also have the opinion of this exalted man about tombs, who likewise fixed funeral costs in advance, ranging from five minae to one mina based on tax-returns. Finally, in the same place he speaks of souls’ immortality, the tranquility awaiting good people after death, and the punishments awaiting the irreligious.

[69] There! I think you have everything about the rites explained!

Quintus. We sure do, brother—exhaustively. Hurry up with the rest.

Marcus. I *am* hurrying! Since you like *forcing* me to new topics, I hope to finish with today’s talk, yes, this very day! I see Plato did the same: his entire speech on the laws was all delivered on one summer day. I’ll do the same and talk about magistracies, which undoubtedly comprise most statecraft, now that the rites are set in order.

Quintus [?]. Speak up and keep to the schedule you’ve set!

PROLEGOMENA: CONFUCIAN COMMENTARY ON CICERO'S THEOLOGY?

Many researchers in the field of religion do not have even the doubtful wisdom of Lady Britomart: 'Will nothing make you behave yourself, Charles? Remember that this is a sacred place, though the misguided worshippers are heathen idolators'.

—E. Bolaji Idowu, citing Bernard Shaw's *Major Barbara* (20)

Confucius est un des plus grandes hommes qui aient honoré l'humanité par la sagesse de sa morale. Son véritable nom était *Confutzé*. Sa doctrine, en Chine, est dans le plus grand vénération. C'est à peu près la seule religion des gens instruits qui n'admettent pas, comme le gros de la nation, le culte des idoles.

—Edme Mentelle (1730-1815) (Mentelle 1822:50)

...doctus fidelis

suavis homo facundus, suo contentus, beatus,
scitus, secunda loquens in tempore, commodus, verbum
paucum, multa tenens antiqua, sepulta vetustas
quae facit, et mores veteres novosque, tenens res
multorum veterum, leges divumque hominumque,
prudenter qui dicta loquive tacereve posset.

—Ennius (239-169) (Warmington 1:80)

S. Radhakrishnan, while India's freedom struggle continued during the Second World War, wrote "whether we like it or not, East and West have come together and can no more part....If we are nurtured exclusively on the past of Europe or of Asia we cannot consider ourselves to be cultivated" (1940:115). A theologically-minded Indian president leads us to the theology of two ancient statesmen, K'üng Chung-ni 孔仲尼 and Marcus Tullius Cicero. Cicero's *De Legibus*, Book 2 (Powell 2006 text) is the subject of this line-by-line commentary, supplemented with topical excursions. Insights of "primordial" Confucianism are applied. Cicero's Roman religion and K'üng's Chinese religion are often elided by placing the two sages in ill-fitting secular niches. W. Wycisło has pointed out the genre mistake of confusing dialogue with legal responsum in Seneca (12); confusing secular philosophy with theology is a retrojected-disciplinary mistake in regard to both DL and much in K'üng and his successors. Cicero was an augur-priest, and K'üng was T'ien's missionary repristinating the threatened Tào. They are theologians. Together, they move readers beyond provincialism. Shared *Diesseitigkeit*, where holiness and humanism meet, enables contemporary and local parallels. The canonical texts are accepted as valid witnesses to the "civic theology" of the two sages without historicist supersession or philological antiquarianism.

In Cicero's words, K'üng makes us *exculiti ad humanitatem*, raising us to ubuntu. No Heaven, no ubuntu (Bresciani 44). K'üng and Cicero teach civil courage and public faith in natural Law and divine Reason. Recording Zulu mos maiorum, A. Bryant rebuked racism's imbecility and historicism's hauteur. "A state and social organization so admirably ordered and equitable, indeed

in many respects so much in advance of our own, may well astound those who had imagined that the institutions of European civilization were the acme of perfection and righteousness” (Bryant 465, *contra* Smuts 75; cp. Zenker’s fine fury). Cicero’s Rome and K’üng’s China break down barriers of small culture and distant time alike. In his posthumously collected dialogues, the Lun Yu 論語, K’üng says “among really educated men, there is no caste or race-distinction” (LY 15,38 Ku).

Natural law...challenges the systems which are not natural to man, such as positivism and skepticism...relativism...historicism, positivism...in direct conflict with the natural law....Both universal monotheistic religions and natural law reject moral relativism, scepticism, and racism. (Ezzatí 12, 28)

W. Schmidt, theologian of primal monotheism, warns that in historicism’s ugly hermeneutic “the lower, the more bestial and ugly, must also be the older; the better in each case was the higher, and therefore the later, stage of development” (W. Schmidt 1935:5,14; cf. Ross 5). A modern linguist says Homer “stitched together (ραψοδεῖν) prefabricated parts. Instead of a creator, you had an assembly-line worker” (Ong 22). K’üng the “transmitter not creator” and Cicero the artisan of “ἀπόγραφα” (Ad. Att. 12,52), not to mention assembly-line workers and commentators, creatively shape what is sent down the line to us. As Greek was for Cicero, so for us Latin has been a companion since early youth—but alas! so little Chinese. An Italian aphorism says “traduttore traditore”, translators are traitors, but it is not so. K’üng translated Chou’s 周朝 magnificence across time, and Cicero applied the gentle New Academy’s insight to Roman religion. In DL2, Cicero is not philosopher or statesman *separatim*, but priest-theologian using philosophy as handmaid and statesmanship as shrine of praxis—or mandate from T’ien.

Translators’ consensus fidelium opens us to hear the Chinese Sages in dialogue. “I thought that it was no use waiting for a scholar who shall have a proper and critical knowledge of Sanskrit and Hebrew, Greek and Latin, French and German, who alone could get all the sides in proper order, for such a scholar has not yet been born. Even translations could be used with care and judgement. So I felt that it was time that someone with *some* knowledge got together the main points into order....If I have misrepresented any point of real importance, no one will be more grieved than myself. Those who know the extent and intricacy of the ground traversed will readily pardon less serious errors” (Radhakrishnan 1940:ix). We ask the same pardon. Let us listen as our sages speak to “all within the four seas” (LY 1,1).

“Ratio, qua una praestamus beluis cunctis hominibus certe est communis, doctrina differens” (1,30), shows Cicero’s faith alive and well within Neo-Academic constructive scepticism. “When you yourself are in the dark, do not haste to make any rash judgement: when you do have a clear understanding, do not think highly of yourself and even be inflated with conceit” (Li Chi 1; Xu).

This launches civic action: “*quaecumque res eum sic attinget ut sit visum illud probabile neque ulla re impeditum, movebitur*” (Acad. 2,101). As a Neo-Academic, Cicero sought clarity, demanded much of conscience and duty, despised Epicureanism intensely, had a firm faith in God and a strong conviction of the immortality of the soul. In this faith “*il se montre très ferme*” (Laurand 545) in *articulo mortis*.

A constructive sceptic as theologian “would still insist that we do not *know* the truth about the gods, but...that his scepticism was perfectly compatible with the assumption that one had some rational justification for believing...that there are certain divine beings” (Frede in Athanassiadi 42; cf. Liebeschuetz 34). Neo-Academics disliked bigotry, not belief, limiting dogmatism and corrosive rationalism (Cooper 79). Style creates stability. “*Non enim sumus ii [Academici], quorum vagetur animus errore nec habeat umquam, quid sequatur*” (DO 2,8). The “wisdom of epistemological modesty” suggests “we shall be better off in our choice of theory if we give up the search for Mr. Right and speak, more modestly, of *productive modes of reading*” creating “a mind resting more comfortably among many possibilities” (Appiah 1979:117,68; 2003:xii) and infused with religious conviction. Kūng says “the *convinced Confucian* cannot be indifferent: how else is his or her religion, as a comprehending, responsible religion, to be purified from both naïve superstition and the ideologies of vested interests? *How else are the obstacles to religion removed and how else is the willingness to believe awakened?*” (Kūng and Ching 105).

Cicero as constructive sceptic agreed “with the leading dogmatic philosophers of his time both as to there *being* a final and absolute truth of the matter whether there are gods and how they relate to us, and as to what in all probability that truth is”. Thanks to Philo and Antiochus, “educated people understandably ceased to see any significant difference between Academics and dogmatists or...Stoics at all” (Cooper 78; cf. Trunsky 341). Affirming God-relatedness empowers a faithful augur’s *ars auguralis*. No irrational “leap of faith”: Cicero is not an Arval Brother! The “Axial Age” μυθοποιητής atheises DND and calls Cicero cowardly for “unwitting un-philosophy of indecisive scepticism” (Jaspers 1967:86). *Cicero* did not die in bed, but confronted death with dignity and courage (Ciaceri 2:375). J. Henderson (43) notes the near-simultaneity of Later Han canon-fixing, Yavneh—whatever happened there—and the early Church’s definition of the New Testament, but casts no jaspersions upon our augur. Rejecting Cicero as thinker, H. Hunt admired Cicero’s “moderation amidst extreme violence” (202). K’ūng tells the Tào’s true muntu “even if you die in its defense, become skilled in The Right Way” (LY 8,13 Ware). Cicero’s *via dolorosa* was never brittle, often terrified, always believing, and, at the end, resolute.

Antiochus of Ascalon, Cicero’s teacher, broke with corrosive Pyrrhonian scepticism in 87 on reading Philo Larissae’s books given him by Lucullus (Acad. 11-12). He stopped its rot of the New

Academy by aggiornamento to mild Stoicism, Peripatetic research, and Platonic belief in God beyond myth (Arnold 110, Luce 151, Schmekel 447). Sternly honest and open to religious belief, Antiochus said proof was unnecessary to active faith; Cicero himself “n’avait rien d’un voltairien” (Luck 11; W. Schmidt 1935:19; Dumézil 543). Cicero imposed a transcendent theology upon Hsün-like Stoic religious naturalism, which saw “*fanum* (the sacred) as *profanum* (the worldly)...Stoic religiosity is a genuine, warm, and deep-seated sentiment” (Hirschberger 226). “Antiochus, Cicero, Philo and others...rediscovered a higher noetic order not inherent in ...the immanent structure of being. This transcendent noetic order provided a universal principle by which to measure social custom and political practice” (Horsley 58; cf. Ricci 4,181 anti-naturalism: souls not ch’i).

Mens divina is not the human mind’s projection, but its Standard, Judge, and External Examiner. Neo-Academic open faith abhorred ipsedixitism’s “rigid dogma and ascribing all its teachings to a divinely inspired master, stamping them with an αὐτόξ ἐφα—as tradition tells us concerning the Pythagoreans and history concerning the Epicureans” (Glucker 32), as also Plato and Mo Ti 墨. When morals are weakened by Neo-Academism, Cicero says so (1,39; cf. Reid 1885:16). Atticus was a freethinker, but Marcus a free thinker (Ad Att. 12,8,1). His loathing of Epicureanism and utopianism reflects his defence of absolute values (Labrousse 61). Nowhere man (quietist ιδιώτης) and nowhere state (under *nullae leges*—of tyranny or theory) are fetishes. What the one ignores, the other inflicts. Neither serves *mens divina*, choosing theory over Tào 道. Cicero skewers Epicurus’ sexist abuse toward unbelievers in unbelief such as “Chrysippum numquam nisi Chrysippam vocabat” with fake pathos: the Epicurean *deus otiosus* is constantly getting bumped by those pesky atoms. How *can* he be at leisure (DND 1,93 and 114)? Against irrational, godless relativism Antiochus and Cicero confessed that “there is such a thing as the objective validity of an idea” (Wiredu 51) and intrinsic value of every human being. “Nihil homine videatur indignius” than Epicurean denial of the *imago Dei* (De Fin. 1,23). Like Cicero, Antiochus was so cordial a person and so engaging a teacher that “even an Epicurean like Atticus is made by Cicero to confess that Antiochus’ friendship had almost made him desert his own school and join the ‘Old Academy’” (Glucker 111; cf. 1,54). K’üng “never took anything for granted, he never insisted on certainty, he was never inflexible and never egotistical” (LY 9,4; Dawson). Cicero takes a miss on that last “never”!

Cicero mocked hard Stoicism. “Nos autem qui sapientes non sumus, fugitives exsules hostis insanos denique esse dicunt...sapientem nihil opinari, nullius rei paenitere, nulla in re falli, sententiam mutare numquam!” (Pro Murena 61). Bigoted and opaque, it lacked scholarly pietas (De Fin. 4,14; Dillon and Long 4; Rist 96; M. Ruch 1970:75). Stoic paradoxes akin to Zen koans or the “little pills” of French Marxism “shocked” Cicero, who disliked hard Stoicism’s oscillation between

“interiority or...the universal perfection of the world” (Hountondji 1996:viii, Edelstein 73, Bloch 17). They were “1) only what is honourable is good; 2) virtue is sufficient for happiness; 3) right actions and offenses are equal; 4) all foolish men are mad; 5) the wise man alone is free and every foolish man a slave; 6) the wise man alone is rich” (Arnold 151).

Civic theology is tough-minded, not prissy. Its risky praxis belies the lie that *ἐποχή* is a shabby “*als-ob* werklikheid” or Cicero’s faith mere “onselfstandigheid...inorganies eklektiese leerstelsel” (De Vleeschauwer 186, his Pyrrhonising error 213). K’üng’s “gentleman is correct but not inflexible” (LY 15,37 Dawson; Creel 1949:139). Mèng K’o 孟軻 mocked fanaticism: “A man of pure principles? To master his discipline completely, you’d have to be an earthworm” (3b10; Hinton). K’üng’s “gentleman is correct but not inflexible” (LY 15,37 Dawson; Creel 1949:139). Mèng K’o 孟軻 ridiculed fanaticism: “A man of pure principles? To master his discipline completely, you’d have to be an earthworm” (3b10; Hinton). Hsün Ching 荀清 hated logomachy (1,81). Unrectified speech and brittle minds “cultivate...paradoxes...courting the absurd, the weird...Perhaps the preoccupation with paradoxes is a sign of sophistication; perhaps it is an indication that one has reached the cognitive limits of a domain” (Yourgrau in Lakatos and Musgrave 1968:197). How like “the kyōgen play *Shūron* in which two Buddhist monks, one an adherent of the Lotus Sect, the other of the Pure Land Sect, meet....They begin to boast to one another about the superiority of their respective sects....So wild does their argument become that in the end the Pure Land monk is calling out *Namu Myōhō Renge-kyō* and the Lotus monk *Namu Amida-butsu!*” (Katō 312). Our ὕπατος γελοῖος smiles broadly.

Cicero spoke his Old Roman faith through Cotta in DND. Antiochus’ new-fā New Academy was his critical arx. (Cf. Brunschwig and Lloyd 799-821.) He used the New Academy’s probabilism, Platonic views of God and soul, Stoic morals—not moralism, and a little Aristotelian influence on politics (Barbedette 101) to build his intellectual framework. He was an institutionalist like K’üng always praying *through the rites*. Civic theologians as transmitters know that “for a set of ideas to be a genuine possession of a people, they need not have originated them, they need only appropriate them, make use of them, develop them, if the spirit so moves them, and thrive on them” (Wiredu in Serequeberhan 83). Plato’s Πολιτεία? “Minds unfettered by an official establishment of Guardians of the Faith [will] be ‘eclectic’...*Eclecticism* has...been used as a term of contempt in...later Greek philosophy. As such, let us have done with it” (Dillon and Long 125; cp. Bacci 165, Rackham 1914:xxiv, *contra* abusive De Vleeschauwer 184). Asked “From whom did Chung-ni derive his learning?”, Tzu-kung replied “From whom indeed did our Master *not* learn?” (LY 19,22). Augurs and jú were rite guardians and political activists, not ephors or Inquisitors. “Clinging to a single doctrine...plunders the Way: to glorify the one, you cast out a hundred” Mèng 7a26; Hinton).

Eclecticism makes Cicero a *better* Neo-Academic. “Nobis autem nostra Academia magnam licentiam dat, ut, quodcumque maximeque probabile occurrat, id nostro iure liceat defendere” and “e fontibus eorum iudicio arbitrioque nostro hauriemus” (DO 3,20 and 1,6). What is neither Roman nor reverent he spits out of his mouth. Εκλέγειν keeps the best, as with *patriis ritibus*.

A. Trollope understood Cicero’s eclecticism. “He had been in the schools at Athens, and had learned it all. In one sense he believed in it. There was a great battle of words carried on, and in regard to that battle he put his faith in this set or in the other. But had he ever been asked by what philosophical process he would rule the world, he would have smiled. Then he would have declared himself not to be an Academician, but a Republican” (2:279). Eclecticism was the sprout (tuan) of a childlike heart. “If he had been less open to ideas, less many-sided, less sympathetic, less conscientious, less human, he would have been a worse man...a less potent influence...but he would have been a stronger...politician, more respected no doubt by the blood-and-iron school of his own day, as of ours” (Mayor 225). It is high time for a man “at sixty” (LY 2,4) to have “a mature synthesis in which other people’s ideas grow in the field of his own experience of life” (Everitt 256). Chang Hs. says “A scholar must never be without a main thought, but he should never entrench himself in a sect” (Bresciani 257). The label Neo-Academic goes beyond

purity of doctrine or degree of eclecticism....Affiliation to one of these ‘sects’ remains a crucial matter....One can no more be a ‘mere’ philosopher than call oneself...a ‘mere’ Christian; and the chairs of Platonic, Stoic, or Epicurean philosophy are not unlike the chairs of Catholic, Evangelical, or Jewish theology in modern universities. (Glucker in Dillon and Long 35)

The theological badge of the New Academy serves “ad moderandam religionem” (DND 1,1). His Neo-Academic scepticism was exclusively gnoseological and he energetically rejected any possible undermining of Roman religion (Kumaniecki 1972:24). The chün-tzū 君子 is not a tool. Cicero is “nulliusque unius disciplinae legibus astrict[us]” (Tusc. 4,7). “The gentleman has universal sympathies and is not partisan. The small man is partisan and does not have universal sympathies...what is right he sides with” (LY 2,14, 4,14; Dawson). Except for Lucretius, Roman philosophers lived within Roman religion (Walsh xxiv). Like his Hàn 漢朝 cousins (Queen 37) Cicero drinks from a deep spring.

“The religion of the ancestors lay much nearer Cicero’s heart than has usually been realized” (Altheim 337). His faith in right reason, ethical statecraft, and augural priesthood rests upon it. “Sa République n’en a point les utopias” (Barbedette 100). Like K’üng, he takes people as they are. The Republic is crumbling like the old Chou order. Designed by a Roman for Romans, Hellenist without évolu servility, Cicero sketches Rome re-sanctified in a tiny contio where optimates seek “the company of the virtuous to straighten their ways” (LY 1,14; 2,1 Ryckmans). The “pole-star”

preaches Rome's *generous* particularity, so antithetical to Plato's fantasy-Sparta, or the "fake unanimism" of the Ceaușescu' K. Nkrumah, would-be collectivisation of Africa's spiritual diversity and splendour (Hountondji 1996:xvii; 2002:107). Thrasymachean spiritual violence treks from Clodius to Christelyk-Nasionalisme, from Fascism to Foucault, assailing reason, text, and ubuntu. We rectify names instead of liquidating them. Philologist and persecutor flee *mens divina* into post-modern brutaliteit. Our Sages know diversity *resists* dissolving meaning, destroying text, or dynamiting the Buddhas of Bamiyan. Cicero, seen through a Jú-chiào 儒教 glass brightly, speaks with eloquent ease to every muntu. Interculturality earths religious reason and civic integrity, for dialogue "weder rein binnenchristlich noch rein innerhalb der abendländischen Vernunfttradition geführt werden kann" (Ratzinger 2005:36). Despite Ch'ín Shīh Huáng's old and new, these books are fireproof.

On Cicero's island in 44-43, the world is condensed: "Um die Ehrfurcht scharen sich alle andern Tugenden" (Tso-chuan 左傳 226a; Forke 1964:53). Soon Cicero and his State will be dead and *theologia civilis* silenced (Marcus Terentius Varro's term (116-27): Kellerman in Maxfield 3, Leonhardt 53; cf. Augustinus Civ. Dei 6,3). The free State's tapestry of divine reason and human *societas* perished in the flames of Augustus' ambition like Jú-chiào books and rites under Ch'ín 秦. "Politik und Religion waren in Rom untrennbar miteinander verbunden. Alle höheren Magistrate übten religiöse Funktionen aus" (Maschkin 1953:158). Then, Augustus put a starry Julian Être Suprême on a gimcrack Jacobin pedestal, "un homme sans pudeur, sans foi, sans honneur" (Voltaire in Maschkin 1953:429; cf. Messina 22). Making politics a religion, he destroyed civic theology. P. Althaus, neither refugee nor recruit to what he publicly called rule by an ape, confessed in *fides heroica* "das Politische ist Gottes Werkzeug" (Althaus 1937). A. Wegner, pious Christian jurist at Breslau/Wrocław until his firing in 1934, said all law rests upon *some* theology and defended civic theology against godless "Absonderung" by National Socialists or other positivists (1:14). We follow Wegner. German Orthodox Jewish theologian S. Hirsch asked if secular positivists know "the very first letters of a political system which will unite justice with love and sanctification with joy on earth" (Hirsch 1956:1:139). Solitary reason is "solivaga et ieiuna" (DO 1,156). Cicero, K'üng, Mèng, and Hsún declare all people stakeholders in humane reason, owning by birth or education heart's reverence and public theological courage. Humanitas/jén 仁/ubuntu brings us to the respectful filial distance. Our *sapientes*/Sages (sheng-jén) offer us "a standard of inspiration rather than a standard of aspiration" (Cua in Næss and Hannay 42; cf. Ross 38).

Does it matter? Does it liberate? M. Towa and N. Wood reject K'üng and Cicero for dirtying their hands with praxis and for "depressing" belief in divine Law (Towa in Masolo 171; Wood 58,71,9). "Confucianism was condemned at home and pronounced dead in the West" (Bresciani iii); when its

New Confucian re-assertion (beyond our scope here) is theologically-minded, it can be seen as a form of liberation theology against New Legalist Maoism. Soviet Latinists loved Cicero while Soviet Sinology was handmaid to State terror. Commenting on *sapientes* is temerity. Pietas/hsiào trumps temerity. Hsiào 孝 began as a hand shielding a head (Ching 1993:21). Beating the aged to death in primitive China is now genocidal human sacrifice the world over to idols of class, race, rights or Yángist ease. Jú defence of aged parents defends all vulnerable deprivileged persons. Ubuntu/jén/humanitas *begins* at home. “Nec est quisquam gentis ullius, qui ducem naturam nactus ad virtutem pervenire non possit” (DL 1,30). K’üng had said “all within the four seas are brothers.” Sharing faith in “res publica sacra” (so Romans prayed for the State; Van Zyl 1986:76) and serving Tào, Sages converse. Cicero is a gracious patronus of Roman holiness. T’ien’s missionary K’üng pulls us yǐ-ti ashore. This afternoon, we are citizens in reason’s empire, partisans at civic theology’s contio, disciples of at least one uncrowned king.

PROLOGUE: THE SCENE IS SET § 1-7

1. This may have been DL's original prologue (E. Rawson in *Temporini* I:4:338). Cicero's craft shines as "besondere Liebe und Sorgfalt verrät die szenische Ausstattung" (Becker 25).

2. Cicero scorns the piscinarii's miniature copies of *Nilus* (Nile) and *Euripus*, the strait between Euboea and Boeotia, just as the fishpond set scorned arriviste Farmer Chick-pea (cf. Ad Q. fr. 3,7 "et piscina et Nilus"; cf. Laser 11). Why? Cicero was a traditional small-town Italian more closely bound to mos maiorum than the urban nobility (Vogt:32). Atticus' lavish town-house and private park was "on the Quirinal near the temples of Salus and Quirinus" (H. Taylor 417). Convenient temples were wasted on the suave Epicurean, but his park whetted his appetite for the real thing at Arpinum. Urban Atticus in real life loved Cicero's estate "malgré son caractère sauvage" (M. Ruch 1958:252). The Volscian brothers might have fancied the adage "Hakka gang duhk", Hakka plough and study too, but like a habitué of the Bund dropped by a rural stream, urbane Atticus might have searched his toga for fish food (Constable 1994:134). After the Míng 明朝 restored mos maiorum/tsü-chuán, Ch`en Hsien-chang (1428-1500) caught learned ruralism: "On market days at Chiang-men / I buy hoes and I buy books. / Ploughing the fields and reading the books / I am half farmer and half scholar" (De Bary 1970:55; cf. Ad Q.fr. 3,4,5 on Marcus' and Quintus' bibliomania). Lucilius coined "ceparius" or onion-man (Warmington 3:68); here the chick-pea brothers (Cicerones) were on natal soil. "Pure is this valley-stream, dark is the Southern mountain, dense like the bamboo, luxuriant like the pine." (Shi 詩經 189; Karlgren). K'üng said "men of intellectual character delight in water scenery; men of moral character delight on mountain scenery." (LY 6,21; Ku) Arpinum has both. "If a perfect gentleman were living among [the tribes], how could they be crude?...At home Confucius was pleasant and agreeable" (LY 9,14 and 10,1 Ware). Cicero speaks to his ad hoc "*contio*...a non-decision-making meeting called by a magistrate or priest with *ius contionandi*...a partisan gathering of loyal supporters" (Mouritsen 38, 50). Cicero brings a theological working group of magistrates, a *contio agrestis* of his stoutest comrades—an anti-triumvirate—to island seclusion. "The best support is provided by one's own kinsmen" (LY 1,13 Ryckmans). Theology is politics by other means. Cicero told Varro in April 46 if he could not serve the State in Forum and Curia, moral jurisprudence would do (ad Fam. 9.3.5; cf. LY 2,21).

2. *Nihil...nisi saxa!* This is Atticus' first visit (*potissimum*, Dyck 270). Mèng said (4a1) "take advantage of existing hills". In mountainous, highland Volscia (Gelzer 1; Maschkin 1953:72), one expects old school baSotho gentlemen blanketed in *dignitas* on horseback. Like K'üng's broken State of Lü 魯, the Volscians, whose capital had been Antium (Torre di Campo d'Antio) lost

freedom in the Latin and Samnite confederacies' fourth-century mfeqane. (Kumaniecki 1972:27, Mentelle 1766:21). An inscription at Kwan Mun Hau in Hong Kong boasts like a Volscian at Rome: "The descendants of those who came from Henan continue / The customs of the North are retained" (Erbaugh in Constable 1996:231, 29). K. Lomas says of the "Volscian Mafia" that "Cicero was the first to pursue a political career at Rome rather than Arpinum", pondering "how to reconcile a commitment to one's own city with...increasing integration into the Roman elite" (Powell and Patterson 2004:98). Fiercely optimate Old Marcus, "avus quidem noster, singulari virtute in hoc municipio quoad vixit restitit M. Gratidio....Ac nostro quidem avo, cum res esset ad se delata, M. Scaurus consul: 'Utinam', inquit, 'M. Cicero isto animo atque virtute in summa re publica nobiscum versari quam in municipali maluisses!'" (3,37). After all, "a pleaser of the whole hsiang [feudal settlement] is a thief of virtue" (LY 17,13; Cheung). Cicero took vicinitas, his "local roots and his obligations as patron of the city very seriously....In 46 BC, he tried to intervene on behalf of the *municipium* of Arpinum to expedite collection of some rents" (Lomas 111,113). Patronus Cicero kept open house at his ancestral estate for clientes, as K'üng stood reverently on his stoep at the nuò rite (LY 10,10), whether separating honoured shades from shady ghosts or showing politesse even at an exorcism. The first Han emperor Liu Pang understood: "My hands hold all within the seas / as I come back to where I was born! Where shall I find fierce warriors, where / to guard the many feudal realms as One?" (Seaton 40).

In 303 Arpinum got civitas sine suffragio, in 188 civitas cum suffragio, and municipium in 100 with inscription in the Cornelian tribe. Cicero's full name was M. Tullius M.F.M.N. Cor. Cicero, that is, Marcus Tullius Marci Filius Marci Nepos Cornelia Cicero. Of the three Arpinate equestrian clans, the Marii and Gratidii (Cicero's mother Helvia's gens) were populares, but the Tullii Cicerones were optimates; Cicero was no aisle-crosser (Habicht 16; Hammond 90). Putative royal ancestry began Cicero's view of family as sacred *societas* (Etruscan?: Høeg 19, Jhering 1:177). N. Mandela's use of princely lineage differs, but his comment on the larger patria is Ciceronian: "I respect custom, but I am not a tribalist....Custom is not moribund" (Lodge 2, 220).

The family supposedly βασιλεύσαντα λαμπρῶς ἐν Οὐολούσκοις (Plutarch "Cicero" 1,2). His praise-song for Marius was Arpinate, not popularis, nor were populares democrats (Gelzer 15). *Duas patrias* is love and law: Roman nationality and Arpinate legal origo (Boissier 25; Guterman 20; Høeg 18). After ethnic conflict ended, Oscan, which Cicero did not know, survived near Arpinum. Its Volscian cognate was dead (Hammond 98,186; E. Rawson 1975:xiv; Corssens). K'üng spoke Lü dialect but used "standard" Chinese liturgically (LY 7,17 Waley).

"To honor the beginning is the basis of virtue." (Hsün 19; B.Watson). K'üng Chung-ni, intimately K'üng Ch'iu 孔丘, was of déclassé Shang royal descent (Needham and Wang 1:95, Hsiao 1979:79).

His burly father, a military hero, died young. Chung-ni grew up in poverty. Like Cicero, K'üing was a legitimist eques/shih appalled by pà (warlords) wrecking Lü's Chou-era polity (LY 3,1-3; Do-Dinh 96; Ryckmans 133). Like Volscia, eastern "Lu was...the heartland of the old Chou 'classical' tradition" while northeastern coastal Yen 燕 and Ch'í 齊 harboured magic and shamanism, southern Ch'ü 楚 "exuberant religious fantasy", and Ch'ín was the laboratory of Legalism 法家 (Schwartz 1985:17). K'üing was minister of justice 大司寇 in Lü (Totok 56; Hattori 107; Rubin 7; Huang 33). The Duke of Chou's "institutions had decayed in the royal domain, thanks to incompetent, even evil, kings...they were thought to have survived in the state of Lu, which was ruled by the Duke of Zhou's descendants. Confucius took pride...that he was from Lu....'The institutions of Zhou are all preserved in Lu. Now I understand the inner power of the Duke of Zhou and why it was that the Zhou became kings'" (Ts'o: Chao 2; Knoblock 2:40). Chinese gentry cherished ancestral roots, but homelessness robbed young Chung-ni of knowing where his father was buried (Kaizuka 51).

Cicero is Arpinate, Volscian, Italian, and Roman, not a supersessionist, anti-diversity, Stoic cosmopolitan. "The wise man does not inhabit an ordinary city or respect ordinary laws. He is a citizen *only* of the universe, not of any of the cities of men....When Diogenes called himself a 'cosmopolitan', he meant it negatively; he did not belong to any particular city" (Diogenes Laertius in Rist 59). Our universal Sages loved home. Cicero was killed near his house at Formiae. "This is the land our ancestors watched over. It isn't a question of what we want. We may die defending it, but we can't abandon this land" (Mèng 1a15; Hinton).

3. Curiana. Manius Curius Dentatus, conqueror of the Sabines and Samnites, a model rustic immune to money's lure, was praised by Cicero among "oblectamenta rerum rusticarum" for his "continentiam vel temporum disciplinam" (De Sen. 55). Curius' modest house was nearby. Cicero owned many properties: the Arpinum estate inherited in 64, whose farm rents supported him; a town-house in Rome, villas at Tusculum (his favourite) and Formiae (where he was killed); and deversoria, cottages, at Tarracina, Sinuessa, Cales and Anagnia (Haskell 136; Rolfe 61). Tullii are "viri boni ac locupletes" steeped in mos prisca "which should not be swallowed [up] altogether" (Comm. 53; cf. Phil. 13,23; Luthuli in Callan 18). Compare K'üing's lost childhood or Moshoeshoe I's youth in another highland valley (Prazniak 15; Thompson 1975:2).

Plato declares νόμοι by fiat in Zeus' grotto. Cicero proposes *leges* on a real island, by faith in Juppiter's *mens divina* giving fas/Tào amid nature (M. Ruch 1958:247). Like K'üing, Cicero is down-to-earth. LY is "aphorisms and anecdotes...intimate dialogue...appealing to shared personal experience of life among a few persons of largely similar status and background" (De Bary 1991:13). C. Harbsmeier parallels K'üing's humorous "social informality...impulsive intellectual

style...insulting behaviour...a conversationalist and a plaiseur—as well as a thinker” (Harbsmeier 151, 156 on Tusc 5,10; cf. Lin Y. 26). Suum cuique: Mèng’s respect for the Literatus requires respect for the Student, as elder brother is lead raconteur (Emmerich 35, Roetz 1992:88). Marcus princeps contionis tells Rome’s religious lore to Quintus and Atticus; unless Quintus acts his fraternal age there is no story (LY 1,2; Ma 450). “Walking in a company of three I will surely find a teacher among them” (LY 7,22 Ni; cf. Cua 1975:31). Whoever “by *reanimating* (literally, ‘warming up’) the Old can gain knowledge of the New is fit to be a teacher” (LY 2,11 Waley). Cicero and Marius’ origo Arpinum is 160 km SE of Rome; for a tour cf. Chevallier 266-289. Cicero links himself to the popularis general “ut ea [patria] quae salva per te est (1,5). Marius saved Rome from Cimbri and Gauls, Cicero from Catilina’s terror squads (Klotz 1:656). Marcus’ and Quintus’ birthplace, where Cicero wrote DL, De Fin. and Acad., is 8 km NW of Arpinum, “where the little river Fibreno runs into the Liri...halfway between the historical town of Sora and the modern Isola Liri” (Leon 291, 293). The rivers are now called Fiume della Porta and Garigliano. The Tullii Cicerones’ estate was later “owned by Silius Italicus...in 1222 it became the property of the Cistercian monks of Casamari, who at present occupy it”. Their church has sixteen genuine columns from Cicero’s villa, but the inscriptions are fake. Leon’s description and Høeg’s photographs show the little island and the roiling Fibrenus at its coldest! (Leon 291-296; Høeg 13-15). Silius Italicus sang “At, qui Fibreno miscentem flumine Lirim / Sulfureum, tacitisque vadis ad litora lapsum / Accolit Arpinas” (B.P. 8,400). In high summer’s aestivation the fields are parched, but by the riverbank is lush greenery (Klotz 1:653). Chill Fibrenus refreshes the Liris as Cicero refreshes the urban-decadent Republic with sturdy Volscian virtue. Concordia Italiae renews concordia ordinum (cf. Fontanella 1:501, Van Zyl 1986:29). Tibullus hymns the purity of rural rites: “vos quoque abesse procul iubeo, discedat ab aris / cui tulit hesterna gaudia nocte Venus. / Casta placent superis: pura cum veste venite / Et manibus puris sumite fontis aquam” (2,1,11). Half a world away, “after the early death of his master and fellow insurgent, Emperor Lê Thái Tô, the illustrious statesman and orthodox Confucian [Nguyễn Trai] no longer felt at home at the court of Lê Thái Tông (1431-1442), and...found solace in retirement and solitude: ‘A tree, a spade—Ah, the joys of the country!...My guest’s arrival is joyfully welcomed by the birds and the flowers, which all of a sudden start waving’” (Durand and Nguyễn 59). Fibrenus’ cold, clean lustration demarcates the augur’s island arx. Cicero “da buon italiano” deeply loved this land (Ciaceri 2:383). A. Luthuli said:

No one could be left unmoved at being plucked from the village of Grootville, a name many of you have never heard before and which does not even feature on many maps - plucked from banishment in a rural backwater, lifted out of the narrow confines of South Africa’s internal politics and placed here in the shadow of these great figures. (Nobel lecture 1961; Callan 55ff.)

“Distinguished families derived their names from...peas and beans (Cicero, Piso, Fabius) or...pigs, sheep, calves and donkeys (Porcii, Ovidii, Vitellii, Asinii)” (Jonkers 1). With memorable weirdness, the cognomen Cicero is “im Englischen etwa Peaow”, says Eulenberg (8). The *ager publicus* symbolises chün-tzū otium and family sacra: “Vos quorum gratia in suffragiis consistet, libertas in legibus, ius in iudiciis et aequitate magistratum, res familiaris in pace, omni ratione otium retinere debetis” (DLA 2,102). Rural reality declares Cicero’s total independence of urban Plato’s utopianism, for “it is always the *place* that gives utopia such trouble” (Calvino 252). Pietas/hsiào is aroused by God and the ancestors, not by an erastes’ ideal political eromenos. Cicero adds pietas erga amicos to pietas erga patriam and erga parentes (Emilie 536). Amicitia includes readers. Restoring tsü-chuán/mos maiorum’s ubuntu, Cicero’s Hàn cousins liked “accessible rhetorical style” (Csíkszentmihályi 11, cf. Althaus 1931:72). Odysseus’ homegoing instead of dallying forever with the nymph Calypso robs him of immortality (Od. 1:55-59 and 5:135), but pietas/ hsiào towards home and family makes him *ille sapientissimus vir*. Pietas and officium differ. In translating hsiào, “piety” conveys “religious flavour” and “reverence [because] the parent will eventually become an ancestor and...object of worship” (Dawson xxiii). Walcott sings of “one country, one map of affection that closes around my pen”, avowing with Tullian grace “I have seen the terrestrial paradise” (Walcott 95, 66).

4. *Ubi tu es natus* inspires Cicero. Cicero’s grandfather hated literature, Cicero’s father loved it, Cicero gave it reverence for *mens divina*. “Happy warrior” Old Marcus agreed with K’üng. “Best of all would be that the good people in his village loved him and the bad hated him” (LY 13,24 Waley). Old Marcus was “ein Grundbesitzer und Landmann von altem Schrot und Korn” (Uttschenko 1978:81). Our Marcus inherited his knack for invective and “spirit of fight and ‘never-say-die’” (Char and Kwock 20). Again, K’üng: “In ancient times, those who were wild were at least forthright; nowadays, they are simply deviant. In ancient times, those who were proud were at least principled; nowadays, they are simply belligerent and easily provoked. In ancient times, those who were stupid were at least upright; nowadays, they are simply devious” (LY 17,16; Slingerland).

5. *Duas esse censeo patrias unam naturae, alteram civitatis*. Patria civitatis prevails with no iniuria to one’s native soil. “Cum omnia ratione animoque lustraris, omnium societatum nulla est gravior, nulla carior quam ea, quae cum re publica est uni cuique nostrum....Omnes omnium caritates patria una complexa est” (DO 1,57). Cicero’s father (a quiet Isaac) taught him well. Gloria is worth little without *auctoritas* won in the colonnades of power and made holy by age, tradition, and religion. Reverence for origo-fatherland is interior. Reverence for the national fatherland

empowers. (Cf. Maschkin 1954:381, Kumaniecki 1972:32.) For Cicero, heir of Volscian warriors, Roman patriotism dies without “Liebe zum Heimatboden” (Kroll 17). Old believers like Old Marcus could not stop Hellenisation (Maschkin 1953:159). Only geniuses and dullards never change (LY 17,3). Quiet Marcus and sons knew “taste operates in a community, but is not subservient” (Gadamer 1998:17). Asia knew *duas patrias*. “As t’ien-hsia, China is the world. Kuo is a local political unit” (Levenson 1:99). T’ien-hsia is not Stoic cosmopolis. Cicero is *Arpinate* priest of Rome. Classicist Nho *duas patrias* earthed resistance. “Lê Quý Đôn’s picture of [K’üng] as a ‘gentleman’ official who...reconciled the local and the general was...criticism of the despotism of a universalizing monarch who forgot his village roots” (Woodside in Elman-Duncan-Ooms 143). Conversely, “he who pleases Heaven...will protect the whole world...he who reveres Heaven...will retain his own state” (Mêng 1b3 Dobson).

Layered citizenship mirrors Cicero’s masterful eclecticism (Gilson 1, 19). *Εποχή* revives and liberates. B. Cardozo waxes Neo-Academic:

In our worship of certainty, we must distinguish between the sound certainty and the sham, between what is gold and what is tinsel...we must remember that it is not the only good; that we can buy it at too high a price; that there is danger in perpetual quiescence as well as in perpetual motion. (Cardozo 1924:16)

Εποχή stops bigoted idolatry, Epicurean/Platonic/Mohist “servile authority-mindedness” (Koschaker 281, Armstrong 6, De Bary in Eber 148). Rejecting ipse dixitism opens civic-theological responsibility. “*Personal* participation of the knower in all acts of understanding...is neither an arbitrary act nor a passive experience, but a responsible act claiming universal validity” (Polányi 1962:vii). Liberty serves *mens divina* in many rites, as Cicero declares: “defendenda sunt: religiones, auspicia, potestates magistratuum, senatus auctoritas, leges, mos maiorum...fides” (Pro Sestio 46, 98).

The *Tào* of *εποχή* is “a constructive rather than a destructive attitude...in place of the new scholasticism... the cult of data (dataism) and the cult of simplicity (dadaism)” (Bunge in Lakatos and Musgrave 1968:137). Jú-chiào-Christian dialogist J. Berthrong complains: “Modern North Atlantic discourse...argues that we can never return to the naïve onto-theological visions of...historic Western and Eastern thinking” (1994:3). Positing others’ naïvete (not least of a “racial” other) is *pensiero debole*, lazy, cruel, anti-ubuntu. Naïveté of theology implies naïveté of postmodern unbelief. C. Hansen, R. Ames, and H. Rosemont claim K’üng and classical China had no concept of “truth”—in quotes, like Pilate (Hansen 491; Ames and Rosemont 1998:33). The white man’s deconstructive burden is neo-imperial *superstitio*. E. Zenker philippicised “die überhebliche Meinung, daß jede Kultur, die nicht die europäische Marke trägt, minderwertig sei und...unmöglich Schöpfer und Träger geistiger Werte höchster Art sein könne”. He respects the text

“um philologischen Nörgeleien zu entgehen” (1926-27: 2,xi; cp. Qur’anic commentarial misgivings in Henderson 198). F. Mote is his Tzū-ssu: “Let us abandon the cork helmets, and the concessions, the white linen suits and the extraterritoriality...let us view now the larger spheres of life beyond the imported standards of classical philology” (532). K’üing exhorts, “Be a noble scholar, not a vulgar pedant!” (LY 6,13 Ryckmans). Liang S.’s plea for intellectual parity must not be undone by Tang J.’s dislike of “Roman jurisprudentialism”, a Hellenocentrism gone East (Bresciani 13, 53). Gentle reader, you are on State business. *HJAS* 5:1940 has an article on the banana in Chinese literature. Do not be dissuaded from duty by greengrocery.

Superstitio/mí-hsin will out. J. O’Neill calls deconstructionists “religious maniacs” like galli, harioli and coniectores (197). The deconstructionist form of Eurocentrism denies textual *fides* across time and culture and from person to person—a flight to covert hermeneutic racism destroying dialogue and hostile to *jén/humanitas/ubuntu*. “Servitude and oppression are resented everywhere; Asian peoples do not inhabit a separate planet. When they...appeal to freedom as a universal standard of political and other values, this can hardly be dismissed as a bourgeois Western, hegemonic invention” (Kelly and Reid 9). M. Pera, modern Italian princeps Senatus, says deconstructionism

transforms philosophy into a careless, gratuitous exercise and the philosopher into a concept-cleaner who isn’t even required to punch in on the time-clock of responsibility for his own moral decisions...If, relativistically...one truth is equivalent to another, what is the purpose of dialogue?...‘Deconstructionist’ is simply another name for a disillusioned Platonist. (Pera and Ratzinger 14, 18, 26)

Jesus said: “ἀφες τοὺς νεκροὺς θάψαι τοὺς ἑαυτῶν νεκρούς” (Matthew 8,22).

What is at stake for K’üing and Cicero? Grondin exposed as non-sense the deconstructionist claim that tradition is bigotry (1995:137). Roman priest Cicero and Hàn Jú Tüing Chüng-shu 董仲舒 conjoin integrity of text, limits of proof, and faith. Tüing “labored to create a text-based theology that would limit the emperor’s powers” because “all human beings possessed the capacity to become like Heaven; the extent to which they [brought]...Heaven into the human world was the measure of their religious life” (Queen 4, 236; cf. Henderson 38). Vietnamese classicists shared this civic-theological “remarkable confidence in the capacity of one ‘primordial’ classical text to convey universal ideals” (Elman-Duncan-Ooms 123). Against the hermeneutic of suspicion, texts are presumed innocent until proven guilty, despite “ad hominem remarks [and] cat calls” as Hall and Ames “perversely credit themselves with a privileged access to Confucius” caricatured “as a freewheeling, postmodern aesthete” (Martin 489; Ivanhoe 2002:5; Gier 48ff, Paul 121). As Yáng Chu 楊朱 (370-319) or Epicurus, Wang Chung 王充 (27-97 A.D.) or Lucretius, so misologists “would not pluck a hair to save the people” (Needham and Wang 2:368, Mèng 7a26). Like Cicero

on incest or parricide, Hsún says: “Do not answer a man whose questions are gross. Do not question a man whose answers are gross. Do not listen to a man whose theories are gross” (21 B. Watson).

Right next to dogmatic slumber..., nothing is more inimical to dialogue than playing what Gadamer calls the role of ‘spoilsport’, the person who thinks she or he has ‘seen through’ what we are saying to our ‘real motives’, our ‘hidden agenda’. In an age of negative hermeneutics...[we] offer good reasons for holding a position and wait for our partner in the dialogue to either agree or show us where our thinking went wrong....What we get instead is a question-begging, wholesale dismissal of our argument as the metaphysics of presence, or ideology, or mere rationalization of deeper, unconscious fears and desires, or covert sexism, or whatever—something that implies that our interlocutor need not take our argument seriously.... This is not the stance of openness, not the attitude that allows the other to speak. (Crusius 46).

Filiality is the “fundamental assumption of commentary...the classic speaks with authority and insight...worthy of such interpretive engagement” (D. Gardner 400; cf. *Laser* 3-5). Are we worthy to engage such texts? Mèng assures us that everyone “need only model himself upon Yao and Shun” (4a2 Ware). Misology is nefas/wú-Tao 無道, not intellectual progress (Zenker 1926-27 1:75). We *listen* to Sages’ cordial talk for praxis’ sake.

How inside is insita: factory installation or after-market?

T’ien 天/Jupiter imparts altruist holy reason. “The external T’ien (heaven) has an essential link with the internal te (virtue, power) of [each human]” (Cheng in Næss and Hannay 141). Mèng explains: “It is the function of the mind to think, and when it does so it receives what is transmitted to it....These functions are imparted to us by Heaven....To guard one’s mind and to nourish one’s true nature is to serve Heaven.” (6a15, 7a1; Dobson; cf. Lau xxiii). The T’ien-given mind-heart is “a sensorium of transcendence” and “not ontologically orphaned” (Chang H. in Cohen and Goldman 24; Pfister 25). It is “de religieuze aandrift in den mens” (Beukers xii). “What is it about our hearts that is alike? Isn’t it what we call reason and Duty? The sage is just the first to discover what is common to our hearts” (6a7 Hinton). “If a man does what is evil he is guilty of denying his natural endowment....‘Heaven gave birth to all mankind, gave them life and gave them laws’....Thus, to possess life is to possess laws” (Mèng 6a6 Dobson). The sage does not invent reason (Knoblock 1:81). Hsún says “inborn nature is the consequence of Heaven”, and A. Luthuli declares that “human personality is a God-given force” (22,5 Knoblock; Luthuli in Callan 66). As *civic* theologoumenon the Mèng-Hsún conflict is not profound. “Man is in his essence *capable* of becoming good. That is why I say human nature is good” (6a5; Zheng). On the baby at the well. P. Ivanhoe says “We are born *for* goodness. Our moral sprouts must mature and ripen, just as grain must ripen, before our full nature is revealed”. Further, “nascent innate moral sense” (tuan) amounts only to “*some* moral sensitivity as part of our nature. This won’t get us very far....Like love, moral

improvement ‘don’t come easy’” (2002:43,19,21; cf. 2a6, 6a19; cf. Ezzati 102).. Mèng is no ‘nature boy’ Taoist. “Entirely untutored maturing of the mind would...result in a state of imbecility” (Polányi 1962:295). H. Marmontin was P. Hountondji’s Scaevola. “No question...of innate knowledge, of hereditary wisdom. One had to *work*” (Hountondji 2002:3). *Ratio recta insita*, or fitrah مرطف (Ezzati 62), repudiates its origins in al-‘aql al-ilahi لعلاي, *mens divina*, unless it engages the world. God requires servants, not mirrors.

An ignorant *capacity for goodness* (5b6) needs education for informed rite and civic action in Mèng, but a *correctable* evil nature is eminently educable to goodness and rite in Hsün (Berthrong 1998:28, Emmerich 89, Renard 54). Creel’s either/or (1953:210), Dubs’s Augustinianism, and Liu’s “blasphemy” (1955:98) err (Ivanhoe 2000:31; Schwartz 1985:292). Lǐ + yí = moral order (fas) in Hsün 17. Incipient sprouts and infant badness are unfit for civic holiness without mos maiorum/tsü-chuán (Wu 1965:25, Csikszentmihályi 3). K’üng denies “innate knowledge. I am simply one who loves the past (LY 7,19 Waley). Theologically-informed magistracy is a well of duty, not child’s play. (Cf. Witte 101, citing Luther.) Hsün’s arx augurs well. His “high place was the edifice of culture which, as human beings, is our unique and precious inheritance. His advice was to climb to this high place by following the steep and rugged path of learning...a long and arduous climb...a vast and incomparable view” (Ivanhoe 2000:37).

5. *Astu* was Athens as urbs was Rome (Klotz 1:655); one did not ask *which* astu or urbs! Legendary Theseus united Greek city-states in συνοικισμός, a fǎ 法 for extending Roman ius civile, but unlike Rome, he destroyed all local law (Ehrhardt 6, Hoffmann 709, Thucydides 2.15, Plutarch “Theseus” 24). ἄστυ is town (not country), ἀστικός is a propertied townsman, and ἀστεῖος is urbane vs. ἄγροικος, hick. Greek city-state and Roman res publica differed on holiness of home life: “For the Roman...there existed a *res privata* of real significance alongside the *res publica*....In a Greek city-state the correlative to *polites* is *idiotes*” (Myres 72, 79). Identity, integrity, and belief have a Source prior to states, hence also K’üng’s denial of penal law (hsíng) as *source* of morality. Family rites in Chinese despotal polity mark res privata as sacred as res publica or more. Res publica is not res tota, not all under Heaven. “*Dignitas* at Rome implies...what its possessor...claims as due to himself...a Roman statesman cannot retain his ‘status dignitatis’ in exile...and no one knew it better than Cicero” (Wirszubski 1954:12). Res privata and res publica are distinct but inseparable, so Cicero rages at the label “exsul” (casting him from res publica) and interdiction igni et aqua (destroying his res privata), entrusting his Minerva to Juppiter Capitolinus against the better day. Roman republicanism paralleled Zululand’s mos maiorum tsü-chuán restored by King Mpande after the fall of King Dingane, the Zulu Tarquin or Chòw 紂辛: “recognition of the need for

law...weapons of defence and for maintenance of authority...established religion; and a tribunal for justice and public care” (Bryant 458). This *populus firmus* had a *fas*-bound State, as Ennius sang and Cicero taught: “*Moribus antiquis res stat Romana virisque’....Itaque ante nostra memoriam et mos ipse patrius praestantes viros adhibebat, et veterem morem ac maiorum institute retinebant excellentes viri*”. (DRP 5,1; cf. Warmington 1:174.)

Res publica and true *Jú-chiào* monarchy are compatible. Roman law parallels “le puissant faisceau de valeurs spirituelles et morales” of *Jú-chiào* polity and rite. Monarchy masked “a republic ruled by an aristocracy of the spirit...” (Escarra 4, Wilhelm 1930:93). The civic thinker’s change from pious child to loyal citizen began in late Shang (Roetz 1992:87). Duke Tan of Chou 周公旦 said: “Be reverent...*follow and observe the proper statutes*...prove a bulwark to the royal house. Enlarge the fame of your meritorious ancestor; be a law to your people!” (Waltham 145). His retirement limits monarchy (Shaughnessy 101). Impartial T’ien favoured righteous houses. “A chief is chief by grace of the tribe” (Parrinder 78), so the wáng 王 ruled for *salus populi* under ethical T’ien. K’üing augurised: “A great minister is a minister who serves his lord by following the way, and who resigns as soon as the two are no longer reconcilable”; here he also rules out parricide *regardless* of positive law (LY 11,24 Ryckmans). *Fas* is required. “Wenn im Reiche Ordnung und Gesetz herrschen, dann gehen Sitte und Harmonie, Frieden und Krieg vom Himmelssohn aus” (LY 16,2; Stange). K’üing held to “remnants of primitive democracy” and disliked “mindless conformism” (Rubin 1; De Bary 1998:19). Mèng’s republicanism shines in 1a2 and 1a7. Royal status is “sacred” only by sharing with the people. Any ruler can become a sagely king (Mèng 6a2). Hsün thundered like the Philippics’ Cicero: “*Folge dem Dao, folge nicht dem Fürsten!*” (13; Roetz 1992:135).

5. *caritate eam praestare*. *Caritas* transcends personal affection, showing our kinship to all flesh. “*Omnes omnium caritates patria una complexa est*” (DO 1,57). *Praestare* is to serve with *dignitas*. The State is inductive, not a Hegelian Absolute concretising universal spirit. All the bonds of affection meet in public life. Republican *caritas* does not unite in servility to a Leader. The Senate houses the rivalries of *dignitas*; it gives the *fā* for the *societas* of citizens as Romans, conjoint tribes and collected gentes. A *civis bonus’ officia* are: “être utile à la patrie, servir la société, ne nuire à personne, cultiver la vertu, être animé du sentiment de l’humanité” (Barbu 1964:145). *Mens divina* does not come from a human “above” to those “below.” “Pull down thy vanity, it is not man / Made courage, or made order, or made grace” (Pound 1957: Canto 81). Divine Law, right reason, and the true republic are *complexae in caritate*. Natural Law is not a mask: Cicero was truly committed to the impartial principles of his youth (Perelli 1990:125). *Caritas* demands that code actualise *mens divina*, as

the Classics have served in China as a Natural Law and...supreme authority over

government, society, religion, and...Chinese culture...Chinese believe truth to be essentially moral...Natural Law covers both natural and human affairs. Both...have moral connotations. (Chan W. 1959:13).

T'ien is no "oblong blur", in Idowu's satirical term. One is not answerable to a non-sentient thing.

5. *qua rei publicae nomen universae civitatis est*. The formal claims of positive law are trumped by the faith-commitment of *caritas*. "What thou lovest well remains, the rest is dross / What thou lov'st well shall not be reft from thee / what thou lov'st well is thy true heritage" (Pound 1957: Canto 81). Cicero's commitment to the *universa civitas* of theology extends his *fides* and his *caritas* from Arpinum, to Rome, to all around Mare Nostrum, and to all within the Four Seas. *Pro qua mori et cui nos totos dedere* is not patriotic gore. *Caritas* is not sentimentality but commitment, in which Cicero hazarded everything despite his proneness "to adjust reality to suit his own wish, even shortly before disaster." (Fuhrmann 215). *Caritas* is not cleverness. Political failure does not annul *nos totos dedere*. Loving kung 公, *salus rei publicae*, makes Epicurean abstentionism culpable without a good excuse (De Bary 1998:21; Guillén Cabañero 1984 2:72; Kroll 6). Epicureans were legal positivists living in comfortable inertia, severing themselves from the *comercium* of li 禮 and undermining *societas* (Dittrich 2:13, Rommen 1998:9, Righi 95). Cicero's passionate aversion to Epicurean quietism and its limited Roman appeal at Rome were due to strong *mos maiorum* (Vogt 24; Conte 155-174, Fowler in Griffin and Barnes 120-150). Best survey of Ciceronian-Epicurean controversy is Vicol's, swan-song of the Scoala Romăna din Roma.

Quietism strikes at the heart of civic theology. It trivialises Deity by ignoring public service without which no man can see Jupiter, or T'ien, or Rome, or all under Heaven, or much of anything else. "Detachment in the rigorous sense of the word can only be achieved in a state of complete imbecility" (Polányi 1951:25; pun noted). Cicero indicts Epicureans in words which *doubtless* made Atticus worry (1,21) lest his fellow-Epicureans overheard him in enemy FHQ. "Sunt enim philosophi et fuerunt qui omnino nullam habere censerent rerum humanarum procurationem deos. Quorum si vera sententia est, quae potest esse pietas, quae sanctitas, quae religio?" (DND 1,3). He calls Epicurus a religious poseur (1,59; 4:103-122). Pontifex maximus Caesar was an apt imitator! Cicero's hatred of quietism—"non tu quidem oderis" is a joke (De Fin. 1,14)—parallels Jü-chiào "humanity makes the Tào great". Civic theology is not contemplative or mystical. It is engaged. Li Chi (Liyun 9; Lín) calls it the better part of valour: "To know that a world of moral perfection exists, but to go along bravely establishing a social order with the imperfect human beings that we know we are today, is the part of wisdom." "Cicero, in contrast with the stoics and epicureans, avers that nature is inherent in man and is, in fact, arranged for his benefit and in his interest" (Van Zyl 1986:25). The Tào was made for humanity, not humanity for the Tào. "Gegenüber dem gesetzten

Recht, das Unrecht sein kann, muss es docht ein Recht geben, das aus der Natur, dem Sein des Menschen selbst folgt” (Ratzinger 2005:34). It scorns Plotinian flight of the alone to the Alone to plunge into praxis.

“Attack the heretical theories and their harm shall cease” (LY 2,16; Huang). Hillel asked, “if not now, when?” “If Heaven wanted to bring peace and order into the world, who is there but myself?” (Mèng cited in Waley 1956:116). LY 11,12 puts people first, then religiosity. It is a more demanding service to obey T’ien’s call to teach and to govern, despite all Epicurean, Yangist, or Taoist 道教 / 道家 contempt of Jú-chiào altruism. “When King Wên perished, did that mean that culture (wên) ceased to exist?...And if Heaven does not intend to destroy such culture, what have I to fear from the people of K’uang?” also “Heaven begat the power that is in me. What have I to fear from such a one as Huan Tui?” (LY 9,5 and 7,22 Waley; cf. Roetz 1998:19). The arriviste’s nervousness gone, at his life’s brutal sunset Cicero wrote (DL), spoke (Philippics), and died resolutely, faithful to God-given duty. He knew what Mèng knew:

If the doctrines of Yang and Mo are not checked, and the doctrine of Master K’ung is not promoted, perverse teaching will delude the people and block the road to human-heartedness and righteousness. And when that way is blocked, beasts will devour men, and men will devour one another. (3b9 Liu).

Triumvirate, proscription which “surpassa toutes les cruautés de Marius et de Sylla” (Mentelle 1766:403), Antony rampant, the Cicero brothers butchered, the prodigy of State terror Augustus, then the Republic sunk in blood, “the killers...seizing possession of whatever they covet” (Mèng 1a1; Zheng et al.). This is not only Cicero’s life but the life of free Rome and free China at stake.

Yang’s school preaches *everyone for themselves*, and so denies the sovereign. Mo’s school preaches *loving everyone equally*; and so denies the father. No father and no sovereign—that’s the realm of birds and animals....No father and no sovereign—this is what Duke Chou fought against. (3A9 Hinton).

Cicero fought the same fight, even if debating Epicureans and utopians was “chasing stray pigs” (3a9, 7a26; Hinton) whose victory was to gate ‘Animal Farm’. In Serica Felix. Hàn Dynasty Jú cancelled the sorcery of China’s imperial Circe, Ch’in Shih Huáng 秦始皇 (260-210), turning bewitched swine back into rational persons. In accord with the damnatio memoriae by the Hàn State 國, the tyrant unrectifiably self-named by a serial number has been stripped here of his tì 帝.

Cicero’s comments that Epicureans “discendi enim studio impediti, quos tueri debent-deserunt!” and “deserunt enim vitae societatem” (DND 1.9,28) fit the adherents of Yáng Chu, who wouldn’t pluck a hair to save the world, savouring a “nonmoral conception of life...[seeing] Tào as a blind physical force that produced the world, not by design or will, but by necessity or chance” (Chai and Chai 1961:113). This is Democritus’ and Lucretius’ swerve—into selfishness. Quintus-like Tzu Lu blared (LY 18,7; Lau) “Not to enter public life is to ignore one’s duty”. Ku H. 辜鴻銘. Viceroy of

Wuchang, fighter against Asiocentrism and Eurocentrism alike, eloquently gives the core text:

A man who withdraws himself from the world for no other reason than to show his personal purity of motive, is one who breaks up one of the greatest ties in the foundation of society. A good and wise man, on the other hand, who enters the public service, tries to carry out what he thinks to be right. As to the failure of right principles to make progress, he is well aware of that.

Sinologist Munro wrongly says Epicureans were the only Roman believers in free will (1985:11), bigotedly crediting φιλανθρωπία only to them for ‘helping’ people by freeing them from scary gods (1985:11, 1969:71). To wú-wei 無為 tradition and decency to death is not jén! “Der Taoismus ist ... wie alle Mystik stark egoistisch; er fragt: ‘was muß ich tun, damit ich selig werde?’, aber nicht, ‘was muß ich für die andern tun, damit sie selig werden?’” Forke 356; Chai and Chai 1961:80-84). It is “a warrant for despotism” (Creel 1953a:114; cf Do-Dinh 101), a solipsistic hatred of all codes and all culture, liquidating tsū-chuán in favour of a fantasy of innocence. It is a de-moral-isation of the Tào/fas (Cua 1998:61). As well drink mercury to gain immortality! Sub specie Coeli, natural law is not the call of the wild. Wú-wei connives by studied indifference at destroying neighbour, god(s), State, tradition, and (W. Rauschenbusch) responsibility beyond the little postern gate. Anti-quietism does not narrowly construe the political: “These virtues surely constitute taking part in government, so why should only that particular activity be regarded as taking part in government?” (LY 2,21; Dawson). Modern scientist and modern theologians concur. Popper’s relativism makes “commitment...an outright crime” (Lakatos I. in Harding 205). Modern Zoroastrianism disdains “meditation that blights all spontaneity of action...Religion should foster civic virtues in man” (Dhalla 15). P. Althaus and M. Luther reject “Innerlichkeit” creating complicity with “Fürst oder Führer” in obedience to the Old Testament and to St Paul (Althaus 1937:5-6). Stoic Quintus rescued De rerum natura’s manuscript after Lucretius’ suicide in 55. He and Marcus made Atticus publish it (Cramer 73)—*dignitas* all round. B. Eno’s Jū capering sylphs oppose “practical political ambitions” since “the dance of Ruism possessed self-fulfilled meaning; the meaning of T’ien must be sought in the dance”, conceding that “although our portrait of Ruist practice pictures it as an all-encompassing ritual dance, the role of formal dance in the Ruist syllabus is somewhat elusive” (12,80,53). This ruins Epicurean ἀπραξία, Stoic ἀταραξία, and Ciceronian/Jū praxis. Laughing at this hermeneutical comedy, our three do not *torquere cervicos* to this dance-hall medley.

5. Cicero’s intimate tone reveals his bravado’s other side of emotional, unfeigned loyalty. Keeping only the best of the inchoate corpus of Roman religion shows critical *thinking* and deep love for his double *patria*. Absence of a developed critical *theory* doesn’t cancel that. Dulce et decorum est pro patria augurare. The Social War did not end Roman and Italian variance. Romanitas’ ambiguity is manifold: who is Roman, where is Rome, *what* is Rome? Arpinum enshrines it: *haec in ea contineatur*. Ambiguity, at least after the Social War, brings inclusion not confusion. The loss of

power to secede was compensated by the gradual extension of the full privileges of Roman citizenship. Local patriotism was not subversive. The young man from Arpinum did not find entrance barred to “Rome”. Climbing the greasy pole (and accruing a priesthood) despite being a *homo novus* proved God’s political reason to Cicero’s theology! Cicero is anti-gnostic. Nothing is more remote than Gnostic postmodernism’s “arrogant ‘we know’” (Appiah in Richard Bell 134). He gleefully uses his augural authority to break obscure pontifical jargon, a protest designed “to combat another narrative and pedigree” (Chanock 155; cf. Ellis, O’Neill). The anti-gnostic combination of reason, openness, and integrity of text is essential to Jú-chiào rectification of names, chènghmíng 正名, and to both sages’ civic stance. Nothing of which he speaks with *caritas* is the preserve of the few. Elites govern, but moral optimates, genuine chün-tzū, also serve. Cf. Weber-Schäfer 1963:16. Philosophers discern, but all discuss. If Cicero shows the an arriviste’s uncertainty, it is not the frustration of an amator exclusus.

Cicero was both a *homo novus* and a man with a strong sentiment for his *dulcis* native place, reinforced by coming through the dangers, toils, and snares of Sulla’s regime. In Cicero’s career “only 11 consuls were novi homines”, then “from 43-33 18 in eleven years”: creatures of tyranny, not achievers like Cicero (Alföldy 87). K. Ziegler contrasts upstart Hitler to upstart Cicero:

In steilem Aufstieg war Marcus Tullius Cicero, ein ehrgeiziger junger Mann aus einer unbekanntenen Familie eines Provinzstädtchens, dank seiner rednerischen Begabung in dem frühesten zulässigen Lebensalter zum höchsten Staatsamt in Rom, dem Konsulat, gelangt. (Ziegler 1934:312).

One thinks happily of Moshoeshoe I of Lesotho, equally *novus homo*: “with these antecedents Moshoeshoe was merely the senior son of a village headman” (Thompson 1975:23). In his forbears he resembled Cicero; in staving off entire destruction of his polity, he surpassed him. His *ratio recta insita* was also “the same in all ages. Greeks, Romans, Frenchmen, Englishmen, BaSotho have all one common nature.” (Thompson 1975:81). Two sacred citizenships and the parabola of Romanitas give Cicero a symphonic identity. Unlike J. Stalin, who chose his adopted Russian identity over Georgian local interests (as L. Beria and S. Ordzhonikidze variously proved), Cicero never chose Rome over Volscia. Unlike A. Hitler, who hid his Waldviertel genealogy, Cicero boasted of *origo* and family. Unlike the totalitarian *novi homines*, Cicero’s trail of blood was negligible.

6.-7. Cicero has it both ways. Losing the *nomen obscurius* is a benefit to the newcomer *in familiam patriciam venerit*. Coolness or freshness are physical and metaphorical virtues. Making the Liris colder or fresher shows the renovation of ruling circles by the infusion of new blood. Nobility and enervation, obscurity and power, interconnect. “*Nec enim ullum hoc frigidius*” may be as much idealised self-portrait as anything else. In adoring self-retrospect, who kept a cooler head during the

Catilinarian conspiracy than Cicero? The metaphor includes the double meaning of rostrum; in the singular, a ship's prow or animal's snout, in the plural, a speakers' platform. *Palaestra* is the arena of politics as well as naked wrestling, a whorehouse, or a school of rhetoric. In dialogue with fellow-optimates, Cicero speaks "ohne jeden Flecken von Opportunismus" (Strasburger 92; cf. Zieliński 1929:5). Hsún said (7,5; Knoblock) "the gentleman bends when the occasion requires bending, but he straightens out when the occasion allows". *Thyamis* is the modern Kalamá in Epirus (Appuhn 415 n.347). An Amaltheum is a library (here, Atticus'), or the old sanctuary of Amalthea near the villa of Atticus in imitation of which Cicero made a similar one at Arpinum. "King Hui of Liang...stood by a pond, and, looking about at his swans and deer, said, 'Do virtuous men enjoy these things?' Mencius answered, 'Only virtuous men *can* enjoy these things'" (Mèng 1a2; Zheng et al.). *Platonis...platanisque* puns. Repetitive *putes esse praeclarius* and *praeclare exigis*, *Quinte* shows the brothers' ease.

7. *Dicamus diem* is dicare, related to dedico and the English "dedicate", to allot to a specified use or person, moving beyond its early sense of consecrating something to a deity or deifying a person or thing. This makes the DL a sacred offering compliant with the time and labour constraints Cicero sets for consecrated manufactures, tomb adornments, and so on. Juppiter placed *ratio recta insita* in us "sicut simulacrum aliquod dicatum" (1,59), just as Cicero entrusted his Minerva to Juppiter Capitolinus' aedes. Τὸ σῶμα ὑμῶν ναὸς τοῦ ἐν ὑμῖν ἁγίου πνεύματος ἐστίν (1 Corinthians 6.19). *Quorsum istuc?* Quintus uses the religious *dico*, to consecrate. Offerer of dies dicata to quasi-divine Law, the gods' offspring (like Aratus' Muses), Cicero is priest of Law and augur. Discussion of the laws of holy rite is holy. Theology of religious law is a religio (cf. Ps.119). Fas needs rite. "Righteousness the gentleman regards as the essential stuff and the rites are his means of putting it into effect." (LY 15,18; Dawson). Civic theology shelters the arts. *Musarum primordia* and *capienda primordia* have one divine source. Cicero saw a celestial globe with stars marked upon it, "cuius omnem ornatum et descriptionem sumptam ab Eudoxo multis annis post non astrologiae scientia, sed poetica quadam facultate versibus Aratum extulisse" (DRP 1,22), referring to Aratus of Soli's Φαινόμενα. Aratus put into poetry Eudoxos of Cnidus's marking of the stars on a globe of Thales' construction. Cicero's translation of this in 60 B.C. makes a poetic-scientific "great chain of being" connecting himself and Thales; nearly 300 verses survive. Cf. DND 2,104. He also wrote a poem about Marius, which Scaevola Augur thought would be immortal. "But the old lawyer was neither a poet nor a prophet." (Forsyth 1:23) Julius Caesar also wrote a De astris, now lost, based on Aratus (Cramer 26). As a pontifex maximus, Caesar's version focussed upon the kalendar. Quintus' poem De signis was zodiacal (Blank-Sangmeister 231). (Cf. Odes 154 Karlgren).

Quintus! And Terentia, too.

An intimate friend was often honoured by Romans with the title of brother. Embarrassed Epicurean Atticus, a statesman-banker like Tsü Kung (LY 1,10 ff.) was so honoured by Cicero. (Bannon 62; Conte 191). “Et nos ames et tibi persuadeas te a me fraterne amari” (Ad Att. 1,5,8). What of the politically unstable, choleric, real brother? Choleric, martial Quintus-like Tsü Lu—killed in combat—was “hard to live with” (cf. LY 1,15, 11,22; Creel 1949:68, Forke 1964:142). Of him K’üing ruefully remarked “In the government of a middle-sized country, he could be entrusted with the ministry of defense. But whether he is good, I do not know” (LY 5,8 Ryckmans). Again, “the love of valor without learning degenerates into violence” (LY 17,8 Ryckmans). Human exclamation point Quintus is distinguished from his prototype by devotion to literature. Ill-wed to Pomponia, Atticus’ sister (Marcus lectured Quintus for behaving badly, Ad. Att. 1,5), Quintus upset Marcus, “praesertim qui quid amor fraternus valeat paene praeter ceteros sentiam” (Pro Scauro 35); but when Marcus was banned “Quintus and Atticus looked out for his wife and children....[Quintus] is devoted in pietas and obsequium” (Bannon 105-107). Quintus seemed a good Jú younger brother.

Quintus was cultured, charmless, combative, impolitic. His “dulcedo iracundiae” (Ad Q. fr. 1,2,7) was Old Marcus’ tsü-chuán triumphing over Stoic tranquillitas. Praetor in 62, he served in Belgica under Caesar, who praised his superb generalship and stamina (Labrousse 29). Oddly hailed imperator after a minor Cilician skirmish, Marcus was “togatus par excellence” (Høeg 25; cf. Wistand). Unlike critical moderate Marcus, Quintus was a man of the extreme right (the “pauci”—the “few”) briefly seduced by the Caesarist Soldateska (“seditiosi”). This infatuation led Quintus to curry Caesar’s favour by sending him anti-Marcus letters; Caesar was so revolted that he sent them on to Marcus (Führmann 143; Kumaniecki 340, 432). Whatever his earlier instability, Quintus’ loyalty at the end was total, “obsequio filium consilio parentem” (Ad Q. fr. 1,3,4; Cicero missed his repartee and jen/humanitas/ubuntu Ad Q.f. 2,10,1). By 44-43 both brothers were “systemtreue Optimaten” (Gelzer 59). A stern Stoic in thought and tongue, Quintus would have exploded at H. De Vleeschauwer’s evidenceless schematism (212) making optimates always Epicureans and Stoics invariably populares or even democrats. Marcus says warmly “adcurate tu quidem...Quinte, et stoice Stoicorum sententiam defendisti” (De Div. 2,8). Our trio had “einem streng konservativen Manne stoischer Observanz, [und] einem epikureischen Atheisten (der aber für die Traditionen römischer Religion Verständnis aufbringt) und Cicero in der Mitte”, religiously closer to Quintus (Kroymann in Michel and Verdère 119).

Clodius tried vainly to seduce Terentia’s resolute half-sister Fabia, a Vestal (Eulenberg 69). Terentia was quite tough-minded in looking after herself and young Marcus and Tullia, even if her

toughness was eventually too much for Cicero. Both Cicero and Confucius eventually divorced (Lin Y. 31). Hard-working, financially astute, and fearless for herself, she embodied all unknown the traditional Hakka pudicitia or woman's virtue (Constable 1994:128). Despite ancient sexism

there is no shortage of references to women who give wise political counsel, or who influence the government....But ancient China was not a civilization that identified social equality as an especial value. Men, too, were allotted hierarchical social roles which they were required to fulfil whether it pleased them or not—all the way up to the ruler, who in theory...could not escape his obligations to Heaven and the spirits. (Goldin in Li 2000:147,150)

Women are *not* aretically inferior. Terentia's daughter Tullia inherited strong-mindedness and eagerness for learning (Hemelrijk 76; Char and Kwock 5, Li 2000:141). Cicero's friend Caerellia, "philosophiae flagrans", stole a draft copy of *De Finibus* (Ad Att. 13 21a 4-5)! "Neither rebels nor victims, these women...embraced certain...norms while resisting others" (Ko-Haboush-Piggott 1).

Atticus: dodger and diplomat. He was no dogmatic Epicurean. "As to Epicurus and his doctrine, he...was ready to abandon them on the first pretext...he concedes that the gods care (Boissier 131; DL 1,7). Q. Caecilius Q. f. Pomponianus turned down Athens' citizenship as it required giving up Rome's. His loyalty to temperamental Cicero was remarkable for a publisher. His office in his Quirinal house was staffed by learned slaves and freedmen; he doled out advances freely as huge profits flowed in (Ciaceri 1:107). His and Pilia's studious daughter Caecilia Attica was *heres* of her father's library (Clift 20). Navigating with unsettling serenity from Republic to principate, marrying off his daughter to Augustus' henchman Agrippa, he died by his own hand in 32. "Anxiety...might [have been] a higher state of mind" (Fan in De Bary 1970:16). His urbane apostasy from Roman faith was a gentled Epicureanism, not a gross "Cynic squalor" (Dudley 118). Hsún is his theoretical cousin: let god go and the rite remain. Cicero hated Cynicism savagely, as he told his son. "Cynicorum vero ratio tota est eicienda; est enim inimica verecundiae, sine qua nihil rectum esse protest, nihil honestum" (DO 1,148). Despising culture is not *ratio*. "Kultur ist Gehorsam gegen einen Gottesauftrag" (Althaus 1929:9). This T'ien ming obeys "the tao of an achieved universal, all-embracing, ethicopolitical order" (Rubin 118; Schwartz 1985:65)—which included women. "Atticus...kept a slave *paedagogus* for his daughter's elementary education, and a freedman *grammaticus* for her education in grammar" (Van Den Bergh 355; cf Ad Att. 12,33).

Titus and Marcus were such close friends they let one another raid their professionally staffed libraries! Sulla's former librarian at Cumae, Tyrannio, curated Marcus' libraries at Tusculum and Arpinum. Quintus' was at Arpinum. (Casson 70-73, E. Rawson 1985:41. "Πυρὸς καὶ ὕδατος ὁ φύλος ἀναγκαιότερος" (Schulz 1936:226). Antiochus tried vainly to convert the unpolitical polymath (ad Att. 1.21.54). Atticus says it is fine with him if Marcus affirms the immortal gods.

“Propter hunc concentum avium strepitumque fluminum non vereor condiscipulorum ne quis exaudiat” (1,21). Friendship’s centrality in classical Jú-chiào equals this. “The gentleman collects friends through culture, and through his friends supports humaneness” (LY 12,24 Dawson). “Einer, der solide, gründlich und freundlich ist, den kann man einen Gebildeten nennen. Als Freund solide und gründlich, als Bruder freundlich” (LY 13,28; Wilhelm). “The upright friend, the devoted, and the learned benefit us” (LY 16,4 Ware). Friendship nourished “the remarkable humane sensibility of Confucius’ moral thinking” (Harbsmeier 158). Tzù-ssu 子思 saw it as a fastum duty:

The duties of universal obligation are five, and the virtues, wherewith they are practised, are three. The duties are those between sovereign and minister, father and son, husband and wife, elder and younger brother, friend and friend. Those five are the duties of universal obligation. Knowledge, benevolence, and courage, these three, are the virtues universally binding. (CY 20,8 Dubs)

Hsün says “He who can order himself and respond to others—this is...the complete man” (23 B Watson).

No starchy mandarin, K’üing was as lively as the voluble Volscian who praises a victim of a practical joke “subtilitatem veteris urbanitatis et humanissimi sermonis” while “ego risu corruí” (Ad Q.fr. 2,10,2). C. Harbsmeier contrasts the “humor and humanism of Confucius” to stiff Chuhsists and “interpreters from the Far West” (135,157; contra Forke 1964:197). (To K’üing, they’re all yí-ti suffering from irony deficiency.) LY’s artlessness shows authenticity and K’üing’s high and low moods (Stange 14-15) like Cicero’s letters. He used *bons mots*, Mèng, eloquence. Harbsmeier brings K’üing to the party, and the fun begins. “Confucius ridens, the smiling Confucius” explodes at corrupt politicians (LY 13,20), portrays himself as highly emotional and impulsive (LY 6,20; 7,18), and laughs at his own jokes (LY 17,3 and 24). Without Stoic constantia, he is volatile and informal apart from the rites (159, 149, 131). “Gut reactions, of course, can be philosophically very profound.” He swore: I’m damned “yi yi hu” and I’ve had it “yi yi fu”; he had Quintus’ hot temper (144, 141; cf. LY 5.10). His dialogues are real, like Cicero using real-life friends Quintus and Atticus. “Absence of recalcitrance or rebelliousness [is] a prima facie sign of stupidity!” (147; cf. LY 2.5). K’üing “was, most certainly, not a Confucian, although he was, admittedly, Confucius” (Harbsmeier 133; cf. Lin Yütang 154). Politically intransigent Mèng was a *bon vivant*, “an extrovert and a great oracle of his age, noted for his wit....[H]e lashed out at his opponents (Chai and Chai 1961:43; Roetz 1992:135, Verwilghen 83,48). Mèng wept candidly, like Marcus, resembling him also in his clear, lively, elegant and ironic writing (Forke 1964:197). His heroes also weep. “Shun wept and wailed, calling upon merciful Heaven”. “The officials and his kinsmen approved of [Jan Yu’s] actions and thought him well-versed in the rites....He showed such a grief-stricken countenance and wept so bitterly that the mourners were greatly delighted” (5a1, 3a2 Lau).

CHARACTER OF DIVINE LAW § 8-10

8. *ignoremusque vim rationis*. Divine origin, tradition, and force of reason intertwine. “The innocence...of the possibility that logical reasoning, grounded in empirical experience, can exist camouflaged or can make a familiar bedfellow to faith now needs to be removed” (Aklujkar 455). *Vis* is sharply anti-positivist (Girardet 1983:67). *Errore sermonis* limits liability like K’üng’s silences. As in NT epistles, what works well is not dwelt upon. In a religion of formulae, Cicero’s augural freedom marks a templum for freewheeling dialogue. The *vim naturamque legis* is an object of religious faith which comes into the world not by the will of man nor the desire of the flesh but by God: “non ex hominum arbitrio, neque ex populorum scitis ortum esse, sed ex ipsa sempiterni Numinis mente” (Bacci 172). Cicero distinguishes positive *lex excogitata* and *lex scita*, from *quod universum mundum regeret imperandi prohibendi sapientia*, Juppiter’s/T’ien’s Reason. Pax deorum and concordia must be *pursued*. Traditions are not *aeterna*; they cannot order *universum mundum*. Cicero knows his theological place. An augur is not Juppiter.

Est quidem vera lex recta ratio naturae congruens, diffusa in omnes, constans, sempiterna. ...Huic legi nec obrogari fas est neque derogari aliquid ex hac licet, neque tota abrogari potest. ...nec erit alia lex Romae, alia Athenis, alia nunc, alia posthac, sed et omnes gentes et omni tempore una lex et sempiterna et immutabilis continebit, unusque erit communis quasai magister et imperator omnium dues: ille legis huius inventor, disceptator lator. (DRP 3,33).

“Καὶ γενήσονται μία ποιῖνη, εἷς ποιμήν. (John 10.16). God reifies his mind into *principem legem illam* (legification of God). Religio/li is ethical, not magical or mystical. “Rites and decorum...combined the government...with personal moral culture and social moral concepts” (Xu 10,12). *Mens*, accessible to our reason, is *omnia ratione aut cogentis aut vetandis dei*. This mind, reason, and direction of all things is *illa lex, quam di humano generi dederunt*. *Illa lex*, identified with *ratio mensque sapientis*, is not hypostatized. *Lex* is not a numen.

8. *Ratio mensque sapientis* copy the fã of wise God’s *ratio mensque*. DL is imitatio dei, a piety of emulation echoing Jú-chiào reverent models. God *cogens aut vetans* is free. The Sage-as-Legist-Priest is constrained to act *ad iubendum et ad deterrendum idonea*, apart from his own impulse or thoughtless conservatism. Despite love-hate towards Cicero, “hoc strictiore sensu ad mentem S. Augustini (Contra Faust. L. 22 c. 27) lex aeterna recte definitur: ratio vel (i. e. et) voluntas divina ordinem naturalem conservari iubens, perturbari vetans” (Cathrein 1921:151). Odes hailing T’ien curb the State (254 Karlgren).

‘Alle sollen sich nach den Grundsätzen der Vernunft richten’ (Schu)...Die Grundsätze der Vernunft sind...der Wille des Himmels...De Harlez schreibt: ‘Die Sittenlehre der Chinesen anerkennt jene Prinzipien der Gerechtigkeit, die uns nach dem Ausdrucke Ciceros angeboren sind, und erklärt das Verhalten Gottes im Lichte derselben. Der

Herr haßt die Ruchlosigkeit und straft sie früh oder spät; er liebt die Tugend, befiehlt, ermutigt und belohnt sie'. (Cathrein 1909:185)

T'ien commands most frequently "in certain writers like Tung Chung-shu, who inclined to greater personalisation of Heaven" (Needham and Wang 2:547).

9. Mos is not mortmain. Quintus knows the power of past habit is a torrent of whitewater capable of sweeping reason away: *ne aestus nos consuetudinis absorbeat*. Cicero resolves to keep (just) the best (10). K'üing says staunchly, "I follow Chou" and so not Shang 商朝 also known as Yin 殷, or legend-shrouded Hsià 夏朝, or the petty states battering upon the Chou Kulturraum. Custom is a hot topic: cool discussion rationalises it. Without ἐποχή, without Jú-chiào reserve, Cicero and his friends may get dragged *ad sermonis morem usitati*. Unrectified habits drown rite, drown righteousness, drown common sense. Cicero has K'üing's flexibility, not Cato's or Varro's Stoic rigidity. Clichés are as dangerous as the bromides of revolution. Cicero's faith in *ratio divina*, and his critical courage in 44-43, protect him against nostalgia. K'üing's "I follow Chou" (3,14) saves from "destruction in the anarchy of the times...ancient laws and institutions...essential to the establishment of stability, order, and decency" (Sherley-Price 23). Cicero begins *a parvis*. Except dialogists become as little children, they cannot enter the kingdom of rite and fas.

9. *Si in ius vocat* is the XII Tables' summons to court (DRP 61). *Ius* has no Greek equivalent, neither νόμος...mainly used for statutory law—*lex* nor τὸ δίκαιον...“the just,”...so employed...by Cicero, who does not even attempt to translate the term" (Vinogradoff 2:19). Divine Reason holds imperium to summon *iussa ac vetita populorum*. It is *vis non modo senior est quam aetas populorum et civitatum*. *Lex divina* pre-dates, outranks, and judges positive laws. No automatic ethical or theological imperative attaches to specific positive laws (De Plinval 1969:302). Ethical divine *vis* is particularised in *iussa ac vetita*, just as T'ien ming 天命 conditionally grants legitimacy to a specific ruler or house. "Heaven's mandate is not forever: / Shang officials sure and bright / now pour libations in our temples" (Shi quoted by Mêng 4a ; Hinton). Paralleling on high *iussa ac vetita* below, always ethical, T'ien ming is never fatalistic in classical Jú-chiào. It is fas, not fatalism, contingent on obedience. *Lex* is concrete reality, creates *vis legum*'s permanence, and is identical with the will of God (Büchner 1961:86).

9. *Aetas populorum et civitatum* is predated by Law *aequalis* with God. Dynasties fade but T'ien's ethical brilliance is eternal. W. Schmidt's theory of primal monotheism fits well here. *Lex divina*'s primordiality destroys the chronological privileging of Greek institutions by late-comer Romans. It

attacks both the Realpolitik and the fake divinity (purported descent of the gens Iulia from Venus) of the Caesarian Hellenistic reprise of hated monarchy. *No* polity can make absolute claims for its own rite, laws, ethics, or goodness on a positivist basis. Antiquity supports laws' godlikeness, since ancient times were held to be nearer the gods than the present day. Every code, nation, and polity is weighed in Heaven's balance. Since all human beings—especially the *sapiens/sheng* [Volscian *sepu*]*—*are endowed by Juppiter “summe deum Regnator” (Naevius; Warmington 2:54) with *ratio recta*, Cicero theologian speaks freely without stigmatisation as a homo novus. He does not speak of Law to foster self-esteem or to excuse the local “raff-Leviathan” (Agyeman in Dukor 368). Our minds bend to that *Vis* impelling us toward right acts and away from *peccatis*. It is *aequalis illius caelum atque terras tuentis et regentis dei*. Dialogue and code-making are holy rites. Cicero divinises Law; it is as old as God and unassailable as He in moral excellence (Dörrie 227, Girardet 1983:77). Laws' bidding and forbidding our actions copies God *tuens et regens* the cosmos. *Recte facta* or *peccata* show progress or poverty in manners and morals, indexed in individual and State by willingness or unwillingness to let laws: *fā* congruent with *fas/Tào* do their work. “Loss of hope in meta-criteria” (Pera 19) is defied by Cicero's ambiguities and K'üng's gnomic terseness. Repetition and varying terms do not bother Cicero. Superficial readers dislike DL's lack of “zitierbarer Maximen” (Ciulei 7. Weber-Schäfer 1983:479).

10. *Mens divina sine ratione* is unthinkable. God's *vis* is not Thrasymachean. What is Thrasymacheanism? “Thrasymachus pounces on Socrates and defines Right as being what the mighty find is profitable (Politeia. I:338a-354c. esp. I:338c)” (Frisch 1949:21). The hsiäojén 小人 gets absolute power to realise amoral fantasies of force. For Sophists (Kallikles, Thrasymachus) might makes natural right: “the way to anarchy and nihilism” (Eikema Hommes 1979:11; cf. Bacci 176 on its nuclear-arms implications “quam Deus averruncet”). Law is not superior fire-power and the State is not its source (Cathrein 1909:119). K'üng “took his stand in the world of Chou...li...without ritual the only real law would be that of brute force” (Berthrong 1998:18). P. Melanchthon cried “if you give the magistrate the power to establish whatever he pleases, see into what slavery you will throw us!” (Witte 66). A modern Quintus warned: “Macht ohne Gerechtigkeit und Freiheit ist rohe Gewalt und Barbarei. Gerechtigkeit und Freiheit ohne Macht ist eine kindische Phrase” (Piłsudski 10).

Legalism/Fä-chia: Thrasymacheanism as State praxis.

Just as Augustus destroyed the Senate's sacred auctoritas, Ch'in shrank the Chou lords to courtiers (Liu 1955:114). “The First Emperor, as he called himself, gave peace... but it was his kind of peace, a peace of regimentation...he commanded the Great Wall to be built and a million men

died...to keep barbarism *out* of the Middle Kingdom” (Hughes 35). Ch’ín unified China by trying to erase its soul; it was “authoritarianism’s ‘cannibalism of its own mother’” (Hsiao 1979:21). Fā-chia’s martyr-theorist Hán Fei 韓非 instructs by Platonic dicta: “destroy all hope”; persuade only by coercion and deceit.

Those who have no understanding of government always tell you, ‘Never change old ways, never depart from established custom!’ But the sage cares nothing about change or no change; his only concern is to rule properly....The Confucians with their learning bring confusion to the law....These are the customs of a disordered state: Its scholars praise the ways of the former kings and imitate their benevolence and righteousness, put on a fair appearance and speak in elegant phrases, thus casting doubt upon the laws of the time and causing the ruler to be of two minds.’ [Jú are] “fools and impostors...shaman priests of the rhetoricians. (5, 12, 18, 49, 50; B. Watson)

Fā-chia’s

virtue is not goodness. It is merely obedience to the law, as fixed by the state. It has nothing to do with morality....Shang-tzu is completely and consciously amoral. His great fear is that the people should become interested in the traditional virtues, and thereby set up other standards of conduct than those established by the [positive] law”. (Duyvendak in Li Yu-ning 208)

Thrasymachean speech is command, applause, and silence—never dialogue. Thus, “Legalist law was positive law, not natural law. [Its] amoral character...contributed to law’s lowly status among many Chinese, who saw law as a necessary evil” (Peerenboom in Huxley 85); cf. Rubin 19). State warred against nation and crushed dignitas in Fā-chia’s “systematic struggle against the Confucian concept of the autonomous human personality” (Rubin 59,62,64). Aristotle’s successful tyranny includes proscription of intellectuals, forbidding education, estrangement destroying *societas*, and idolatry of the ruler and his lineage, all of which comprise a twin of extreme democracy (Politics 5.11.4-9). This is “le Dao totalitaire du Han Feizi” (Anne Cheng 244). B. Mussolini explains: “the State [is] an absolute in comparison with which all individuals or groups are relative, only to be conceived of in their relation to the State” (Micklem 1941:37). K’üng’s “cultural unity was...the consummation of humanity, not an order imposed upon sheep” (Fingarette 64).

10. *Ratio divina* reinforces Cicero’s ethical point. The *vim in rectis pravisque sancientis*, is like specific prescriptive power of positive laws, but divine. “Law is not θέσει but φύσει, by nature....Natural law must always be the same, but...this cannot apply to all existing laws” (Aalders 87 citing 1,42). It operates *quia nusquam erat scriptum*. For Cicero (and K’üng), it is “man first and foremost...other things only in so far as...relevant to man’s position in the world” (Hunt 188). As in Mèng and Hsün, good people obey *mens et ratio divina* by inborn sense or careful education, completing the triple link of human and divine mind(s), law(s), and ethics. Heroes’ good deeds or

scoundrels' evil deeds illustrate social ethics; notable law-full actions prior to positive laws bridge primordial divine mind and present legist/ritualist mind. History is pontifical, bridging *din al-fitrah* *مرطفاً نبيد* (Ezzati 62) and modern duty. Consistency is the hobgoblin of no little Mind. Horatius the one-eyed (*Coclitum illum*) on the bridge is a trope of antique virtue, defending it alone in the war with Porsenna. Macaulay's bad poetry and noble evocation inspired prisoners on Robben Island: "And how can man die better/than facing fearful odds/for the ashes of his fathers/and the temples of his gods?" (Mandela 9). Like K'ung's stalwart farmers—or Cicero meeting death at Formiae—how indeed?

Ennius says of him doing Juppiter's will "Hic occasus datust: at Horatius inclutus saltu" and "olim de caelo laevum dedit inclutus signum" (Warmington 1:46,54). J. Kenyatta wittily pegs the cliché: "The good old days before the advent of the Europeans are lauded to the skies. These were the days of wars and national pride of heroes and great leaders of the dance, days when men went together to plunder, when they were all brave, and no man deserted his friend" (119). Cocles transfigures this sentimentalism. Reason-Natural Law prevails, code or no code. "Noster Cocles" (DO 1,61) kept it unto death, but Sextus Tarquinius *violated* it. For his aggression against the Volscians and his decadence, cf. Mentelle 1766:140,188. Mèng's "Heaven sees with the eyes of its people. Heaven hears with the ears of its people" (5a5 Lau) applied to the republican *and* republican revolution: "La nation indignée se souleva...et par les efforts d'un grand courage, recouvra son indépendance" (Mentelle 1822:47; Girardet 1983:70).

10. *Erat enim ratio*: absence of positive law is no excuse for *stupris*. There need not be positive law, let alone penal law, mandating rescue of an infant from a well's mouth (Mèng 2a6); the normal person does it automatically, since "every man came from heaven because he was made by God" (Cetshwayo 94). "La loi de piété filiale est innée au cœur de l'homme" (Bernard-Maitre 33, cf. Forke 1925:148). "נתתי את־חוקתי בקרבם וצל־לבם אכתבנה והייתי להם" (Jeremiah 31,33). "Ac naturae quidem ius esse, quod nobis non opinio, sed quaedam innata vis adferat, ut religionem, pietatem, gratiam, vindicationem observantiam, veritatem" (De Inv. 2,65). (Cf. Romans 2:14.) Written code is helpful, not essential. Cicero gives this eloquent (written) expression in a speech never delivered "est igitur haec...non scripta sed nata lex quam non didicimus, accepimus, legimus, verum ex natura ipsa arripuimus, hausimus, expressimus, ad quam non docti sed facti non instituti sed imbuti sumus" (Pro Milone 4,10; cf. De Part. 130 "et ea quae scripta sunt et ea quae sine litteris aut gentium iure aut maiorum more retinentur"). For Cicero as a Roman, written law particularises *ratio ad recte faciendum impellens et a delicto avocans* deriving from divine reason bidding and forbidding. *Impellens* is stronger than *avocans*. Cicero may be closer to Mèng in theory and closer

to Hsün in practice. “Homo rationis est particeps”. An “animus bene informatus a natura” is unseparated by charismatic figures (DO 1,11; 1,14). Since both are congruent with divine reason and (genuine) written law, Cicero does not foresee theological civil disobedience. (Iconic misuse of Socrates reverses Socrates’ position.)

10. Code exists *cum scripta est*. Law exists *cum orta est* from divine Mind. Fà-chia positivism shrinks law to “a body of orders by a legitimate ruler or even an impostor...enforced by punishment. It does not matter whether or not these orders are ethical or moral...This legal system in its extreme form is called dictatorship or tyranny” (Odera Oruka 1990:78). “Naïve belief that such ‘positive law’ is always just is regarded by [Cicero] as rank stupidity” (Van Zyl 1991:78). Cicero won this battle for universal Natural Law against Epictetus’ and Carneades’ positivism (Verdross-Drossberg 22). Positive law is more stable than royal temperament, but Tào is more stable than either. “Tao...is completely independent of any government; it derives its authority from itself. It is, therefore, of especial value in periods of such disorganization and chaos as were the Ch’un Ch’iu (722-481 B.C.) and the Chan Kuo (468-221 B.C.)...The *chün-tzū* in Chi and the *chün-tzū* in Lü could both look to *tao* for their standard” (L. Creel 22-23). Humans cannot out-manoeuvre Divine Law or justify flouting It. It resides in “coniunctio hominum <cum dis>. quae naturalis societas inter ipsos” and is “quae saeculis ante nata est quam scripta lex ulla” (1,16 and 1.19). *Insita* makes DL an anti-Caesarian riposte. Like Disraeli, he will “dish the Whigs” (and Whig historicism). Mencianly returning Law and laws to the people rectifies names ruined by Caesarian cultic fraud (Harries in Clark and Rajak 55), dishing the populares. Putting *Lex* (back) in the hands of the *populus bonus et firmus* resists utopianism. “Citizens obey the [Platonic] state as children obey the parents to whom they are born. But Cicero...envisages a state that belongs to the people...an independent standard against which the laws of *real* states could be assessed” (Clark and Rajak 4, 58). T’ien “sees as my subjects see...hears as my subject hears (Mèng 5a5 Ware). Does Heaven speak? If the people know the Tào, all is said that needs be said. Cicero *sapiens* claims T’ien ming for himself with the approval of God (cf. Philippics 2.28), who “makes, judges, and avenges the laws of the moral order” (W. Schmidt 1939:38).

10. Co-eternal Law is *simul* with divine Mind. *Lex vera atque princeps* by Senate protocol speaks first. *Recte faciendum* is prior to *delictum*. Yet the historicist subjects the human spirit to “a scheme of teleological development” (Conte 2; cf. *contra* Smuts 30. 93), dogmatising

that what was truth for his grandfather could no longer be truth for him, that he was wiser than his grandfather—wiser thanks to his personal partaking of the changes in civilization. Grandfather did not fly in an airplane, he did not read Lenin, he did not

watch films; therefore Grandfather, even in his best and most creative moments, had to be less clever. (Miłosz 2005:89)

Horatius' glory is *lex princeps*. Rapist Tarquinius' infamy is not negotiable (Sprute 166, Wolff 83). *Ratio est recta summi Iovis*, a non-positivist external criterion for a *sapiens'* laws and rites *ad salutem civium civitatemque* (Mayer-Maly in Büchner 1971:383). Jupiter-Reason and his law-full State inspire Cicero's "schönsten und selbständigsten Gedankengänge, Gedanken voller Glauben an den Menschen, die Geschichte und das Göttliche" (Büchner 1961:90). Rite (sc. augury) keeps civic theology republican. God's *auctoritas*—force and source—stops the State's self-worship. (Cf. Zetzel 307, 315.)

POSITIVE LAW JUDGED BY GOD § 11-13

11. *rectum verumque <aeternum quoque>*. Quintus says the triad of the right, the true and the eternal remains whilst positive law *aut oriatur aut occidat*. *Lex divina* survives States. Scita and plebiscita fade as *ratio summi Iovis* endures. T'ien stays; T'ien ming shifts. Non-contingent, impassible, requiring no *one* code, Cicero's Law is above the vicissitudes of politics and positivism. Battling Antony by confessing eternal Law in God's mind is an act of civic-theological faith: fiat lex ruat Senatum. Stoutly declaring in 44-43 that *recte verumque* remains shows *moral* faith, not servility to divine caprice. Not every custom or rite/li needs propositional defence. The working universe links rite, Law, morals, and God. Tradition develops in this moral matrix as *lex non scripta*, "quae sine litteris aut gentium iure aut maiorum more retinetur" (De Part. 130). Generous acceptance of tradition allows generous criticism. (Cf. Yeh 133). R. Burns' "man of independent mind" is conservative and critical. As *sapiens* and Sage he trusts a Mind above "a" that".

11. *Summa lex* is co-eternal with mens divina. "It is a sin to try to alter this law" (Westrup 3:37, Levy 1948:45). "What is God-given is what we call human nature. To fulfil the law of our human nature is what we call the moral law. The cultivation of the moral law is what we call culture....Confucius remarked: 'The life of the moral man is an exemplification of the universal moral order'." (CY 1; Ku in Lin 104). Law and justice are not eternally hypostatized as in Plato. Persons with officium to enact law and justice have neither revelation nor privileged epistemological access by rank or birth (cp. yangban 양반 Korea). "Vereque dici potest magistratum legem esse loquentem" while in Mencian language 'salus populi suprema lex esto' (DL 3:2 and 9). Practitioners of εροχή and pious magistrates avoid absolutist hubris by submission to mens divina of Juppiter-T'ien. K'ung jabs at self-sufficient polytheism and divinised rulers contrary to republican monarchy (or Roman piety): "if you offend against Heaven, there is no one to pray to" (LY 3,13; Dawson). Scrapping li rejects "the prescription of reason" (Li Chi 25.10: Hsü 94). The Tso chuan says: "Ritual (li) is the constant principle of Heaven, that which is right for the earth, the proper course of the people....Ritual determines the relations between high and low; it is the warp and woof of Heaven and earth...by which the people...live." (Duke Chao 25th year; B. Watson 1989:xxiii). T'ien's moral judgement is captive to no one. "God on high in sovereign might looked down majestically : God on high examined them / and hated the laxity of their rule" (Shi 243 Waley; cf. Forke 1964:29). "Heaven, whether as active conscious will or as the source of universal order, is quite clearly in a category which sets 'him' far beyond the ancestral and natural spirits" (Schwartz 1985:50-51). Neither king nor kuèi, Caesar nor shén, can usurp Heaven's rights or escape its judgement in revoking ming. The foe of tsü-chuan, rite, and justice makes war upon Heaven.

“Unless one recognizes the imperatives of Heaven one cannot be a noble man” (LY 20,3; De Bary 1991:8). Old Marcus’ contemporary, Tüŋg Chüŋ-shu, says “The great origin of the way emanates from Heaven. Heaven does not change” (Queen 195). (Num. 23,19)? (Num. 23,19)? Cf. LY 4,16; 14,12; 16,10; 19,1.

Is law Jú-chiào: lǐ?

“Ritual (li) is related etymologically to...‘worship’ and ‘sacrificial vessel’ with a definite religious overtone...partaking even of the nature of law” (Ching 1993:60; Huang 19). Secularising li defies the word. “Transform[ing] the rites *li* into laws *fá* goes back perhaps to the beginning of Chou...Chou feudalism was itself a development...from the pure clan-law system of the Shang” (Hsiao 1979:195). “Rules of behavior, laws, and institutions together are *li i fá tu*” (Schwartz 1985:295), a model against brutal penal law, not all law, where rite overlaps (De Bary 1998:30,32). Cicero agreed that “*libertatem non acerbitate suppliciorum infestam sed lenitate legum munitam esse*”, harsh penal law makes even freedom loathsome; he also refused as consul to permit crucifixion, calling it nefas (Pro Rab. 10). Natural law is the basis for li and true positive law and the critical principle over them (Ma 457). Hsünist Knoblock’s view differs:

Li originally meant the ‘pattern’ or ‘order’ inherent in a thing...Its earliest attested meaning is to mark out the divisions of fields...Thus, wherever a distinctive pattern provided order in a thing, there was *li*...The *li* is the rational basis of all order. It is natural order, and it is reason. (Knoblock 1:80; cf. Hsün 1,12 and 2,13).

Also, *leges* are both precepts *and* laws (Westrup 5:46). Li is natural law needing sages to enact it. K’üŋg never “entirely rejected the role of force and penal law in human affairs and had shown a certain ambiguity in relation to the hegemon” (Schwartz 1985:301,304; contra Vandermeersch). Rites’ *force* of law is not *hsing*: “though the former kings of old did not lay down any rules, rites and decorum have been formed in accordance with...righteousness” (Li Chi 28; Xu). Li are a rited constitution of religious *mos maiorum* / *tsü-chuán*. “Without li, we do not know how to conduct a proper worship of the spirits of the universe, or how to establish the proper status of the king and the ministers” (Li Chi 27; Lín Yütang 217). “The end to which ceremonies, music, punishments, and laws conduce is one...good order in government is made to appear” (Li Chi 2,93). In classical Jú-chiào “*Li*...partook of the *nature of law*...*Li* commanded positive action and law was prohibitory; the violation of law was punishable by the state, whereas violation of *Li* was visited only [?] with social disapproval. *Li* was for the aristocrats, while law did not apply to them...Except for these three matters, *Li* and law were alike” (Dubs 1928:95; Xiao in Carr 152).

K’üŋg’s democratisation? “Therefore, for a man in general, the observance of the rules of rites and decorum is just like distilling spirits, the flavor of which depends on the quality of the distiller’s

yeast: the superior man practices rites and decorum in a way with rich and strong flavor, while the inferior man in a way with mild and light flavor” (28 *Lǐ Chí*; Xu). Note that *chün-tzū* /*optimas* and “ordinary” people are both capable of the distiller’s art: the *hsiao-jén* is not. Undemocratic? Is every registered voter a good citizen—or even a faithful voter? “The Chou world...had been originally governed by two different codes...the ceremonies that directed the lives of the aristocracy, and the common laws that controlled the lives of the peasantry. In the hands of Master K’ung the rules of noble conduct, derived from the ceremonies, became a universal system of ethics for all people, irrespective of rank and class” (Liu 98; cf. Ma 444). K’ung dislikes penal law (*chéng* or *hsing*), not all law or pattern (*fā* 法). His is a democratising praxis: whoever truly values *li* must be taught (an impoverished student paid only a piece of biltong; Yeh 2 gets this exactly wrong). Anyone eligible to be taught the ways of *chün-tzū* ought to be *treated* like a *chün-tzū*, summoned to good behaviour by T’ien, reason, and tradition, not shamed by *hsing*’s brutal penalties—or taught shamelessness by evading them (LY 2,30). *Chéng* or *hsing*, *not fā*, means penal laws (Schwartz 1985:103). Aversion to a penal view of *fā*—raised to absolute pitch by Caesarism of the *Fā-chia*—is *open* optimism. Any normal *muntu* is *optimas* in nuce, raised by Mèng’s nurturing *tuan* or Hsún’s *παῖδεία* from ignorance to rite and civic virtue.

Exemplarism of magistral priest or filial king is policy-driven and personally displayed. “Any action which is against the law of nature will certainly not be an example for the public.” (Hsiao Ching 9; Chên). Henderson compares “abrogation of rites” to “the elimination of law in most modern societies” (Cheu 1993:49). “The importance of *li*...put a great instrument in the hands of a ruler. The so-called ‘governing by *li*’ is much more than the application of abstract ethical and moral principles” (Ch’ü 9, 241). This bridges the *li*-law gap and cooks the canard that law is only penal law and utterly nothing else ever. (Cf. De Bary in Eber 121.)

Confucianists never completely rejected the legal sanction. They only objected to replacing moral influence by punishment. Yao, Shun, Yü, T’ang, Kings Wên and Wu, the Duke of Chou, and Confucius were held to be the model figures of Confucianism, and *according to Confucianist legend*, Yao and Shun had executed Kun and exiled Kung-kung and Huan-tou. Moreover, Shun appointed Kao Yao as judge. The Duke of Chou executed Kuan-shu and exiled Tsai-shu. In fact, Confucius himself, while officiating in the state of Lu, had Mao Shao-chêng executed. The sage obviously was not one to oppose absolutely the use of punishment, but he held that moral influence was basic, punishment supplementary. (Ch’ü 268).

He “compiled and codified the Book of Rites, and...insisted on their *enforcement* in the town of Zhong-du” (Clements 68). The Duke was a model ruler, not a therapist, whom “Confucius often saw in a dream, the famous Tan, duke of Chou, the author of the laws and rites of the third dynasty....he considered him as his familiar Genie, as the patron of his work of restoration. Also, when these apparitions ceased, Confucius judged that his career was approaching its end” (Wieger

129). Compare the *Somnium Scipionis*; Wieger's *génie* is Roman *genius*. Lawful *lǐ* grew from sacrifice to rite of sacrifice to all religious rite (LY is here) to all "enlightened tradition" Cua 1998:276; cf. Creel 1949:82, Dawson xxvi, Dobson 194, Needham and Wang 1:519). "There is no indication that Confucius opposes use of law and the enforcement of the law....But Confucius is opposed to the government that depends purely on strict law and severe punishment without making an effort [toward]...intelligent education" (Hsü 125). K'üing's generalism and that of later Jú accounts for some of the reticence on (not rejection of) code. "Wherever, it seems, 'experts' are disliked and the amateur ideal encouraged, the instruments of legal transaction tend to be technically weak" (Levenson 2:33). K'üing and Marcus are not "amateurs". What they are not is juristic *Fachmänner*. K'üing, the Hàn Jú, and Cicero agree that

bedeutsamer als die schuldorientierten Sanktionen, sei es die Strafe des Himmels, sei es ein inneres Schuldgefühl oder seien es durch Institutionen verhängte Strafen [good join!], ist für den frühen Konfuzianismus die Sanktion der Scham. (Roetz 1992:289; cf. Ch'ü 213, A. Chan 2000:258).

"If wide-ranging studies in culture are restrained by the requirements of ritual, surely one cannot rebel against this, can one?" (LY 12,15; Dawson). Why does K'üing offer no legal code? His commitment to Tào is a tough civic-theological commitment to

the unique moral path that should be walked by any true human being, endorsed by Heaven and revealed to the early sage-kings. More concretely, this "Way" is manifested in the ritual practices, music, and literature passed down from the Golden Age of the Zhou, which were still preserved in the state of Lu by a few high-minded, uncompromising *ru* (6.13, 19.22). (Slingerland xxii).

"Arthur Waley was probably right in remarking that as long as they were carried out automatically there was no need to give them a fixed written form" (Rubin 16; Waley 1952:54 In LY 2,3 "keep order by chastisements" (Waley), K'üing clearly has only penal law in mind.

Tzū-ssu says *hsin-fā*, true mind, models itself on T'ien innately or by prodding (Hsiao 1979:207), just like *ratio recta* upon *ratio Iovis*. Tzū-ssu declares in CY's proslodium "what is ordained by Heaven is called "Nature." Following out this Nature is called the "Tao" or the *natural law*. The refinement of the natural law is called "culture." (Wu 1965:17). Grandfather K'üing embodies Tào as the Sage or *sapiens*. "Oh, how great is the divine moral law of the Sage" (9; Ku in Lín Y. 127; cf. Wu in Moore 237). *Mèng* moves toward codification of K'üing's "simple principles" (Eber 31). "Virtue alone isn't enough for government, and law alone cannot put itself into action" (4a1 Hinton; cf. Wu 1965:32). Cicero wants moral laws. Remember he is 500 years later. Clodiuses and other moral *hsiao-jén* fight the State, evoking its forceful defence.

No Legalist, *Hsün* keeps Jú-chiào devotion to *jén/ubuntu*. For him *fā* is personal ethics, principled statecraft, and moral-traditional education, exemplary institutions transmitted by learned *chün-tzū*,

not penal law (Cheng 288). “These models were the basis of political philosophy and provided the ‘model for law’ in society” (De Bary 1998:92; Knoblock 2:ix). Cicero applies the “learning of a gentleman” to *mos maiorum* in DL. Fā in “T’ien fā” was natural law “something like li” as early as the Tso, ca. 515 (Needham and Wang 2:547). Rites foster *concordia ordinum* in the hands of an ethical, riteful, constitutional, righteous ruler. “Rites are the highest expression of hierarchical order, the basis for strengthening the state, the way by which to create authority, the crux of achievement and fame” (Hsün 15; B. Watson). Positive law is a last resort.

Ritual principles...rectify the state [like]...the steelyard for the measurement of weight, the blackened marking-line for determining crookedness or straightness, or the compass and square for testing squareness and roundness....The best points selected from the old laws are put to intelligent use

and every nation’s laws are a mix of good and bad (11 Knoblock; cf. Hsiao 1979:194).

Hàn Jú hated Ch’in fā-chia, not the *terms* fā and hsing (Csikszentmihályi 23, 55, 61). Confucius’ dislike of hsing defends open-ended chün-tzū status and freedom from coercion. Lu Jia † 178 said the Duke of Chou did not “use laws and mutilating punishments”. Chao Cuo † 154 said:

When [the ancients] instituted laws...the laws were [not] made to be hidden pitfalls to make people’s lives difficult and do injury to the masses, but...to promote general welfare and eliminate harm, to honor the ruler and bring security to the people, and in so doing relieve disasters and chaos.

Lǐ, rite reason, makes for *salus populi*. Revulsion after Ch’in and Cinna saw the heart of the heartless matter as an attack upon

the Word as the worst enemy of militarization and despotism, which depend upon the stupidity and ignorance of the people....This panicky fear of the Word on the part of the ideologies of despotism confirms the observation of D. Granin (Новый Мир 1968/3:224) that an articulate individual is a threat to an autocratic regime. (Rubin 76).

Cicero saw the word as the best defence of the *res publica*. “Quem metuunt, oderunt; quem quisque odit, periisse expetit” (Ennius cited in DO 2,23). Further, “qui vero in libera civitate ita se instruunt, ut metuantur, iis nihil potest esse dementius” (DO 2,24). This results in “*leges demersae*”. (Cf. Rexine 29-31 on Plato’s harshness.) Fā-chia was prototypical of State terror seeing law as “devoid of all moral and religious sanctions” (Rubin 66). In contrast, “the *Laws* offer us the prescriptive morality for an ideal state—not a legalistic code for local police enforcement, but a blueprint for a society which respects the most basic and typical human needs and impulses” (Van Zyl 1986:70).

Lǐ is Jú pedagogy in statecraft, said Chia I (221-168).

‘As for human wisdom, it (always) sees what has taken place (but) is unable to see what will happen in the future. Li (rites, etiquette) are meant to prohibit what will happen and fā (laws, rules) are constituted to forbid what has happened, therefore the function of fā is conspicuous and yet what li will generate is hard to know . . . (If the ruler) rules by li and i (righteousness), he accumulates li and i; (if he rules) by hsing-fā

(punishments), he accumulates punishments. (Once) punishments would be piled up, the people would resent and revolt; (but once) li and i would be stored up, the people would become harmonious and amiable'...Han Confucians always recognized a proper, though philosophically limited, role for a good legal code. (Berthrong 1998:47).

In Tüŋg Chüŋg-shu, Heaven's institution = chih (not fã). Like Roman hatred of 'rex', Hàn Confucians hated the word, but "the two words are close in meaning in this particular context" (Bodde 1979:150). Lǐ roughly equals rites and natural Law (Bodde 1979:140). Rite, awe, and symbolism "were prescribed by codified legislation and in the context of deeply held religious beliefs...the Confucianism of law in the Han [shows] that the religion played a greater role in the legal system than the received wisdom suggests" (Perenboom citing Twitchett in Huxley 86, 95). For Old Marcus' near-contemporary Tüŋg, complementarity of virtue and legal sanction was part of "natural order" (Ch'ü 271). This Law "is objective; that is, it is independent of human will. Natural law exacts obedience in the same way that physical laws do" (Taiwo 40,68). T'ien is insightful, inerrant, justice-minded, and interventionist (Forke 1964:41, citing Shi 3,2,10).

Law's Jú-chiào purpose. Pax deorum and concordia ordinum are nourished by li/religio for salus populi's sake.

In...government, li comes first. It is the means by which we establish the forms of worship, enabling the ruler [or the republic-jwh] to appear before the spirits of heaven and earth at sacrifices...it is the means by which we establish the forms of intercourse at the court and a sense of piety or respect between the ruler and the ruled. It revives or resuscitates the social and political life from a condition of disgraceful confusion. Therefore li is the foundation of government. (Lín Yütang 221).

Warning against loss of lex divina, Shi says "God on high, his charge has many rules" (255 Karlgren). Fã means model, standard, law, plumb-line, τέχνη "political techniques" and "complex networks of relations which probably mean something like 'institutions or 'systems' of patterned behavior", while hsíng is penal law (Schwartz 1985:321; Creel 1974:32). Real chün-tzũ want to conform to T'ien fã. "Confucius made no [explicit-jwh] provision for the [rule of positive-jwh] law. It could be said, however, that if the way is interpreted as the equivalent of natural law, then it may be elaborated into a body of laws" (Tu 1996:53). "Confucian humanism, though opposed to Legalism, is compatible with rule of law...Confucian democracy...will become the best weapon against the spectre of a Legalistic tyranny". There is no "though" about it. It is because of opposition to tyranny that Cicero turns theological legist. Fã becomes fascist-positivist only in Fã-chia, earlier enjoying a broad semantic field: fã is method or model; fã tu, institutional policy; fã yí, norms; fã chi, constitutional provisions; li fã, propriety. (Cheng 1981:272, 274-275).

11. There is a lacuna here. *Summa lex* parallels *perfecta lex*, and *mens divina*, *mens sapientis*. The

unattainable height of Law in God's mind parallels excellence in legislating; cf. the Senate's tutelary shén, Mens). One is out of reach, but the other can with effort be made to resemble the first. *Lex perfecta*, when it exists *in homine* at all, is present *in mente sapientis*--of the moral and devout optimas/chün-tzù and, one hopes, in a society's patterns, laws, or history as shaped by *sapientes*. The common use of *lex* to cover every human enactment is *favore magis quam re*. Cicero is not an uncritical, complacent apologist for *res Romana*, nor does he permit himself the mental abdication of uncritical rejection of his own culture or an assumption of another culture's supremacy insofar as it despises his own (a post-modern madness). He is also more his father's son than his Opa's grandson. Cicero says his father was "qui aut valetudinis imbecillitate aut aliqua graviore causa impediti a re publica recesserunt" (DO 1,71). Cicero's father died at the end of 68, taken home to Arpinum from Rome in his last days (Ciaceri 1:109,183). Unlike Old Marcus, "il tipo del vecchio agricoltore italico privo di istruzione", Quiet Marcus was a cultured man, a rural *literatus* like the best Viêtnamese Nho (Høeg 19, Kumaniecki 1972:32, Elman-Duncan-Ooms 4). "Wenn du lange Zeit nicht vom Weg des Vaters abweichst, kann man sagen, daß du dich ehrfürchtig und pietätvoll verhältst" (LY 1,11 Moritz; cf. 2,5 and 2,7). Quiet Marcus embodied it like Mêng's mother, sacrificing health and treasure to get his sons the finest civic-minded education. The brothers Tullius could say "Ich war ein Kind der Freiheit, und ihretwegen suchte ich Gewalt" (Pilsudski 191). "He who loves law and puts it into effect is a man of breeding" (Hsün 2:29 B. Watson). "Quamobrem peto a vobis ut me sic audiatis: neque ut omnino expertem Graecarum rerum, neque ut eas nostris in hoc praesertim genere antepontem; sed ut unum e togatis, patris diligentia non illiberaliter institutum" (DRP 1,36). Transmitted inter-generational moral awareness binds conscience (Althaus 1931:34). "When simplicity surpasses refinement, one is a rustic; when refinement surpasses simplicity, one is a scribe [documentarian ritual expert without much heart]. Only when refinement and simplicity are well blended can one become a gentleman" (LY 6,18 Huang). K'üing's father was Shu Liang He, an eque and military hero; his mother was Yang Zheng Zai. Despite his imposing physique, inherited from his father, "Confucius' aim was not...to rise to fame as a warrior in command of troops, but...as a statesman, and to settle the world's plight by... 'sacrificial and religious vessels'...social reformation based on the ceremonial and music of religion." (Renard 7, Kaizuka 56; cf Stange 7). K'üing defends constitutionalism against the Huan pà oligarchy ruling since 537 (LY 16,3; Creel 1949:26; Kaizuka 40). "When the Way prevails in all under Heaven, government is not in the hands of the grandees" (LY 16,2 Dawson). What lifelong illness did to Quiet Marcus, Cicero refuses to let psychiatric crisis after Tullia's death in February 45 and State terror do to him (cf. K'üing after Yan Hui died, LY 11,8-10). Quit the vanguard of the dying Republic? "Defendi rem publicam adolescens, non deseram senex!" (Phil. 2,118).

11. Laws can adapt, as K'üing shows by preferring the modern silk to the (costly) older linen cap (LY 9,3). His forced exile and turn to education parallel Cicero's. However, claims of emergency, as in the last years of the Republic, do not create—nothing can create—justification for defying divine Reason by unjust laws or rule by terror. The forms of constitutional propriety, *descriptae populis*, do not confer sacramental reality ex opere operato. The age of vigour is over by the time of the the Gracchishchina. By dismissing the *varie et ad tempus descriptae*, consularis Cicero challenges the popular will's right to act at whim without theological standards. The desecration of his house, which cost HS3,500,000 to build (Kroll 96), at #7, Clivus Victoriae (Allen 1939:134) taught him that. (The supposedly spontaneous will of the people still provides cover for every sort of totalitarian brutality.) The *sapiens* as critical traditioner demands authenticity, not reaction. Anti-traditionalism “affords feelings of daring and exhilaration” (Ellis 70). Clodius was a wealthy paramilitary squadrista firing the “Lumpenproletariat” with pseudo-democratic slogans (Maschkin 1954:36; cp. Perón or Goebbels in his “left” phase”).

Interdictio aquae et ignis [was] the new form which the death penalty assumed under Sulla.... Clodius asked Cicero on his return, “Cuius civitatis es?”...The accused, in order to save himself, [usually] assumed the citizenship of another state and thus cancelled his Roman nationality. (Guterman 22).

The ban, secured by bribery, read 1) “qui civem romanum (in)demnatum interemisset ei aqua et igni interdiceretur”; and 2) “ut M. Tullio aqua et igni interdictum sit” (Siber 247). His banning and sequestration at the behest of “the Roman Alkibiades” (Eulenberg 104) shows the necessity of rectifying terms. Cicero never called himself “exsul” since his banning was illegal (cf A. Robinson 42). The Temple to Libertas, a slogan in stone (Maschkin 35) built on his stolen property, was as fake as its “goddess”. “At unde est inventa ista Libertas? Quaesivi enim diligenter. Tanagraea quaedam meretrix fuisse dicitur” (De Domo 111). Caesar built an aedes libertatis in his own honour (Kroll 12). Quintus' slaves rescued him half-dead from a Clodian necklacing (Eulenberg 77; Hammond 116).

Cicero's return was legalised and the fake temple deconsecrated—a very rare action—by the Lex Papiria on 4 August 57 (Ciaceri 2:72, Maschkin 1954:37, Stroh in Powell and Patterson 317,320). Cicero criticises pontifices' *quaestiunculae* and claims augural authority in their monopolies, but he was mindful that a pontifical ruling got him his house—or what was left of it—back upon his return (Gelzer 155).

Liberis autem nostris satis amplum patrimonium paterni nominis ac nostrae memoriae relinquemus: Domo per scelus erepta, per latrocinium occupata, per religionis vim sceleratius etiam aedificata quam eversa, career sine maxima ignominia rei publicae, meo dedecore ac dolore non possum. (De Domo 147)

A jurisconsult's house is an oracle of State (De Or. 1,199). So it was: the rule of law restored, sacrilege discountenanced, and justice done, but only briefly.

11. *populis*. Ciceronian and Jú cultural construction workers (pace Freire) accept integrity of names de fide, free from deconstructionist Euronarcissism. If verbal *communication* is impossible, dialogue dies with the shared humanity of all within the Four Seas. B. Eno's anti-textualism fails, like his masque of K'üing's circle as a high-toned Turnverein (9). Bad definition devours civil discourse and shared information. Dialogue presumes and creates community. Integrity of dialogue and urgency of *recte appellari* are of a piece. Quintus and Atticus are not foils but necessary junior partners. Neither priests, jurisconsults, nor ex-consuls, they defer (*rang*) to the elder brother as *sapiens* for instruction, correction, and gratitude. No audience, no story. No storyteller, mere babel. A. Haury merrily notes that "le rôle de docteur qu'il assume allègrement ne sert pas Cicéron, non qu'il ne sache parer les bottes d'Atticus, mais l'ironie, comme l'humour, s'accommode mal de l'emphase" (Haury 163; cf. Becker 17). Cicero's quasi-monologue includes the other by teaching him. Rational teachability shows the reality of mens divina and human laws' power to echo mens divina, a process complete in *sapientes* (Sprute 166). No parrots need apply. Dialogue mutualises self-cultivation (cf. Ta Hsüeh 大學) most clearly when dialogist are exemplary, real, articulate public figures. Self-talk kills empathy by imperious monological non-sense, not *recte appellari's* grapholect. *Consensio omnium bonorum* needs shared language (*sensus*).

11. *Recte appellari*, "transparency of language" (Polányi 1962:57), or Jú-chiào chéng míng, rectification of names, is an urgent religious-civic need.

In Chinese, as also in English, [rectification] suggested ethical and moral considerations, thus, what was 'right,' 'correct,' and 'orthodox' as opposed to what was 'perverse,' 'depraved,' or 'heterodox'.... The regular and consistent use of a word required a *fā*," making an exact (*cheng* 正) bond between word and object. Lack of moral calibration demanded great risk to rectify it. (Knoblock 3:113; cf. Needham and Wang 2:10).

K'üing anguishes over the fake ku: ersatz rite, ersatz polity (LY 6,25)! Viceroy Ku gives the locus classicus (LY 13,3 Ku):

Now, if names of things are not properly defined, words will not correspond to facts. When words do not correspond to facts, it is impossible to perfect anything. Where it is impossible to perfect anything, the arts and institutions of civilisation cannot flourish. When the arts and institutions of civilisation cannot flourish, law and justice cannot attain their ends; and when law and justice cannot attain their ends, the people will be at a loss to know what to do.

Rite and honest language guarantee Law and favour pietas/hsiào. In a corrupt State, gods are miscalled and meaning gutted. “Let the prince *be* a prince, and the public servant *be* a public servant. Let the father *be* a father, and let the son *be* a son” (LY 12,11 Ku).

11. Cicero is anti-utopian. Real law is *laudabilem*, not perfect. Constitutionalism “must shake hands with the imperfect” (Trollope 1:22), making utopians tense. It fosters religion/rite and requires learning, as in old optimate Ghana.

I [was]...constantly confronted with words in the Ashanti language, which, although primarily associated with religion, were nevertheless continuously found in connexion with Legal and Constitutional procedure...words, phrases, or rites, apparently of religious import, but obviously in some way associated with Legal and Constitutional formulae....Ashanti Law and Ashanti Religion were intimately associated. (Rattray 1929:v).

T'ien ming can be forfeited, since Juppiter-pleasing Roman positivisation is “akzidentell”, not Law’s “res propriae” (Girardet 1983:67). “The Mandate (*ming*) was a charge given to fief-holders” (Dobson xiv). It is an ethical λειτουργία. “Characteristically all Confucians feel that the Decree of Heaven is bestowed on them” (Ni 14, 22). *Docent* is impersonal: conventional wisdom is meant.

11. Note the rising tricolon: 1) [*ad*] *salutem civium* [7]; 2) *civitatumque incolumitatem* [12]; 3) *vitamque hominum quietam et beatam* [13], followed by a coda: *inventas esse leges* [7]. Prosody imitates polity. Laws describe a circle of human life together (Sprute 167). First, laws exist for the welfare or safety of people *as citizens*. Second, laws are intended for the security of civitates, (both states and citizenries, including individuals and families). Third, laws must guard citizens’ tranquil and blessed lives, like Mèng’s focus on *salus populi*. He who begins as *civis*, and loses himself in *civitas*, comes into his own his own Ta Hsüeh cultivation again as *homo*, the “plain man”. In the duel with Antony, *otium* lured *alte Kämpfer* Cicero, though sworn to fight to the death against “enemies of society, plotters of anarchy, destroyers of the bases upon which modern civilization has been built, [who] seized opportunity to array the lowest, the most ignorant, the most ill-conditioned against the intelligent, and the responsible” (Taft 23). P. Koschaker’s comment (324) fits Antony’s mind: a hodgepodge of crude thought. Cicero’s desire for *optimate/chün-tzū otium*, hinted at here and shown in setting DL at the old family country place, (instead of some busy favoured place in Rome), unveils a very public man’s inner soul. This is not Epicurean stupor, but deserved *otium*. Cicero died fighting. A modern *optimate*’s Philippic shared the originals’ fire. In his fierce 29 May 1926 address to a Sejm overrun by Clodian assassins and popularis anti-Semites, J. Piłsudski spoke as an appalled princeps Senatus:

Ich habe den Schurken, Schuften, Feiglingen, Mördern und Dieben den Krieg erklärt, und ich werde in diesem Kampfe nicht unterliegen....Mein Programm ist die Vernichtung der Schurkerei und die Anbahnung ehrenhafter Wege. Ich warte ab, aber ich versichere Ihnen, das meinen Standpunkt nicht ändern werde. (200)

11. Lawgivers *qui populis ostendisse* copy God, the source of natural Law. Cf. *leges regiae*. “How great was Yao as sovereign! How lofty! *Heaven alone is greatest!* Yao alone could imitate it! How boundless! The people could hardly find words to praise him! How lofty were his achievements! How brilliant his cultural institutions!” (LY 8,19; Huang) One wonders what Cicero would have made of Moses, had he heard of him (possible) or cared (unlikely). Lín Y. likens K’üing to Moses as ‘integrated’ religious and civil legislators (14). Laws do not arise without individual agency from undirected sociological process, consonant with Cicero’s divine lawgiver, but also with the convention of Numa as lawgiver at Rome and stock examples from legends of the Greek states.

Numa Pompilius, elected King when Romulus died, reputedly organised the religious life of Rome. The ritualistic taking of vows to the gods, in order to placate their spirits and to seek their favours, became a central feature of daily life, both at a public and private level. The *paterfamilias*, the head of the Roman household, was entrusted with the performance of daily acts of family worship—one of his most important duties. (Borkowski 2).

Numa invented *flamens*—“*tutulatos*” in Ennius’ colourful, quasi-episcopal term: the mitre- or cone-wearers, referring to the apex “*quei apice insigne Dialis flaminis gesistei*” (Warmington 1:42, 4:4)—and the Vestals (DRP 2,26). Lucilius hymns “*Hinc ancilia, ab hoc apices capidasque repertas....*The ancilia belonged particularly to the Sallii, the apices to the flamines, and the capides to the pontifices”. Naevius said, “*res divas edicit, praedicit castus.*” Ennius makes Numa sound like the Duke of Chou (Warmington 3:105, 2:56, 1:44): “*Si quid me fuerit humanitus ut teneatis!*” When my mortal life is finished, be sure to maintain [my li]! Cicero caustically says Numa had no “*transmarinis nec importatis artibus...sed genuinis domesticisque virtutibus*” DRP 2,29. Numa was not Roman but Italian: a flattering parallel. “Er war Sabiner und erst eigens wegen seiner Religion und Gelehrtheit nach Rom geholt worden, ein peregrinus, wie Cicero ihn ausdrücklich nennt” (Seel 397). He was a priest-king like Yao or Shun. This makes Cicero a Duke of Chou, codifier of rite and exemplary sacred politician.

11. *sanxerint*. *Sancio* is used with *lex* to make a law holy or to make a thing legally holy. *Sanctus* is inviolable. *Sacer* is remanded to a deity: special holiness—or removal of all positive law protection. *Scita sancire* enshrines decisions in positive law, and imparts the aura of holiness and permanence. This is the opposite of “quickie” legislation arising *varie et ad tempus*. Even if such evanescent legal products are *descriptae populis*, the individual legislator is absent, breaking the

parallels of cosmos and polity or *mens divina* and *lex humana*. *Mens* is senatorial (cf. Kokole). Without Senatorial sanction, religion is outré. "Ne quis templum aramne iniussu Senatus dedicaret" and "de rebus divinis priusquam humanis ad senatum referendum esse" (Livy 4,46; Aulus Gellius 14,7). The sacred *iura* and *auctoritas* of the wrecked Roman kingship devolved amongst republican magistrates. Cicero's augurship forestalls Platonic fantasy: he has a sacred magistral right and duty to speak. His code is not a school-book exercise. "Distinguatur lex a praecepto. Lex semper dicit ordinem ad aliquam communitatem lex de se stabilis est et mortuo legislatore in vigore permanet. Praeceptum vero per mortem mandantis per se extinguitur" (Cathrein 1921:148). There is no New Platonic/Soviet/Fascist Man, but "traditional or pontifical man, a bridge between Heaven and Earth" (Nasr 6; augural man, too). In China, "government and religious celebration were not...quite distinct functions; the Duke of Lu more than any other in the state had the *competency* to become the priest in charge of...at the ancestral temple" (Kaizuka 28; Forke 1964:2, Needham and Wang 2:31). Reception transforms Cicero's DL and K'üing's aphorisms into *lex*.

Laws must take on permanence *composita sanctaque* truly to be *leges nominarent[ur]*. Laws and rites are the fingerprints of tradition. *Sancta* implies permanence. *Perniciosa et iniusta iussa* subvert *sancta* and *cannot* be holy. They are called laws only in error. They make war on just persons, rites, or institutions. They are *quidvis potius tulisse quam leges*. "No law was admissible that would deprive citizens of their status as free men" (Wolff 67).

11. *honeste beateque viverent*. The good life guaranteed by laws swings on happiness' hinge (*beatitudo*) from tranquillity (*quies*) to integrity (*honestas*). Life (*vitam*) becomes particular lives (*viverent*). Carrying *quies* (or *otium*) into the public sphere is tenuous. *Quies* is an inward virtue. *Honestas* is visible and requires an ordered community for display. To live *honeste*, with integrity, decently and in order, possessing honour, esteem, and prestige, requires the regard of one's fellows, family, and State. *Honores* come from outside the self. *Quies* was attractive to Cicero after the devastating loss of Tullia (like K'üing's disconsolateness at Yan Hui's early death), but he never slaked his thirst for *honestas* (long thwarted by enforced pseudo-otium under Caesar) marked by applause, honours, and prestige. His ambition was always stronger than his wistfulness. The constellations of honour "rendraient la vie belle et bonne" (Appuhn 285).

11. Genuine laws protect *vim et sententiam* to choose justice and holiness. Force without design is brutality. Design without force is the empty talk K'üing distrusted, unable to defend rite or reason (LY 17,15). *Vis* strengthens the demand to rectify language about law. If positive law's power and design destroy ethical behaviour and public religious reverence, the State's sacrality dies and

revocation of the Mandate of Heaven follows. *Fiat iustitia ruat res publicam*, whether signalled by the bandit Chow, Fä-chia, or Marc Antony. Positive law is susceptible to demagoguery (Michel 2003:476). When proscription and vendetta necklace the constitution, nothing is left but *latrones consessu*. “For Cicero...the republic is not just one form of government...but the only legitimate one. Where a tyrant rules, the state is not so much defective as non-existent.” (Honohan 32). “Sollen wir diese Mordbefehle des blutdürstigen Despoten mit *dem heiligen Namen des Rechts* ehren?” (Cathrein 1909:139). The exchange with Quintus shows Cicero’s alacrity: not change for change’s sake, nor blank cheques for tradition or status quo. Present reality requires divine consonance; divine consonance requires political activism. “That very spiritual sphere in which the ruins of Roman religion seemed to have found a place of refuge on their way to a quiet and slow decay, that very realm, by virtue of an inward dialectic, drove them out again to a new activity” (Altheim 337). Dialogue revives public life, uniting different philosophies in a common civic-theological imperative. *Polliciti professique sint* may refer to promises and declarations in oaths of office, or electoral speeches, or the general responsibilities of legislators and magistrates.

12. *si civitas careat*. The State is nullified by lack of public goodness or inability to maintain happiness, integrity, and tranquillity. The dis-ease of the people revokes the mandate of Heaven. Cicero moves from authentic laws through enactments called “laws” out of habit or courtesy, to what might be called anti-laws possessing destructive power. His miniature contio sets up a sine qua non: if a given characteristic is missing, the result is not only short a political ideal or the conveyance of Roman tradition, but the state in question is *pro nihil habenda*, must be reckoned as nothing. *Si non fas est, non est*. The positive social or communal authority over the cives is not necessarily a real civitas. “*Fas* was die *lex divina* teenoor *ius* as *lex humana*”. Lacking that, a state is no State. “Die reg as sodanig was egter baie primitief en eenvoudig. Aangesien die regspleging in ‘n groot mate in die hande van die priesters was, was die regsreël (*ius*) dikwels nouliks te onderskei van die godsdienstige voorskrif (*fas*)” (Van Zyl 1977:3, cf. Ciulei 27). This is close to *li*. Without *li*, there are not warring *states*, but brigands and barbarians. *Ius* is Latin and *fas* is Sabine: the Sabines giving participatory structures and leaving numina undefined. Sacred and profane are near: the king is priest, the family a sanctuary, the individual part of a *communio sanctorum*. The Latins set limits to the sacred, proper order, dignitas of gods and people inviolable, magistral priesthood (Brink 397, 417). *Id numerandum in bonis* must be a concrete good, not a mere ideal, or hallmark of the State.

12. *Lege carens civitas* is no real state, as worsening faction and warlordism, or the despotic or disorganised life of the barbarian peoples illustrate this. One recalls the old (overstated) retort of the

Greeks to the Persians, that they were fighting, not as slaves, but as free men. A triple sense of *civitas* brings out the full horror of *lege carens* comes out: a state lacking law purports to govern a lawless citizenry holding a citizenship bereft of responsibilities and of any protection for the happy, integral, and peaceable life. A pretended state *habenda nullo loco* lacks the Archimedean fulcrum (it is no accident that Cicero restored his tomb while investigating the corrupt Verres in Sicily) by which the world can be moved (or judged). It ought to be removed. *Dici aliter non potest* is stronger than *recte appellari, favore magis quam re* and *videlicet nominarent*. There is no option but “FIGHT!” (Frisch 1946:122). To speak otherwise is unrectified abuse of names. Cf. W. Temple’s ecclesiological distinction between *esse*, *bene esse*, or *plene esse*. Quintus says law is *in rebus optimis*. *Optimates ad optimis*, or the state is a nullity. L’etat, c’est loi.

13. Cicero’s metaphor of the quack physician prescribing *multa perniciose* shows dislike of non-statesmen dabbling in political theory. Lawful precedent, hallowed by rite, is ranged against personalism and violence. Evil laws are the plague rats of states. The millet-devouring big rats (cf Shi Ching) give birth to them. They infect and kill the political organism. They wreck the double parallel of law to Law, of human intellect(s) to divine Mind. Evil laws *non adtingunt nomen* of holy laws or Law, destroying decency. Honour among thieves? Bad legislators are bandits, passing bills as though *latrones sanxerint*. “Whatever is, is right” is *habenda nullo loco* for Cicero. Brigands’ *consessu suo* applies to Verres, to the Gracchi, to the proscriptions by pretended physicians of the State, to Clodius’ bribing of Senators to get the “aqua et igni” capital banning decree against Cicero” (Siber 247). Warlordism “cures” the disease its factions created, killing the patient. The poisoner plays *medicus*, protecting others from himself. Hàn Jú Jia Yi (200-168) expressed his horror at proscriptions: “If a Hu Hai took the throne today, tomorrow he would begin to target people....He would treat killing people as if it was simply a matter of mowing down thatching grass” (Csikszentmihályi 14; Hàn against arbitrary executions 62). Cicero’s “keep the best” principle frees him from blind positivist slavery to the accidents of written law. Like A. Wegner and post-conversion G. Radbruch, and unlike H. Hart, he does not shrug at totalitarianism. He vituperatively clears away cruel parodies of laws and of Law, which are often wrapped in a mantle of sanctity by the heirs of Hàn Fei Tzu. Legal quackery is lethal.

13. *Latrones* = *inscii inperitique*, and *sanxerint* = *conscripterunt*. As the guard is to the bandit and the physician is to the quack, so is real law to its unjust parody, and a true legislator to a cruel, unjust, or exploitative enactor or enforcer of lawless (ill-legal?) prescriptions. Motive of the *inscii* or *inperiti* is irrelevant. To be *inscius*, simply ignorant of a thing, and to be *inperitus*, awkward or lacking

expertise, might be innocent enough, but the regrettable becomes dangerous in the civic sphere. Like fake prescriptions, spurious laws contrived by thugs are *neque lex*. “Nur durch das römische Recht wird nämlich seiner Ansicht nach ermöglicht, dass das Gerechte vom Ungerechten getrennt werde. Gleichemassen ist die Kenntnis der ‚perfekten‘ Gesetze nur durch das römische Recht möglich” (Hamza 1984:51). Citing Cicero, D. Richards (8) says:

When a natural law thinker like Franciscus Victoria found that various putative laws imposed by the Spanish on the Indians (sic) in the New World were unjust, he concluded that such putative laws were not laws at all, but merely the commands of potent thugs to whom the Indians owed only the deference they would give the orders of any other potent thug.

Etiamsi populus acceperit, neither correct legislative process nor constitutional forms, makes non-laws into laws. A botch *favore magis quam re* might be fixed, but *perniciosum aliquid* remains pathogenic and inexcusable. Roman law should be ‘easy of attainment’ for semi-barbarians (Hamza 1987:82). Cicero is unmoved by appeals to quiescent or perverted popular will or amoral enforceability (cf. K’üng on inadequacy of mere penal law). Majority rule or passive consent is fallible. *Salus populi* cannot be replaced by *pernicius populi* even if the *populus* wants it. If legislative majorities destroy a State subordinate to *ratio divina*, the majority dehumanises itself. No *sciens* or *peritus* wills his own harm. A lekgotla with Lucifer does not heal hell, and a bosberaad of brigands is no Senate. Popular whim and assemblies’ cravenness do not create legal value. “Nec vero sum inscius esse utilitatem in historia” (De Fin. 5,51). Laws chronically warring against Law starting with, say, the Mines and Works Act and Native Labour Regulation Act of 1911 (Cowen 26, 29) corrode a State’s character as State: “Wo keine Gesetze im eigentlichen Sinn vorhanden sind, gibt es für Cicero auch keinen Staat (civitas)” (Sprute 175).

Who is Juppiter/T’ien?

The Shang conceived of T’ien as thinking and behaving as “*ein vernunftbegabtes Wesen*”, somehow inherent in the heavens. “Der Himmel hört und sieht alles, und der Heilige nimmt ihn sich zum Muster, er blickt auf das Volk unten herab und prüft seine Gerechtigkeit” (Forke 1964:28). *Timor Domini initium sapientiae*. “Die Furcht Gottes ist der Kultur Anfang und Gesundheit” (Althaus 1931:80). Like K’üng, Cicero has no creation theology, although it is obvious from looking at the sky that “*patrem divumque hominumque*” made the stars (DND 2,4 citing Ennius). He has a cosmic-maintenance theology. Translating T’ien as ‘Heaven’ sounds too naturalistic (Overmyer 126). T’ien lives *in* heaven and is master and father of human beings, “an active force interfering in human affairs” and “the legislator of the race” (Bernard-Maitre 22, Chai and Chai 1961:90, Wieger 14). Tribalism is dead. T’ien’s ethical-ritual judgement is a “new note of

transcendence”, and he/it is conscious and theistic for our good (Schwartz 1985:48, 116; Callaway 378). As Juppiter for Cicero, so “Confucius speaks of Heaven in a personal way as the Supreme Being to whom he is personally responsible in conscience; but as a matter of rite, it is still the Chou ruler, and later emperors, who alone sacrifice to Heaven” (De Bary 1991:31). “From the remotest time there were not a few saints who had received the grace of Heaven...and ruled people on account of Heaven. Moreover, the people were educated by them”. Education by them makes political action civil catechesis. Ratio divina rules out Epicureanism. “It is hardly possible that Heaven, the lord of human beings, himself profoundly humane and virtuous, would conceal the Way, would let the world perish while he looked with indifference upon the people” (Hattori 105). Ti 帝, Shàng-tì 上帝, and T’ien 天 are interchangeable in Chou, just like Cicero’s “sloppy” terminology. (As to that sloppiness, “many key terms are plurisignations, capable of suggesting and stimulating different thoughts and interpretations” (Cua 1998:267; cf. Do-Dinh 127, Ricci 34 and 37) “For the Duke of Jou...the supreme God was vitally concerned with the government of the country. It is He who appoints the king, selecting a man who governs righteously and giving him His mandate (*ming*).” Like Hebrew prophecy for H. Dubs, this proclaims “ethical monotheism” and the great King Wen of Chou “was not merely the founder of the Jou dynasty’s glory, but a great religious prophet.” (Dubs 1958: 228, 232) “I follow Chou” is a theological boast, not a liturgical rubric—Chou at its pinnacle of moral, political, and religious greatness. The Shi declares “Chou like the sun’s fountainhead” and “the time of Chou is of destiny to the utmost order of thought” (#235, 295; Pound).

K’ung was a believer in Heaven as personal deity, as higher power, order and law, displacing the many ‘gestalts’ of the old gods. ‘He who sins against Heaven has no one to whom he can pray’ (LY 3:13).....Ancient religious beliefs were questioned....But why shouldn’t he question them, knowing what we do of ancient religion, with its emphasis on divination and sacrifice, including human sacrifice?...K’ung distanced himself from this. (Ching 1993:55; cf. Suryadinata in Cheu 1983).

“The tian passages do form a consistent whole...Confucius was a strong religious believer in a noncontroversial sense”. His morals were theology-based. The rare “allegedly antireligious tian passages”, 5,13/6,22 “keep your distance“ and 7,21 “did not speak of ” have been wrongly privileged (Louden in Van Norden 77-79; cf. divine mission passages 7.23; 9.5; 9.6; 3.24 / moral pessimism + persistence passages 14.35; 11.9; 6.28 / need personal guidance from tian 3.13; 8.19; 9.12; 16.8). T’ien behaves like a man, gets angry, sees, hears, loves (Forke 1925:151). K’ung “believed that Heaven ‘knew’ and ‘approved’ of his activities” (Needham and Wang 1:12; Yuan 81). “Let heaven’s far span, azure darkness, declare what manner of man this is” (Shi 65 Pound). “I do not feel resentful toward Heaven and I do not put blame on men. But although my studies are of lowly things they reach up above, and the one that understands me will be Heaven, will it not?” (LY

14,35 Dawson). Theistic “*T’ien* has will and intelligence, and *T’ien ming* is not fate but Divine Providence”; *T’ien* is not the sky (R. Taylor 1990:2, Wu 1965:12; Wieger 705; cf. Schwartz 1985:116, Sih 1957:319) In *Mèng*, *T’ien* is “author of creatures and the regulator of the laws that govern them” 6a6, 5a7,5b3; “universal lord of the world” 5a5,6; responsible for order in world” 2b13; intelligent 7a20; and the source of human nature 6a15 (Shih 320-328). An activist Heaven is worth fearing. “The Songs say: Fearing august Heaven’s majesty, / we nurture our nation forever” (1a3; Hinton). The Mandate is a conscious bestowal, and “Gott sieht, wie mein Volk sieht; Gott hört, wie mein Volk hört.” (Wilhelm 5a6). Tüŋg Chùŋg-shu says “Heaven is the great source from which right principles [Tào] proceed....The one who is the ruler of men in [establishing] his modes [fā] draws patterns [hsiang] from heaven” (Hsiao 1979:489). Later Jú loss of theism must not obscure K’üŋg’s faith as part of *Lū mos maiorum* (Dubs 1959-60:166).

Does T’ien speak?

“Heaven does not speak, but shows its intention through acts and events” (*Mèng* 5a5 Zheng et al.; cf. Lau xxv). “‘Wordless’ thought can be, and often is, founded on language” (Polányi 1962:93). R. Dawson says LY 17:17 “What ever does Heaven say?” rejects shamanism, but “the striking thing about this chapter is that Master Kong is depicted as comparing himself with Heaven” (Dawson 101). In primordial religion, “Heaven is not identified with the material heaven, the sky, but He is a person in heaven. It is this dwelling-place of His that often suggests the names given to Him: ‘He who is above’, ‘The Old One above’, ‘The Heavenly One’. The actual term Heaven’ is used by only...the Samoyeds” (Schmidt 1939:124). Even the best terminology falls short of Deity. “Das wissen wir selber besser als alle Atheisten” (Schebesta 170). Wanting just the right/rite word (and his perfectionist streak) makes K’üŋg more tacit with his knowledge; Cicero happily mucks about in ambiguity and invents terms as he needs them. He was a grapholectician. K’üŋg was not. “Language is for men, not angels” (Maximos IV in Nichols 79). Does Tien speak? His speech is not anthropomorphic. “He...spoke to Moses directly...without...speech or throat” (Tabātabā’i 37). K’üŋg meant *audible speech*. Heaven does not *talk*, but It/He has something to say. Augustine says “Verbum est quod in corde dicimus: quod nec graecum est, nec latinum, nec linguae alicuius alterius” (De Trin. 15,10,19 in Grondin 1995:103). “God is unspeakable...even when this word is spoken, something is spoken. There is a kind of conflict between words here: if what cannot be spoken is unspeakable, then it is not unspeakable, because it can actually be said to be unspeakable” (De doct. 1,14 Green).

Mèng says

Heaven has will, intelligence, creative power, and protective love. Thus, he says: 'He who delights in Heaven will affect with his love and protection all under the sky; and he who fears Heaven will so affect his own State. It is said in the Book of Poetry, "I revere the majesty of Heaven, and thus preserve its favour"....'He who has exhaustively studied all his mental constitution knows his nature. Knowing his nature, he knows Heaven'....Heaven is the Supreme Ruler over all the universe, while nature is what Heaven 'confers' on men. In other words, the law of nature is implanted [cf. Romans 2:16] in man by Heaven....In these simple words is contained the whole theological basis of the natural law...of Mencius. (Sih 321; 1a3,7a1).

T'ien is the religious anchor, no matter how defined (R. Taylor 1998:87). Li T'ai Po is apt: "What is the use of talking, and there is no end of talking, / There is no end of things on the heart" (Pound 1957:58).

And Shang-ti?

Shang Ti lives in heaven, walks, leaves tracks on the ground, enjoys the sweet savour of sacrifices, approves or disapproves of conduct, deals with rewards and punishments...and comes more actually into touch with the human race. Shang Ti would be the God who walked in the garden in the cool of the day, the God who smelled the sweet savour of Noah's sacrifice, and the God who allowed Moses to see His back. T'ien would be the God of Gods of the Psalms, whose mercy endureth for ever; the everlasting God of Isaiah, who fainteth not, neither is weary. (Giles 16; cf. Suzuki 139, Shu 5,4,7).

Like *summus Iovis*, anthropomorphic Shang-ti morally scrutinises human affairs (Zenker 1926-27 1:33; Shi 3,1,7). He is a "unitary Deity" fading away only in the Hàn (Bodde 1979:148, 1957:724).

To legitimise their rule, the Chou

redefine[d] Shang Ti as *Heaven*, thus ending the Shang's claim to legitimacy by lineage [cp. "Iulus"], and then proclaim that the right to rule depended upon the Mandate of Heaven: once a ruler becomes unworthy, Heaven withdraws its mandate and bestows it on another. This was...the first investment of power with an ethical imperative. (Hinton xii)

Legalism was regression. "Several different senses of *Tian* existed side by side in the Han. Initially, when the Zhou overthrew the Shang, their omnipotent *Tian* took on some of the anthropomorphic characteristics of the Shang's highest deity, Shangdi, which it replaced" Csíkszentmihályi 65; cf. Giles 13). Archaic Chinese belief is in a personal God, not the sky (Forke 1964:32). The materialist view of T'ien (quasi-Stoic) began only in later Hàn. Do not retroject Chuhsism. Just so, Nkulunkulu is closer to Ti. He is iNkosi yaphezulu, the Lord *in* Heaven (Cetshwayo 93). As canonical scriptures, the Classics show the "personal character of God was safeguarded" with "frequent accounts of prayers....The ethical implications of the belief in God were especially emphasized. God is the source and principle of the moral order, the judge of good and evil. To this Lord, the royal ancestors of the Chou House were clearly subordinate" (Ching 1977:113). "God,

however different...from the Hebrew Creator, was present from the very beginning of Chinese civilisation until our own times...a practical and devotional theism has persisted in popular religious consciousness" (Ching 1993:5). T'ien is essentially monotheist.

Heaven is regarded as supreme deity-over and above the host of other spirits, especially the ancestors....The cult of Heaven was an assertion of faith in one God. A multitude of celestial and terrestrial spirits, of the Sun and Moon, of Mountains and Rivers—was associated with Heaven, but always as his subordinates, his appointed officials. (Ching 1977:170,173).

Imperial ancestors were not divinised, unlike Caesar's or the Japanese emperor's, and were mere subjects of T'ien.

Kuèi and shén: cousins of Minerva?

K'üing says: "to show reverence for ghosts and spirits so as to keep them at a distance may be called wisdom" (LY 6,22 Dawson). Family tradition, tsü-chuán sensu stricto, may colour this. "As a Shang descendant Confucius may not have totally cast off those teachings of the Yin which stressed veneration of the spirits. If the *Doctrine of the Mean* was written by...Tzu-ssu, then the various places in it where it speaks of ghosts and spirits [16, 24, and 29], if not representing the 'true mind' [hsin fā] of the Confucian school, still might possibly reflect the grandfather's and his grandson's family tradition" (Hsiao 1979:207). Royal Shang male and female ancestors received sacrifices. In time, sacrifices to legendary ancestors and early officials were dropped, royal ancestor offerings were made to a wider range of personages, and memorial offerings to the queens were expanded (Chang K. 171,185). L. Wieger is imprecise: "since the second dynasty, the deceased to whom food and libations were offered, have been called *kuèi-shên*. *Kuèi* signifies deceased, *shên* signifies genie" (Wieger 55). *Shên* means spirits in general, not ancestors turned into genii (Wieger unwittingly Romanises; a *shên* is not a *genius*). *Shên* are numina, not Olympians (Zenker 1915:12). Under Chou, says militant atheist M. Granet, "Heaven appeared as a sovereign Power, basically unique and omnipotent; it was endowed with the essential attributes of a supreme God. In that, there was a sketch of monotheistic beliefs" (72). In later Chou, nonroyal ancestors are "progenitors (hsien tsu), former dukes (hsien kung), or former lords (hsien chün)." *Shên* comes to mean all spirits not just manes. (Bilsky 1:163). Memory needs rite. "In offering sacrifices to the ancestors at the temple or dedicating obligations to ghosts and deities, piety and solemnity cannot be manifested without rites and decorum" (Li Chi 2; Xu).

T'ien's very majesty bears a risk (cf. late patristic merit-Christianity): an unapproachable Supreme God turns people to lesser spirits (Sherley-Price 49; cf. Ross 37, 178). K'üing's dislike of this has garnered him a false accusation of agnosticism. Ironically, K'üing

assumed a belief in Heaven and the ancestors...Profoundly sceptical of all nature worship and believing only in the supremacy of Heaven, which to him was a monotheistic deity, he was worshiped with rites which he would have regarded as superstitions, and ranked as a member of a polytheistic pantheon. (Shryock 223, 233; cf. Soothill 1939:113).

Chuhsiist J. Legge sees LY 6,22 as an anti-Taoist injunction (1880:178). "Keep your distance" is either respectful protocol before the divine majesty resembling an earthly court, or (also) advocacy of T'ien-monotheism. "The Chou...served the (ancestral) spirits and the (heavenly) gods with piety but kept both at a respectful distance" (Lǐ Chi 29 in Eichhorn 50). In the second view derogation of T'ien is *lesè-majesté* akin to making Minerva superior to Juppiter and not a lesser devotion: Cicero entrusts her to Juppiter's temple, *not* her own! K'üing sternly warns: "Wer gegen den Willen des Himmels verstößt, hat niemanden, zu dem er beten kann" (LY 3,13 Moritz). H. Dubs forcefully argues the second view, that "keep your distance" means avoiding shén. LY 3,12, 3,13, and 6,22 "plainly imply a belief in a single personal high-god, i.e., a God superior in power and character to all other gods. This God rules the world just as the Yin or Jou Dynasty ruled China". He sees T'ien, Shang-ti, and Ti as interchangeable, the latter a high god exactly parallel to early North America "Since the American Indians [sic] are blood brothers of the Chinese (shown by the possession of identical blood groups), it is not surprising to find such a belief also in ancient China" (Dubs 1959-60:166; cf. North Asian indigenous belief). One must attend all the more on the High God.

So, Confucius accepted a single Supreme God, Heaven. What about other deities? The usage of terms in Han imperial edicts [later!-jwh] concerned with sacrifice demonstrates that the archaic Chinese language distinguished three fundamental categories of deities. In English, we distinguish only two groups, gods and spirits (the latter includes ghosts, devils, etc.). In archaic Chinese, there were high gods (*di*), ordinary gods (*shen*), and spirits (*guei*). This last term included good spirits, ancestors, and evil spirits. Confucius uses this same tripartite language about deities. Significantly enough, he makes only non-committal statements about ordinary gods and spirits.

At LY 3,12 "Confucius avoids saying either that gods or manes are or are not present" (Dubs 1959-60:169). (The issue is *presence* not *existence*, "actually present in person" (LY 3,12 Ware). Refusing presence impedes physical idolatry. Denying existence loses K'üing's *Diesseitigkeit*, departing from civic theology into precisely the speculative theology—negative, here—that he was at such pains to avoid. "The Chinese believed in and worshipped a plurality of inferior deities of various grades subordinate to the Supreme God...as the servants of God, without the least sense of incongruity"; the Sage feared displacement of T'ien, not reverence to lesser spirits. (Ross 22,24,27). Dubs thinks this is political-theological strategy to avoid giving offence.

yet he maintained his faith in one Supreme God....He declared that [LY 3:13] there is no effective spiritual power in the universe except Heaven. He plainly says that no ordinary god or spirit can assist a man who has offended Heaven. This saying, together with Confucius' evasion of questions about ordinary gods...indicate that Confucius

carried the Duke of Jou's theological teaching to its logical monotheistic conclusion. Monotheism is quite in harmony with Confucius' high ethics and his insistence upon the highest of ideals. (Dubs 1959-60:170).

Consider the tripartite Asante theology: God is Nyame, lesser gods abosom, and manes samanfo (Rattray 1929:vi). At home, "Zulu are explicit that there is no worship of the shades in the sense that there is a veneration of them....Worship...is the veneration of the Lord-of-the-Sky" (Berglund 28). Conversely, ignored Roman lares become angry kuèi (Rudd and Powell 1998:210).

13. *Iustorum iniustorumque distinctio* is not predicated upon special revelation. Primordial *distinctio* cannot be co-opted by faction or hegemon (pà) to serve private ends of exploitation or revenge. Justice and injustice do not derive from private sentiment of groups, individual amour-propre or collective self-esteem, but from Natural Law, the *societas* of *mens humana* and *mens divina*. To Lenin's "Kro? Koro?", Cicero's *etiamsi* answers Deus! Rem publicam! *Distinctio* exists in *mens divina* and is enacted in rite and law. For the *peritus*, the threat of being weighed in the balance and found wanting, checks that lust to obey, to revolt, and to kill, which has scarred our times and eviscerated positivism.* "The claim that there are true principles of right conduct, rationally discoverable...is...antithetic to the general conception of nature which constitutes the framework of modern secular thought" (Hart 182). With this, both Cicero and K'üing are at war "non sine causa sed sine fine". When K'üing says he transmits but does not create (LY 3,12),

it is the traditional [Chou] religious world-view with its complexity of ceremonial and sacrificial cult and the acceptance of the religious authority of *T'ien*...a thorough-going religious state, a theocracy, that followed the Way of *T'ien*...through the proper sacrificial and ritual relationship that Confucius sought to convince the rulers of his day to return to and to emulate. (Taylor 1986:3)

*Socialist G. Radbruch and Altlutheraner A. Wegner were devout exponents of Naturrecht, expelled from university posts by the National Socialists. Radbruch "converted" from legal positivism after experiencing totalitarianism; cp. Radbruch 1914 or 1925 to Radbruch 1955. Wegner's colleagues tried to have him declared insane for wishing to move to the GDR from Western Germany; a Ciceronian *civis* of *duas patrias*, he was homesick for his origo, Halle. Once there, he was a gadfly in Ulbrichtparadies. Hà China had such a "conversion" and homecoming under Jú guidance, restoring tsü-chuán/mos maiorum and jen/ubuntu. "It was as if the [entire] West repudiated legal positivism irrevocably to embrace natural law after...the Nazi experience" (K. K. Lee 23,35; cf. Knoblock 1:vii). Calling positivism an "obsession" contrary to right reason, Hsún says "He who thinks only of law will take the Way to be wholly a matter of policy" (21; B. Watson). "Vernunft zugleich die Quellen der Moral ist, bleiben mittels ihrer die Institutionen im Namen der Moral kritisierbar. Auch als Quelle des Gesetzes-dies ist konfuzianisches Urgestein-ist

für Xunzi nur die moralische Autorität denkbar; *jeder Gesetzpositivismus...ist für ihn ausgeschlossen*" (Roetz 1998:103).

13. Like olive oil, Law is *ad illam antiquissimam expressa* on God-given natural fǎ. *Mens divina* or Nature has an order which human institutions can emulate. Grateful awe must grow in one seeing the regular order of nature, as Hsún said. This is ethical, not aesthetic, lost if T'ien is the blue vault of the sky. Scenery does not impart mission; scenery has no *ratio*. Just as laws which blur good and evil are not real laws, lacking protection of the one and punishment of the other, so a natural order without ethical distinctio would not only be "silent" (does T'ien speak?) but otiose. If neither nature nor law divide good and bad, evil ruins rite, reverence, and righteousness. Cicero wants to copy the moral fǎ of Juppiter/T'ien. True law is *expressa ad*, and nature is *ad quam leges* (pattern or goal, not identity). By whom are laws *diriguntur*? Is it divine Mind, nature, or human effort? Stoic identification of divine Mind and nature is rejected, nor is Divine mind a projection. Divine and human minds act in parallel. Cicero does not require perfection, but imitation.

13. Punishing wrongdoers and protecting good people is natural, else laws' watch-and-ward power is gone; refusal of morality and concocting unnatural, non-ethical diversity (cf. apartheid) impair the brotherhood of all within the four seas and preclude *leges fastae*. The only separation Cicero admits is between *improbos* and *bonos*. *Boni* means worthily traditional, ethical, or propertied. Citizenship plays no part here, nor gender, nor race. *Bonus*' class bias is ethicalised away. A poor aspirant may study the *tào* of the chün-tzū for a bit of biltong. A rural upstart can be declared *parens patriae*, as Cicero was after the Catilinshchina (Habicht 32). "By conducting affairs in this way, you will become in fact the 'parent of the people'." (Mèng 1b7; Dobson). *Bonus*' ethical sense rules in Cicero and K'üng. *Defendere* is warding off or striking down to prevent harm. *Tueri* is being vigilant against someone or something. Laws punish *delictum*, forcibly block it on behalf of the good (*defendunt bonos*), and ward it off by instruction (*tuentur*). *Improbi* are evildoers. Quintus' agreement has rolling finality: "*intellego...iam aliam ullam legem habendam appellandam*". Quintus' rejoinder adds more laws to the paired and impaired corn-law set.

CHOOSE YE THIS DAY: ROMAN RELIGION OR GREEK PHILOSOPHY? § 14-18

14. What harms the commonweal cannot bind the commonweal. “Ein diesem [Gemein]Wohl offenbar unnützes oder gar schädliches Gesetz hat keine bindende Kraft, auch wenn es alle äußeren Formen des Gesetzes besitzt. Ein in Deutschland erlassenes Gesetz, welche vorschriebe, jeder müsse sich fortan einen Zopf wachsen lassen oder eine Perücke tragen, wäre unnütz und lächerlich und deshalb kein wahres Gesetz” (Cathrein 1909:62). R. Bhargava says “a minimally decent society is governed by minimally moral rules. A complete breakdown of such rules characterises a barbaric society” (Villa-Vicencio and Verwoerd 60). Against that breakdown Cicero set his face like flint. The label *nullas leges* damages and is intended to delegitimise any functional power (Girardet 1983:142). This is an overture to civil disobedience at the start of natural Law thought, very far from Socrates/Plato. “God resents bad government” (Giles 69). “No unjust ruler deserves the name ‘emperor’... Over the long haul, imprecise speech allows injustice to go unnoticed because it can hide behind acceptable names. Euphemism can erode one’s sense of right and wrong and desensitize a person to violence” (Renard 79). Similarly, “ritual observations which contravene the Rites are not true rites. Acts of justice which contravene true Justice are not acts of justice” (Mêng 4b6 Dobson). “A juristic act which is contrary to public order or good morals is void” (R.O.C. Civil Code, art. 72). On the moral consequences of corrupt positive law under Augustus’ religion of politics, cf. Wycisło 17.

These “unheilbringende ‘Gesetze’”, a series of agrarian laws proposed by popularis tribunes in 100-91 are no laws at all (Girardet 1983:82; Keyes 1928:386). There is no jingoist perfectionism in Marcus and Quintus. They deny *religious authenticity (habendam appellandam)* in an optimate/chün-tzū pre-emptive strike against Titius, Apuleius, and Livius as scoundrel tribunes (Heikkilä in Paananen 136); the real targets are Hellenomanes and “varias reprehensiones” by évolu Romans “eruditi Graecis litteris contemnentes Latinas” (De Fin. 1,1). Making bad Roman laws his targets scores points. Before Cicero’s grapholectic, Hellenocentric Roman literature was colonial or at best post-colonial. Cicero rejects the dependency Cz. Miłosz condemns (1968:181): “The whole...attitude toward ‘centers of culture’ is false; it comes from timidity....They imitate instead of opposing; they reflect instead of being themselves.” The Ciceros are neither helplessly dependent on cultural-colonialist fake Greeks citations nor sentinels for Old Marcus’ laager. Teaching home truths by domestic example authenticates the Ciceros’ Roman auctoritas.

Titian, Apuleian, and Livian *nullas leges* show that Roman positive law is not necessarily law. They “were nullae leges not only because of their anti-optimate character, but above all because their rogators disregarded the auspices. Thus thunder, storm, lightning or the fighting ravens turn out to be genuine divine signs, and to disregard them means to disregard the will of the gods. And

so divination is not superstition at all; it conforms to the law of nature.” (Linderski 26) What conforms to *mos maiorum* is “living tradition....It is indifferent whether it is home brewed or borrowed wholly or partially from other peoples” (Wiredu in Serequeberhan 106). What does not so conform, no matter how Roman, is a legal *Unding*. D. Van Zyl (1977:22) says: “Cicero...stel weer die gewoontereg an ‘wet’ gelyk: *mos maiorum ut lex valebat*”. A. Borkowski (26) confirms that “Custom was *ius non scriptum*....practices which had become so firmly established as to acquire obligatory force”. C. Kratz remarks “we’ve always done it like this except for a few details” (Masolo and Karp 17). R. Rattray (1929:ix) more nobly evokes the aura of *mos maiorum*, “a living Universe—the acknowledgement of a Supreme God—sanctity and reverence for dead ancestors—religion which is inseparable from law—these were the foundations on which the old order was based”. Cicero speaks of that order in *De inv.* 3,53: “Postea res et a natura profectas et a consuetudine probatas legum metus et religio sanxit”. *Mos maiorum* was a genuinely revered repository of ancestral lore, not a Potemkin village for a cynical polity (Conte 71).

Gibt es nicht auch ungeschriebenes öffentliches Recht? Liberalismus, Demokratie, aber auch Sozialismus verneinen vielfach die Frage. Sie bekennen sich damit zu enger Gesetzgebundenheit der Verwaltung, leugnen, daß deren Praxis, leugnen aber vor allem, daß das in Gemeinden und Ständen (sie sind da, auch wo das Gesetz sie nicht oder kaum beachtet) organisch und genossenschaftlich gegliederte Volk durch lebendige Rechtsüberzeugung, gebunden an Glaube und Geschichte, Recht schaffen kann. Wir behaupten dagegen, daß das Gewohnheitsrecht sei auch im öffentlichen Recht des Staates gleich starke Rechtsquelle, neben Gesetz, Satzung und Vereinbarung. (Wegner 2:21).

R. Ames and H. Rosemont distort K’üing into a deconstructionist philosophe, but transmit nolens volens his defence of tradition: “Reviewing the old as a means of realizing the new—such a person can be considered a teacher....Following the proper way, I do not forge new paths; with confidence I cherish the ancients” (LY 2,11 and 7,1). K’üing’s haogu, devotion to antiquity, declares that “just as blindness cannot lead to sight, turning a blind eye to tradition would only result in cultural and moral darkness” (A. Chan 2000:246, 252). He anticipated Gadamer by 2500 years.

Plebiscites and laws were of equal validity “since the Hortensian act of 287 B.C. Both were routinely called *leges* (Wolff 65-66.) Marcus prevents a disputant arguing that the legislation cited was merely plebiscitary. *Nullae leges* are the civic-theological equivalent of what L. Kołakowski calls somewhere “fried snowballs”. As mediaeval Romanists said of Lombard law, “*nec meretur lex appellari, sed faex*” (Koschaker 59). *Any nefasta law “etiam in deos caerimoniae religions tolluntur” (1,43) is condemned by god-honouring magistrates. At times opportunity arose for “direct action” against nullas leges and having some belligerent fun. On Cicero’s return to Rome, he and his claque tore down and smashed the δημαρχικὰς δέλτους. Clodius’ tribunician anti-Cicero decreetablets (Plut. Cic. 34). This is not “καὶ τὰς τραπέζας τῶν κολλυβιστῶν κατέστρεψεν” (Matt. 21,12),*

but it has some of the same verve.

14. Quintus alertly advances from thinking *praeclare* to moral understanding *recte...praesertim*. If one believes the Senate knew its business and had courage to act—no mean act of constitutional faith—with *uno versiculo* false laws were removed. Little argument may mean that these cases were clear to the Senate. Brevity of Senate opinion and discussion *puncto temporis* reinforce these laws' nullity. Conversely, proscriptions and dictatorial acts, or acts of warlord terror such as the murder of the Ciceros, were done *uno versiculo* and *puncto temporis*. Constitutional process is not infallible; fake laws' abrogation is just. *Abrogare* annuls existing law. Natural or divine *lex illa* is neither subject to human procedure nor of human origin. No protocol and no Senate decree *uno versiculo* has imperium over mens divina. Here is consolation: if protocol cannot annul or impair divine Law, then collapse or corruption of the Senate cannot. "Cettes il y a de mauvaises lois, qui ne portent le nom de lois que par un abus de langage" (Guillaumont 1984:56). *Lex* is from *legere* to read out (Stein 1999:4); text makes *lex*. What can be read aloud must be speakable—*fas*; what is unspeakable—*nefas*—cannot be law (cf. Hughes 90 on *fas-nefas* in Shi Ching). "Vera lex recta ratio naturae consequens...huic legi nec abrogari fas est neque derogari ex hac aliquid licet neque tota abrogari potest, nec vero aut per senatum aut per populum solvi hac lege possumus" (DRP 3,22). W. Taft warned, "if we do not conform to human nature in legislation we shall fail" (42). Cicero uses *lex naturae* and *ius naturae* indifferently, and *yí* 義 is broad-gauge. "The world has been without the Way for a long while. Heaven is going to use your master to ring the tocsin" (LY 3,24 Ryckmans). Tzū-ssu says "Yi is doing what is right and proper (or correctness); its greatest exhibition is in honouring the worthy" (CY 20,5; Dubs 1928:155). It embraces morality, aptness, propriety, decency, righteousness, justice, or rubrics if combined with *li* (Knoblock 1:95; Hsiao 1979; B. Watson 89). Hsün says "only under the civilizing influence of teachers and laws, and the guidance of *li* and *yí*, does man conform to courtesy and compliance, observe good manners, and submit to order" (32; Berthrong 1998:69; Dubs 1928:157).

For Cicero, "the totality of moral, legal, and religious norms [is] *fas*, and any conduct in contravention...is *nefas*...that which is permissible in accordance with legal principles is...*quod licet*, whereas that which is permissible according to moral and religious norms is...*quod oportet*" (Van Zyl 1986:76; 1991:4-5). Roman laws' priestly origin gave rise to dual terminology:

Ius (regsreël) en *fas* (godsdienstige voorskrif) is baie nou an mekaar verbonde en by die Romeine is hierdie toestand ook merkbaar. In hulle wese word die twee uit mekaar gehou, maar wat die juridiese werksaamhede hulle sakrale funksies beïnvloed. Dit is wel bekend hoe die priester in Rome oorspronklik, en trouens vir 'n baie lang tyd tot diep in die tydperk van die Republiek, die kenner van die reg (dus die *juris*) was; en wat betref die prosedures wat gevolg moet word om 'n geskil te besleg, het die

priesters nie alleen die regspleging waargeneem nie maar was die dwang agter die prosedures vir 'n lang tyd van sakrale aard. (Van Warmelo 27, 47).

Cicero's archaisms are apt. "*Oportet*" injunctions mean either it is necessary/proper or it is permitted; the following are not imperatives or jussives: *oportet, necessum est, mos est, fas est, ius est, religio est, piaculum est, licitum est, constitutum est*. Si quis [Volscian se pis] replaced si... in late republican edicts. If-then assumes shared knowledge of right and wrong (Daube 1956:4,5,25); Daube does not say if this is consensus iuris or ratio recta insita! Third person singular can be impersonal in the XII Tables, and libet is impersonal in classical Latin but lubeant is still personal as late as Plautus (57-58). First person clauses show "energetic concern" in edicts (42). Ne quis is elite or polite language (38), ne quis velit implies coming disaster and ne feceris is an implied threat—you'd best not... (47), and ne facito is a direct threat of punishment (55). *Sacer esto* in the XII Tables and after is "la más terrible de las sanciones" and it applied to a patronus who broke faith with his cliens (Labrousse 97, Laser 29). Cicero's code language was not unintelligible, potted, or pastiche (Wilhelms 459).

Greek θεσμός is earlier than νόμος, Solon's term is the "august rulings of (divine) justice", θέμελθα, which are destroyed by faction, and θέμις = fas (Frisch 1949:120,153,182). "Behind the particular codes of individual states lay a universal, natural law based on the character of man as man, not on the particular character of a specific state" (Hammond 45). Δίκη is abstract rightness, straightness, retribution [proprium-jwh], not necessarily "moral" and not necessarily rational. Reason nowhere enters in. Θεσμός is morally incumbent and in response to a specific enquiry (cf. τίθημι), while νόμος can approach closely to mos or custom. J. Jones wrongly says 'ομόνοια is roughly equal to concordia ordinum or harmony in the State (Jones 24, 77). 'Ομόνοια requires unanimity incompatible with *dignitas* (suum cuique tribuere) or a free polity. P. Hountondji diagnoses it as inherently totalitarian or fake, sharing Aristotle's fear of τὸ λίαν ἐνὸν ζῆταιν (1996:viii; Politics 2,3-7). 100% civic agreement is ethnophilosophy in praxis, "a 'crazed language' accountable to nothing...so that its falsity can never be demonstrated".

It is not *fas*, religiously licit, to abrogate Law; by implication it is *nefas* to try. It is not permitted (*neque...licet*) to mar its perfection by excisions (*derogari*). Humans have no power to abolish Law entirely (*neque tota abrogari potest*) or impair its judging authority over human laws. Human legal failures point out its absolute imperviousness. *Nefas* and *temeritas* are closely linked. "Declaravit id modo temeritas C. Caesaris, qui omnia iura divina et humana pervertit propter eum, quem sibi ipse opinionis errore finxerat, principatum" (DO 1,26). Any *nefastus* is God's bitter enemy (Verdross-Drossberg 166). Natural law's divinity and freedom from abrogation reinforce Cicero's earlier point about bad laws being no laws at all. True Law has spoken first. Later attacks on it stem from evil,

mistaken opinion, or religious error. The ruin of constitutional institutions and process in the late Republic, and Caesarist cult of personality, cannot kill *mens* or *lex divina*. The pursuit of it is perpetually incumbent, but achievement is not our affair.

14. *leges rogabis*. Quintus makes the picnic-discussion into a miniature Senate, where bills of thought can be proposed, which will not be subject to abrogation *uno versiculo*. This makes both the discussion in general and the specific legislation proposed into something more than the oratorical play-acting of the schools of declamation, or Augustine's sham-Arpinum at Cassiciacum. (On Augustine's at times plagiaristic love-hate toward Cicero cf. Kellerman in Maxfield 12.) Discussion and proposal remain a manifestation of *recta ratio naturae* in human hands. Optimistically it prepares for later action, pessimistically, it gives mental training and a political testament of faith. Noble ideas, unlike noble men, *numquam abrogentur* by proscription or by jacquerie. If the proposed laws are concretisations of or congruent with *lex illa*, which is *fas*, then they share in its imperviousness to deterioration at human hands. Where two or three are gathered together in the name of Law, there it is in the midst of them. An ironic construction is also possible. Laws never enacted by the Senate, never proposed by any actual magistrate, never by any deliberate action become part of the fabric of any functioning state, can likewise never be abrogated, because they exist only as intellectual constructs. Are they, like the unjust and destructive legislation cited earlier, *nullas leges*? To answer 'yes' requires a denial of the existence of natural Law, and a resort to utopian legal nominalism. If *mens divina* is back of both natural Law and good positive laws, and if divine Mind and human minds can parallel each other, then the appeal to divine authority makes sense. "Chan Wing-tsit was quick to point out that Confucius' heaven is 'purposive' and is 'the Master of all things'" (Cheu 2000:xxxix).

14. *si modo*. Acceptance of the "imaginary" laws by Cicero's hearers gives them ratification in the republic of the sacred, which I. Onyewuenyi calls "the spiritual republic outside of which he does not exist as a Muntu" (Serequeberhan 43). Dialogue is more than a genre gimmick to add gravitas to the author's words: it is a claim upon our shared humanity, ubuntu across the ages. Real reporting, while unverifiable, is likely. That Cicero talked with friends on such topics is a certainty. That he talks with us is gift and challenge.

Humanity, justice and morality cannot be successfully put into practice without rites and decorum. Cultural education, moral training and custom rectification cannot be properly carried out without rites and decorum. The adjustment of disputes and the judgment of lawsuits cannot be fairly completed without rites and decorum.... Thus, by practicing rites and decorum, the human society enjoys peace and order; otherwise, it would suffer chaos and peril. (Li Chi 2; Xu).

“Ren as returning to li means to be a person acceptable according to the Zhou li....However, Confucius’ conservatism is not necessarily a fault. His beliefs were generated by his reflection on the brutal social reality of his time....what he really embraces is the *spirit and essence* of the Zhou li” (Yu 327). Therefore, “whoever has no sense of compassion is not human; whoever has no sense of shame is not human; whoever has no sense of modesty is not human; and whoever has no sense of right and wrong is not human. From these proceed respectively benevolence, righteousness, decorum, and wisdom” (Mèng 2a6; Zheng et al.). Jú-chiào enhances ubuntu now by “unconditional reverence for the autonomous individual in all dimensions—personal, familial, political, ecological. Its central point is unabashed humanism, attended with dynamic socio-cosmic implications” (Huang and Harrell:70). Ecological? LY 10:11 is not cruelty to animals but reverence for humans—horses cost more! “When the stables caught fire the Master, on returning from court, said: ‘Did anyone get hurt?’ He did not ask about the horses” (Dawson). “Es ist ein Rühmestitel des Mencius, daß er für das Recht der Tiere den Menschen gegenüber eingetreten ist und Mitleid für ihre Leiden verlangt” (Forke 1964:208).

14. *Vir doctissimus*...*Plato* justifies including a *prooemium*. Cicero imitates genre, not opinion. If *Plato* is *vir doctissimus*, Cicero is at least *vir doctus*. J. Adams’ wisecrack in 1814 to T. Jefferson could have come from Quintus’ or Marcus’ mouth:

Nothing seizes the attention of the staring animal so surely as paradox, riddle, mystery, invention, discovery, wonder, temerity. Plato, and his disciples from the fourth-century Christians to Rousseau and Tom Paine, have been fully sensible of this weakness in mankind, and have too successfully grounded upon it their pretensions to fame. I might, indeed, have mentioned Bolingbroke, Hume, Gibbon, Voltaire, Turgot, Helvétius, Diderot, Condorcet, Buffon, De la Lande, and fifty others, all a little cracked. (Adams 188).

Panaetius is the usually cited source for DL, but it may equally well have been Antiochus. (Hunt 202; cf. Armstrong 53-55).

E. Atkins (Rowe and Schofield 514) claims “Cicero Romanizes the Platonic tradition from within by presenting republican Rome at her peak as...the best possible constitution...the city and statesmen that theory could describe, but only experience produce. Cicero’s exaggerated patriotism encouraged him to a strikingly un-Platonic trust in historical and empirical evidence”. He does not Romanise it, he guts it like a fish. Cicero is no Jonah within said fish. “L’imitation platonicienne n’explique rien”; it is merely “un tribut qu’il faut payer obligatoirement” (M. Ruch 1958:121).

“The famous Chinese synthetic attitude...applies the Chinese spirit of harmony in the realm of the intellect and in the realm of religion as well as in the practical and ethical life” (Moore 6). For

example, “Yan Hui asked about governing a state. The Master said, ‘Introduce the seasons of Xia, ride the state carriage of Yin, wear the ceremonial cap of Zhou. For music adopt the *shao* and *wu*. Get rid of the sounds of Zheng, and banish clever talkers. The sounds of Zheng are licentious and clever talkers are a menace” (LY 15,11 Dawson). Chung 中 in LY 6,29 and in the Chung Yung 中庸 means “centrality, not to be one-sided” (Ni 91). K’üing’s διαφωνία expands in Mèng’s eloquent Ciceronian hands; one thinks of all-under-Heaven and Eleusis, LY 1,1 and broad-minded Atticus, haogu or love of mos maiorum suffusing all.

The fine virtuous intellectual of a village will make friends with all other fine virtuous intellectuals of that village. In the same way, the fine virtuous intellectuals of a state will make friends with all other fine virtuous intellectuals of that state, and the fine virtuous intellectuals of the world will make friends with all other fine virtuous intellectuals of the world. Then, not being contented with making friends with fine virtuous intellectuals of the world, he will turn to the ancients and discuss them. When he studies their books and declaims their poems, is it right for him not to know about the ancients? So it is necessary to discuss the ages in which they lived. This is called making friends with the ancients. (5b8 Zheng et al.)

It holds firm in theological combat. “Mencius operates from deep within the fortress of his faith...Hsün-tzu is in the thick of battle against enemies from all sides. He is keenly responsive to other currents of thought and certainly does not hesitate to learn from them” (Schwartz 1985:290). Itō Jinsai’s jinkakusha, the alert all-rounder, embodies “wise eclecticism” (Ellis 155, Spae 93).

Cicero proprium systema philosophicum non condidit, sed ex variis sententiis philosophorum graecorum eas selegit [not hodgepodge], quae sibi optimae [keep the best] videbantur...Multa non sola consuetudine vel legibus et scitis populorum, sed natura sua sunt bona vel mala, iusta vel iniusta et qua talia ab omnibus gentibus agnoscuntur...Lex princeps et ultima non est quid ingeniis hominum excogitatum, sed apta ad iubendum et ad vetandum ratio recta summi Iovis (De leg. 2,4). Ab hac lege divina derivatur lex naturalis, i. e. recta ratio naturae congruens, diffusa in omnes, constans, sempiterna, quae continet omnes gentes, et a qua neque per senatum neque per populum solvi possumus, cum imperator omnium Deus est huius legis lator [two words] (Fragm. De republica l. 3 apud Lactant., Div. instit. L. 6, c. 8)...Extollit pietatem adversus deos, qua ‘sublata’, inquit, ‘fides etiam et societas generis humani et una excellentissima virtus iustitia tollitur’ (D.N.D. l. 1, c. 2). (Cathrein 1921:10).

K’üing advised “Hear much, pick the best and follow it” (LY 7,28 Ryckmans). In 1883 R. Hoyer spoke of “furium quellenforschenium” (Glucker 32; cf Ch’ien M. in Bresciani 249). Cicero is his own man despite Barnes and Görler’s outdated over-emphasis on Quellenforschung (Harries in Clark and Rajak 54, Levy 1948:43). Levine (146) is indignant: “exclusive emphasis on sources is grossly unfair to Cicero as a literary figure”. Cicero and K’üing call themselves transmitters, not creators, but they are no more “tools” than any other optimas or chün-tzū. Quellenforschung falters: he knew everybody, read voraciously, and had “an attractive...predisposition to admire” (Everitt 36). He kept half of K’üing’s counsel “Don’t worry if people don’t recognize your merits; worry that

you may not recognize theirs” (LY 1,16 Ryckmans). T. DeGraff says “Cicero frequently mentions...casually and *ex memoria*...the Platonic Socrates....This intimacy is the sort of careless intimacy that the highly cultivated modern enjoys with Shakespeare and the Bible” (De Graff 151, 153). Cicero has so incorporated his sources—no mere commentator!—that General Junot’s boast is his: “Moi, je suis mon ancêtre” (Haskell 37). This is “eine verhüllte Polemik, ja sogar ein ‘Kampf’ Ciceros gegen seine Quellen”, as Cicero confirms: “qui utrumque voluit et potuit, id est ut cum maiorum institutes tum doctrina se instrueret, ad laudem hunc omnia consecutum puto”, just like Curius! (Uttschenko 1956:140; DRP 3,6). Cicero did, Plato did not. Deference to Plato is ironic.

Wherever Greek theology operated with examples out of its own religion, he is able at once to find a suitable example out of Roman....In his ideal picture of sacred legislation...there is spread before us a wealth of true Roman conception of the activity and nature of the gods and of their cult. (Altheim 338).

Source analysis is obsolescent and Cicero’s omnivorous reading makes it moot (Atkins in Rowe and Schofield 477; Chroust 227; Goedeckemeyer 138; Hsü:xiv on “mechanical fatalism”; Luck 11; Needham 1:87 on Hu S.; Smethurst 1953:262). Cicero was not “a mechanical copyist of Greek theories. He was not a fool nor was he infallible and omniscient”. Source-criticism is at root historicist. “To state this [assumption] explicitly would reveal its absurdity: namely that early sources were perfect or at least much superior to what came later: it was always *epigoni* who introduced confusion and error....[T]he originator of a system...is as a pioneer more likely than they to be guilty of errors” (Douglas in Temporini I:3:100,131).

A source-catalogue shows the futility of pigeonholing the priest of “utilitarny Rzym”!

Cicero...słuchał za młodu epikurejczyka Fajdrośa, akademika Filona i stoika Diodotosa, potem uczył się, jeszcze od epikurejczyka Zenona, akademika-eklektyka Antiochosa z Askalonu i od platonizującego stoika Poseidoniosa.

He took material wherever he found it suited to his own aims.

Więc: w *De finibus bonorum et malorum* korzysta z Antiochosa i współczesnych sobie stoików i epikurejczyków; w *Tusculanae disputationes*, traktujących o warunkach szczęścia—z Panaitiosa, Poseidoniosa, Antiochosa, Chryzypa; w *De natura deorum*—z Fajdrośa, Kleitomacha, Karneadesa i in.. *De republica* było naśladownictwem Platona, a ponadto w treści korzystało z Panaitiosa i Poseidoniosa; *Laelius sive de amicitia* czerpał z Teofrasta przez pośrednictwo stoików, itd., itd. Ciceron nie by nigdzie twórczym filozofem, wszędzie był wyrazicielem eklektycznego ducha, panującego na schyłku starożytności. Ponieważ zaś źródła, z których korzystał, przeważnie zginęły, przeto on sam stał się, niezastąpionym źródłem. (Tatarkiewicz 167).

As theologian he draws “z wszystkich szkół filozoficznych”, independently selecting tools to use in his own masterful praxis. (Cf. Avallone 205.)

Boyancé, van den Bruwaene, Colish, Luck, and E. Rawson reject Quellenforschung (Colish 66,

Luck 11, *Temporini* I:4:341). “Many critics...have spent far more time in the investigation of the theories of the Greeks whom he...is supposed to have used as sources than in reading the Ciceronian texts”, denying that Cicero (any non-Greek?) could think for himself (Laing 427), a chronic Hellenocentric intellectual abuse (Brzózka 292; even Henderson has not a word to say on Republican Rome). Quousque tandem? Collins’ splendid philosophical charts (110, fig. 3.5; for political antitypes cf. Mentelle 1766) are a nuanced map: all roads lead to Arpinum. Quellen do not always spring from Hellas. “For *De Legibus* he consulted old senatorial decrees and used etymology to reconstruct social customs” (Griffin in Crook-Lintott-Rawson 718).

“Mit *De re publica* und *De legibus* bildet Cicero *formal* Platons *Politeia* und *Nomoi* nach” (Leonhardt 208). Using a genre model—unslavishly—has no bearing on content. Guillén Cabañero (1984 2:76) speaks magisterially:

Entre los libros de Platón y de Cicerón hay esta diferencia esencial: que aquél imaginó una República, y éste la describió; el uno dijo cómo debía de ser un Estado a su juicio, y el otro cómo había sido en otro tiempo su propia patria.’ La diferencia, pues, es absoluta: pasamos de la utopía a la práctica; del sueño a la realidad.

In *De Oratore*, *De Re Publica*, and *De Legibus*

die tiefe Liebe zu der altrömischen Tradition ist nahezu auf jedem Blatt seines Werkes erkennbar. Beim Lesen von *De legibus*’ fühlt man, daß der Mann, der die Texte seiner Gesetze in leicht archaisierter lateinischer Sprache verfaßte, einen tiefen Kult und großes Verständnis für alles hatte, was echt römisch war. (Kumaniecki in Büchner 1971:368; cf. Jolowicz 1954:195).

Masolo debunks Diop and Bernal’s “joy dance in the shadow of Egyptian grandiosity”, a “passive and unproductive intellectual narrative” (Masolo 18, 41). Cicero refuses to do a joy dance in Plato’s shadow (cf. Everitt 121). “The resemblances are superficial...he refers to Plato as ‘that divine philosopher’. But he never soars away with the Greek into any cloudland. Always it is the Roman statesman who addresses us” (How 26; Haskell 299). A merry Thomist says “To all *Quellenforscher* we may say: *procul o procul este profani!*” (Rand 61).

Against hyperphilology

Cicero was betrayed in his flight by a slave named Philologus (Forsyth 2:316); perhaps names are destiny. We prefer “*uitwendige geskiedenis*” and canonical text to “disquisitions on philological trifles” and “the immoderate use of high-brow academic jargon” (Van Zyl 1977:77, Balazs xiii). D. Twitchett warns of Sinological “pedantry and a preoccupation with trivia...the misemployment of advanced techniques of analysis in the pursuit of unimportant topics” even as the western classicist is intent upon “preserving his professional virginity against the contamination of Sinology” (109). Civic theology, like holistic Sinology, is a “remedy for scholarly cramp” (Næss and Hannay vii).

“Ein zünftiger Philosoph mag über manchen chinesischen Staats-, Rechts- oder politischen Philosophen die Nase rümpfen” (Forke 1964:ix). Nasal rictus led to a secular (masked as “philosophical”) view of Cicero, unjust both to Hellenistic philosophy and Cicero’s explicitly theological writing. Similarly, “Confucius, his teachings, and their followers were characterized as agnostic; and once their religious beliefs had been defined as undefined, they could in good conscience be left unresearched” (R. Taylor and Arbuckle in Overmyer 347).

Civic theology clears the path like lictors in a Roman crowd. “Der Philologe nun sollte nicht im Dschungel der Möglichkeiten des Textes steckenbleiben, sondern sich eine Deutung zutrauen. Hierzu sind plausible Extrapolationen nötig” (Roetz 1998:31). Neo-Academic modesty skirts a heuristic and hermeneutical jungle—and gets where it’s going. As Ch’ing classicism fell to *Hyperphilologia inexplebilis* subspecies *serica*, “Viêtnamese Confucians rarely suffered from the Chinese sort of philological anxiety”. In fairness, the Ch’ing practice of “reading...one classic in terms of another” bespeaks our own small attempt (Henderson 148). Government minister and commentator Ngô Thi Nhâm 1746-1803, whose edicts bypassed Chuhsianism for their Jú-chiào guts, called his commentary on Ch’un Chiu “*Xuân thu quãn kiên*, ‘A modest view of the Spring and Autumn Annals’, more literally ‘Looking at the Spring and Autumn annals through a tube’” (Woodside in Elman-Duncan-Ooms 120-122). Civic theology is the exoskeleton of our Minister Ngô’s Tube. (Cf. Bresciani 12.)

Modesty avoids hyperphilologism. The Confucian Manifesto of 1958 affirms the method of “round insight/penetration” vs. “square precision” (Bresciani 51). Considering a seTswana orthography unused in *civic* life in Botswana or South Africa, “to use eleven diacriticals in a simple three word sentence (it means the madman’s blankets have been burnt’) is going beyond all reasonable bounds: Dikòbò tsášètsénó díselè. More complex and no doubt consistent orthographies do exist, but they involve writing this kind of thing” (Young xiv). Our blankets are not burnt and we are not mad. K’üng and Cicero fit an earlier template: “*factotum*...technician, politician, and ‘sage’ in one” (Hirschberger 215). Ennius hymns Sagehood. “Homo qui erranti comiter monstrat viam / Quasi lumen de suo lumine accendat facit; / Nihilominus ipsi lucet cum illi accenderit” (DO 1,51). An African theologian said “I do not wish to look as if I am giving a course in grammar”, deftly admitting “the African ear is not a good judge of long or short vowels” (Augustinus, DDC 3,87 and 4:65; Green). The reader who wishes to burn his blankets in the fire of phonological reconstruction is referred to W. S. Allen for Latin, Karlgren 1954 for Chinese, and Corssen for Volscian. A. Dyck’s exhaustive hyperphilological commentary misses Cicero’s views and sees only his verbs. Cicero as engagé statesman contrasts to jaded Plato (Burkert 200). Εποχή moves in tandem with political realism and civic theology’s praxis. S. Radhakrishnan Cynically says “Diogenes annoyed

Plato with the taunt that if he had learned to live on rough vegetables he would not have needed to flatter despots” (1940:258). Old Marcus—and Yan Hui—would have agreed! How shall we read Cicero’s “divine Plato”? Cicero the civic theologian is also Cicero the joking consul: “feci idem quod in πολιτεία deus ille noster Plato” (DO 4,3). Ille noster gives the game of irony away, ille almost dismissive, noster almost endearing, none of it *quite*, altogether a practised inconcinnity distancing Cicero from Plato while ‘praising’ him. Cicero and K’üŋ stress praxis over gnosis out of “dédain du pur speculatif” (Poncelet 1957:352). K’üŋ did not emanate from Heaven to breathe ahistorical (or historicist) σοφία upon the earth. (Cf. Berthrong 1998:4,13; Buttinger 85; Ching 1993:86 on Taoism and Gnosticism.)

Ille Plato

Cicero’s scorn for divine Julius stings Plato. *Divinum* hominem is a Hellenistic *king’s* title for the likes of Ptolemy Soter, Antiochus Epiphanes, etc. Real deification is for “Helden der Freistaat” (Eulenberg 179, Mentelle 1766:402)—not assassins of the Republic. Cicero sarcastically calls the immortal anti-respublican *illum divinum* and *istum ipsum* (3,1), just as *gravissimus philosophorum* makes him neither priest nor statesman. Cicero’s bosberaad finds Plato gone missing. Atticus chaffed Cicero at 1,5 with sexual banter “Sic enim fecisse video Platonem illum tuum, quem tu admiraris, quem omnibus *anteponis*, quem maxime *diligis*”. Cicero sternly sets love’s limits. Plato would have found him uncompanionable. Cicero did not write elenchus or approve its veiled sexual combat and “running fire of cross-examination” (Everitt 123; Marrou 1956:251; Ross 26; cf. DRP 4,4). K’üŋ was a gentle teacher without elenchus (LY 7,38). Tzū-ssu says “a virtuous teacher...guides [students] instead of pressing them; he encourages them instead of forcing them; and he enlightens them instead of cramming them” (Li Chi 34; Xu). Cicero lets each speaker have his say. He is “always polite and urbane, sometimes ironical, never truculent (even when dealing with Epicureans)...[his style] has an important protreptic function in making philosophical disputes seem real and interesting to a largely unphilosophical readership” (Powell 1999:10; cf. Acad. 7-9, DND 1,11). Pohlenz denies any „innere Verhältnis“ to Plato (1948:1:250). Like the Chinese, the Romans *knew* their *mos maiorum* was superior. “There is no conversion, no outward turning” (Levenson 1:120).

“Cicero sich in der Gesprächsweise von seinem sonst so hoch gepriesenen Ideal Platon trennt...Cicero schreibt seine Dialoge als Römer und für Römer...sein Gespräch [ist] nicht Schuldebatte, kein ἀγών... sondern Konversation, die ihrer Wesensart entspricht” (Becker 32, 59). Vigour does not preclude non-manipulative friendship toward interlocutors. DL is a *fā* of ubuntu because *ratio recta*’s “domain is accessible to the ordinary intelligence of every normal muntu”

(Kalumba and English 28), not only to a proctacious Athenian elite. Ubuntu-jén-humanitas, the “moral obligation to consider the interests of other members of his species...embod[jied] the ethical principles of early Roman society” (Reesor 4). One must be fully human in civic *societas* to realise T’ien Tào. “To be fully human for the Confucian is to be fully religious” (R. Taylor 1998:97). The non-religious person dehumanises himself, lacking jén *and ratio recta*. Jén 仁 combines

‘man’ and ‘two’...fundamental bond...altruistic benevolence...source of all humane feelings...Han Fei (20 ‘*Jie Lao*’ 6.12) provides the best definition of the word: ‘the enjoyment that one feels in one’s innermost heart in loving others...joy at the good luck of others...revulsion at their misfortune. It is an indispensable part of the heart with which we are born since it never seeks any recompense’. (Knoblock 1:96).

When the student is at the teacher’s mercy, that is not dialogue. Jú-chiào dialogue is not elenchus (Cohen 1976:159; Cua 1975:134; Schwartz 1985:98). Mèng’s optimate anti-extremism leads to anti-elenchus. “The Duke of Chou wanted to punish those who ignored father and prince. I, too, wish to follow...the three sages in rectifying the hearts of men, laying heresies to rest, opposing extreme action, and banishing excessive views. I am not fond of disputation” (3b9; Lau). There is no Platonic power-fantasy. “Die Philosophen werden nicht zu Königen, und die Könige sind keine Philosophen” (Weber-Schäfer 1963:67). Equating Plato to Hán Fei, and Stalin to Ch’in-shih Huáng, V. Rubin draws a Fä-chia philosopher-king: “Measures...aimed at the complete liquidation of humanist culture were accompanied by the execution of hundreds of prominent members of the intelligentsia. But the attempt at building an empire on a monolithic foundation of universal stupefaction ended in failure” (Rubin 83, 28). Contrast the Euthyphro to K’üng’s anti-snitch chiào in LY 11,23 and 13,18. Hán Fei (!) declares *capital esto*, as one of the Five Vermin, a son who rats out his father (Whitlock 130). Shielding one’s father familises amicitia, clientela and *fides*, sharing nothing with Plato. Plato attacks the family to make “la paternità dello Stato” a monopoly on filiality (Messina 82).

Is V. Rubin unfair to J. Stalin, likening him to Plato and Fä-chia? No: the Вожд was fluent in classical Greek, emended Greek translations into Georgian, read and annotated his Greek Plato throughout his career, and found “in philosophy a license to transgress human and divine law” (Rayfield 16, 21-23). Stalin never read a word of Latin, or Cicero (Rayfield to jwh 2006). Cicero condemns “perelegans” Plato and his civic-theological train. “Nam princeps ille, quo nemo in scribendo praestantior fuit, aream sibi sumpsit, in qua civitatem extrueret *arbitratu suo*, praeclaram ille quidem fortasse, sed a vita hominum abhorrentum et a moribus” (DRP 1,29; 2,21). Plato made a ‘republic’ “quam minimum potuit non quae posset esse”, but “*nostra* autem res publica non unius esset ingenio sed multorum, nec una hominis vita sed aliquot constituta saeculis et aetatibus” (DRP 2,52; 2,3). Antifamilism, fanatical sexism, and supposed spiritual uselessness of the Greek past

mark Plato (Schwartz 1985:70, 85; Dickinson 260). Cicero “non che seguire le utopie della repubblica immaginaria del Greco” or his hatred of family (Messina 22). Our *sapientes* love the Tào of mores maiorum. (Cf. Conte 187; Popper 1971:1:103,263).

Cicero is not an évolu like M. Aurelius or L. Senghor. Fending off Plato protects Romanitas. “Sunt ista, Varro, nam nos in nostra urbe peregrinantis errantisque” Acad. 1,9). Varro gave us the term *theologia civilis*. Cicero had a deep sense of Romanitas: dignity, practicality, vast humour, intense loves and hatreds (Ciaceri 2:165; cf LY 4,3). P. Zoungrana said:

Au delà du refus de toute domination extérieure, c'est la volonté de renouer en profondeur avec l'héritage culturel...trop longtemps méconnu et refusé. Loin d'être un effort superficiel ou folklorique pour faire revivre quelques traditions ou pratiques ancestrales, il s'agit de construire une...société dont l'identité n'est pas conférée du dehors. (Appiah 1992:47).

K. Appiah himself fits the Arpinate mould, “trained as an Asante leader long before...Cambridge” (Kalumba and English 226). Cicero thought “Rome was the best of states and...his main task should be not so much to legislate in the lines of the Greek theorists as to describe and justify Roman institutions” (Clarke 47). Romanitas makes him anti-Utopian; his State is not “an imaginary system, like the republic of Plato. It is in actual existence and working...his own country.” Identical titles mean nothing: “as soon as they are opened we perceive that in reality they are quite unlike” (Boissier 27, 31).

Cicero enjoys the “elasticity” (Bailey 244) by which moderated Stoicism naturalised itself at Rome. Cicero’s State must protect human dignity, but “Plato’s...state is totalitarian. There is no evidence that he acknowledges the individual’s sphere of liberty, nor those of non-state societal relationships....In line with the classical Greek conception Plato views the polis as the all-inclusive totality” (Eikema Hommes 1979:15; Dickinson 294, Ezzati 209 on Islam as such). Cicero’s State governs sancta but respects the citizen’s private sphere. Cicero “bleibt...in seiner Existenz der vir Romanus, was seinem Philosophieren die Grenze setzt. Sein eigentliches Engagement lag im Bereich der Politik, in ihm hat er sein erregendes Schicksal erfüllt” (Burkert 200). As politician, he seeks goodwill, not conquest. As writer, he paints courtesy, friendliness, diversity, and conversational simplicity, not Socratic abusiveness. “Das urbane Verhalten der Gesprächspartner ist ein Ausdruck der *humanitas*, die sie auszeichnet”, linking this to deportment virtues of *facilitas* (ease), *suavitas* (lovableness) *comitas* (politeness), and *iucunditas* (good humour) (Becker 18).

Every generation, including Cicero’s, has its modernity and its historicism. Post-modernity is a jejune spin on historicism’s weary allure, escaping the modern to a newer and (bleakly) better state? Stoic *conflagratio mundi* leaves Cicero cold. *Tabes rei publicae* was sufficient apocalypse. Plato is formal antecedent and cautionary example of philosophy against rite, religion, and reality. To his

cost, Cicero had illusions. To his credit, Cicero had a lively sense of tradition and of himself as its transmitter and advocate. His auguring excluded fantasy about realising literary constructs in a self-destructing Senate. Neither illusion nor hope ran that far. Unlike Plato or Pol Pot, Cicero wanted no utopian anti-State *des sauvages nobles* as a testing (killing) ground. In 44-43, people of learning read Plato—and savages were making a Thrasymachean abattoir heedless, like the Πολιτεία, of human cost. Plato *gravissimus* can mean crushingly burdensome. Πολιτεία and Νόμοι prefigure Cicero's writing two separate books under the same titles, nothing more. DRP and DL are not copies of Plato, nor written consecutively—nor were Plato's eponymous books. Hopes for Plato's literary fame are competition, not allegiance.

Mo Ti: the Wowser Utopia

This summary of Mo Ti (470-391) follows Mei 1929. "If one does not preserve the learned in a state he will be injuring the state" (1,1) Why, if all know all? All must be loved equally since all "partake of the nature of Heaven" (1,6). The virtuous must rule (2,8). No reward from Heaven unless spirits and ghosts are sedulously cultivated (5,19); augury is also a reliable predictor. Cheap accoutrements and emotional chaos make a good funeral:

What are the rules to be observed by the mourner? He must weep without restraint and sound as if he were choking....His tears and snot are not to be wiped away....Three feet in size shall be big enough for the mound. There shall be no extended mourning after burial, but speedy return to work.

Heaven is superior to the monarch (7,26). All music is wrong (8,32). There is no critical principle like Cicero's "keep the best"; the primal legendary monarchs exhaust potentiality (9,37). In contrast, K'üing proudly chooses "I follow Chou!" (LY 3,14)—not Shang, not Hsià, not Ch'un Ch'iu 春秋 fragmentation—for the sake of jén and yi. Mo's undifferentiated love is self-annihilating and his hatred of K'üing (9,39) a "caricature". "When love becomes truly universal and hate is no more, logically love will vanish in its own universality" (Mei 1934:203,105). Love without a real object cannot be pietas, which is always relational and tangible. "If you do not know life", etc. Mo's uniformitarianism hated K'üing's "regard for individuality" (Mei 1934:125; Jenner in Kelly and Reid 87), so consistent with Roman dignitas, while Mohist or Platonic utopianism is not.

Tzū-ssu aimed the last part of the Tà Hsiüeh at Mo (Hughes 71). Mèng thought him a plague (Ivanhoe 2002:31) bereft of authentic morality. Mohism denies prince and father by erasing lǐ, says Mèng (3b9). Hsün defends the Tào of culture. "The misfortune truly common to the whole world is...social anarchy....In my view it is Mozi who with his 'Condemnation of Music' produces social anarchy throughout the world and with his 'Moderation in Expenditures' causes poverty throughout the world" (10,8; Knoblock). K'üing insisted on personal morality and family solidarity, and "he

condemned Mo-tzu, who first conceived of the state as an impersonal machine; Shang Yang, who believed that the people exist for the sake of the state; and Chuang-tzu, who rejected all ethical norms and morality.” (Rubin in Eber 29, 142). Mohist destruction of the family, universal militarisation, the State as technology of sameness, hatred of arts (yüeh), and “мир, земля, хлеб” replace humanity with sloganeering and the gulag (Rubin 43-51).

Universal love is easy if everyone is one’s clone, a foolish *reductio ad absurdum* of altruism like drowning to retrieve a stranger’s hat from the ocean (Song). The Chū Tzu, head of the Mohist paramilitary religious order, had the right to execute errant cultists (Creel 1949:184; Fung 1948:50). Cicero satirised Pythagoreans’ bizarre servility: “respondere solitos ‘ipse dixit’, ipse autem erat Pythagoras; tantum opinio praeiudicata poterat, ut etiam *sine ratione* valeret auctoritas” (DND 1,10). *Opinio praeiudicata* is antithetical to Roman faith and Neo-Academicism. Ancient model (an anti-fā) plus revolution equalled hell in a modern Mohist parricidal anti-patria:

Language was stripped bare of incorrect allusions. Instead of ‘I’, people had to say ‘we’. A child called its parents ‘uncle and aunt’ and other grownups, ‘mother’ or ‘father’. Every relationship became collective; words distinguishing the individual were suppressed....Love, sorrow, anger, passion and all the other feelings that make up everyday life were seen as emanations of individualism to be banished for the collective good. In some parts of the country, it was forbidden even to laugh or sing. (Short 324, 328).

Family: antidote to utopianism

Like Plato, “liberal anthropology assumes...individual agents are disembodied, degendered and defamilied” (O’Neill 7). Mèng says wryly (1b5 Dobson): “If you, Sir, like your women, then see to it that the common people are so placed as to do so too. The difficulty does not lie in a fondness for women”. Family pietas/hsiào is unassailable for Mèng (2b7, 3a2). Mo Ti’s anti-familism (Schwartz 1985:148) is absent in Cicero and K’üng. Graded love shows faith in family solidarity, not dislike of ἀγάπη. St Augustine echoes graded love, which is action- and rite-centred, not emotion-centred (DDC 1:61, Green). “All people should be loved equally. But you cannot *do* good to all people equally, so you should take particular thought for those who, as if by lot, happen to be particularly close to you in terms of place, time, or any other circumstances”.

Honestum/yi (moral goodness) spreads from family to clan to neighbours to State to the human race (Van Zyl 1986:53). “Qui autem non defendit nec obstitit, si potest, iniuriae, tam est in vitio quam si parentes aut amicos aut patriam deserat” (DO 1,23). Cicero, like K’üng, never sets family against State, while refusing to rat out dissidents. Family religious integrity earths *res publica*’s moral integrity. “Prima societas in ipso coniugio est, proxima in liberis, deinde una domus, communia omnia; id autem est principium urbis et quasi *seminarium rei publicae*”. What is impermissible—in light of Clodius, Caesar, Antony, and Augustus—is setting a family in supremacy over the State,

subordinating *salus populi* to the ambitions of one's *gens/tsú*. Graded love and *jén* set limits. "In ipsa autem communitate sunt gradus officiorum... ut prima dis immortalibus, secunda patriae, tertia parentibus, deinceps gradatim reliquis debeantur" (DO 1,54 and 1,160; cf. Ivanhoe 2002:1) Theologically proper families ready a person for public service, not for nepotism masked as revolution. "Nec Domo dominus, sed domino domus honestanda est" (DO 1,139).

Cicero wants young Marcus to imitate family *fā* as he enters public life: "licet enim mihi, M. fili, apud te gloriari, ad quem et hereditas huius gloriae et factorum imitatio pertinet" (DO 1,78). Good citizenship begins with filiality at home (Cetshwayo 79, Clements 75). *Good* citizenship is not blind submission to despotism.

Far from using filial piety to bolster government power, Confucius and Mencius employ it...advocate limitations on political authority and to place responsibilities on the ruler...for the founders of Confucianism, filial piety is so basic to humanity that one's ability to fulfill this obligation is the equivalent to...a natural right. (Schreker 401).

T'ien observes filiality and its ripple effect (Hsiào Ching 16; Chên). Weakening family solidarity "cleared the way for placing the individual in bondage to state, party, or other...organizations" (Chow in Wright 1960:312).

14. *Zaleucus* was lawgiver-king of the Lokroi, Greek tribes in the Abruzzo (Aalders 95-96). *Charondas* was a disciple of Thales and lawgiver at Catana (Catania). (Cf. ad Att. 6,1,8; DL 1,57. Hamza 1987:73). *Zaleucus* is earlier, *Charondas* more elegant. *Zaleucus* set up austere, uniform civic rites (this may be Stoic retrojection by Cicero's domestic philosopher Diodorus) to foster *concordia ordinum*. *Charondas* emphasised family law (Mühl 37,43). *Concordia ordinum* begins at home. "Jén...teaches one to be a good ruler, a good citizen, a good parent, a good child, a good husband, a good wife and a good neighbor; it advocates filial devotion and fraternity, justice and fairness, kindness and mutual affection" (Chai and Chai 1961:36). Middle-class *Charondas*' laws were used by other cities in Magna Graecia (Frisch 1949:116; Hamza 1987:73). Beloch thought them theriomorphic gods. A lawgiver is neither *shén* nor werewolf. Perhaps K'üng's supposed distaste for statute law was a traditionalist's unease with innovation, not a timeless rejection.

The Italiotes wrote *non studii et delectationis* (like Plato) *sed rei publicae causa*, like Cicero. They were also *novi homines*, as were most Greek and Italiotes cities' lawgivers (Gagarin 137). On Cicero's Italianness cf. Hammond 109 and Høeg 20. As Clodius personified aristocracy's utter ruin, *our* *novus homo* is a new Numa. Quintus tells him to declare boldly "Novus sum, consulatum peto, Roma est!" (CP 2). *Fiat iustitia ruant piscinarii!* K'üng left Lǔ in protest at decadence trumping duty (Goldin in Li 2000:145). Cicero and Mèng's statesman "is not the illiterate nobleman...whose

luxurious life drains the food and blood of his subjects...[a] perverted knighthood” (Verwilghen 73). Sapiencia links private pursuit and public responsibility. Writing for pleasure and writing for public use are the same, when done by statesmen. *Plato* is *imitatus* only in stagecraft, as Cicero maintains independence (Lehmann 4), so he admits *adsentior Platoni* (15). Citizen Plato has no *vi ac minis* to *persuadere aliquid*. Magistrate-priest Cicero, holding imperium, chooses dialogue. K’üing accepts force but privileges example. “The world is out of order (tianxia wudao)...a moral regeneration is required” beyond *vi ac minis* (Chang H. in Cohen and Goldman 21). Reducing natural Law to *vi ac minis* assaults primary *recta ratio* (Cf. DRP 3,33). “The processes of [Zeus’] thought are definitive of what it is rational to think (that is, correct by the standards of reason itself)”. He is ‘ο ορθός λόγος, ‘ο νόμος ‘ο κοινός, and καθηγεμόνι τούτω της τῶν ὄντων διοικήσεως ὄντι (Diog. Laer. 7,88). Our rationality puts us under this Law, requiring us to think as Jupiter thinks (Collins 225, 228, 232). Only reason adjudicates between the passions, and “reason...is a passion in itself” (Horton 386), and, for Cicero, a Passion. The Hymn of Kleantes is eloquent:

Höchster Gott, Allmächtiger! Unter vielen Namen angerufen wirst du, Zeus.
Du herrschest über die Natur und lenkst das Weltall nach dem Gesetz.
Gib uns Vernunft und Rechtssinn, durch die du regierest,
Wenn du uns also ehrst, wollen auch wir dich wieder verehren,
Sieh dein Lob, wie es zukommt sterblichen Menschen.
Kein höheres Vorrecht gibt es bei Göttern und Menschen
Als das Weltgesetz, das all verbindet, zu preisen. (Flückiger 213).

Clearing away *nullas leges*’ weeds need not start a forest fire. Cicero’s limited Hellenism precludes cheap nationalism. Zaleucus, Charondas, and his republican scorn of the Tarquinii preclude chauvinism. *Mens divina*, *recta ratio*, or *universa lex* are not Roman toys. Roman institutions (usually) reflect them, but they can be judged by them. Antiquity’s value lay *only* in its adherence to the Tào, (Mèng 7a9). Jupiter/T’ien grants imperium to a *sapiens* legist, in power or no.

15. *Timaeus* is the Taorminese historian and legist 352-259 (De Or. 2,58; DND 2,69, DRP 3,43; Br. 16,63; cf. Klotz 1:660; Labrousse 260). Timaeus denies, but Theophrastus and Locrians affirm, with Cicero, that Zaleucus is real (Fleck 76). Mühl’s research confirms it (1-4). Quintus’ question about *Zaleucum istum* clears a new way for Cicero to fend off criticism and to secure his project from quibbles over historical fact (Koschaker 160). He refracts argument like a diamond refracting light. He appeals to the post-Aristotelian polymath *Theophrastus*, calling him *haud deterior* but only *mea quidem sententia*. *Haud deterior* either avoids bluntness or drips with sarcasm. *Multi* (who?) rate Theophrastus *melioem* than Timaeus, thus elevating Cicero’s *sententia*. In light of Cicero’s concern with right naming, *nominare* implies that the popular view of Theophrastus is right. Zaleucus’ *ipsius cives*, the Locrians *nostris clientes* say he existed. Cicero’s *fides* underwrites the

Locrians' credibility—or credulity. *Fides* is deity, and patron Cicero her servant. “Ὁμοσεν κύριος, καὶ οὐ μεταμελήθησεται· σὺ ἱερεὺς εἰς τὸν αἰῶνα” (Heb. 7,21). Cicero quotes Ennius: “Nulla sancta societas / Nec fides regni est” (DO 1,26) and again, “O Fides alma apta pinnis et ius iurandum Iovis! Qui ius igitur iurandum violat, is Fidem violat” (DO 1,26; 3,104). Breaking one's oath rapes the goddess. A patron's breach of trust was sacrilege in the XII Tables (Maschkin 1953:116). Cicero's concern for the Locrians was real. “His patriotism was Roman, but it was Roman in an Italian sense” (Hammond 99). Divine-human commonwealth rested upon it. K'üng said “Nimm dir Treue und Wahrheit zum obersten Gesetz” (LY 9,24; Stange). *Fides* (chung 忠) is the most basic civic virtue (Laser 29, Roetz 1992:116; cf Wu in Moore 215: trustee of Heaven implies a sentient trustor). Zaleucus is *fā sive fuit sive non fuit*. His pattern matters, but his person is *nihil ad rem*. Ambiguously, Cicero cuts the discussion short with *loquimur quod traditum est*. Tradition is warrant for truthfulness *even if* Zaleucus is legend like the Yellow Emperor or Cecrops.

15. *A principio persuasum civibus* in this tiny contio. *Prooemium legis* calls gods and citizen-dialogists to a *locus et sermo familiaris* (18). Populus Romanus must “overhear” vicariously in Quintus and Atticus, because DL is *civic* theology and law is kerygmatic, not neoteric—or esoteric. Theological belief for the sake of eventual praxis in res publica, like K'üng's demand for exemplarism by the wáng and his ministers, was not hobbyism but a prophetic call to ethical rule (cf. Luther's Landsvater or paterpoliticus; Witte 8). Unpolitical life is ἀνόσιος (Euripides, Hercules furens 1301; cf. Hirschberger 237)—but unlike the Greek, the Roman polity is *limited*. Cicero had Old Stoic faith in “a unidade do género humano e a igualdade essencial dos homens, com o consequente ideal de fraternidade” (Truyol Serra 291), sharply different from Plato and Aristotle's belief in slaves' and women's subhumanity. Every normal muntu owns *ratio recta*, particeps mentis divinae, like Mèng's sprouts or Hsún's potential παιδεία, duty-bound to be informed and active. (Cf. Ezzati 95 citing Hadith: “Every child is born in a state of fitrah”.) Without stakeholders in constitutional process and institutions, there is no reason for right reason, no lawful talk of law. Without gods, this is whistling in the graveyard. Here is more religious fervour than Roman religion is often credited. The contio is Cicero's extended family hearing *sermo familiaris* from paterfamilias and parens patriae. Cicero says *dominos... omnium rerum ac moderatores deos*, nature and State alike. They are not penned within their cults (shūkyōism), trapped in human emotions (pietism) or sunk in Epicurean stupor. “If one cannot govern the country by observing ritual...what's the use of ritual?” (LY 4,13 Ryckmans). A *dominus*, is a subduer (cf. δαμάω) or owner. A *moderator* [Volscian medix, also meaning magistrate] maintains harmony (modus), which K'üng appreciated. The gods own and operate the universe, living in the flat above the shop, playing the cosmic accordion. The distinction between *dominus* and *moderator* echoes that

between *iudicio ac numine*. *Iudicium* is case by case, and *numen*, from *nuo*, to *nod* one's favour, constant. "Di immortales suo numine atque auxilio sua templa atque urbis tecta defendunt" (In Catil. 2:13:29). The nominal robe of *iudicium* cloaks the numinal power of Cicero's (*pace* F. Adler) ethical polytheism; if it is in fact a monotheism with a polycultic expression, all the more so, proto-Christian or not (Bacci 169, Messina 7, Yeh 5 *et passim* wishes K'üing into R. Niebuhr or P. Tillich!).

15. *Mens divina*—always moral, like T'ien, sees *castimonia* (or its opposite) in human hearts. Moral judgement is Juppiter's *imperium*. T'ien's gaze sees character, *qualis quisque sit*, not just action or talk (cf. LY 3,26 and 4,13; Sherley-Price 63, Ross 216). *Persuasum civibus* of moral accountability to divine *auctoritas* above that of the State. Civic and personal *fama* stand or fall in the sight of God. Human beings are answerable to divinely-laid charges, not just for breaking positive law. Conscience is the judicial enquiry of Juppiter's *ratio recta*: one must answer for *quid in se admittat*. One who has *aliquid in se admittere* has it regardless of court verdicts, to which divine superintendence of right and wrong is not captive. God sends the agenbite of inwit and cannot be gainsaid. Distinguishing *malus* and *reus* opposes the positivist moral windfall by which any wrongdoing escaping legal punishment becomes right, that answerability exists only when the legal system wins a sort of game and imposes *hsing*, or penal law, not to mention that this distinction defends the integrity of victims of State terror. Cicero's *leges imperfectae* echo K'üing's dislike of *hsing* (but *not* of *fā* tout court). God's moral presence shines through the *sapiens*, the upright *optimas/chün-tzū*, and the righteous magistrate. Fear of punishment is no motivation to faith in DL (Ducos 1979:156). Compare K'üing's "where gentlemen think only of punishments. the commoners think only of exemptions" (LY 4,11 Waley; cf. 2,3). Like a Jú monarch, *res publica* holds power *only ministerially*. Royal, magistral, civic, familial, and inner persons are answerable to God and to those "broad fundamental principles...[an] unconscious sense of fairness, the disregard of which results in a feeling of outrage" (Dickinson 301). Cf. Mêng 2a6. Any normal *muntu* acts *sua sponte*, not because of the child's winsomeness—or the State's loveliness.

15. *Qua mente, qua pietate colat religiones* gives the lie to the Hellenocentric myth of Roman religion as a merely mechanistic *do ut des* affair. (Cf. Cowell 181.)

The great originality of this religion with its very primitive conceptions lies in the essentially rational character of its organization. If the presence of so many gods seems never to have disturbed the Roman, it is because he had adopted towards them, at an early date and once for all, the same attitude as towards men—that of law. *Jus divinum*, covering *fas* and *nefas*, what is allowed or forbidden by religion, was as strictly regulated as *jus civile*, and on the same principle—to every one his due. (Grenier 97).

“Ut tibi jus est” “as is thy due” goes with each offering. Crises evoke deep reactions, infusing formal rites with great intensity. Sacrifices must be made with “virile sentiments” (Soothill 1939:32). Terror of the gods is as bad as blasé opus operatum. “Horum enim sententiae omnium non modo superstitionem tollunt in qua inest timor inanis deorum, sed etiam religionem quae deorum cultu pio continetur” (DND 1,117). “Sacrifice implies presence. One should sacrifice to the gods as if they were present” (LY 3,12 Ryckmans). One must be *caste* (LY 15.17; Mèng 5a5, 5a6, 6b15, 4b19). Mechanistic rite falls short of the standard for action pleasing to the gods. “Devotion is the first requisite. Mere muttering of a few formulas with the lips, while the heart does not pulsate with devotional fervour, is no prayer” (Dhalla 39). Speaking of shén—not T’ien!—Mèng threatens: “When an august lord neglects the gods of soil and grain, he should be replaced. When the sacrificial animals are perfect, the vessels of grain pure, the sacrifices observed in their proper seasons, and still drought and flood plague the land, then the gods of soil and grain should be replaced” (7b14; Hinton). Do ut des works both ways.

Caste and “keep your distance”

A cliens is not a patronus. Craven importunity degrades the cliens, and pushy overfamiliarity insults the patronus, human or divine. “*Ngai ndegiagiagwo*, literally, ‘Ngai must never be pestered’” (Kenyatta 238). Shang worship wavered between superstitio as terror (Zhao in Wang 55) and superstitio as possession.

All [Shang] ritual pointed [to] a union that was shamanic and ecstatic....There is a palpable difference....Where the Shang kings led the people in the service of ‘ghosts and spirits’, the Chou rulers made use of ritual and music to educate the people, keeping a ‘respectful distance’ from spirits and ghosts. (Ching 1993:49)

Caution! “God on high is very changeable, do not bring yourself too near to him” (Shi 224 Karlgren). Caprice by T’ien and shamanism by humans are anathema to K’üng, as Greek storybook “quo numine laeso” (Aeneid 1,1) is nonsense to Cicero, whose creed ridicules Greek myth (Tusc. 1,26). “Keep away from them” (LY 6,22), means keep a respectful distance, not indifferentism—and emphatically not shamanism (Li Chi 2:342 Legge; Bilsky 1:197; Hsiao 1979:181; Creel 1949:115). “Keep your distance” shows pious ἐπιτροχῆ, avoidance of a too-cataphatic theology. “As soon as the *aql* tries to understand the very Essence of God, it oversteps its boundaries” (Tabātabā‘i-Chittick-Nasr 56; Ezzati 220). Civic theology does not explore the essence of Deity; *mens divina*, al-‘aql al-ilahi *يحل إلى لقلع*, points to statecraft, not speculation or gnosis. Rite lifts insight to praxis. A mal geste is inappropriate toward iNkosi yaphezulu or iNkosi yezulu.

One must not point...‘Not even my child points at me. How can we point at the greatest one?’ If reference is made to the sky, one can indicate it by lifting one’s eyes

or by speaking indirectly of it. If circumstances force one to do so, one points at the sky with the right hand fist, the thumb enclosed in the fingers. (Berglund 32)

“Distance is a proper factor in the relationship between human beings and gods: indeed, not to respect this distance would itself be a sign of blasphemy” (Louden in Van Norden 80; Creel and Waley cited in Needham and Wang 2:12). This is not agnosticism, but punctilio respecting the divine patronus’ dignitas. (Cf. Exodus 3,5-6.) We idolise celebrities, but lèse-majesté strikes us as odd. We must not essentialise our cultural quirks.

Performing religio/li is microcosmic. The gods who bestow the universe upon us receive devotion bestowed by us. Mens gives life and character to actions which enhance (with goodness and true devotion) or damage (by bad motive or heedless performance of ritual) the divine-human nexus. Cicero’s mouthpiece-priest Cotta digs in his heels as fidei defensor: “Ego vero eas defendam semper semperque defendi, nec me ex ea opinione quam a maioribus accepi de cultu deorum immortalium ullius umquam oratio aut docti aut indocti movebit” (DND 3,5). DND is not the Humean covert attack on faith many suppose, but a true confession of genuine belief via “Cotta” (Pease 1955:35,54). Cicero is a sturdy theological confessor. Without pietas, hubris displaces state, ancestors, family authority, and the gods themselves, claiming to rise to their station. Pietas admits that commercium divine and (human) bestower of benefit in rite and offering and (divine) recipient of the same, does not lift the bestower of ritual benefit to the level of the recipient. The ritual agent is cliens, not patronus. Religiones show homage to a superior, not favour to an inferior. Without pietas, li lacks tue god-directedness. (Cf. Mèng 3b9.) It declines from thoughtful to unthinking habit, from civic theology to superstitio’s self-manipulation, through reflex performance to nonobservance to oblivion.

15. *Colere* means tilling the soil or caring for crops, applied to the gods, *colere religiones* is to tend their shrines and to worship them, making a mutual *cultus* between gods and worshippers. “Deos ab hominibus colendos dicas” and “deos et venerari et colere debemus” (DND 1.115 and 2.271). How one reckons with God in everyday rite shows whether that person is open or closed to *ratio recta*, whether they kept or lost the childlike heart (Mèng 4B12), childlike meaning filial, not childish.

15. The gods notice what citizens do, noting the whole person as reverent or irreverent, *intueri piorumque et impiorum habere rationem*. Religiousness is not only outwardly proper maintenance of rite, nor is it only divine regard of inward attitude alone. Mens, pietas, ratio, and rite combine to make human beings *pīi* or *pīae*. Their absence shows humans to be *impīi* or *impīae*. Blind rite without faith is no more pious than omitting rite or pernicious Epicureanism. To be *pīus* [Volscian

pihos] or *impius* is republican: in rite, personal character's public display is good or bad model towards *salus populi*. *Qualis quisque sit* aligns public and private behaviour. Cicero asserts religion's civic usefulness, but utility is insufficient warrant; cp. atheist C. Maurras' Action Française, or atheist Caesar as pontifex maximus. Devout priest Cicero's bitter polemic is best delineated by H. Strasburger. DL2 omits the "top" of Roman state religion to preclude Caesarian divinisation, or hijacking by warlord-consul even as both consul and dictator's best practice are spelled out in DL3. Traditionally, consuls and dictators had no major religious role (Tellegen-Couperus 40). Caesarist political religion's assault upon tradition—and Antony's abolition in 44 of the constitutional dictatorship—makes DL2's "silence" an act of resistance. DL2 seizes pontifical turf but refuses to speak of Caesar's vitiation of the maximate. The echo of DO confirms DL's late date. Liberius (352-366) was the first bishop of Rome called "pontifex maximus", but pontifex also designated lesser bishops as paganism lost its legal standing (Kajanto 45, Bouché-Leclercq 424).

16. Religious propriety *his enim rebus* makes civic propriety. Civic *mentes* must be *imbutae* with *mos* and led by senatorial *Mens*. The Senate's meeting-house, the Curia, is "templum sanctitatis, amplitudinis, mentis, consilii publici" (Pro Milone 32,90). The cult of *Mens* began inauspiciously, after the awful defeat at Lake Trasimene (217 B.C.) was attributed to neglect of omens and the stupidity of the Roman general Flaminius. The Senate panicked. To bring it to its right mind

a temple was vowed to *Mens* by the duumvir T. Otacilius Crassus. Henceforth during the republican period the benevolent dea *Mens* was especially invoked when Rome was under dire threat of imminent barbarian invasion, as, for example, at the time of the invasion of Cimbri and Teutoni in 107 B.C. (Kokole 232).

Cicero has a catalogue raisonné.

Sequitur ut eadem est in iis [diis] quae humano in genere ratio, eadem veritas utrobique sit eademque lex, quae est recti praeceptio pravique depulsio. Ex quo intellegitur prudentiam quoque et mentem a deis ad hominem pervenisse; ob eam causam maiorum institutis *Mens*, *Fides*, *Virtus*, *Concordia* consecratae et publice dedicatae sunt, quae cui convenit penes deos esse negare cum earum augusta et sancta simulacra veneremur?" (DND 2,79)

Concordia and rites are not magic. "Master You said: 'In the practice of the rites harmony is regarded as the most valuable thing, and in the ways of the ancient kings this is regarded as the most beautiful thing....But sometimes it does not work....'" (LY 1,12 Dawson). Té 德 is no longer "power-fraught" mana but ethical, "specifically Heaven-sent...moral charisma" (Dobson xv, Ivanhoe 2000:ix and 2002:71). *Virtus* matures from machismo to virtue.

Cicero was *imbutus* with tradition through *tirocinium fori*. (Cf. Trunsky 339.) Minds steeped in rite and ethics (*qualis quisque* through *habere rationem*), will not avoid faith and responsibility.

Uniting *mens*, *pietas*, and *religiones* was conservative then, revolutionary now. Modernity is no norm. “Die säkulare Lebensform ist ein Spätprodukt und eine Ausnahmegestalt” (Pannenberg 24; cf. Schebesta 15, Bernard-Maitre 20). Privileging it is “the amusing simplicity of some reactionary” (W. Schmidt 1935:5) blending dialectic and imperialism. In Communist Chinese criticism,

to call a tradition a religion is...to put it lower than philosophy, but higher than ‘superstition’....Scholars (Fung Yulan and Kuang Yaming) who have more respect for Confucianism...see it as a philosophy, while others who have less respect for it (especially Ren Jiyu) prefer to call it a religion

against which L. Vandermeersch defended K’ung! (Ching 1993:52,83). Nineteenth century philology which saw Cicero as a fount of “Humanism” *versus* holiness, used the praise to damn him as theologian, calling him superficial and incompetent because no one person can do much more than one thing (Beukers viii *contra* Van der Bruwaene), since the hedgehog *must* devour the fox.

16. *Haud sane abhorrebunt* shows that every citizen is a stakeholder in civic formation of the young. By evildoing and sleek, useless consciences, citizens denying divine oversight appal gods and ancestors. Persons rejecting riteful civic duty and tradition cannot stand coram Deo. To neglect rite makes one an ἰδιώτης. *Ab utili aut a vera sententia* is not deracinated pragmatism in Cicero. He knows neither church nor civitas Dei: civic life is the holy place. *Aut* distinguishes and affirms the usefulness and the truth of religion. If it were not useful, although it *is* useful, it would still be true. *Tam stulte adrogantem?* אָמַר נָבֵל בְּלִבּוֹ, אֵין אֶל הַיָּם: (Ps. 13,1). Humans are not sole proprietors of reason. Cosmic order dwarfs our mastery. Angst is arrogance.

16. Our mind is not the measure of all things. *Vix* vexes dogmatism and unbelief. *Summa ratio ingenii*, lacking sensitive ἐποχή will misread or miss *mens divina* in nature. Recognising our reason’s limits is not corrosive Humean scepticism or “Pyrrhonis explosa sententia” (DO 1,6), but wide-awake, warm-hearted Antiochan humility. A toga is not a kilt. Broadmindedness, not fear of error (cf Augustine, *Contra Acad.* 2,5,11), drives “sceptic” Cicero to the rational liberty of faith. Chan W. (1954c:83) rejects anachronising K’ung, who “was not really a sceptic but...insisted on religion serving life instead [of] life serving religion.” Cicero never thought ἐποχή was infallible, nor did he use a high-contrast Manichaean lens. “Constructive scepticism” distinguishes Cicero from Hume and affirms God-given human reason’s limited but real abilities. “Non enim sumus ii quibus nihil verum esse videatur” (DND 1,12). Ennui and despair are equally credulous superstitio, against which Cicero sets “una gnoseologia antidialectica, antidogmatica, antidealistica, antisolipsistica: è realistica” (Righi 9). In LY 2,4, “doubt” (huò 或) means “maybe” or “I have my doubts” not existentialist Angst or Humean/Taoist nihilism. Leaving one’s doubts behind is one’s

resolve to act within civic and religious/ritual reality, not a total certainty. K'üing "war von den Zweifeln geheilt" (Müller 37-39, 44).

16. *Summa ingenii ratione* reverses to *nulla ratione*. Reason in the human microcosm fosters belief in Reason governing nature's macrocosm. This humanises the argument from design. A concept of a universe originally ordered, with or without a belief in divine creation-act, does not require belief in a *maintained* order in natural processes. A clockwork universe could run down, run amok, or melt down in Stoic conflagratio mundi. Conversely, belief in a god of supreme order, reason and intellect need not include a theology of creation (it does not in Cicero). K'üing does not see T'ien as Creator on Biblical or Qur'anic lines; that does not erase his essential monotheism.

A. Heschel's phrase "man is not alone" applies to Cicero's view of human ability and activity. We can—and occasionally do—reason and enquire. We can—and often do—believe and hope. One's purposeful acts can be congruent with the rational divine pattern. Legislatures or lawmakers (real or literary) develop, discern, or impose order. Whose shall it be? Real Senates differ from utopian constructs by recurrent failure and fragile achievement; fail-safe is unknown in Cicero's doomed triumphalism and K'üing's social nostalgia. Congruence forsakes wú-wei, Taiosm's interiorised amorality. Congruence is found in the difficult labour of human reason devoted to the holy service of society and State. We are not minds alone in an ordered universe. Our *societas* ought not be a solitary disorder in the universe. "Le monde n'est pas l'œuvre du hasard!" (Ducos 1990:270). If man is merely a creature of nature he has lost track of himself in the world (Wegner 1931:1:40).

16. *Vicissitudo* is regular alternating change, not our "vicissitudes". *Ordines*, *vicissitudines*, and *temperatio* show nature's harmonious order. Political terms (*ordo*, *temperatio*) show Cicero's faith in civic/natural theological congruence. As *astorum ordines* move in concordia in the blue vault, and "in Reason's ear they all rejoice" (J. Addison) with the loudly silent voice of T'ien, so concordia ordinum makes a sacrally attuned State. This is no slogan. "Concordia ordinum...between the ordo senatorius and the equites would not only serve the best interests of Rome; it could also solve the personal problem of our homo novus from Arpinum" (Yavetz in Clark and Rajak 179). Unless *gignuntur nobis ad fruendum*, the body perishes. Divine order makes us *gratus*. Gratitude and graciousness nourish political behaviour and personal survival when the patronus-cliens bond is guarded by Fides. The person in whom the contemplation of nature stirs no reverent gratitude is scarcely *hominem numerari*. An ingrate lacking politesse or obligation digs up his sprouts/tuan of inborn goodness (Mêng) or trainability to the good (Hsün). Savagery is simple. Sacral-political life is a complex play of relationships, power, benefaction and gratitude upon

concord's foundation firmed by mutual obligation. A wild state or a wild State (Roman warlordism, Ch'in empire) is sin against natural order, not its recovery. Lawless and deeply unjust régimes are "States" only by abusio or κατάχρησις (Benardete 308). Despotism perverts the res publica into a res privata. Such pseudo-States are "idiotic" domains of a despot's self-worship. An *ingratus* is a despot, himself his only slave. Heedless of concordia in ordines of nature or State, ignorant of the Source of good, he is a muntu only by unreciprocated courtesy, a monster (mobster?) on the fã of Plato's Thrasymachus, K'üing's Huan Tui, or Cicero's Verres, Catilina, Clodius, or Antony. Despotic "State" and despotic "self" are twin freaks. In our unhappy post-modern constellation of potency and whim, Cicero's near-truism that rational, thinking beings *praestent* things which are *rationis expertia* has great force. A human being living below the life of reason is a quod, not a qui or quae: an object, a tool, a projectile. "The perfect gentleman is no robot" (LY 2,12 Ware). Cicero tells Quintus "Sit anulus tuus non ut vas aliquod sed tamquam ipse tu, non minister alienae voluntatis, sed testis tuae" (Ad Q. Fr. 1,1,13). Keeping our status as rational beings requires struggle: one's own opportunity and social obligation to en-rite and legislate our own republican T'ien ming in "cum Deo rationis societas" (Buechner 235). Neglect is impietas/wuhsiào to gods and human superiors, without ubuntu/humanitas/jén, fellow-feeling toward the human race.

16. *Nefasque sit* to refuse Reason, destroying citizenship in Law's realm and filial concord with the Mind of God. Overarching rationality extends "downward" to be reflected in the other assertions we make (or in ἐποχή delimit). Since *rationem inesse* the external world, reason must shape civic theology. If the reason which inheres in nature exhibits itself *nobis ad fruendum*; so should our assertions about it. Human sacrifice is a classic example of *nefas*. Senate forbade it in 97, but Caesar sacrificed two rebel soldiers in 46, and may have been human sacrifice in honour of Catilina (Laurand 470; Siber 117). Rejection of human sacrifice is central to K'üing's boast "I follow Chou!"—and his denunciation of burying human statues with kings—the artifice could lead to the real thing. This moral revulsion was enacted into Zulu law by King Cetshwayo (Krige 172). Cicero's views are *utilis* without Cynicism or Deweyanism. A rational divine Mind ordering and sustaining nature becomes *utilis* for Rome by inciting citizens to emulation in rite and politics. Utility is not utilitarianism. It *follows* from faith that gods work in human affairs and minds (Fontanella 1:503). She affirms Cicero's honesty: "utilis sententia presuppone vera sententia". Grasping self-sacrifice's utilitas, to be realised in the world to come, requires faith, not analysis. The spareness of Jü-chiào (not Cicero's) trust in immortality makes the faith-risk of political engagement in violent times even greater. Cicero's faith is that truth is good for us. *Quis neget cum intellegat?* Quantity and quality alternate in the *quam multa* benefits: oaths, religious aspect of

treaties, divine punishment as deterrent to crime, holiness of civic assemblies with the gods in attendance. He brings the gods directly into human *societas* as arbiters or as audience.

16. *Societas civium* is where we enact our full humanity, provided Law is manifest in human laws fostering individual dignity and *salus populi*. We become *socii* to one another and to the gods, forge transcendent *inter ipsos societas coniunctioque* (1,28), enact rights and obligations, and (learn to) exist in rited context and not as isolates. We are born to this: “[nos] natos esse ad societatem communitatemque generis humani”(De Fin. 4,4). We realise our lawful nature, civic and civilised, within the web of *pietas/hsiào* and *religiones/li*.

Itaque, cum patres rerum potirentur, numquam constitisse civitatis statum; multo iam id in regnis minus, quorum, ut ait Ennius, ‘nulla sancta societas nec fides est.’ Quare cum lex sit civilis societatis vinculum, ius autem legis aequale, quo iure societas civium teneri potest, cum par non sit condicio civium? (DRP 1,49).

Echoing Ennius shows high seriousness and old-fashioned Romanness. *Societas* is *sancta*: where traditioned holiness happens. Without *societas* there is no rite, no line between sacred and profane. The human being is “incurvatus in se” (M. Luther). Nothing excels, nothing beckons, nothing unites. The word civilised, purged of racialism unknown to Cicero or K’üng (Mèng is not so pure) is wanted here in its literal sense. A human aggregate becomes a civilised society by creating and enshrining distinctions in the sorting mechanisms of rite and law. The claims of rite and reason move the *ιδιώτης* from stimulus and response to sacrality, reason, and purpose. Real laws change human aggregates from packs or herds into States. In *societas* we approach the human other and through heaven-herders the divine Other. If *societas civium* is *sancta*, then citizen and citizen, citizen and collectivities, and citizens and State are linked to divine Mind or Law by lawful rite. All becomes All-under Heaven, a series of obligatory wholes, of holy connections to the sacred. Rite itself must be ethicalised. Shu 5,5 shows “the divine sanction of the political order and the grave responsibility of the ruler to fulfill his moral duties to Heaven and to the people....[Chou thought’s] greatest contribution lies in its rationalizing religious beliefs and transforming purely ritual practices into a universal system of ethics” (Chai and Chai 24,27). K’üng lifted *li* from “mere ritual” to ethical construct. Without *li* virtues turn to vices: “Without ritual, courtesy is tiresome...prudence is timid...bravery is quarrelsome...frankness is hurtful” (LY 8,2 Ryckmans).

Wherever two or three cives are gathered together in its name, there is holy Law in the midst of them. The State is writ small in the Tullian contio, *prooemium* to true lawmaking and anodyne against political despair. Cicero thunders a real-life defence of his topics in the DL:

Nos deorum immortalium templa, nos muros, nos domicilia sedesque populi Romani, aras, focus, sepulchra maiorum, nos leges, iudicia, libertatem, coniuges, liberos, patriam defendimus...[a] parricidis....Nos libertatem nostris militibus, leges, iura,

iudicium, imperium orbis terrae, dignitatem, pacem, otium pollicemur! (Phil. 8, 8-9)

“Does Heaven speak?” is faithful; “hath God said?” is cynic. Mandate devolves by dialogue, rite and honour to the *res publica* in monarchical China or republican Rome: where civic theology is, there is *res publica*. *Consensio bonorum omnium* in the little republic of Cicero and his friends has promise for the great, “real” republics. True speech, *fare*, reflects *fas*. Does Heaven speak? The rite teacher and the priestly magistrate speak in Its name. Human beings appeal to *diis immortalibus interpositis*. (This is not Epicurean, contra Dyck 285). The gods are ritual/legal arbiters and witnesses. Where they serve is sacred. The immortal gods are guests in our contiones, our Senate, our royal courts. Hospitality demands we treat them well, whatever we think they are. Their dignitas demands *ius* and *pietas*, *yí* and *hsiào*. “Roman Gods...made in the image of the legal-minded Romans themselves, insisted no less than these upon...*do* (or rather *dabo*) *ut des* in the matter of strict fulfilment of all obligations of the State to the Gods (*religiones*)” (Westrup 4:38).

16. Cicero has “the practical capacity for organization...the care for small details and the sense that religion must penetrate into the small things of life, that the genuine Roman religion has left as a legacy to the world” (Bailey 275). Cicero’s code presupposes civic religiosity and intends to convince citizens that the gods are now *patroni* and magistrates of the universe (Troiani 942). Cicero and Mèng are not Varro or Lao Peng antiquarians. “What [Mèng] called the methods [*fǎ*] of the former kings were...general outlines of some ancient institutions to which he added ideal elements of his own creation; they were thus mixed and amalgamated formulations, not necessarily entirely based upon historical foundations” (Hsiao 1979:175). The late Chou Chou Li was also a “prescriptive model, rather than...straight historical description” (De Bary 1998:98). Tzū-ssu advises that

a man may occupy a position of authority, yet, unless he possesses the moral character fitting him for his task, he may not take upon himself to make changes in the established religious and artistic institutions (literally ‘ritual and music’). Although one may possess the moral character fitting him for his task, yet, unless he occupies the position of authority, he may not take upon himself to make changes in the established religious and artistic institutions. (CY 9; Lín Y. 128).

As *augur*, *consularis*, and once *parens patriae*, Cicero was qualified.

16. Cicero claims *Plato’s* stylistic—not content—standing in the court of literary opinion. By using the Greek term *prooemium*, Cicero asserts Roman equality with Greece (and shows off; cf. Fowler on *French Words*.) Cicero imitates indigenous older Latin legal style in his code, so using the latinised Greek term enables him to show off his Hellenism. *Sic enim haec appellat Plato* winces,

for to kragdadig Romans like Hellenism-hating Old Marcus—not Quintus and above all not Atticus!—the ironically pompous *habes legis prooemium* shows Cicero as too cosmopolitan. The “fleißiger, tugendharter alter Bauer” (Eulenberg 7) would have scoffed. Cicero laughingly recounts “ut illud M. Cicero senex, huius viri optimi nostri familiaris pater: nostros homines similes Syrorum venalium [vernaliū?]: ut quisque optime Graece sciret, ita esse nequissimum” (De Or. 2,265). A. Brzózka wittily surveys prejudices Cicero fought successfully to overcome (295). K’üng warned of the idiot-savant village worthy. Ungentled by reflection, “abusua ye dom”, the *gens* is a mob (Gyekye 1988:32). “Older men and women who have few dealings with the foreigner, live secluded lives in remote villages, and are ignorant of or indifferent to the social and religious changes” (Rattray 1923:7) pale beside Old Marcus’ performance art, “fanatico conservatore e nemico di ogni novità, che in Arpino combatté per tutta la vita...per la sua inflessibile condotta” (Kumaniecki 31).

17. *habeo vero*. Quintus’ reply has a wry humour. Got it? Got it—the *legis prooemium*, that is. Quintus applauds Cicero’s turning Platonic style to his own ends. Quintus bangs the drum with gusto for Marcus’ departures from Platonic *rebus [et] sentiis*. Cicero’s craft shows up well here. He praises himself for copying (here) Plato’s terms and for his own originality! Quintus’ *versari* is ambivalent. Does Cicero use the Platonic model well, or simply fail in an attempt at imitation? The difference is exactly what pleases Quintus (*admodum delector* with adversative use of *atque*). Quintus rubs it in: *nihil enim tam dissimile*. Belabouring the difference bolsters the Romanitas of the proposals; since quality of style on Plato’s level need not indicate similarity of content. It is one thing to write as well as Plato, and another thing to be as Greek as Plato. Plato once dismissed Cicero’s beloved Isocrates as writing some supposed philosophy, φιλοσοφία τις (Phaedrus 279); Cicero might rejoinder that there is aliquid magistratus in Plato! Cicero’s dislike of Platonic sexuality is well known. Quintus’ pointed *hoc ipsum de diis exordium* pulls the sting of foreign affectation, yet keeps the hellenic elegance of Cicero’s own “*prooemium*”. When Quintus concludes *videris imitari orationis genus*, Cicero uses dialogue to praise his use of dialogue, as he used Latin (*exordium*) to explain Greek (*prooemium*). Quintus makes plain that Marcus is only in form following Plato, but totally independent in content and terms (Girardet 1983:8; cf. DRP 2:3,21,52 and DO 1:224.)

17. After tortuous turns of praise, Cicero modestly (?) demurs. From self-justification in another’s speech, he turns to self-abnegation in his own. Beneath the mask of humility lies Cicero’s boldness as homo novus, as augur, and as inventor of the Latin philosophical grapholect. For him it is always “filosoferen in het Latijn” never “filosoferen en het Latijn” (Beukers 5). Cicero asserts *auctoritas*

against Plato and pontifices by deflections and deferences. Nobody could match Plato, but anybody could translate his opinions. I would have done it, but then I would be no better a writer or thinker than anybody else. Cicero's *velle fortasse* is two-edged. Modest deference in the face of accepted praise deflects the charge of being a mere copyist. "Who could possibly?" becomes "Who, me?", a clever bunch of sweet and sour grapes.

17. Copying slavishly is *negotium*, but Cicero revels in cultured *otium*. Study and office-holding go together (LY 19,13). A gentleman is above mere trade, even, or especially, if that gentleman is a *novus homo*. Cicero wants his effort noticed, not his strain; his art, not his artifice. Cicero succeeds in his realistic dialogue. He obliterates the line between snobbery and skill. K. Ziegler's comment declaring *nefas!* against National Socialism is a high point of Ciceronian resistance:

Er stellt die Frage, die die epikureischen Freunde, Atticus an der Spitze, ohne Zweifel oft an ihn gerichtet, die der eminent kluge und eminent eitle Mann unter dem Druck der fortgesetzten Demütigungen sich sicherlich oft genug selber vorgelegt hat: Wozu Politik? Kann denn ein kultivierter Geist, ein Mensch von feiner Bildung, Geschmack und idealem Wollen in dieser verwilderten Gegenwart, in der der politische Kampf in hemmungslose Gemeinheit und rohe Gewalt ausgeartet ist, überhaupt Politiker sein? Und Cicero, auch hier in guter Kenntnis der von griechischen Vorgängern über dieses Thema geführten Diskussionen, aber aus eigener Erfahrung redend und mit persönlichster Formulierung, antwortet *ja und dreimal ja!* (Ziegler 1934:314)

Quintus bows lower and lower before his brother's achievement, going from *admodum delector* to *prorsus adsentior*. To admire is one thing, to agree another. *Admodum* turns to conversion in *prorsus*. *Tute dixisti...te...tuum* vocalise Quintus' spluttering capitulation.

17. Cicero proposes/storytells (*exprope*) laws, pouring out his heart in intimate company. He gives an archaic patina to his laws in homage to XII Tables and *Leges sacrae*; a style *neque ita prisca*, shows the tradition of these very old laws to be very much alive. Old-fashioned Roman legalese earths DL in Roman civic glory and home-grown theology. The semi-archaic tone preserves without privatising what is best in Roman religion. Lucretius strongly archaizes to pre-empt and destroy belief. Cicero archaizes slightly to confess his faith. Silk-capped Cicero does not always use linen archaism. Only the code is a set-piece *as if* quoted from an old source. (Cf. Plaks xxxvii.) In a sense the laws *are* quoted, given Cicero's awareness of tradition, even as compositions *de novo*. A severe critic admits Cicero's clever originality in using formulae for "ein archaisches Kolorit" (Latte 5). K'ung speaks for him: "I transmit the old truth and do not originate any new theory. I am well acquainted and love the study of Antiquity." (LY 7,1; Ku). "Wer nicht in die Fußtapfen eines anderen tritt, der wird auch nicht zur Wahrheit eingehen" (LY 11,19 Stange).

18. Archaism invokes *plus auctoritatis* for optimum traditional religion. (Cf. δημοτική vs. καθαρεύουσα in modern Greece.) Knowing the Republic's peril, Cicero lovingly uses antiquity in defence of God and State (cf. LY 7,20). *Limited* archaism shows that the old laws are not a museum exhibit; limited *archaism* defies theological fraud and abuse of names and persons. Vigorous old tradition should sound like this, just as K'üng cherished traditional music, especially laws for religious rites hallowed by time and ancient usage. Cicero's old-new phrases echo *illud tempus*. *Auctoritas* means both source and power. Avoiding pontifical jargon (Lehmann 12), Cicero asserts priestly *auctoritas* as *mos maiorum's* defender. "La liberté du *législateur-exégète*" rejects decadent laws and allows him to write his own (Lévy 558, Liebeschuetz xiv).

Can we trust the Chinese classics?

The end of Chou prefigured the dying Republic. Warlords mocked old ways, rite and music fell apart, and history was forgotten. K'üng tried to re-pristiniate "the time of Wên-wáng and Chou-kung. To this end, he sorted out the Rites...the Annals, and...the Odes, and commented on the Book of Changes" (Wieger 126). Jú-chiào "cherishes the classics as the truthful records of ancient culture, value-added by Confucius' editing and commentaries" (Yao 50). We prefer wellsprings to Wellhausen. "the destructive criticism of a sceptical mind...rightly called 'hsiao-jén'" (Verwilghen xvii). LY was compiled accurately just after K'üng's death (Forke 1964:117; Hsü 23; Needham and Wang 1:2-5; Ryckmans xix, comparing LY to the Gospels; Shaughnessy 31). Hu Yen (190-249 A.D.) established its text (Shaughnessy xiv). Chai and Chai claim K'üng edited all six Ching and wrote the Ch'un ch'iu (1961:xxvii).

Tzū-ssu was K'üng's first commentator and Mèng *his* reliable "Enkelschüler" closely bound to K'üng by scholarly transmission (Forke 1964:158. Emmerich 23-24, Hinton xxi). Mèng first attributed Ch'un ch'iu to K'üng (Csikszentmihályi 139, Tschepe 13, Renard 12 as editor). Xu (29) accepts Tzū-ssu as author of it and of the Odes. The Hàn Dynasty canonised the Five Classics (Renard 11), who dates I to early Chou, Shu to 600-200 BC, Shi to 800-600 BC). A Deuteronomic find led to canonisation. "Prince Kung of Lu, while dismantling an old house of the K'ung family to make way for his palace, discovered in the dilapidated walls...the Classic of History, the Spring and Autumn, the Analects, and the Classic of Filial Piety...written in the archaic tadpole characters of Master K'ung's period. So these recovered books were sent to K'ung An-kuo...a great scholar and a lineal descendant of Master K'ung in the eleventh generation, to be deciphered and rewritten in the current Han script...When his version...was completed he presented it together with the old tablets to the emperor [Wu] in 97 B.C." (Liu 1955:120). As a result of Hàn scholarship, B. Schwartz

affirms the „borderline“ canonicity of the Chou Lǐ (1985:389). The Lǐ Chi was edited by Tai Sheng ca. 73-49 BC (Xu 4). J. Gernet affirms basic reliability of Tso Ch’uan (53). In sum, “the reader may be reassured to know that...the hands holding the hands into which you have put yourself are trustworthy.” (Slingerland ix).

18. Writing *paulo antiquiora* makes Cicero’s laws “authoritative texts par excellence: in archaic Rome the style of the laws is deliberately solemn, vigorous, monumental” (Conte 19). Cicero’s promulgation is “peu archaïque et hiératique” (De Plinval 1969:302). This is not a philosopher’s construct, “but an actual code of fundamental public law, corresponding closely in content and in form to our idea of a ‘written constitution’” including actual augural law in §19-21, since sacral law is the foundation of all Roman law for Cicero (Keyes 1921:309; Guillén Cabañero 1990:490; Kroymann in Michel and Verdière 123). *Cum brevitate* has K’üng-like gnomic power and carninal austerity. Terseness bespeaks imperium, putting DL and Νόμοι at profound variance. Cicero achieves *vellem meus*. Concision? Windbag Cicero? We may imagine subtle Atticus and soldierly Quintus howling with laughter—and Marcus, too!

18. *Leges non perfectae* are laws of emulation more than laws of punishment—an “imbalance” strikingly Jú-chiào. They do not punish every infraction (van den Bruwaene 1961:40). To Isocrates, laws are primarily moral patterns, only secondarily penalties (Areop. 40). Fǎ need not be hsíng. “Justice is not *simply* found in the rule of law but in human practices that create a civil society” (Bell 92 on the TRC). *Leges minus quam perfectae* urge repentance and *leges perfectae* cancel contravention. “The penalty for wickedness...is the anguish of a guilty mind coupled with posthumous infamy (II:43)” (Brunt in Griffin and Barnes 182; Ducos 1979:145). Complaining of an inadequate “theory of punishment” undertheologises (Bauman 4). De Legibus is not De Suppliciis! (Cf. Yeh 63 on K’üng.) Solon knew divine judgement transcends legal penalty: “not for ever does the man who is sinner in soul (ἀλιτρός) escape the god’s [Zeus’] memory”. One need not punish everything. “Solon entertained a genuine hatred for dictatorship, though it was the fashion....The most striking feature in Solon’s personality...was his mature and spiritual liberality combined with careful moderation” (Frisch 1949:162, 165). Cicero follows in his civic-theological train.

K’üng affirms *leges non perfectae*:

If in government you depend on laws, and maintain order by enforcing those laws by punishments, you can also make the people keep away from wrong-doing, but they will lose the sense of shame for wrong-doing. If...in government you depend upon the moral sentiment, and maintain order by encouraging education and good manners, the people will have a sense of shame for wrong-doing, and...will emulate what is good. (LY 2.3; Ku)

Rules and punishments' inadequacy is that of *mere* laws and *mere* punishments when ruling chün-tzū/optimates are unexemplary (Cf. LY 12.4-5; Creel 1949:150, Soothill 1929:34). *Leges imperfectae* are rooted in "ancient rites...the power of moral virtues rather than the power of cruel and punitive laws". Concise antique laws were sparing with punishments (Yao 22, 24 citing Hsün). Quintus smelt *orationis genus*. Promulgator Cicero is hieratic. Brother Marcus is homely, giving not a total canon-law system, but *ipsae seminae rerum atque sententiae*, not static loci, but gists. "Ius constat...igitur ex his partibus: natura, lege, consuetudine, iudicato, aequo et bono, pacto", of things to be kept "pietatis causa" (Rhet. 2:19). Code under Tào is not un-Jú-chiào. Roman legal formalism *looks* unlike Jú-chiào exemplarism. Romans had a leading Senate. Chinese had kingly behaviour. "Classical [Jú-chiào] thinkers judged law less harshly than modern observers" operating on a Western standard (Turner (1993:287, 290). Jú are not Taoist anarchists. Tso Chuan 732 showing K'üing against code is fake (Creel 1949:163,313). China must not be weighed in a Roman legal balance. Rome must not be set a Chinese examination. See them in each other's light: bright Heaven's reason reflected by both.

ROME HAS SPOKEN: CICERO'S CODE OF CANON LAW § 19-22

19. *Adeunto caste* prevents impiety. Cicero wears a kerygmatic or juridical mask, the priestly persona of an announcing augur: decrees do not wheedle. His augurship is a divine mandate to write DL, based on entry into the power elite and priesthood. (Cf. Alföldy 35.) How does one approach *ad divos caste*? *Castus* is without interior blame or guilt, righteous within. The *castus* or *casta* is “...יְמֵי יְקוּם בְּמִקְוֹם קִדְשׁוֹ וְקִי. כְּכִים וְבַר לְבָב..”, (Ps. 24,4) to inform and grace the rite without attitudinising. Distraction and moral evasion should be driven off. Our *only* good behaviour toward God is *caste* without overblown piety and foolish gestures (LY 6,26; Song; Creel 1953a:30). “Dii, quos tu castissime coluisti...homines. quibus ego semper servivi” (Ad fam 14,4) shows healthy Jú-chiào Diesseitigkeit. Without reason, behaving *castissime* veers into superstitio. Inhumanity ruins rites. “If a person lacks humaneness (*ren*) within, then what is the value of performing rituals? If a person lacks humaneness within, what is the use of performing music? (Lunyu 3:3)” (Yao 32). “Zi-zhang sprach ‘Beim Opfern muß sein Sinn voll Ehrfurcht sein’ (LY 19,1 Moritz) and St Paul said “ἀγάπην δὲ μὴ ἔχω γέγονα χαλκὸς ἠχῶν ἢ κύμβαλον ἀλαλάζον” (1 Cor. 13,1). Approaching *caste* entails correct civic life and reverent concentration on the rite:

“In specie autem fictae simulationis sicut reliquae virtutes item pietas inesse non potest, cum qua simul sanctitatem et religionem tolli necesse est; quibus sublatis perturbatio vitae sequitur et magna confusio, atque haud scio an pietate adversus deos sublata fides etiam et societas generis humani et una excellentissima virtus iustitia tollatur” (DND 1,3).

Originally ritual precision, li now permeates and corrects public demeanour. *Pietatem adhibento!* *Pietas*/hsiao is the outward and visible sign of an inward and spiritual yi/righteousness, of *castimonia*. Pietas toward gods, parents, gens/tsú, country, state, and others to whom it is due begins in rite, shows in loyalty and deference, culminating in service and self-sacrifice. *Pietas* is an active offering, consecrated by the praxis of bringing it *caste*. Speaking as a rich man disliking asceticism and ostentation equally, Cicero fears that one can have gauds or gods but not both. *Pietas* and *opes* do not co-exist in rite. Wealth is “peripheral” to “inner moral force”; reversing that creates “rapaciousness” (TH 10 Plaks).

19. Plaintiff god(s) punish *qui secus faxit*, trifling with sacra. They avenge their *iura* and *dignitas* with crackling fury: *secus faxit vindex*. An Epicurean theological roué might wonder when a god ever brought suit, “quo numine laeso” (Aeneid 1:1); a reader of the Hebrew Bible knows. *Civis Iuppiter*, approached *incaste* because rite and ethics were disjoined, is witness and *vindex*. *Societas* was bolstered (or challenged) by calling the gods as witnesses. Punishment *se vindicare* is left to gods; the magistral priest is cliens deferring to gods’ weightier dignitas. This is reorientation, not

μετανοία, the rite place, not the anxious bench. Politeness befits meeting *mens divina* concretised in a specific deus or numen. Cicero's model worshipper behaves with *gravitas*, aware of who and when he is coram Deo et dis manibus. *Qui secus faxit* abandons polite company and everything time-honoured, reasonable, and sacred. Worshipers must see to it that “ἀπαντα κατεργασόμενοι στῆναι” (Ephesians 6,14). *Pietas* grants standing to one approaching *caste*, in the sight of gods (he is ours, this worshipper) and S.P.Q.R. (he is one of us, this decent Roman).

19. Without religious union, Cicero fears breakup of civic order. Nobody may have gods *separatim*, divisively, on one's own, opposed to mos maiorum and Senate auctoritas. “Having” a god as one's own property is temerarious. A chattel witness is suborned. Controlling (sic) numen puts one dangerously at odds with State and salus populi. Clodius, Caesar, and Antony show the public face of private anti-constitutional trafficking in godhead. Like *secus faxit*, having a god or rite *separatim* is vis publica. Cicero defends the citizenry's rites against sedition; against tyranny he defends the private sphere's sanctity. Pietas against Rome is impietas. Virtue at home, *privatim*, obeys mos maiorum. Virtue *separatim* is vice. H. Brink says freedom of conscience is thwarted by *privatim*, but A. Dyck notes Cicero's tolerance compared to Plato (Brink 311, Dyck 288). Caesarian mystification by anti-rite is ruled out. Similarly, “Zulu do not emphasize a distinction in practice between that which is religious and that which may be described as secular....”What is there that is not religious? Has not God made everything?” (Berglund 27). Opting out is no option.

One with a rival pax deorum wars *separatim* against the State. The more *castimonia* and *pietas* and the less sham he brings to “his” god, the more sedulous his clientela and the more effective the rite, the more dangerous that worshipper is to *salus populi*. Jews, and later, Christians, broke holy politesse with a God brazenly *separatim* and shūkyōteki. Rival maiores Abraham, Isaac, and Jacob, and anti-Numa Moses, delegitimise State-sanctioned gods and rites. Notwithstanding the rabbinic dictum אֲנִי דְּאֵתְרָא מְלִכָּא דְּאִנְיָ (civil law is real law) and Paul's affirming *imperium* “ὑπὸ Θεοῦ τεταγμένοι... Θεοῦ γὰρ διάκονός ἐστι σοὶ εἰς τὸ ἀγαθόν (Romans 13:1,4), fitting Jews and Christians into Roman religion never went beyond improvisation and grudges. Their sacra *separatim* created suspicion and the paradoxical lure of the exotic.

19. Unrecognised gods, *novos* or *alienos* must be avoided. Ushering in new gods is delicate. Equating a new foreign god to a Roman numen co-opts it. If it is only a strange name for a home-grown god, or a quarantined curiosity, it poses no threat, and is not very foreign. New gods from within alienate their adherents from the standing order. Adopting alien gods raises suspicion about the adopters' place in society, ranging from divided loyalty to eccentricity, weakening the ties binding them to the rest of the citizenry. This is not a xenophobic rigid status quo (cf. Kroll 145).

Cicero approves new or foreign gods *publice adscitos*, preventing private households from being the seedbed of rival, if miniature, series of conflicting commonwealths. Public recognition [Volscian totice] preserves the pax deorum by expansion when exclusion has failed. State cult used four rites to secure pax deorum: sacrificium = gift and petition; lustratio = purification; piaculum = atonement; and votum = promise and reward (Bailey 76); add to this watchfulness for portents. Botching rite formulae is piaculum in the sense of sacrilege (Noailles 14). *Habere* and *colere* differ: ownership or deferential attendance upon the gods. *Patribus* means both Senate and ancestors. The political sense emphasises optimate constitutionalist authority. The familial sense stresses filial pietas/hsiào, linking family and State cult, if one's ancestors worshipped no new, alien, or unsanctioned gods. *Privatim* can get odd. "Confucius remarked of an eccentric character of the time, saying, 'The man actually built a chapel elaborate with carvings for a large tortoise which he kept. What can one say of the intellect of a man like that?'" (LY 5,17; Ku). *Privatim* means at home; *separatim* means seditiously.

19. Shrines make sacred space *[in urbibus et] in agris*. Groves reflect the more "natural" character of farmland. There is a subtle ruralism in Cicero, nostalgia for rural life and religious purity. Trees are not stipulated, nor shrine blueprints, just as K'üing won't say which trees were best in Tsai Yu's list of Hsia pine, Yin/Shang cypress, and Chou fir (LY 3.21 Ryckmans). Groves and temples equally "concrétisent...la présence divine, développant ainsi la dévotion et la piété" (Guillaumont 1989:64) *Lar* is Etruscan (Appuhn 416). Lares are not manes/kuèi but "spirits of farm fields", reliable "kindly guardians". Each family had its lares and the State had its Lares Praestites or Penates Publici, at times conflated with Vesta (Bailey 50, 150). Next after quasi-monotheistic calls upon Juppiter/T'ien (Bailey 171), Cicero invokes the lares and penates most frequently in his speeches whenever he makes emotional mention of the homes of citizens (cf. Pro Quinctio 83 and Pro Rosc. 23). Penates comes from penus, store-chest of food: "Penates kept and Vesta cooked the family food" (Bailey 49). The civic hearth gives public resonance to Heraclitus' words "Come in, don't be afraid: there are gods even here" (Edelstein x). Sulla in his louche and impoverished youth, like many urban poor, had no home altar-fire (Cowell 342). Rome's wooden multi-storey insulae were fire-traps. Households able to do so kept shrines to the lares and the penates, the lar shrine niche always lit with fire and prayer twice daily. On 1 March (new year's), the paterfamilias put out and solemnly re-lit the fire, prefiguring Christian "new fire" Easter rites. Along with di parentes/di manes, lares and penates had res religiosae, the legal right to rites *privatim* (Siber 117).

Household worship and political bravery are co-ordinate. "To sacrifice to the spirits of ancestors who are not one's own is obsequiousness, and to see what is right and not do it is cowardice" (LY

2,24; Dawson). Conquest becomes blasphemy when old royal family rites fall apart (Schwartz 1985:115). T'u-ti were small household gods like lares and penates; at Ch'üfü 曲阜 K'üŋ's family shrine made him nolens volens a super-lar (Thompson 1989:58,52). The House-spirit in the south-west corner of the house was a lar-like numen fading away by K'üŋ's day (Wilhelm 1923:24). K'üŋ criticises giving the kitchen god precedence over T'ien (LY 3,13).

Cicero takes his stand "in ea re publica quam *auspicato* Romulus condiderit, non in illa quam sibi ipse Socrates...depinxit" (DRP 2,51). Romulus is among *quos endo caelo*, a model for emulation (LY 16,8), not least for founding Rome "augusto augurio" (Ennius in Warmington 1:176,30ff.), just as the historical "King Wu had been able to create the Chou state not by a mere triumph of human arms, but because Heaven had...bestowed its mandate to govern the state upon him" (Bilsky 1:65; cf. Ching in Eber 77; Schwartz 1985:39,53). "Wen Wáng ...he was *careful* and reverent, brightly he served God on high...his virtue did not deflect" (Shi 236; Karlgren). Heaven's gift has no "detailed and minute instructions" (Mêng 5a5); political action bespeaks its will. Rome's monarchy fell amid personalist violence by its royal family. Shang, founded with God's blessing and mandate, ended with the brigand Chow (Giles 10). The old farmstead lends force to *familiae patrumque servanto*. Here, the consularis-priest is a filial Tullius "integer vitae". Rote observance of otiose sacra does not rationally guard rite and mos. Lǐ with hsiào serve "ordinis conservatio" (DO 1,142).

19. *Divos et eos*, are *caelestes* around T'ien (like Amesha Spentas round Ahura Mazda). Gods proper, *divos*, rightly receive worship and shrines. "*Dei* son las múltiples manifestaciones de *Deus*" (Labrousse 75). Earliest Roman gods were imageless, non-anthropomorphic, and certainly not narrative superheroes. (Cf. Dumézil 64; Kroll 142; Kunkel 5; Maschkin 1953:124.) "Omniaque traducta ad similitudinem inbecillitatis humanae...[cum] perturbatis animis" (DND 2,70). Numina, *eos*, were numberless, immanent powers, or human attributes "like Victoria, Concordia, Fides, Libertas" (Brunt in Griffin and Barnes 177). Confusing *numina* and Olympians is a "Hellenocentric view of mythopoiesis", compelling civic theology also "to recast the antithesis in ways that do not...project the Romans as 'secondary,' passive and inert" (Feeney 7, cf. Siber 117; *contra* De Vleeschauwer 204-207). Roman historic images replace Greek myth. "Der massive Wirklichkeitssinn, der ihnen eigen ist" gave history all the force of myth and the auctoritas of reality besides (Vogt 14, 30; cf DO 3,99). "Historical reality is not...a heavy, opaque medium, mindless matter, rigid necessity against which the spirit beats in vain and in whose bonds it suffocates. This...gnostic, Neoplatonic view...does not do justice to the metaphysical value of history...[the] plenitude and variety of the human" (Gadamer 1998:202). K'üŋ devoutly sought "the repristination of the...inherited way of the former dynasties and sage kings" (Berthrong

1998:4). He laments “it is long since I last dreamt I saw the Duke of Zhou” (LY 7,5 Dawson). The memory of immortal statesmen is equal to “patriis fanis atque delubris” (Pro Rab. 30). Cf. “Αἰνέσωμεν δὴ ἄνδρας ἐνδόξους...κυριεύοντες ἐν ταῖς βασιλείαις αὐτῶν καὶ ἄνδρες ὀνομαστοὶ ἐν δυνάμει” (Sirach 44,1-3). Historical bits can be vague. Arpinates argued over which oak was *the* quercus Mariana (Høeg 23)!

The Mongols took to Jù-chiào, so far as they did, by reading history, not “abstract metaphysical texts” (Atwood 117). “Ils adoptèrent les lois et presque tous les usages du pays” (Mentelle 1822:122). Japanese Jukyō made kami “ethical divine beings...identified with Heaven” (Kitagawa 1966:28). Japan resembles Rome: “ancient Greeks often found themselves as pawns in rivalries and conflicts among the deities...abuse of humans by the celestial *kami* is rare in either Shinto myths or people’s interpretation of ordinary events” (Kasulis 73). Seen thus, Vergil, acolyte of Hellenistic monarchism, is scarcely Roman. Numina had no personality cult, unlike Greek (or political) gods. “Ritual treated the gods impersonally like remote and powerful officials” (Liebeschuetz 22). J. Ratzinger sees a Hellenocentric skew in Christian theology. “Roman concern with the State and its law has its own irreplaceable value for the life of the mind...an ‘inner factor in Christian theology’” (Nichols 45). De-privileging Hellenism de-privileges Plato. K’üng helps us be good Romans. T’ien has a Capitoline Doppelgänger. Cicero’s dedicating Minerva in his aedes enrites at Rome K’üng’s cry “perhaps only Heaven understands me” (LY 14,35; De Bary 25). By *servare* his lawful civic goddess, Cicero registers *religious* protest against his banning. “Watch to see which of the gods he goes to for help with the troubles of his life, which of the gods he communes with when he is off parade” (Horton 22), or on the run. “The best religious question to ask in East Asia is “To whom do you owe sacrifice?” and not “What religion do you belong to?” (Berthrong 1998:14).

Juppiter is not a manes, a kuèi. He rules *endo caelo* above the sainted dead. “The Lord-of-the-sky is not a shade....‘They know each other, the shades bowing and praying on behalf of their children before the face of iNkosi yezulu. But they are not the same’” (Berglund 35). The “immemorial tribal cult of Jupiter Latiaris” (Kunkel 4), by Cicero’s time is that of “nobis Capitolini...Afris Hammonis Iovis....Sed ipse Iuppiter—id est iuvans pater, quem conversis casibus appellamus a iuvando Iovem, a poetis ‘pater divomque hominumque’ dicitur, a maioribus autem nostris Optumus Maxumus....Hunc etiam augures nostri, cum dicunt ‘Iove fulgente, tonante’: dicunt enim ‘caelo fulgente et et tonante’.” (DND 1,82; 2,64-65). Ennius sings: “Aspice hoc sublime candens, quem invocant omnes Iovem” (DND 3,11). He is “the upholder of moral and civic order. As Optumus Maximus, he is the highest embodiment of all power, goodness, and glory. He is so essentially ‘father’ that this title is permanently incorporated in his name” (W. Schmidt 1935:45). He dwarfs

storybook Zeus. “Q. Mucius Scaevola’s...theory about the gods is that one class of divinities, the gods of poetic mythology, are trifling (*nugatorium*)” (Rist 179).

Ancient China deified ‘Hauptpflichten: Freundlichkeit, Würde, Aufrichtigkeit, Maßhalten, Einsicht, Tatkraft, Mut, Gerechtigkeit’ (Forke 1964:19). Note the two Arpinates and *eos*: “A temple near the Porta Capena was dedicated to Honos by Fabius Cunctator, and later...to Honos and Virtus jointly. Another temple dedicated to [them] by Marius stood on the Capitol” (Rackham 1933:180). This proves Cicero’s point. “Ex quo intellegitur prudentiam quoque et mentem a deis ad homines pervenisse; ob eamque causam maiorum institutis Mens, Fides, Virtus Concordia consecratae et publice dedicatae sunt” (DND 2,79). *Salus* is both *salus populi* and “augurium salutis [as] the augur tested whether the gods would permit prayers to be offered for the safety of Rome” (Rudd 1998:207). *Salus* opposes *populares*, *seditio*, and *tumultus* (Mitchell 2001:133). Sextilis Atilius Calatinus built *Spes*’ temple in 258 BC during the First Punic War, enhancing pre-5th century *Spes Vetus*, and worshipped on 1 Sextilis (Momigliano 75; Sabbatucci 253). *Spes*, *Fides*, and *Fortuna* worked together: “Spei Fidei Foretunae murum faciundu” (Warmington 4:102). *Pietas* got a temple when Cicero was a child (Kroll 26). Cicero does not deify *clementia*. It is Caesarian. royal, anti-republican. It is the “horrible virtue” (Wirszubski 1950:151), exalted when Cicero and his Republic are dead. No *optimas* with *libertas* and *dignitas*/ch’ih, “deep self-respect” (Schwartz 1985:107) adores it. Only a *hsiào-jén* accepts it. Only a despot bestows it. In the principate, “*libertas* became a gift rather than a right and...lost...its essential quality” (Wirszubski 1950:171). It also lost consonance with *mens divina*. No tyrant can award or steal what God hardwires into the human being. “Dignity cannot be a gift” (Hountondji 1996:204). “Fürsten sind Menschen. vom Weib geboren...” Intellect, Excellence, *Pietas*, and Loyalty are reified, counted eternal. and able to place humans *endo caelo*. Cicero does not specify whether they do this as sentient deities rewarding distinguished citizens or as human traits possessing divinising power. “Cum vero iurato sententia dicenda erit, meminerit deum se adhibere testem, id est, ut ego arbitror, mentem suam, qua nihil homini dedit deus ipse divinius” (DO 3,10,44). If divine favour, rite done caste gains bestowed reward (do ut des). If divinising traits, sagely self-cultivation itself is a “rite”. *Delubra* are markets of *comercium* or theatres of virtue, in either case a civic stage for emulation and a matter of divine prestige and Roman tradition.

Shén are *endo caelo merita*. Cicero believes that “Herkules, Liber, Aesculapius, Castor, Pollux, und Quirinus auf Grund ihrer Verdienste an den Himmel versetzt worden und dementsprechend als Götter zu betrachten seien, sowie das Prinzip, nur das Beste von den *patrii ritus* zu verehren” (Lieberg in Temporini I:4, 67). Li Chi affirms “that those who had legislated for the people should be sacrificed to, also those who had died in the diligent discharge of their duties, those whose toils

had established states, and those who had warded off, or given succour in, great calamities” (Legge 89; cf. Li Chi 47 Xu; Constable 1996:183). “Spirits of men of exceptional powers and accomplishments [attain] to the status of functional deities....Heroes and great men...manifested extraordinary individual spiritual powers and...retain this individuated divine afflatus in the world beyond”. The ‘Announcement of Duke Shao’ in Shu Ching says “When Heaven put an end to the mandate of the great state Yin, the many wise former kings of Yin were in Heaven” (Schwartz 1985:25, 47). Mèng (6a16) calls great moral leaders *t’ien-chèh* “nobility of Heaven” (De Bary 1991:15). The Duke of Chou had his memorial temple and the departed kings of Zululand their holy places and celestial rank (Dawson 87; Cetschwayo 93). King Cetschwayo famously kept dignitas in captivity (Cetschwayo xxv)—the King may not have read Cicero but he knew how to behave like Cicero—what of K’üng the *su wáng* or “uncrowned king”? He is called this based on LY 19,25, as holding T’ien’s (non-positivistic) mandate to repristinate Chou though lacking actual power (Granet 118; Levenson 2:90; Slingerland 230). Mèng shared this “religious sense of his own vocation...a task which Heaven has imposed upon him...no more ‘metaphorical’ than it is in Judeo-Christian tradition” (Schwartz 1985:285, 289; cf. 7a7). In China that was kings’ business as it was of consuls’, consulares’, and augurs’ business at Rome. A shrine was built to K’üng at Chüfu on his death, where Hàn Emperor Kao Tsü 高祖 (r. 206-195) offered an ox in 195. In 59 A.D. Emperor Míng Ti 明帝 (r. 58-75) required K’üng *sacra gentilia* of all Jú—not flattery of another family’s manes, but pietas from K’üng’s intellectual descendants (Gier 44, 50). Temples were nationwide by 555 A.D. (Forke 1964:109). Ch’ing Emperor K’ang-hsi rebuked Jesuits charging the Chinese with K’üng-idolatry and drew the analogy to Roman Catholic veneration of saints (Ching 1993:193; Girardot 46-47): “He is not identified with Heaven”. Legge carps that “K’üng...unreasonably neglected when alive is now unreasonably worshipped when dead”, yet he made pilgrimage to the original K’üng shrine (Girardot 27). Our Lord was also neglected in His lifetime, to say no more. K’üng was deified as equal to Shang-ti on 30 December 1906 as the Ch’ing were losing whatever mandate they had, and deification became gimmickry as in the dying Republic. Yet

the ‘Temple of Literature’ (Văn Miếu) in Hà Nội is now an impressive shrine to a postrevolutionary Vietnamese Confucianism. [In 1986]...it was a neglected ruin inhabited by homeless people. In 1988, shortly after the *đổi mới* reform movement had begun, the Hà Nội municipal government established a ‘cultural research center’ to look after it. (Taylor in Elman-Duncan-Ooms 364)

For splendid photographs of the fully restored Temple, cf. Norris 72-75.

Caesar deified remained a popularis putschist, readying lawless rites and spontaneous demonstrations of the people’s will just before the Ides (Maschkin 1954:130).

Zu Anfang des Jahres 44 erfolgte der letzte Schritt, der Senatbeschuß, Caesar als Jupiter Iulius unter die Staatsgötter zu erheben mit einem eigenen Priester [flamen

Iulialis-jwh], der die Bezeichnung flamen tragen sollte, wie nur die Priester der höchsten Staatsgötter Juppiter, Mars, Quirinus hießen, und ihm Tempel zu bauen lassen. (Meyer 1964: 335, 342)

Caesar became the State incarnate and sole fount of holiness. After 15 March,

a cult of Julius Caesar arose...and was thought to have received supernatural confirmation when a comet was seen during seven nights while the Ludi Victoriae Caesaris were being celebrated....Octavian proclaim[ed] that the comet was Caesar's soul... attaching stars to statues of Caesar. (Liebeschuetz 65).

As a political star, Caesar was "ceremoniously 'catasterized,'...officially reported as having ascended skywards. His effigy thus became the first of any Roman to bear a star-shaped halo, a symbol transformed into the haloes of the images of countless saints" (Cramer 1). Cicero hated pantheism, star-cults, and popular religious frenzy. "Haec igitur indocti. Quid vos philosophi? Qui meliora?" (DND 3,40; cf. 3,23).

Hellenistic diadems crowned Julian yangbanism. Julius was clever: golden chair, temple to *his* clementia, Antony's ceremonial procession offering divine honours "*but Caesar remained sitting*"; posthumously, State worship of Venus Genetrix and divine honours by the Senate (Frisch 1946:30-35). Coercive deification brands the free State's end in "revolutionary autocracy" (Feeny 104). Cicero in psychiatric crisis pulled back from building a temple to Tullia! What he thunders in the Philippics (Brutus suggested the title as a joke; Ad Br. 2,4), he says by deathly silence here. Caesar's (posthumous!) charisma struck Cicero as "stets unheimlich"; on the Ides Cicero was "kein Mitverschworener, aber Mithasser" (Borzsák in Michel and Verdière 25, 34). The cascade of powers in life and idolatry in death dwarfed Sulla. No Chinese emperor was more than *Son* of Heaven. The hijacking of royal rite sickened K'üng: "I no longer desire to look on" (LY 3,10 Ware). Hsün anticipated lawless Caesar's sacral fraud. Mocking obedience to mos maiorum, they "are fond of innovation. They obtain a hearing from the ruling class and a following among the unsophisticated. It is impossible for them to provide a classical norm for the state" (6,5; Knoblock). Mo Ti sensed popularis heresy: "if the people all identify themselves with the Son of Heaven but *not with Heaven itself*, then the jungle is still unremoved" (2,12 Mei). Thus "the absence of correct names will lead to moral degeneration, to the disappearance of law and justice, and to political anarchism" (cf. LY 13,3; Hsü 46). Anarchism triggers autocratic idolatry. With Cicero, K'üng and SS. Paul and Peter, rejecting idolatry defends civic theology. The more the divine origin of true Law is stressed, the less risk of "Divinisierung des Staates" (Ratzinger 2005:17; Rom. 13,1-6, 1 Pet. 2,13-17). K'üng's "silence" and "you don't know life" are not agnostic but against exploiting rite for political advantage (R. Green 53). Hsün's cold eye pierces the sham. "[Rites'] rational order is so genuinely great that when people who create statutes and regulations on their own authority and

advance despised and backward theories enter the domain of ritual, they are brought to ruin” (19,2 Knoblock; Chang K. 202; A. Cheng 56: T'ien ming warped into lineage-cult—Caesarism or Japanese imperialism.)

The descendants of Cicero and K'üŋg.

Famous fathers are sometimes disappointed in their sons. Nondescript K'üŋg Pó-yú (Big Carp) died before the Sage. His son K'üŋg Tzū-ssu (481-402) fostered his grandfather's tradition. Born in 690 A.U.C., Young Marcus got his toga virilis at Arpinum (Everitt 212; cf. Chinese capping or Zulu head-ring; Cetshwayo 7). Staging a rite at Arpinum which would have been a glittering Roman political event shows Cicero's filiality (Middleton 1804 2:293). Like his father and uncle, the last Marcus studied at Athens, taking a first in brawling and drinking, his lifelong Fach. Twice a competent provincial governor and *pious* toward his assassinated father, he gave “a beating to a rhetorician who had, at table, deprecated Cicero's style. As far as we know, he had no descendants” (E. Rawson 1975:296). She errs: *we* are his descendants. De Officiis was therapy for the turbulent young man. His proud Italian father speaks in his own spiritual voice with a princeps Senatus' precedence over any Greek, directing him “to read his father's philosophical works, written in Rome and in Latin by a Roman statesman and orator, who has never held an official position in any of the Athenian philosophical schools” (Glucker 120). K'üŋg urges “let the father *be* a father and the son *be* a son” (LY 12,11; Song). “Nam si quis an ineunte aetate habet causam celebritatis et nominis aut a patre acceptam, tibi, mi Cicero, arbitror contigisse” (DO 2,44). “Devenu maître de l'empire, Auguste réussit en quelque sorte à faire oublier...les horreurs dont il avait été complice pendant le triumvirat” (Mentelle 1822:64). He made Young Marcus an augur and co-consul in 30. Marcus decreed *damnatio memoriae* against Antony (Ciaceri 2:376, Rose 1954:155ff.), erasing the butcher's name from all State buildings and forever forbidding the praenomen Marcus to the Antonii. Hàn Dynasty filiality favoured commentary (Moore 3). Young Marcus's commentary obeyed Hsün: “Heaven and earth produce the gentleman and the gentleman brings order to Heaven and earth” (9; B. Watson). The Tullii Cicerones end in him. K'üŋg's house lives on. Ex-minister of examinations of the R.O.C. K'üŋg Te-Ch'eng (b. 1920), was seventy-seventh descendant (Huang 200). Eightieth lineal descendant is K'üŋg Yu-jen of Taipei, R.O.C., aged two.

Ebullient K'üŋg Tzū-ssu wrote CY and chapters 30, 32, and 33 of Li Chi (Hughes 78; Lin Yütang 102). Like DO, CY urges “cultivating sincerity and intelligence” (Eber 27). Omens show national weal and woe (Fung 208). Like Mèng, K'üŋg Tzū-ssu says “in honoring the bearers of virtue the duke is honoring virtue, and the man of virtue in defending his virtue is essentially defending...the ultimate source of all social harmony” (Schwartz 1985:256).

Ku [CY] translates *jén* as 'the moral sense', *yí* as 'the sense of justice', *lǐ* as 'moral and religious institutions (of the Three dynasties)', and elsewhere as 'the laws and usages of social life', *Tào* as 'the moral law', *chuntse* as 'the moral man', *hsiào jén* as 'the vulgar man', and *chungyung* as the 'universal moral order' and as 'to find the central clue in our moral being which unites us to the universal order'. (Lín Y. 103).

"What is God-given is what we call human nature. To fulfil the law of our human nature is what we call the moral law. The cultivation of the moral law is what we call culture....Confucius remarked: 'The life of the moral man is an exemplification of the universal moral order'" (1). "Confucius remarked: 'The power of spiritual forces on the Universe-how active it is everywhere!'" It is the fact that there are these forces which makes men in all countries fast and purify themselves, and with solemnity of dress institute services of sacrifice and religious worship. Such is the evidence of things invisible that it is impossible to doubt the spiritual nature of man" (3). "No [funerary] distinction is made between noble and plebeian" (5). "Oh, how great is the divine moral law of the Sage" (9). Both CY and TH (the latter not by Tzū-ssu) show faith in crisis that "the moral order of the universe is supreme" (Hughes 2). In this faith, the sage/sapiens stands firm. "How steadfast his strength, for, when there is good government, he does not change his original principles, and, when there is vile government, he does not change, even though his life be at stake" (CY 10; Hughes). "[The sage] studies the old past and comes to know the new present, and gives earnest attention to (the principles and practice of) the Ritual Code," (CY 27, 30; Hughes). Tà Hsüeh, adult/high instruction, says: "When things are investigated, knowledge is extended: when knowledge is extended, thoughts are made sincere; when thoughts are made sincere, the heart and mind are rectified; when the heart and mind are rectified, one's person is cultivated; when one's person is cultivated, the family is set in order; when the family is set in order, the state is governed; when the state is governed, there is peace in all the world" (Oldstone-Moore 60-61).

Spiritual heirs: Mèng and Hsùn

Son of Ki Kong-yi and Tchang-che (Yuan 23), Mèng was

a native of Zou (the southeast of modern Zouxian County in Shandong Province). The descendant of the noble family known as Mengsun, he was under the rigorous training of his virtuous mother, as his father died when he was a boy....he made decadence into miraculousness, harmoniously interpreting Heaven in a traditional, religious sense as his idea of ancient democracy. (Zheng et al. 7, 10; cf. Graham 111, Sih 318).

"What I possess is the lore of antiquity. Why should I stand in awe of kings?" 7a34; Creel 1953:79). He was briefly minister in Ch'i but without influence, (Dobson xvii), given his steadfast opposition to arbitrary rule (Sih 317), although he shared K'üing's convictions of ethical T'ien (LY 7,22 and 9,53) and was if anything more strongly pious (Hsiao 180; Berthrong 1998:24, after Schwartz).

Hsün Ching was born in 310, possibly of noble birth. “Was he...too deistic in his views of ‘Heaven’ or too rationalistic in his view of man?” (Hughes 85). H. Dubs views Hsün as secularist exponent of an intrinsically moral but materialist universe with no god, and feigning faith in divination (Dubs 1928:56,65,68). Secularist évolus Liáng Ch’i-ch’ao 梁 * 超 and Hú Shih 胡適 remade him in their own image (Machle 1976:444) and some earlier twentieth-century interpretation followed this, but Lín Yütang 林語堂 likens “Mencius to St John and Hsuntse to St James” (156). E. Machle has rectified names. “Hsün Ching aimed at being...the best possible Confucian, and whatever ‘Confucianism’ has been...it has always been in some sense religious even when not a religion.” Hsün opposed opus operatum rite (cf. LY 17,11 “bells and drums”) and strongly dividing kuèi-cult from correct sole worship of shén (Machle 445-448; cf. Dubs on K’üing). Machle rejects

denials of Heaven’s moral supremacy or religious significance...Hsün Ch’ing [wished] to protect the religious substance of Confucianism from dangers on many sides: from the superstitious who seek to use rituals to obtain special favors or to escape the results of their own foolishness, from Mohists who appeal to heavenly reward and retribution to correct social ills, from Taoists who would downgrade or abolish all li...contribute nothing to high culture and...turn statecraft over to the Legalists; and indeed from followers of Mencius who rely so much on natural processes to produce moral goods that they threaten the Confucian discipline itself. (Machle 459).

Hsün retired in his mid-seventies after his Lord Chunshen’s murder, and died almost 100 years old (Knoblock 1:31).

The tyrant as parricide

Mêng says “Vicious doctrines and acts of cruelty again appeared...ministers murdered their princes...sons murdered their fathers; so in fear and trembling Confucius composed the Annals” 3b9 Ware), and on regicide with damnatio memoriae: “He who outrages benevolence is an outrager; he who outrages righteousness is a cruel fellow. He who is a man both cruel and outrageous is a despot forsaken by all. I have heard that Zhou [Chow], the despot forsaken by all, was killed, but not that the killing was regicide” (1b8; Zheng et al.; cf. 7b14; K’üing T. 32; Lee 1975:24). Similarly, “the Roman Republic was born in revolution...the violent overthrow of a monarchical system. Its name, *respublica*, which signified *res populi*, ‘the property of the people,’ was incompatible with the idea of absolute power by any individual or group over the body of citizens” (Mitchell 2001:129). No normal muntu and no normal State has anything in common with a tyrant. “Nulla est enim societas nobis cum tyrannis, et potius summa distractio est, neque est contra naturam spoliare eum, si possis, quem est honestum necare, atque hoc genus pestiferum atque impium ex hominum communitate exterminandum est” (DO 3,32 cf. 3,19).

“A wise and good man holds in awe...the Laws of God. persons in authority, and the words of

wisdom of holy men. A fool, on the other hand, does not know that there are Laws of God; he, therefore, has no reverence for them; he is disrespectful to persons in authority, and contemns the words of wisdom of holy men" (LY 16,8; Ku). As governor of Roman Asia, Quintus punished parricides with exemplary despatch (Ad Q. fr. 1,2,5). Classical Chinese law stipulated beheading even for an accidental parricide, and shaming a parent into suicide was parricide (Ch'ü 47). The parent is patria personified.

We must treat our parents with the same reverence as is shown to our sovereign, because we receive boundless kindness from them and are under a natural obligation to do so. If any one does not love his parents, but others, he is a rebel against virtue; and if any one does not respect his parents, but others, he is a rebel against the standard of rites. Any action which is against the law of nature will certainly not be an example for the public.

Conversely, *res nova* "shows that the speaker does not know what law is" (Hsiào Ching 9 and 11 Chên). Tyrant and parricide war identically against *mens divina*. Caesar's glory is "*oppressionem taetram et detestabilem gloriosam putat*", and he is "*foedissimum et taeterrimum parricidium patriae*" (DO 3,83). "Bandit" Chow and Tarquin the Proud are evil twins, for "*rex in dominatum...quo neque taetrius neque foedius nec dis hominibusque invisius animal ullum cogitari potest*" (DRP 2,48). As the parricide destroys the family, so the tyrant destroys the State: "*ubi tyrannus est...ratio cogit dicendum est plane nullam rem publicam*" and "*civium coniunctionem qui dirimunt, eos morte, exilio, vinclis, damno coercent*" (DRP 3,43 and 23). Mèng equates parricide and sacrilege. "How can there be approval of your deeds if you now slay their fathers and elder brothers, and put their sons and younger brothers in bonds; if you destroy their ancestral shrines and carry off the precious sacrificial caldrons?" (1b11 Ware).

The *faex Alexandrou* outraged *res religiosae* and *dignitas* "when wielders of supreme power in the State like Julius Caesar and Augustus were deified. The political apotheosis removed the last shred of mystery from religion and made it into a national anthem" (Radhakrishnan 1940:7). Thrasymachean idolatry silenced civic speech by "sanctification of the leader...that could not be questioned by any criticism" (Hountondji 2002:112). No "normal Roman" mixed up imperial and divine ontology. (Liebeschuetz 75; Suetonius, Vesp. 23,4). Were there any normal Romans under the principate besides Vespasian? Omitting the highest magistracies (consul, dictator) in DL2 condemns by silence. Cicero's true tradition-ing of *leges, mos et fas* will not be abused. K. Gyekye's *distinctio* applies to Ciceronianism (and Jü-chiào) against Caesarism's spurious tradition.

Traditions, if they are traditions, cannot be invented, for they are not arbitrarily created, referring, as they do, to practices actually lived, or ideas and beliefs known to have been actually held, for a very long time. If certain practices that are not traditions are nevertheless, out of ignorance or arrogance, called traditions (and are thus invented), they still are not traditions; statements saying that they are, are simply false.

(1997:232)

The Ara Pacis is a lie in stone.

Augustus linked himself with...the state religion; within the grounds of his house on the Palatine Hill he set aside plots of land for the temple of Apollo Palatinus and a shrine of Vesta, and his name was included in the Hymn of the Salii, the dancing priests of Mars. He created a new priest, the flamen Iulialis, to supervise the cult of the deified Julius Caesar, just as Numa had created the flamen Quirinalis for the worship of Romulus as a god after his death. (Rehak 193).

A *real* king, not a fake Hellenistic monarch, dare not abolish or co-opt *mos maiorum* which, “from having been so long a custom in the country, has now come to be a general law” superior to any will of the king (Cetshwayo 74, 94). King Shaka’s despotism was *res nova* in Zululand as Caesarism was in Rome, a “violation of the customs of his people...he went the way of most tyrants” (Luthuli 18, Krige 22, Thompson 1975:216). Nonetheless, “over and above all persons reigned Law and authority. By the law both king and commoners were bound alike—in principle anyway, though certainly not always in practice! The law...was based upon a strong foundation of experience, equity and logic” (Bryant 464). Kings Mpande and Cetshwayo, royal *rectores rei publicae*, revoked “unguarded access to the letters of positivism” (Dukor 368, 47). That, *not the crown*, made them true *rectores*. Principate and Japanese Jukyō highlight by aberration the republican character of true Jú-chiào monarchy. “Vel rex aequus ac sapiens, vel delecti ac principes cives, vel ipse populus” matters little: it is the character of the State that counts (DRP 1,42; cf. Bresciani 267). Lín M. saw only “formal” difference between monarchy and republic in Jú-chiào. “The only valid criterion in politics” (Lín M. 220, citing K’ang Yü-wéi 康有為) is if a State is *res publica* or *res privata*. *Res privata* is not a pious State but a booby-trapped toy—so Cicero spurned the second Triumvirate.

DL’s funerary rules show tough personal restraint. Tullia’s death aged 32 in 44, the year of Ac. Post, De Fin., and DND, just before DL, was the “worst blow of his life” (Kumaniecki 1972:465; Kroll 234), like K’üng’s inconsolable sorrow over his favourite student Yan Hui. “Et fortunae gravissimo percussus vulnere et administratione rei publicae liberatus” (Ac. Post. 1,3,11), he found Epicureanism a theological and therapeutic failure (2,14,45). After terrifying psychiatric collapse, when he thought “quod precarer deos nisi meas preces audire desissent” (Ad Q. fr. 1,3,9; cf. Ad Br. 19,2), wandering dirty, weeping, and poorly clad in the forest, Cicero bought a garden in Trastevere to build her a temple (Kroll 97; cf. Powell 1988 on De Sen.). Ravaged Cicero, with compassionate help from Atticus, Quintus, and Brutus, resisted the impulse and regained his sanity. Sumptuary law may also have helped (Uttschenko 1978:220; Wagener 367). Disconsolate Cicero, defiantly believing in the soul’s immortality, resisted the temptation to deify Tullia, as he earlier rejected a

temple to himself by superstitious Cilicians grateful for his honest governorship (Ad Q. fr. 1,1,27). The orchestrated mob-deification of Caesar by what Quintus calls “urbanam illam multitudinem” (CP 51) provoked him to fury. “Adducti tamen non possum, ut quemquam mortuum coniungerem cum deorum immortalium religione” (Phil 1,11). Divine worship is quite distinct from parentalia, public manes-honours, as K’üŋg separates T’ien worship from kuèi-rites). Sulpicius’ memorial in 43 exemplified *proper* posthumous sacred State honours (Phil. 9,16-17; on his career cf. Acheson 23 and Acheson 3-20 on the political background from a Caesarist perspective).

19. *Ne uncula vitiorum* declares that reifying evil into a numen is superstitio, its *ius* vice, its suum cuique social hell, its rites ego-fulfilment destroying *societas*. The Homeric good man, paragon of low Hellenic tribalism, must help friends and harm enemies: Clodian lust, Antonian butchery, and proscriptions sanctified. Is the Republic a bandits’ imbizo, *latrones consessu*, where Intellect, Excellence, Pietas, and Loyalty become Brutishness, Meanness, Lack of Scruple, and Betrayal, to do well by friends, to fulfill sacred obligations to “one’s own”? Homeric man had a grudge, not a State. Good divinity can be *violari ab impiis* (42). Bad divinity *must* be violari a piis. What then shall we say to all this? If vice be for us, Who can be against us? If rational *mens divina* dwells at the civic hearth and in nature’s realm, vices dare not be worshipped nor aedes built to their dishonourable honour.

Cicero does not segregate common sense, virtue, and tradition from the divine. The Barthian claim that he was without religious faith defies the evidence (Ehrhardt 276). Baptist theologian L. Pfister rejects this shūkyōism making “Deity absolutely transcendent so that no genuine ontological experience of relations or union was achievable, while limiting religious experience to a relatively externalized and legalistic attendance to pious rules for life” (16). This leaves out Cicero and K’üŋg. Cicero’s frustrations show that ideals, unlike utopias, do not occur by fiat. The value of shrines and worship to “the better angels of our nature” (A. Lincoln) cannot be gainsaid. Laws instruct us, not gods. If pleading traditional theology of deity and virtue was the best Cicero could do, there were worse cases to plead in 44-43. Augustus’ shambolic renovation of public piety, after destroying the Republic whose sacrality those rites protected, at best showed tyranny better than the anarchy he had conspired to create. Augur and Jú deny the State is racketeering.

Polity may vary if “the sacred is embodied somewhere...whether it is in a legal document or in a person. This cannot be questioned, cannot be taken apart, cannot be argued with, and is the source of belonging” (De Vos in Hejtmanek 116). Res publica and Heaven-filial wáng are equal instruments for public holiness. The Republic is often the pious State (Kroll 123). “The converting

power of rites...can gradually transform the people from sinfulness into goodness unknowingly” apart from polity-form (Li Chi 58 Xu).

The traditional state in China had its very churchly aspect...If [the emperor] really did it all, he would be spending most of his time offering sacrifices....So the state was secular in that it dealt with the kinds of secular issues that all states must deal with. But it was also religious even in a strong sense. (Schwartz in Hejzmanek 117).

Rite guides a sacred republic to ubuntu/jén/humanitas:

The relationship of ritual principles to the correct governance of the nation is like that of the suspended balance and steelyard to...weight or that of the darkened marking line to straightness. Thus, a man without ritual will not live, an undertaking without ritual will not succeed, and a nation without ritual will not be tranquil. (Hsún 27,41; Knoblock).

Polányi M. warned: “A free society is not an Open Society, but one fully dedicated to a distinctive set of beliefs” (1951:vi). If all are truly under Heaven, decent muntu need more than Thrasymachean or Popperian poverty of truth and spirit. (“Popper too abandons truth [Logic 274]...the sole recent philosopher of science who feels no embarrassment about truth is Polányi” (Weinsheimer 18).)

Tyrants usually claim to be saviours from chaos. Cicero’s insistence that political order try to reflect the (moral) divine order has been a burden too great for the totalitarian project to bear. The murderous history of the call for uncritical order does not weigh in the moral balance against Cicero’s scheme (or Augustus’, for that matter), unless one accepts the view that order itself is the enemy of freedom, feeling, and the limitless expansion of the self in realms of cruelty and amusement. The false satisfactions in which the human need for order finds solace do not destroy the reality or justice of that need. Hsún says (17,18 Knoblock): “The destiny of men is from Heaven; the destiny of a country is from observing the rules of proper conduct (*Li*)....The principles of proper conduct (*Li*) have remained unchanged through the time of all the Kings”.

Early China enjoyed

a close structural identification between the religious and the political community. An early historical record, the *Kuo yü*, pictured pre-Shang religion as a political function conducted by an officially appointed priesthood, the *wu* or magicians, and regarded the subsequent rise of private worship as a sign of deterioration of the early moral and political order. Classical records also showed at least two magicians occupying the post of ‘prime minister’ in the Shang state, which thrived in the second millennium BC. (Yang 106).

This is close to the personae of augurs, pontifices, and consulares. (Anti-shamanism applied “keep the best” to tsū-chuán/mos maiorum.) K’üing saw the State as a divine institution (cf. Romans 13 ‘αὐτὸς θεὸς [εἰς] τὸν κράτος καὶ ἐξουσία] ὑπὸ Θεοῦ τεταγμέναι εἰσιν) and the ruler’s task to do the will of Heaven, in an unbreakable nexus of the political and the religious which was itself an “article of faith” (Taylor

1990:21; cf. Forke 1964:136). LY's religious reticence is only veneer. T'ien-given conscience's rebuke is not an (unnecessary) beatific vision, but it shows God's reality (cf. LY 3,13). *Mens divina* is already active in that conscience. Shame in *societas* takes precedence over private guilt. The chün-tzū is happy not to be ashamed before God and humans (Mèng 7a20). Worship and shame are linked, making religion moral, not mystical. Critically for the Cicero-K'üng connection, "nicht nur gegenüber den Bestimmungen eines Gottes, auch gegenüber den staatlichen Gesetzen kann der Mensch 'schuldig' zu werden" (Roetz 1992:286).

19. *sacra sollemnia obeunto*. The best rites punctuate common life's run-on text with holiness. Religious man is liturgical, and liturgical man is public. Conviction is not enough. Belief is not the whole armour of civic theological faith. By keeping the right rites, individual and society escape the cage of solo self and superstitious crowd—and the prison of time. To know that one is not first or last to keep the rites *sacra*, set apart or "holy", means that lǐ break barriers, "only connect", and impart transcendence. Ritual moves the agent beyond internal reflection. Pietas and rational restraint open the agent's inward spirit to whatever or whomever is the target of the *sacra sollemnia*. *Descriptum esto* [Volscian estu] orders a functioning kalendar to keep the more than one hundred festivals at the correct seasons, economic routine flowing, and dies fasti aut nefasti properly observed. (Cf. Warmington 4:450ff; Cowell 183, 344.) A new emperor had a holy duty to repair the Chinese calendar (Soothill 1939:153). K'üng says the Hsià calendar was best; some rural areas *still* use it (LY 15,11; Huang).

19. *Feriis iurgia amovento* applies to all quarrels, not just lawsuits. Cicero distinguishes surcease from *litium* and from *iurgiorum* (29). Unless all *iurgia* have become *lites*, the broader term fits better with exalting the four virtues, and the attitude required for pious worship. Any contentious person, litigant or no, must set aside cherished combativeness on sacred days. Resentment is *incasta* toward holy rite. Its zeal aims elsewhere in an adultery of regard. *Iurgia* create discordia just when concordia ordinum et deorum should foster "vertical" and "horizontal" *officia*. *Feria* turn us from turbulent Forum or Chinese court to the home's presumed tranquillity, where the householder is at peace, and even slaves are briefly at rest. In our moral superiority to slaveholders (genocide is a modern word for a modern thing), we prefer economic ugliness out of sight, and ourselves out of our minds. Decreeing a pause in squabbling, onerous household routine is not sentimentality. Public man's routinely bad behaviour also pauses. *Iurgia* always seek advantage. This lust—not only metaphorical—is the violent heart of a slave-based household economy. Interrupting it delegitimises its worst aspects unless one applies legal positivism to the treatment of slaves. The

human being, slave or free, is more than a factor. We should not overdo Cicero's humanitarianism, but his regard for all humans' riteful need rebukes savagery masked as *severitas*, whether antique or faux-antique (Cato). Master and slaves, *paterfamilias* and family, share sacred responsibilities. (Cf. Creel 1936:281.) Even brief aspectual holiness interrupts usual power-imbalances and power-identities. Cicero was famed for treating slaves as human equals, "gewiß kein harter Herr für seine Sklaven" (Kroll 208). Cicero and his secretary Tiro practised solidarity. Marcus Tullius Tiro, manumitted in 53, courageously published the DL (in 36) and wrote Cicero's first biography (Balsdon 110; De Plinval 1969:296; Dillon and Long 55; on manumission cf. van Zyl 1977:77). E. Bury (63) says Cicero's failure to abolish *all* slavery reduced the agony of millions to "peanuts" through cowardice; but Bury never criticised Ulbricht. Treating theological law enables Cicero to affirm (in Roman style, not biblical) that all people alike possess the *imago Dei* and an immortal soul, making the free-slave distinction strictly contingent and not to be absolutised. The moral liberty and human dignity of the slave he ratified by freeing Tiro and embracing him as a beloved member of the family, becoming deeply distraught at a life-threatening illness suffered by Tiro (Cicero 2:393). "In *diesem* Sinne sind wir berechtigt zu sagen: ohne antike Sklaverei kein moderner Sozialismus" (Engels 138).

19. Forum copies farm; priests parallel *paterfamilias*. Priests ensure that *certas* grains, fruits, and sacrifices are offered *publice*, just as the *paterfamilias* maintains *mos maiorum* and keeps alien gods or manes out of family *sacra*. (Bailey (102) claims that the *dii manes* "the good gods" were originally not the sainted dead but chthonic deities who guard the tomb.) Cicero tells his son that tombs cement family solidarity: "Sanguinis autem coniunctio et benevolentia devincit homines et caritate. Magnum est enim eadem habere monumenta maiorum, isdem uti sacris, sepulcra habere communia" (De Off. 1:54), a radical solidarity (Schebesta 141). It is a guarantor of liberty and a countersolidarity to totalitarianism. Rite protects solidarity and liberty, and inheritance protects the rite. Cicero's inheritance laws are "calculées pour sauver en tout cas un culte menacé de l'oubli" (Bouché-Leclercq 210). Priest and *paterfamilias* teach by rite, not catechesis. Every Roman, *homo religiosus publice seu privatim*, has an equal need for rites. There is no spiritualised elite religion. In a time of rapid change, shared ritual protects social bonds between persons of differing status, enhancing the *concordia ordinum*. Keeping the details of offerings exactly as they "always" were gives psychological stability when change is disorienting. Those needing religious instruction go, not to theologian or jurist, but to *sacerdos publicus*, a ritual expert.

20. *Alios ad dies*. Our culture tries to abolish time through speed. Cicero's regulates carefully the

timing of offerings, so that they take place only on set days, giving mastery over time. He restricts certain kinds of offerings to certain (crops and fruits on certain days, milk and animal sacrifices on others). What unites both Cicero's and western monotheism's concerns about foods and times (Paul's vehement polemic in the Christian Testament against such concerns shows the vitality of the thing denounced) is the impulse to separation and to order. There are dies fasti and nefasti; Cicero refused to engage his daughter Tullia on a dies nefas (Balsdon 67). N. Constable reports no cooking on New Year (1994:115).

Li's hodgepodge may appear without rhyme or reason to those outside a given tradition. For all his earlier avowals of divine Mind as conscious Unifier of the cosmic order, once Cicero issues specific leges, an overarching structure is hard to discern, but it is there. Separating specific activities, prohibiting combining them, the distribution of priestly labor to different categories of priests, rather than allow a Jack-of-all-sacrifices professional class, the apparently simple statements of "do this" with their constant implication of "and *not* that": all these things show the polar opposite of any monistic mysticism. Cicero is no pantheist. What is *sacer*, what is holy, is set aside from ordinary use. This applies to the material sacrificed (made *sacer*) and to the times and persons for so doing. If the contact with the divine is utterly the same as every everyday action, then it is, for the non-mystical generality of the race, no contact at all. To say "this and not that" is a *principium cognoscendi* for the divine. To say *this* food, day, or action pertains to God or gods, and *that* food, day or action does not, shows divinity as *vindex* by holy rite amidst the mundane. Observances from home to State cover the whole *societas* with sacrality. This sets *mens divina* and *ratio recta*'s claims upon time. Harvest a crop or slaughter an animal, and divine Mind has an interest in it. Wake up in the morning of a given day, and that time is directed toward divinity, or not, depending on the kalendar. Do the rite thing, and *ratio recta* moves from human fussing to godward *clientela*, and "an immense mental domain" of reverence regains specifiability and power (Polányi 1962:62). Let the augur declare "alio die" and Juppiter bolts from the Senate. The kalendar brings holiness into ordinary life (Burdick 107).

20. *divo decorae grataeque*. Cicero's concern for decency and order in worship presumes that protocol and politesse actually please the gods. Offerings must be *decorae*, fitting and appropriate to the god receiving them, and *gratae*, enjoyable to the god. The priests say what constitute pleasing sacrifices and set an annual schedule. Priests are compradors between gods and (other) citizens. How the priests know what the gods want to "eat" is an unanswered question.

20. *Divisque aliis* have their own clientelae, but *omnibus* have *pontifices*, who oversee the State

cult and the gods in general. Division of labour unites Cicero's practical polytheism with his incipient monotheism (*mens divina* as single controlling Intellect). Post-Enlightenment readers may see Cicero's polytheistic cultus as incorrigible popular habit, while his "true" inner sanctum is monotheist. This essentially anti-religious construct (no intelligent person could *really* believe...) makes Cicero a mendacious prisoner of custom, and misses what his polytheism was. Keeping the several *religiones/li*, each in its proper place and manner by the appropriate priests, spreads the sunshade of tradition. There were sixteen patrician *pontifices*, fifteen *flamines*, and six Vestals. *Pontifices* were bridge-builders, but had become general arbiters of rite and casuists (Jolowicz 1957:21). After the Lex Domitia of 104, they were elected by a special assembly and the college could co-opt a new pontifex (Cary 652). "Magistrates were representatives of the people before the Gods....But alone the *pontifices*, the highest priestly college of the State, of unknown origin but without doubt of immemorial antiquity, possessed knowledge of the *caerimoniae et sacra* according to *patrius ritus*" (Westrup. 4:39). They and augurs speak theological truth, which only an idiot would deny (Har. Resp. 19).

Flamines, instituted by Numa, served specific gods; flare means to blow up a (sanctuary) flame (Bailey 155). They had no collegium and no *primus inter pares* (Brink 324). Most important was Juppiter's flamen Dialis, round whose person and conduct elaborate taboos had developed, against horseback riding, touching certain foods, swearing an oath, leaving the *pomoerium*, and so forth. He had a curule chair and sat in the Senate; like other *flamines* he wore the *apex* (Appuhn 417). He and the *pontifex maximus* alone could preside at *confarreatio*, holiest form of Roman marriage (van Zyl 1977:96).

Wenn der Priester des Jupiter...ein Haus betrat, in dem sich ein Gefesselter befand, so gebot das *fas*, ihn seine Banden abzunehmen und sie über das Dach aus dem Hause zu schaffen. Wenn jemand, der zur Geiselnahme abgeführt ward, ihm begegnete und ihm zu Füßen fiel, so mußte die Execution aufgeschoben werden. So durchbrach die Religion...zurückgestrahlt von dem Bilde der Götter, der warme Sonnenblick eines menschlichen Gefühls. (Jhering 1:289; cf. Eliade 1991:94)

He embodied in the State both Juppiter's fatherly aspect and the *paterfamilias'* *ius vitae necisque*. He tended temples whose god was no longer known (Kroll 140). Cf. Acts 17:23 "καὶ ἀναθεωρῶν τὰ σεβάσματα ὑμῶν, εὖρον καὶ βωμὸν ἐν ᾧ ἐπεγέγραπτο «Ἄγνώστῳ Θεῷ»".

Vestales tended the "ignem fori publici sempiternum", and served as custodians of wills. (Cf. Wissowa 1897:311). "Die im Vestatempel verehrten Staatspenaten sicherten gleichfalls die Dauer der Gemeinde; der kapitolinische Juppiter wachte über das Gedeihen seiner Stadt" (Vogt 75) These *penates populi Romani* were honoured on the *Vestalia*, 9 June (Vogt 75; Sabbatucci 202). The *Ainu kamui fuchi*, spirit of the hearth, serves similarly as usher into the presence of the other household gods and is the judge of ethical and ritual misconduct (N. Munro 14, 18). Vestals were chosen like

flamines “durch feierliches ‘Greifen’ (capere) des Oberpontifex” (Siber 118). Technically in his *patria potestas* but *not* his control, Vestals were independent archivists of state intelligence and autonomous priests of majestic dignitas; “a Vestal was always felt to be austere and awesome: *sacrosanctitas* and *religio* hung about her” (Bailey 157-159, Mentelle 1766:109). She is a magistrate manqué, serving six to ten years, honourably retired and then married (Gardner 5). Sexual activity (*incestum*) during their tenure was punished with burial alive (Bouché-Leclercq 295). The hearth goddess *mater Vesta* [Volscian Vesune] (Har. Resp. 12) had direct *materna potestas* over her priests, trumping the pontifex maximus’ notional *patria potestas* (Jhering 2:97).

The harshness moderns father upon Roman fathers is inaccurate. “We ought to do Roman fathers...the justice of assuming that most of them had *some* feelings of affection for their sons and daughters” (Gardner 25, 42; on *ius vitae necisque* as holy Kroll 35). Unlike Greek women, Roman women were not kept in purdah. Their moral education was designed to inculcate filiality, modesty, pietas, humanitas, and industry. (Van Den Bergh 359-60; cf. Hemelrijk 9, 29-41, 63-75; *Ad Fam.* 9.4; Varro, *Rerum Rusticarum Libri* 3.5.9). Positive law does not exhaust freedom and dignitas. A *matrona/materfamilias*

came under the *potestas* of her husband or his father. Although juridically speaking this placed her in the position of a daughter of the family, she enjoyed an important social position as *materfamilias*....Increasingly she obtained the same legal rights as her male counterparts. (Van Den Bergh 361)

Letting the Roman father be father was not hsiào-jén brutality; optimates particularly fostered women’s education whilst three populares *matronae* were famed teachers: the mothers of the Gracchi, Caesar, and Augustus. *Our* notables kill children in their care; Roman magistrates did not. Roman matrons’ dignitas and power were unquenched by *patria potestas* (Maschkin 1953:115; Meyer 1964:256; Wegner 1:17). Customary authority of *matrona* or *materfamilias* equaled in practice the legal authority of the *paterfamilias*. Cornelia, mother of the Gracchi, the Mother Mèng of Roman tradition, Caesar’s mother Aurelia and Augustus’ mother Atia educated their own children (Van Den Bergh 353). (Helvia, Cicero’s mother, apparently did not.) Cf. *Brutus* 104. *Materfamilias* and doughty lioness of Jú-chiào, Mèng’s mother excoriated his domestic priggishness and decreed “You do what is right for you and I act according to the rites which apply to me” (Lau 218, citing a biography of Mèng from Cicero’s time). Fearless before kings, Mèng meekly obeyed. A son must obey his father, but not blindly, and a son may respectfully remonstrate for righteousness’ sake as a minister before a king (Forke 1964:155; cf. Ch’ü 20; Creel 1936:301). A father being a father did not mean a father ought to be a monster. “Das Band, das die chinesische Familie zusammenhält, ist nicht die brutale Gewalt, sondern Liebe und Pietät” (Zenker 1915:10). K’üing and Mèng were not misogynistic whatever happened later (Li Chenyang 36; Wawrytko in Li

Chenyang 188; Ni 79). S. Wawrytko condemns caricature of Jú-chiào as mere sexism. K'üing's defence of monogamy was an advance for women:

Confucius and Mencius were the product of single-parent homes. Raised and nurtured by widowed mothers under difficult economic circumstances, they had virtually no direct influence from their fathers. Each mother recognized the extraordinary talents of her son and did her utmost to encourage his educational development. (Li Ch. 163, 172, 174).

LY 8:20 reports a woman among king Wu's 10 ministers of state. A (rare) cultivated woman was a cultivated man's equal (Kuo-yü 5.211; Goldin in Li Chenyang 2000:140-143). Hán Fei saw women as sex implements. Chuhsism restricted women much more than did classical Jú-chiào. In classicist Việt Nam a "culturally powerful role for women based on traditional [Nho giáo] Vietnamese royal law" endured (Young in Slote and De Vos 138).

Cicero omits the *roi fainéant rex sacrorum*, sacral vestige of the old kingship, like Athens' king-archon, or the emperor in the Warring States Period. Gone by the late Republic, its omission is no less anti-Caesarian for that. Monarchy was an awkward phase in Rome's adolescence, not a theological or ritual desideratum. The omission shows Cicero's distance from Plato's fantasy-projections of a philosopher-king. Cicero could have reinflated the collapsed *rex sacrorum* as an ideal public office for ritual and theological oversight. Instead, the augurate is his bully pulpit. Prosecuting Verres left Cicero, unlike Plato, without Sicilian dreams.

The Shang king (*wáng*) was high priest, oneiromancer, and chief augur. As at Rome, "there was no distinction between religious and administrative functions. In later times the functions of the religious assistants at the great state ceremonies continued to be carried out by specially appointed experts from the higher ranks of officialdom" (Eichhorn 38). He was chief, perhaps sole worshipper, and maker of *pax deorum* (Bernard-Maitre 22; Wieger 12). Later, under Chou and its *de facto* successor states, in K'üing's time, "government and religious celebration were not regarded as two quite distinct functions, the Duke of Lu more than any other in the state had the competency to become the priest in charge of the celebrations at the ancestral temple" (Kaizuka 28). Chinese divination devolved upon priests and nobles, sacralised "political decisions and facilitated their popular acceptance. Through divination, political decisions became commands of the gods" (Yang 107). Like augurs, "diviners were educated men...forerunners of the scholar-statesmen...If they sometimes made the oracle answer as they wished...they may merely have been giving the king sound advice in a form in which he was fairly sure to take it" (Creel 1936:192). Generalised to all Jú, "Han Confucianists in delineating Ch'in's faults in its exercise of despotic power tended to follow more or less the same principle, hoping to restrain and intimidate the ruler with ominous interpretations of calamities, prodigies, and heavenly portents" (Hsiao 1979:485 cf. Queen 7 "an

independent and critical voice”). Augury is hermeneutics as service! “Of this... legal and theological hermeneutics are the true model. To interpret the law’s will or the promises of God is clearly not a form of domination but of service.” (Gadamer 1998:311). Like OT prophets,

the noble man does have his own personal mission to uphold a moral order identified with the celestial order—Heaven’s creative, directive, governing, and punishing power in the form of *t’ien-ming*. It is the noble man, then, who speaks for Heaven, obeying the dictates of Heaven’s imperative as expressed in the individual human minds, and laying on the ruler Heaven’s censure of actions contrary to the Way. (De Bary 1991:11).

Does T’ien speak? Yes. Jú, like Roman augurs, “succeeded to the place vacated by the practical pillars of Chou value: the kingship and hereditary roles....T’ien was restored...as the ultimate ground of value, recast as the mandator of ritual” (Eno 28). In modern times, the “emblematic figure among educated Vietnamese in the sixteenth century was Nguyễn Bình Khiêm (1491-1585), who, in the absence of a political center, served as a kind of moral center” (Taylor in Elman-Duncan-Ooms 345). For his contemporary, Saxon theologian Martin Luther, “das Predigtamt steht im Range über dem politischen Amte” (Althaus 1937:16 cf. *WA* 51, 258).

20. *Disconto...a publicis sacerdotibus.* Priests—including augurs!—can teach, just as pontifices regulate rites and do casuistry. “Cicero sneer[ed] at jurists, precisely because they seemed to be immersed in legal minutiae” (Stein 1999: 16). Ritualists and two sorts of interpreters comprise the priesthood. There are State-recognised interpreters of *fatidicorum et vatium* (21), and the *publici augures* of Jupiter Best and Greatest. Early legal-religious carmina can become unintelligible incantations, not real laws, since registry in policy and conscience reflects mens et lex divina. Formulae mumbled without rational communication, are *iniusta [et] nefasta* (21). The XII Tables forbid crop-magic or decoying (8,8; Warmington). Augural “science” must be used only for the public good. Magistral augurs are publicly accountable *interpretes*, who help the State to implement the will of Jupiter which they report (Kowalski 128). The scientist of moral integrity “speaks to the State as a liegeman of a higher master demanding homage to his master” (Polányi 1951:46), civically accountable, not politically captive. A *fatidicus* predicts future events (*fatum+dicere*), more reputable and intelligible than an otherworldly *vates*, a seer or even poet. Vaticinari can mean “to rave”, so *ecfata incognita* belong to vates. Priests check omens in *vineta virgetaque* for *salus populi* at “dem Gedeihen der Saaten” (Latte 61). Magistrates and commanders are kept abreast through the *acta diurna*, Rome’s Hansard (Boissier 2). Like most Romans except Lucretius, Cicero nowhere limits the divine to the friendly confines of *aedes* and *templa*, or to the fixed times of public or private worship. Shūkyōism is not *his* category mistake, like looking for a sermon in a breviary, in C. Beukers’ memorable metaphor (125). *Mens divina* informs the whole universe.

Interpretetur! Its “speaking” (does T’ien speak?) in signs is only natural. Disturbance of nature signals something is up. *Auspicium praemonento* on a “need to know” basis. Auguries must be obeyed (no slaughtering of the sacred chickens?). Failure to obey is reckless and impious toward the res Romana. Priests enjoy customary prestige and legal authority. Their observations are a White Paper. Obedience to augury shows due deference to the gods whose will the augurs interpret (whether or not portents eo ipso declare it) Signs of divine goodwill are boons conferred by Juppiter Optimus Maximus as *patronus* on the Roman State as pious *cliens*. (Juppiter is to Romans as Cicero is to Locrians!) Realistic Cicero sees with chagrin that “Iovemque optimum et maximum ob eas res appellat, non quod nos iustos temperatos sapientes efficiat, sed quod salvos incolumis opulentos copiosos” (DND 3,87). His feast was 13 September (Sabbatucci 308). Maschkin (1953:113) has a touching photograph of the remaining wall of the aedes of J.O.M. Capitolinus, the Roman Wailing Wall.

21. *Divorum iras providento* protects *salus populi*. *Iras* means specific angry responses to provocations. Unethical decisions and deracinated rites could make gods hostile to Rome. Augural obnuntiatio had such power that the Lex Aelia et Fufia (150 B.C.) tried unsuccessfully to destroy it (Kroll 125). Altercations with gods can be patched up. The threat of national destruction under God’s wrath and the inadequacy of rite without structural goodness are ignored: the difficult business of holiness at the core, not just temporary mental focus and passing purity of rite. Cicero’s gods may be touchy, but they are tame, unlike the Biblical God. Their demands do not bite deeply. Rite has a constitutionalist power even so. “Applied to the ruler, *li* functioned as a constitutionalist norm” checking arbitrary rule, a source of education (as in DL) and a bulwark of the whole range of civil society (Bell and Hahn 45-47, 37). Augurs have power for zoning on earth as in the skies: *urbemque et agros et templa*. *Effata* is controlled by augural utterances, and *liberata* is freed from wild supernatural forces” Guillaumont 53; cf Att. 13,42,3). The power to set aside land for sacred use gives augurs financial power. Sacred space is divine guarantee of Rome’s territorial integrity. Anything harming sacred space, anything *augur iniusta nefasta vitiosa dira deixerit* (a train-wreck of adjectives!) is forbidden. Death penalty is set for defying an augur’s findings, a striking affirmation, in its way, of the reality of omens. It shows the veto power possessed by the augurs, guarding against violations of *fas* more than enjoining specific policies. Forbidden actions are *inrita*, against rite, and *infecta*, against secular action. Lawmaking runs parallel to the divine Mind; what prophecy lacks, legislation supplies. The legislator is as oracular as the augur. Cicero as augur and consularis packed a holy one-two punch.

21. *fetiales*. These priests, *oratores belli* (Michel 2003:6), make war and peace as *iudices* and *nuntii*. The Aequicoli, a cadet house of the Volscii, invented them, although Cicero says Tullus Hostilius founded them (DRP 2,31 vs. A. Watson 1993:8,6). Their Latin origin and Roman adoption shows “rogue foundation” Rome’s legitimisation among the Latins (A. Watson 1996:180). Undeclared war was *inritum*. War must be a riteful act with the gods as legal witnesses, just as they are legal witnesses at the sow sacrifice at the outbreak of peace. The normal business of the State is peace, so a special class of priests manages the crossing between concordia within and bellum without. The *pater patratus*, chief actor in the rite, is an ostentatiously artificial “fatherised” father (*patratus* is as odd in Latin as *fatherised* in English). War was routine for the Romans but it was not *normal*; “cedant arma togae, concedat laurea laudi” (DO 1,78) may have been bad poetry, but it was a serious principle. War-making was under the Senate’s control, just as assembling the Incwala preceded a Swazi declaration of war (Kuper 71). “Repetitio, denuntiatio, indictio” made declaring of war the act of “un *gentleman*”; there is no Greek equivalent (Barnes 52, 67). Fetial law had a just war procedure begun after attacks on Roman territory or ambassadors, breach of treaty, or betrayal by an ally.

Rome sent a delegation of four *fetiales* led by the *pater patratus populi Romani* to the foreign nation with a view of seeking redress for the injury sustained. Dressed in white wool and wearing a wreath of sacred herbs, the *pater patratus* forwarded the complaints and demands of the Roman people (*clarigatio*) to the leaders of the offending nation. In case a satisfactory reply was not given in thirty or thirty-three days, the delegation returned home and made a report, on the basis of which the senate – and, from the 5th century B.C., the *comitia centuriata* – decided whether Rome should launch the war. If such decision was made, the *pater patratus* once again returned to the border of the offending nation, where – in the presence of three adult men – he threw a spear of iron or of charred wood dipped in blood into the enemy territory signifying the declaration of war. As a result of an accurate execution of the procedure, a war was to be considered as being a *bellum iustum et pium*...war in conformity with religious prescriptions. Later, as Rome expanded, this proceeding would have been overly troublesome, therefore it was carried out symbolically in the capitol, at the temple of Bellona. (Sulyok 88-90).

Jupiter had to concur (Watson 1996:181) via the augurs as *interpretes*. An extraterritorial plot of ground for the spear rite bordered the Campus Martius (Rehak 191). Cf. Livy 1.32.12; Goldsworthy 38; Brink 328; Jhering 1:260; Pohlenz 1934:32; Righi 120. “Ac belli quidem aequitas sanctissime fetiali populi Romani iure perscripta est. Ex quo intellegi potest nullum bellum esse iustum, nisi quod aut rebus repetitis geratur aut denuntiatur ante sit et indictum” (DO 1,36). Optimate-controlled augury and fetial rite thwarted warlordism at home and abroad (Mitchell 1991:60). With fetial desuetude after 171 (Wardman 48), Cicero claims their moral for himself.

Subordinating military adventurism to the theological imperium of the *res publica* matches the Jǔ as paradigmatic non-military figure: “cedant arma togae” in Chinese dress. War was legitimate to

punish injustice (Mèng 3b4), but met without enthusiasm. “Moderate the overemphasis on overawing others and...turn back to an emphasis on civilian matters” (Hsún 16,5; Knoblock). Sneak attacks are “raids of robber bands”—a *consessus latronum* (Hsún 15; B. Watson). As Cicero forbids consecration of arable land, war in old China was timed to avoid planting and harvest (Dubs 1928:1). August 1914 is inconceivable in a Jú-chiào culture. *Mansuetudo* and *continentia* (Fam. 15,3,2) are profoundly Jú-chiào. “Confucianist and aristocrat clash...vividly. Both agree that there is something about a soldier, but not on what it is. The Confucianist, after all, is the eternal civilian” (Levenson 1972:2:36; cf. Yao 21). “Multo maiora opera sunt animi quam corporis” and that “rem vero publicam penitus amisimus...dominatu unius” (DO 2,46; 2,29; 2,2). Militarism, “animi elatio”, ends in “vitio” (DO 1,62). Diplomatic tools are as precise as the pater patratus’ cornelwood spear: “Ambassadors on goodwill mission use the *gui* baton. Knights on missions of inquiry use the *bi* disc. Officers who deliver summons use the *yuan* ring. Envoys who break off relations carry the *jue* jade crescent. For the restoration of broken relations, the *huan* jade circle is used” (Hsún 27,9; Knoblock; cf. Escarra 15). As among Romans, Swazis, and Zulus, “commanders of military expeditions had not only to receive their orders in the ancestral temple, but also to take part in certain ceremonies at this mound, before they could set out on an expedition” (Creel 1936:337). Under attack? First sacrifices at t’an altars, then at all state altars; war news given to Shang-ti at the wáng’s ancestral temple, ritual drumming mobilised troops, sacrifice to Shang-ti, and finally the blessing of the war-chariots (Bilsky 1:175). Peace treaties were equally solemn, after a limited punitive expedition:

The making of covenants was a solemn religious ceremony. A sacrificial animal was slain, and its blood was used to smear each copy of the agreement. Each of the rulers or officers subscribing to the treaty then read it aloud and smeared his lips with the blood of the victim. Finally, a copy of the treaty was buried along with the victim, so that the spirits might enforce it. (Creel 1949:16).

The gods are witnesses as at Rome.

21. *Prodigia portenta ad Etruscos* cites *lex scripta* but the Senate often pre-empted haruspices (Ruoff-Väänänen 152). Frequent use of haruspices was late Republican. “Multa cernunt haruspices, multa augures provident...haec...sive vis sive ars sive natura...dis immortalibus data” (DND 2,163) All the *sives* avoid the “scientific” question. T’ien is not ethically blind; cf. “silence” below. Hsún rejected *prodigia* and *portenta* “because Heaven and Man are united and act in unison. The received Ru tradition, the Confucius of the *Lunyu*, Zisi, and Mencius, held that Heaven/Nature responds to the moral qualities of men” (Knoblock 3:5). (Cf. Hsún 11,15; Forke 1964:226.)

If the haruspices were consulted only about extraordinary *prodigia*, one wonders what *ordinary*

prodigia were. To prop up the fiction of his corrosive skepticism, Cicero is often half-quoted as saying that he cannot fathom two haruspices meeting each other without smirking. Haruspices predicted Catilina's coup two years in advance (Vogt 51)! Through Cotta, his theological alter ego, Cicero actually said "Mirabile videtur quod non rideat haruspex cum haruspicem videat [n.b. *not* augurem!]; hoc mirabilius, quod vos [Epicurei] inter vos risum tenere potestis" (DND 1,26,71) The wisecrack was directed against Epicureans. *Haruspices*, interpreters of liver and entrails, were not an official Roman priesthood. Introduced by Tarquin I, they stayed "Etruscan" (Hammond 60; De Div. 2,52; DND 2,11). "Porro amici est bene praecipere, Tusci bene praedicere" (Lucilius in Warmington 3:222). *Haruspex* is "pure Latin" (Brink 311, Meyer 1964:20), but the Etruscan origin of their *disciplina* and identification with Rome's Etruscan element enhanced their glamour. Their rich lore's codification in the 100's gave them lower status than augurs, perhaps due to the rite's messiness (Maschkin 1953:68; Meyer 1964:7; Navarro y Calvo and Calvo 92; Soothill 1929:145). In Roman Tào "the arts of haruspicy and augury rest on the assumption of a predetermined pattern of events; and the reports of prodigies assembled year by year presuppose a harmony in nature, in which disorder in the microcosm...connotes similar disorder in the world at large" (Walsh xxxv). Cf. Trollope's entertaining hymn to prodigies ancient and modern (2:25).

The bigoted Gracchi hated haruspices as "foreign". Tiberius Gracchus ridiculed them in the Senate. "An vos Tusci ac barbari auspicioꝝ populi Romani ius tenetis...?" (Rackham 132). He ended badly. Divine wrath-detection was haruspices' speciality (Kroll 127); the Gracchi might have given heed. "Otherness" enhanced their art, as Khoi religious terms taken into Xhosa shows "inferior social status...balanced by a high religious status" (Hodgson 8). Etruscans had hoary antiquity and the romance of the vanishing. Unlike augurs' free-floating Polish veto, haruspices are only consulted *si Senatus iussit...Etruriaque principes disciplinam doceto*. No lex Ogulnia let plebeians (including artificial ones like Clodius!) corrupt the art which held so much in trust. A Roman Rasputin is unthinkable. Cicero and Clodius played duelling haruspices when Clodius tried to raze Cicero's rebuilt house in 56 (Uttschenko 1978:170). Cicero won.

Unlike the Gracchi, Cicero was no bigot. As governor of Cilicia in 51, he happily and professionally discussed Roman and Galatian augury with King Ariobarzanus of Galatia (Everitt 194). His dismissiveness toward Judaism in Pro Flacco 28,69 was not anti-Semitism (unlike his teacher Apollonius Molo's hatred) but *any* cultivated Roman's alienation from worship out of the Greco-Roman loop. Marx's philologist-in-law J. Bernays blasted Cicero's "heidnische Spott", not based on faith but upon historicist confidence in broadening Jewish prospects thanks to modern ideology (465). *Superstitio* was not winners' theological talk but marker of a cultural edge, meaning *any* non-Roman religion (Bernard 116, 124-125). Cicero scorns "Chaldaeorum monstra" and

attacks any “supernatural” racism as gross *superstitio* (De Div. 2,87 and 94). The late Republic and the principate saw flood-tide in the fortune of astrology and *harioli et coniectores*, partly under Stoic influence—another reason why Cicero is not a Stoic. This rise, worsened by Levantines’ “Geheimlehren, Aberglaube und Spuk” (Meyer 1964:277) marked the free polity’s collapse, “retreat from rationalism”, and the “end of open politics” (Liebeschuetz xii, 23). Un-Roman *superstitio* whored after un-Roman Hellenistic tyranny, a brain-dead relic of authentic religious rite (Schebesta 75). Aquinas’ definition fits well here. “Superstition is the vice which is opposed to religion through excess, because it offers divine veneration to him to whom it is not due or in a manner in which it is not due” (ST II-II,92,1; Küng and Ching 56)

“The southerners have a saying: ‘Without constancy a man cannot play the part of a shaman or a doctor.’ That’s good, isn’t it? If one does not show constancy in one’s virtue, one will perhaps be visited by shame....They do not merely read omens” (LY 13,22 Dawson). LY 6,22 is anti-shamanic, not irreligious. “When...the Way fell into obscurity, heresies *and violence* again arose” (Mèng 3b9; Lau). *Superstitio/mí-hsin* and tyranny go hand in hand. “Hsün Ch’ing belonged to a generation of evil and foul governments, of dying states and evil princes, who did not follow the great Way (*Tao*), but attended to magic and prayers, and believed in omens and luck” (Dubs 1928:27). The “*Tao Tê Ching*...is an occultist kaleidoscope, a magic void” (Waley 1956:121); Taoism is a political null. Piety opposed divination except State-approved milfoil and scapula (Forke 1964:76). Hàn law executed sorcerers (Ch’ü 223); cf. SC de bacanalibus. “Disreputable, *vin*, covers excessive, obscene, unapproved”, or rites of a deity outside the Chou pantheon (B. Watson 1989:209; Granet 116; Huxley 91).

“Cultus autem deorum est optimus idemque castissimus atque sanctissimus plenissimusque pietatis ut eos semper pura integra incorrupta et mente et voce veneremur. Non enim philosophi solum verum etiam maiores nostri superstitionem a religione separaverunt”. (DND 2,71).

As long as *mos maiorum* stood as bulwark, Hellenistic lucky eudaimonism was held at bay (Kroll 246, 135). Chou En-lai asked: “Do you think that Communists are not afraid of ghosts? I doubt it” (Heberer 108).

The consuls razed Isis’ Capitoline aedes in 58 (Wissowa 293). Cleopatra’s “barbares zoolâtres” (Haury 227) were as obnoxious to Cicero as Western *mí-hsin* (Buddhism) was to Jú sharing his “scharfe Trennung zwischen *religio* und *superstitio*” (Kroymann in Michel and Verdière 127), and XII Tables’ horror of magic (Graf 42). Low-grade foreign occultists swamped Rome. Even Neo-Academic Brutus the tyrannicide credited talking apparitions (Kroll 129). *Numina* had to be “von jedem Aberglauben losgelösten, reinen und lautern Frömmigkeit, die auch für jede andere Gemeinschaft die *condicio sine qua non* bildet, zu verehren haben” (Goedeckemeyer 187).

Superstitio robs gods' dignitas, giving what is *not* their due; it is injustice.

Cicero's civic hope is holy and down to earth. Not xenophobic, he simply has his feet on Italian ground and his head *not* in the clouds. He does not want the "roaring chaos of the barbarian world" (Haskell 251), but all under Heaven can come *into* the Roman οἰκουμένη and share its Reason. Just as leges imperfectae employed shame, King Cetshwayo (85) ordered witch-doctors, as fakes, to be crudely shorn as a humiliation. How Ashurbanipalitan hairstyles fared at Rome is unknown.

The Shoah made Bernays' and all other historicism untenable. Natural law, on the other hand, makes it possible to denounce all genocide without accusations of special pleading (Novak 180) that further attack the humanity of victims and survivors. Natural law demythologises historicism, which is *itself* "zeitgeschichtlich bedingt und hat nicht das Recht, sich als theologische Erkenntnis der Wirklichkeit auszugeben. Sie steht zu der Weise, in der die Heilige Schrift von der Selbstbezeugung Gottes in Natur und Geschichte redet, in offenem Gegensatz" (Althaus 1952:22). The usually astute Emperor Trajan spoke inanely of "the spirit of our century" (Pliny jun., Ep. 10,97). Anti-utopian and anti-dystopian Cicero set modest εὐλογία like the Iron Gates against progressive historicism and "Dekadenz-Pessimismus" (Seel 402; cf. Schwartz 1985:333 on Hán Fei's historicism). Cicero's faith in universal ratio recta makes him avoid Hellenocentrism and affirm every person's humanity. Cicero and J. O'Neill share interconfessional resistance to a failed arx with no templum, the *ara Febris* of nefasta apartheid and its deManding inheritors:

It is a conceit of postmodernity that it stands on a point of the highest morality achieved through the erosion of all previous moral institutions....At the same time, we are asked to believe that human beings are now so speciated by gender and race—though we are silent about class—that there can be no universal knowledge, politics, or morality. (O'Neill 1).

Post-modernism's attack on universals is bleakly Eurocentric in its despair of dialogue (Wiredu 1).

Silent on spirits: civic theology's tacit dimension

Limiting one's talking is not mute despair. King Cetshwayo explains ukuHlonipha as "show[ing] respect through observing certain formal avoidances in action or speech" (xi). "The Master never talked of: miracles, violence, disorder, spirits" (LY 7,21 Ryckmans). Just as Cicero's passing over ontic for civic theology in DL is a matter of topic (Avallone 207ff discusses his divine ontology in Tusc. and De fin.), so K'üng's silence on spirits is a matter of timor Domini, modesty, and this-worldly focus, not indifference. This description of the Sage cannot bear the burden of a non-existent (not merely not present!) unbelief in Deity on K'üng's part, just as a false privileging and at least partial misreading of De Div can cancel Cicero's faith. LY 7,21 shows both detestation of superstitio and genuine reverence toward T'ien. Against retrojection and reductionism, "those who

insist Master Kong never spoke of disorder and spirits' (LY 7.21) should realize they speak of an image [Chuhsiism-jwh] constructed one and a half millennia after Confucius died. An earlier image of Confucius only failed to speak of [them] *because* a sage was simply not ambivalent or agnostic about the demons and spirits" (Csikszentmihályi in Van Norden 153; his emphasis). "Keep your distance" reprimands Chou. K'üŋg "was not so much denying the spirits' reality, or Heaven's activity, as he was reemphasizing, in a context of religious abuse, the standard Chou belief that genuine political security and strength lie in virtuous leadership, not superstition and religious formalism...Confucius's attitude toward the spirits recalls the Hebrew prophets' polemic against the sacrificial cult" (Green 54; cf. Dubs on monotheism). P. Ivanhoe puts it in a canonical context, consistent with an underlying monotheist praxis as well as avoidance of mí-hsin:

In the *Analects* there is a clear reluctance to appeal directly to spirits for aid or support and a real concern for not patronizing the spiritual world. (See, for example, *Analects* 2.24, 3.12, 7.35, etc.). I do not interpret these passages as expressing a disbelief in spiritual beings but rather a rejection of a more magical conception of human-spirit interaction. (2000:xvii)

Alternatively, "did not speak of" may have been a single incident" (Dawson 92).

Not speaking overmuch is *pium*. Out-talking L. Wittgenstein, H-G. Gadamer says:

One can say something tactfully; but that will always mean that one passes over something tactfully and leaves it unsaid, and it is tactless to express what one can only pass over. But to pass over something does not mean to avert one's gaze from it, but to keep an eye on it in such a way that rather than knock into it, one slips by it. Thus tact helps one to preserve distance. It avoids the offensive, the intrusive, the violation of the intimate sphere of the person. (1998:16).

Perfectionism compels reticence, and the inadequacy of human speech, reserve. "One cannot express everything that one has in mind, the *logos endiathetos*" (Grondin 1994:xiv citing dialogue with Gadamer). Christian and resistance activist Polányi M. tells us that "we can know more than we can tell", calling it "subception". As the Sage's respectful (but non-participating) bashfulness during the exorcism rite was not loss of faith in T'ien but its silent confession, so "the ineffable domain of skilful knowing is continuous in its inarticulateness" (1966:4,8; 1962:90). Ineffability and *εποχή* do not thwart action. Constructive scepticism in Cicero allows "knowing" well enough to act theologically and politically. *Diesseitigkeit* and verbal limits in K'üŋg leave him able to worship in rite, cry out to Tien, etc. Civic theology is like riding a bicycle:

Though I cannot say clearly how I ride a bicycle nor how I recognize my macintosh (for I don't know it clearly), yet this will not prevent me from saying that I know how to ride a bicycle and how to recognize my macintosh. For I know that I know perfectly well how to do such things, though I know the particulars of what I know only in an instrumental manner and am focally quite ignorant of them...I know these matters even though I cannot tell clearly, or hardly at all, what it is that I know. (Polányi 1962:88).

Thus, Cicero can sound “sceptical” in the vulgar sense in *De Div.*, the committed believer and philosophical underdog “Cotta” in *DND*, and speak in his own name with priestly *auctoritas* as augur and civic theologian in *DL*. . לַכֹּהֵן, וְעַתָּה לְכָל-הַיָּמִים, תַּחַח הַשָּׁמַיִם (Eccl. 3,1). Historicism and Hellenomania relegated Roman thought to second-rate status. K. Jasper’s axial-age literary conceit, adopted by the often astute H. Roetz, does this to Han thought. Axialism is a reactionary, mechanistic exclusion of other cultures’ and times’ creativity; were it based on race or gender its inadequacy would be clearer. Eclecticism again provokes disdain. “When the Han is sometimes derided...it is usually by people mourning the lack of pure examples of ‘Confucianism’, ‘Daoism’, and ‘Legalism’ rather than looking at the interesting ways these categories were being combined and adapted to the realities of the time”. The axial age “model of synchronous philosophical fluorescences requires the poverty of Han discourse to exist in inverse relation to the richness of Warring States discourse” (Csikszentmihályi xx,xxii). As K’üing followed Chou, so we follow Antiochus and Cicero, rejecting ipsedixitism.

21. *quibus divis creverint.* Either Cicero gives the haruspices *carte blanche*, respecting their ability, or he knowingly shunts them to one side, letting them do what they wish. If Cicero is sidetracking the *haruspices*, this is a gentle, partial distancing. Cicero avoids uncritical endorsement of the *haruspices’* art, while defending its place in Roman custom. Keeping haruspices shows prudence, in case there is something to it after all. Tradition and State practice are not overturned by Cicero’s Scots verdict. *Creverint* extends Cicero’s stern defence against breach of augural law to haruspicy (Guillaumont 53). He opposed abolishing *obnuntiatio* “as the removal of a necessary safeguard against the *tribunicios furores*” (Liebeschuetz 30). J. Liebeschuetz sees this as a secular objection. However, *furores* are attacks on *ratio*, which is §8 *mens Iovis*, and attacks against the sacred Republic, and thus *sacrilegium* twice over (Cf. *Post Red.* 5,11.) *Capital esto* was rare, and *aqua et igni interdictio* (early republic did not anticipate a great distance to go) was archaic Rome’s “to hell or Connaught” but in Cicero’s time and case a virtual death sentence. But Rome was reticent about it, used “only in the case of high treason (*perduellio*) and perhaps also in the case of grave delicts of a sacral kind...committed directly against the commonwealth. Even the punishment of a murderer (*parricidas*) was left to the victim’s kin, his agnates” (Kunkel 27). King Cetshwayo ordered sorcerers (anti-State anti-augurs) killed, but only *after* a series of complaints (19).

21. In contrast, caution and strict control mark *nocturna*. XII Tables 8,26 declares of secular meetings “ne quis in urbe coetus nocturnos agitare.” Women do not fit the pattern of integration and acceptance, since they are neither state priests nor magistrates. Women’s sacrifices skirt the edge of *separatim nemo habessit deos*, not because the *Bona Dea* was women-only, but because women’s connection to the public sphere was indirect. Feminist hermeneutic of suspicion is

unwarranted by the text; the faithful Neo-Academic Cicero soars beyond such rigidity. Graf too closely assimilates Bona Dea to mystery-religion while rightly noting men's fears of autonomous women (59). The rite's action happens away from the centre of public life, but *castimonia* points it directly to *salus populi*. Cicero proceeds from rites done by Roman men, to prophecy done by Etruscan men, to rites done by women, to the initiations of the adepts of mystery-cults.

It is easy to charge Cicero with sexism, with no right of appeal for the accused. This charge confers *eo ipso* moral superiority upon the critic over the *object* criticised. Cicero actually integrates women into his code. Women's night-time sacrifices *separatim* are prohibited, but what is *pro populo rite* is affirmed. The timing of rite, not its personnel, makes Cicero cautious. [Cicero deeply admired brilliant daughter Tullia (76-44). In his great respect and her great talent the father/son hsiào of Jú-chiào transcended gender bounds similarly to Hakka tsü-chuán (Constable in Bays 160).] What takes place at night happens apart from public and state functions. It is not a household activity readily observable by outsiders. If religiously wrongful acts occur at night, human act and divine response move from an offence to civility occurring *privatim* to the edge of sedition. Code support for *nocturna sacrificia* shines the light of day upon them, making them safe for the State, just as Zulu *mos maiorum* treated burial at night as an honourable old (disused) rite (Berglund 364). Women actively enter the *res publica rite* by these recognized rites—night is no scandal because they are done *pro populo* (Guillén Cabañero 1999:505; cf. Forsyth 1:176). Cicero does not control *minutiae*. His turf is *libertas*, not totalitarian obsession. Dialogue requires *libertas*. "There is no discussion possible with those who are not free" (Stravinsky 358 [in 1949]).

Cicero is our oldest source on the *nobilis Bona Dea* rites (Brouwer 260). The rite at Cicero's house in his Wunderjahr saw the ritual fire blaze up as a sign of Ceres' favour (Dio Cassius 37,35,3-4); Caesar was then *pontifex maximus* (Appuhn 420). On the night of the Third Catilinarian, the kalends of May 63 (Sabbatucci 159), Cicero had to stay at a friend's house because the Bona Dea was being staged at his own. Clodius in drag, "Prinzipienlosigkeit, und Habgier" infiltrated the rite at Caesar's house in 62 (Maschkin 1954:30). Earnest people and "di immortales" can but mourn: "tristiores...sine maximo dolore audire non possint". The protecting goddess has been insulted by the fellow "accusando senatum quod severe de religione decerneret" (De Domo 104; cf. Brouwer 397, Everitt 117). "Bona Dea possesses all the qualities which make her a goddess who, together with Cicero, is capable of championing the preservation of Roman tradition. She is the nobility's goddess and...in Cicero's eyes stands for everything that is to be preserved. (Brouwer 265). Clodius was killed at a shrine of Bona Dea; penal law/hsing was unnecessary, it seems.

21. Embraced by the Roman élite as a badge of cultural-theological grace, Eleusis accepted any

cultured (Hellenophone) person. Banning all initiations, except *Cereri Graeco sacro*, guards the res publica against numinous power of *separatim* mysteries. Non-initiates are outsiders, profani. This disrupts consensio *omnium* bonorum. Other mysteries would make the State, its rites, and mos maiorum profana. Their grip could induce initiates to neglect public religiones. Privacy in Cicero's code is good but secrecy is bad. Eleusis is good because optimates come "from ocean's farthest coast": "ubi initiantur gentes orarum ultimae" (DND 1,119). Hallowed by adoptive Romanitas (*ut adsolet*), the Eleusianian mysteries gracefully enhance Roman exoteric rites, bless family sacra with hope of eternity. They foster personal holiness and personal faith (Beukers 55). They "excluded no one save barbarians and those who were guilty of bloodshed ('who had no clean hands')"; letting in Sulla showed that the hereditary *Eumolpidae* were lax guardians (Frisch 1949:173; Kumaniecki 1972:96). In contrast King David was forbidden to build the Temple כִּי אִישׁ מִלְחָמוֹת אִתָּהּ וְדַמִּים שָׁפַכְתָּ (1 Chron.1 28,3). Like the Chou, Cicero's Romans wanted reassurance that they were civilised. "In die Mysterien von Eleusis und den dortigen Geheimkult ließen sie sich einweihen als in Dinge, die man damals schon mit der verständigen Überlegenheit betrachtete, mit der die Einsichtsvollen sich heute in den Freimaurerorden aufnehmen lassen" (Eulenberg 25). Similarly, "participating in Confucian rituals mean that one regarded oneself as a Chinese" (Eberhard 1982:118). Titus Pomponius *Atticus* was Greek honoris causa; the Cicero brothers were content with edifying spiritual tourism and a taste of immortality. Life extends beyond physical death; even if hope is not proof, good hope carries the weight of conviction (Grimal 1986:75).

Proserpine, assimilated to Ceres, enters and enhances the indigenous Roman constellation of *numina*. The decorous (so far as we know) rites of Demeter/Ceres gave hope of a gentler life and a better death (Dörrie 1973:240), in sharp contrast to Cybelism. They were a bulwark of pagan monotheism, subsuming lesser deities within the mind of God (Athanassiadi 20 n. 49). In a code reflecting divine Mind and right reason, unreason and mindlessness must be thwarted. Pietas is not unbridled fervour. The mysteries must fit in the web of Roman pietas and things done rite, or they must be left to dubious foreigners. Kindly Ceres and Libera "ex mysteriis intellegi potest" (DND 2,62). Who monitored this? Aediles were originally guards at Ceres' Aventine aedes. "Die religiöse Freiheit des einzelnen Bürgers wird durch die Sakralpolizei [aediles] nur insofern beschränkt, als er nicht in loco publico sacrove andern Göttern als den staatlich anerkannten oder in anderm Ritus opfern darf, und um häuslichen Gottesdienste haben ohne Frage die di sive novi sive advenae oft einen grösseren Raum eingenommen als die Staatsgötter" (Meyer 1964:43; Wissowa 1902:41).

22. Sacrilege, *sacrum commissum*, harms salus populi. It provokes *divorum iras* and blocks approaching *caste*. Ridding the body politic of it is the proper task of public priests. Intent

distinguishes expiable and inexpiable sacrilege. Unintentional breaches of protocol are not deliberate desecration of the rites. Only the latter is done *impie*. Gods, public institutions, and traditions are not on a hair-trigger. An honest blunder is not a hostile assault. Cicero is not in the realm of magic. What is put wrong can be put right. Expiation by *publici sacerdotes* (37) appeases the gods and averts their anger, so the *sacrilegus'* guilt does not pollute the State if it misses punishing him. The State *as such* is not guilty of sacrilege; through priest-magistrates it can approach the gods *caste* and reconcile them. No unwitting offense is irretrievable. *Sacer* here means a wrong done to the gods or to something holy. *Expiari* is reparation for a wrong and averting its bad consequences. “At vero scelerum in homines atque impietatum nulla expiatio est” (DRP 1:40). Penal law alone makes for slyness, not expiation (LY 4,11). The Furies afflict the guilty with “angore conscientiae fraudisque cruciatu” (1,41). Whom laws cannot reach, Juppiter/T’ien’s Law indicts and convicts: the depraved, sociopathic, conscienceless wrongdoer. Any *normal* muntu obeys conscience instanter at Mèng’s well (2a6). Public expiation ensures that the State is not tainted by a sociopath doomed morally *privatim*; publice all is well again. A scofflaw ignoring a robot may not feel guilty. A conscience-driven person who hid innocents need not have balanced breaking statutory “law” and saving innocents outlawed by a terrorist “state”. Prosecuting Verres’ sacrilege pursues social justice for despoiled Sicilians. The peroration is terrifying in Verr. 5,184, calling down the wrath of Juppiter Optimus Maximus, Juno Queen of Heaven, Minerva, Ceres, the Greek pantheon, and “ceteros item deos deasque omnes imploro et obtestor”—his religious prayer *and* his legal appeal—against Verres who waged “bellum sacrilegum semper impiumque”. Cicero held to this until death. Only the enemies changed. Tyranny itself is *sacrilegium* and *capital esto!* (Dickinson 271). “ὁ βδελυσσόμενος τὰ εἰδῶλα ἱεροσυλεῖς;” (Romans 2,22).

22. Whatever happened to *Numa*? Bouché-Leclercq (17) lugubriously says “C’était au pied du Janicule, en effet, près des autels de Fontus, que le pieux roi dormait de l’éternel sommeil: il avait voulu rentrer dans le sein du Dieu par qui tout commence et tout finit, qui allume et éteint le flambeau de la vie”. One wonders about the burial places of King Wen and the Duke of Chou.

22. *Popularem laetitiam moderanto* by music to rouse emotions or gentle a crowd to pay attention to the programme of games and forestall its degeneration into a mob. “Taming” *laetitia*? Happiness is near to violence, *laetitia* to *laedo*. “Geheisse des Volkes” is scary: at a great sacred event, popular enthusiasm could career into crazed destruction of the “Verbindung, die der Mensch mit Gott hat” (Buechner 235). After the football match is over, the obligatory riot ends the rite. Careful control of the style and content of music could enhance the aesthetic and emotional impact of a boisterous public occasion. Cicero accepts the crowd-pleasing side of the games, sanctifying the hoopla by

requiring *eam cum divum honore iungunto*. *Honos/honor* is not “churchy” behaviour, but rowdy fanship toward the gods whom the games honour. After cheering for the divine home side, all other partying could go on unimpeded. *Cum honore* prevents sacrilege. Since so little is required, there is little danger of offending the gods. There is no puritanical frown at the seriousness of rite disappearing in boisterous festival: cf. San Gennaro in modern Napoli and modern Taiwanese fattest-pig contests! (Clart 41). Music at races and games shows the entertainment and its enthusiastic (sic) response, *was* honos/honor, and so pietas/hsiào. Gods are champions at the games, holy stars basking in the favour of fans they favour with rited presence. (Cf. 38-39.)

22. Keeping the *optuma* of *patriis ritibus* separates Cicero’s critical love of tradition from unthinking traditionalism, which admits neither change nor differing merits in the traditions (cf. LY 9,3 cap). If every rite were right, Cicero, like Varro, would be archivist, not theologian. *Ritus familiae patrumque servanto* (19) refers to family worship. *Patriis ritibus* are civic rites authorised by the *patres conscripti* (senators). As in DL, K’üing’s concern promotes Chou’s *lǐ*, not simply (as Aristotle) “prevailing social customs and conventions” (Yu 329). K’üing and Cicero are nearer each other as critical traditioners than either is to utopian totalitarian Plato or status quo Aristotle:

In terms of the rites...*li*...the Confucian quest for the Dao does not admit of a blind or unthinking adherence to tradition. Confucius’ devotion to antiquity [haogu]...implies a sharply honed historical consciousness. This rules out any uncritical reduction of...Confucian thought to an obstinate refusal to accept change. (A. Chan 2000:249).

22. *Ne quis stipem cogito*, as airports block hawking holy tchotchkes. “Wem fällt nicht hierbei die Einrichtung der Bettelorden in neuerer Zeit ein?” (Klotz 1:675). The Idaean Mother’s slashing catharsis was against Roman dignity, like “Tantric practices that...shock and disgust the more prudish Burmese Buddhists” (Thant 58). Cybele is anti-Vesta, with unsanctioned prophecy and the infamy of castration. “Ihr Kult war einer der rohsten Kulte, die es in Orient überhaupt gab. Die östlichen Kulte fanden ihre Anhänger vorwiegend in den demokratischen Kreisen, denen die offizielle Religion keine Befriedigung zu geben vermochte” (Maschkin 1953:159, with a picture of a *gallus*, effete and barbaric). Quindecemviri admitted her to Rome in 204 because of her Trojan origin (Siber 118; Szemler 1972:27). Restricting *galli* shows the sort of Romans and the sort of gods Cicero wanted. He did not want financial pests and he did not want Romans to be *famuli*, flunkies. Quarantine protects Roman faith and Roman dignitas. Restraint is repression is our superstitio, that violence is the *imago dei* of the worshipped “healthy” self. This is the “health” of fascisms old and new. Better a sick Republic or valetudinarian Warring States! *Optuma* need no rectification of names. Given the *ludi*, Roman limits on sacral violence were few, but syncretism cannot digest everything. Containment is Cicero’s strategy. Annoying *galli* were still doing business in

Augustine's time (CD 7,26).

“Shamans, both male (chī) and female (wu or ling), were known in other states besides Ch'u...In some states, such as Ch'i, naked female shamans danced to bring rain” while possessed (Bilsky I:180). So much for keeping one's distance! “Shamanism was in the long run not compatible with the emerging religion of the state in China” (Schwartz 1985:36 citing Maspero). This is not ethnocentric but it was good for the long run: Ögödei regarded Jú as religious teachers and condemned Mongol shamanism (Liu Ts. in Chan H. and De Bary 496). T'ien is “to be treated with much greater circumspection and the wild orgies of eating, drinking, dancing and fraternization between god and man became inappropriate” (Eichhorn 46; cf. Creel 1936:338). For K'üing, Heaven is a personal God, high and exalted, knowing K'üing and being known by him through jén/humanitas/ubuntu. “If Heaven can be seen as conducting a dialogue with humans, the gap between the two seems to be implied and Heaven as a quasi-personal God far above can not but inspire a profound sense of awe in Confucius” (Móu Ts. 牟宗三 in Lín & Zhou:416). Harper criticises overuse of term “shaman” (Overmyer et al. 154); cf. the august J. Ching, and M. Eliade.

22. *incestum*. Cicero was “notoriously [sic] upright” (Boswell 300). Conservative in sexual matters, “he explicitly disapproved of same-sex relationships” without shunning those who did not (Everitt 121). When a public figure (Clodius) is nefas, *and* a vicious enemy, Cicero notes that the Roman Alkibiades was always escorted—and much else—by a gaggle of male prostitutes (Pro Mil. 21,55). He condemns paedophilia in the strongest possible terms: “despiciens conscius stuprorum ac veteres vexatores aetatulae suae puteali et faeneratorum gregibus inflatus” (Pro Ses. 8); social injustice and unnatural sexuality go faute de mieux hand in hand. Minimal comment in DL is not indifference to the claims of fas/ Tào in sexual matters.

22. Valuables put in a temple for safekeeping are *sacer*, the god's belongings. *Qui clepsit rapsitve* is a parricide. If the *sacrum* is stolen, the god's beneficence stops. Since gifts were made from generation to generation, theft mocks ancestors and the benefits they received. Stealing the temple gifts living parents made treats them as never receiving nor ever to receive divine benefits, or as good as dead. Theft of *sacrove commendatum* could cancel a marriage (cf. 41), despoil heirs, and make an unprovided old age. Sacrilegious theft attacks family continuity and the life of its aged. It amounts to parricide. Filiality extends to the patria. The temple-robber harms the State, impairing earlier generations' fama and sabotaging divine comercium. He insults and incites the gods. Actual parricide is punished with death by torture in XII Tables (Borkowski 27). Cicero's gods were “a sort of highest class of Roman citizens. As such they had...their duties toward the state while the

state...was obliged to provide them with their proper offerings and honours....the Romans and their gods are rather in the position of free contracting parties" (Rose 1924:85). "Communio sacrorum, partnership in the curial sacra" was the earliest mark of citizenship (H. Taylor 89). As fellow-citizens, public-spirited gods Mencianly care for *salus populi* (E. Rawson 1975:154). Social equity and civic reverence go hand in hand. "Quod [ratio iuris] dividitur in duas partes primas, naturam atque legem, et utriusque generis vis in divinum et humanum ius est distributa, quorum aequitatis est unum, alterum religionis" (Part. Or. 37,129). This commonalty is under wise Juppiter/T'ien's aegis, for "l'universo tutto si può ritenere la civitas comune agli uomini e agli dei, definita e distinta da una mente divina potentissima" (Righi 93). Ratio and iura are shared by Roman citizens, men or gods (Schmekel 47). "Est enim pietas iustitia adversum deos; cum quibus quid potest nobis esse iuris, cum homini *nulla cum deo sit communitas?* Sanctitas autem est scientia colendorum deorum; qui quam ob rem colendi sint non intellego nullo nec accepto ab iis nec sperato bono" (DND 1,116). Cicero expresses horror at the threat to *salus populi* if rites/lī deliquesce (1,43). K'üing also feared that ruining the commonwealth of gods and men will wreck all ethics. Loyalty, *societas*, and justice are impossible without "religiöse Bindung an die Götter" (Vogt 77). Without rite or commonwealth, by ἀσεβεια we have the Hobbesian state τῶν ἰδιότων. Mencianly, Cicero declares us "ad iustitiam natos" (1,28). Without *res publica* joining us to the gods and one another, without reverence and ubuntu joined, reason has no riteful space and all that sacred is ripe for theft. Festivals may strike outsiders as anything but religious. They lure the gods to convivial life (Bilsky 1:8). Contemporary Taiwanese

pilgrimage trips and renewal festivals [with fattest-animal contests, etc.] are per se expressions of deep religious spirit. But what one observes on the outside does not necessarily always strike one as an act of faith. Entertainment and external show appear to suffocate the spirit of worship. This may be an indication of secularization setting in or a sign of the externalization of religious faith. Yet, at the same time, true devotion can still be found, at least among a minority of worshipers. (Pas in Clart and Jones 41; cf. Cua 1979:57, Fingarette 16).

For classical Jú-chiào, sociability is natural to the human "zoon politikon" (Zenker 1915:17). "If a man knows Heaven, he is not only a citizen of society, but also a 'citizen of Heaven,' *T'ien min*, as Mencius says" (Ta19; Fung 77). "Ἡμῶν γὰρ πολιτεύμα ἐν οὐρανοῖς ὑπάρχει" (Philippians 3,20).

22. *periurii poena*. In 41, Cicero refuses to discuss either perjury or incest. The difference in punishment for the two crimes is worth noting. In the laws themselves, Cicero posits divine destruction for the perjurer, but no divine punishment for the incestuous. On the other hand, the human punishment for incest is death, and that for perjury dishonour (*dedecus*). The perjurer might appear to be getting away lightly, but in Cicero's society this was not the case. In DL 1:55, Cicero

points out that to Zeno, *dedecus* was the only evil, and to the Academy it was the greatest evil, remarking that the discrepancy is “non rerum sed verborum discordia”. It goes without saying for Cicero that *dedecus* would attach to the person guilty of incest as well. “El incesto designa especialmente al ultraje hecho a las vestales y envuelve siempre la idea de profanación” (Navarro y Calvo and Calvo 92). (Cf. Har Resp.18,39.)

In 42, Cicero speaks of seeing his enemies’ disgrace and destruction. Their crimes were their own punishment. Divine punishment (*exitium*) is neither an abstraction nor deferred to a future life, but something which eventuates naturally in the guilty mind. The pontifices themselves, in the case of incest, are to carry out the execution. Incest strikes at *societas* by shaming the family, whose role as a religious entity is basic to civic theology for both Cicero and K’üng. Priests, not magistrates, punish incestum, and ritual impurity is removed by agents who mimic divine judgement. Holiness avenges itself through the pontifices, its *iniuria* is healed, and fundamental order is restored. Placing laws on perjury and incest next to one another shows the essential kinship of the two crimes. These crimes are universally abhorred (Krige 224). Perjury assaults the sanctity of the state by repudiating the sacred character of oaths. Incest assaults the sanctity of the family by violating the standards of the community and by violating the intrinsic natural order of the family. Since state and family, as ordered structures, reflect and participate in the divine ordering of society and of nature, an attack upon them is an attack upon the gods and divine reason. Divine and human punishment in the case of perjury, and human capital punishment done by sacred functionaries in the case of incest, reveal the congruence of social structures and natural order. To outrage *societas* denies natural order—more than “stars in their courses” (cf. DND 2,97), the retributive justice of Heaven.

22.. Conditioned by Biblical בִּישׁוּתָה and μετανοία, we may think that Cicero has barred God’s door to the conscience-stricken penitent. No: the penitent Roman, whatever his past neglect, is *pius* as he now seeks *ethical*, not adventitious, recourse to the gods. One conscious of wrong and making reparation, moved by contrition, guilt, or shame to reactivate *comercium* between himself and the divine, is *reus* but by castimonia *pius*—if not simul iustus et peccator! An *impius* could not care less: *ne audeto* to approach! Sleekly free of shame, him Cicero forbids to make reparations to the gods amounting only to crass manipulation. The *impius* plays games and acts a part, mocking *societas* with gods and men. His gifts are not sacrifices but pieces on a chessboard of self-regard. The *impius* does not approach the gods caste. *Opus operatum* has become *opus otiosum*. The ties that bind are broken. Ostentatious gifts cannot make the giver religiousus.

The gods do not want obligating gifts from such a person. Nobody (surely not the gods!) wants to be bound by reciprocity to a scoundrel, or be guilty by association. Equally important, the guilty

giver is no true giver, not because of past delict, but because his giving *now* acknowledges no claim of morals, reason, or gods upon his present relationships. The self-excluding *impius* is not the accidental or contrite wrongdoer. Intention separates them cleanly. The difference between acting in travesty of obligatedness, and acting out of desire to repair obligation, is castimonia of intent and love of *pax deorum*. Debarring an *impius* shows Cicero is far from rote rite. Without moral conscience, *religiones* are no *religiones*.

22. *Caute vota reddunto* speaks to the ordinary person who, neither *impius* nor *scrupulosus*, is slovenly about religious obligations. *Votum* is a contractual request based on belief that worshipper and god can live up to their respective sides of the bargain. The person *voti reus* ought not wander away when the concern is assuaged by circumstance, or fail to pay the vow when the danger is past or the good outcome befalls him. If the happy issue never occurs, it is not the votary's concern. Humans tend to turn to the gods when times are bad or danger threatens, whether in bargaining or in monotheism's "faith". We tend to minimise danger and our own sense of helplessness when the direct crisis is over. (People who are utterly unreasonable about fulfilling their vows made in crisis, such as Luther, instead of sloughing them off in mellow prudence, make wonderful revolutionaries and dangerous neighbours.) Combined with cheapness, this understandable, relieved, all-too-human lightheartedness leads easily to indifference, betraying in prosperity the trust shown in adversity. The god-ridden panic of desperation fades in the sanguine glow of security and success. The penalty is left unspecified, given the enormous range of vow-provoking concerns, and the infinite range of obligations able to be set by vows. The penalty is not for the breaking of the vow, but for the breaking of the law about the breaking of vows. The vow is a private matter between the god and the votary. The law is public. It assesses penalties to defend itself. It acts in cases of violated vows, not for the god's injured majesty, but to defend its own integrity as regulator of public order and reflector of divine order. This law does not regulate theological *faith*. It defends *faithfulness* in human obligations to gods and polity. If a man is faithful to the god whom he cannot see, he will likelier keep faith with the civic brother whom he can see.

22. *ne quis agrum consecrato*. If large tracts of land were consecrated, taking them out of cultivation (and making them unavailable for veterans' land-grants), the state would be deprived of their use and produce. The food-supply effect of such consecrations could be disastrous. The consecration of land, by impoverishing its "former" owners, works at cross purposes to the usual vows, and to patterns of inheritance—and their *li*. Sacrificing in order to gain is one thing, but spoliation of self, family, and community *ad maiorem dei gloriam* is quite another. It is foolishness

like pulling a hat from the ocean (Song 1999). Sacrifice is a kind of investment. If I sacrifice this gold, livestock, or grain, I will gain by the gods' favour more of what I have given up in token form. In Roman prosperity-religion, the sacred waste of land is self-defeating. Two ethical problems result. Putting loopholes in consecrations to keep the use and produce of the consecrated land is a temptation too great for ordinary human nature. The consecration subverted becomes an act of impiety, an attempt to cheat the gods, Prometheus in the real estate business. That such consecrations would deprive families and dependents of sustenance, becoming ways of evading responsibility is suggested by Mark 7:11, where Jesus castigates a man for failing to provide for his aged father under the excuse that the money had been consecrated to God, *qurban*. Theologically, the consecration of land raises the question of the limits of piety. How much is too much? Excessive piety is no better than excessive anything else. It is inimical to *pietas*, lacking proportion and *due* deference to the gods. It is *superstitio*: ungodly excess. Calibrated deference may strike western monotheists as presumptuous, given the incommensurability of God's mercy with human sin. The Roman search for a divine *concordia ordinum*, gods and human beings in their proper places, requires that extravagance in religion be curbed. The over-lavish giver creates resentment among less prosperous or ostentatious fellow-citizens. He upsets the proper imbalance of power between *patronus* and *cliens*. Giving too much, he claims too much.

22. *modus esto*. Gold, silver, and ivory could be consecrated only in moderate amounts within this serious and proportionate approach to the gods. Acts of devotion and acts of statecraft are equally under the aegis of *ratio recta*. The restrictions on the cult of Cybele, the mixed revulsion and admiration Romans felt for unreasonable Jews and later, equally unreasonable Christians, and Cicero's temperance in consecrating valuables bespeak a sense that enough is enough and too much is too much. Humans are less powerful than gods, and human action only approximates to the reasonableness of divine Mind's governance of the world. The ethical and motive discrepancy between gods and humans does not destroy *comercium* or wipe out the congruence of human and divine reason. Isaiah's cry, that he and his people are unfit to encounter the utterly transcendent and ethically holy God (Isaiah 6:5), has no place in Cicero's discussion of the divine. Normal *religiones* normally observed keep existing order in balance. Limits on consecrations must be seen in this self-respecting and duly proportionate light.

22. *sacra privata perpetua*. This stipulation repeats Cicero's concern for religion in the home. It is difficult for persons in a secularised society, especially a post-Christian secularised society, to grasp the seriousness of this concern. Cicero exemplified *pietas* in his locating and refurbishing the tomb

of Archimedes in Syracuse and securing preservation of ruins of house of Epicurus [!] in Athens (Haskell 124). Between internalised belief and the domain(s) of public activity, lies family ritual. When secularisation equals the abandonment of ritual, and when the abandonment of ritual leaves issues of personal, family, or group identity permanently up for discussion and re-evaluation, then the solid fabric of tradition, even among the self-consciously traditionalist, has melted into the air of argument. Cicero affirms family ritual as diachronic or transgenerational glue for tradition

22. *manium*. If the fellow-citizen gods among the living receive proper worship, so do gods/shén and kuèi/*manes* among the dead, who may favour both the dead in the afterlife (in which Cicero believed) and pious living descendants. Szemler Gy. claims “the dead at this epoch were regarded as a collectivity, divine and to be venerated as ancestors, but colourless and undifferentiated” (Szemler 35); *ius imaginum* contradicts this. *Ius imaginum*, the right to keep ancestral busts on display in the atrium, creates “eine dauernde geschichtliche Verbundenheit der Generationen”. The well-known glories of Roman history compensated for Cicero’s obscure ancestors; it was “das feste Vermächtnis der Väter” (Vogt 6; cf. Maschkin 1953:159, Uttschenko 1978:43). Cicero’s theological language forces us not to “forget that [manes-cult] is a branch of religion and moral philosophy” (Fortes and Dieterlen 125). By *comercium* and *clientela*, the *manes* look after the living (Cetshwayo 86). Rite and *li* towards the collective sainted dead, *deorum manium*, apply to one’s own, *suos leto datos*. The divinised dead possess *iura*, rights entailing rites, must be approached *caste*, and so on. Rite, rights, and recollection are one. The dead keep their dignitates, even to the point of being considered gods. Their legacies, tangible or intangible, are not to be taken lightly. A man with ancestors is a man with a burden. Death confers *fama* upon the heir. Family identity celebrated is a source of glory: forgetfulness makes the *gens/tsú* a genetic disorder. In XII Tables 5:4-5,7a the nearest agnate succeeds if there is no will; “*si furiosus escit*”, an agnate guardian keeps the rites (Warmington 3:448). *Pietas* to the dead fosters faith of the living. Those who held *patria potestas* or *pudicitia*, though dead, keep *iura*, which the heir’s succession to *jural status* maintains (Fortes and Dieterlen 132). Cicero theologises dealings with the dead away from magic. Keeping the dead within the *religiones* which bind the living drives out *superstitio* and fear of the dead. The *manes* ask only a few flowers, a few fruits, a dash of salt, a consecrated tomb inscribed “DMS (*dis manibus sacrum*)” (Guillén Cabañero 1999:519).

Manes-cult is inherently moral in so far as it subordinates the living to to God and checks egocentrism (Zenker 1926-27 1:31). *Hakka mos* has *ius imaginum*. As *imagines* were kept in the Roman atrium, so the “central ancestral hall” is in the round-house courtyard. “*Hakka halls* display only one tablet, that of the founding ancestor...in theory and belief all ancestors—rich and poor,

men and women—are included”. Women make public offerings before the single tablet placed “behind a small incense pot on the altar...under which is an earth-god shrine. In front of the altar is a table, decorated with an embroidered cloth on special occasions, where the incense pot is placed and where there are lamps and other fittings.” (Constable 1996: 27,83,91,211). This democratises ancient nobles’ announcing great deeds to the manes (Creel 1936:161) and confirms that “the departed great and good are in heaven in the immediate presence of God. There the ancestral spirits are represented as abiding” (Ross 39,140 on China).

Permanence of consecrations applies to family traditions and to promises whose force, if the dead are regarded as gods, is not broken by death. In a society Gadamerically alive to tradition, ancestor worship is part and parcel of one’s *dignitas*—other-related at all times. Honours to the dead avow the worthiness of the individual’s origins, historic warrant for his own *fama*. Remembrance of the dead gives hope for one’s own posthumous *gloria*. Fame after death is stipulated as moving to a divine sphere. The worthy dead/*kuèi*, if regarded as gods/*shén*, are in *societas* with other gods.

The State gods bestow benefits, receive sacrifices, exhibit *ira*, and enjoy the give-and-take of *religiones*. Divinised ancestors also participate in the transactions of reasonable religion. *Mens divina* and *ratio recta* guide dealings with the official gods, vows, and all the rites, public, family, and personal. *Mens divina* also guides rite relations to the exemplary dead—positively or negatively exemplary. To reckon them *endo caelo* ritualises moral reflection. *Iura sancta* mark the living as members of a particular family, within an ongoing matrix of obligation to a particular set of *manes*. “It is flattery to make offerings to the dead who do not belong to your own family” (LY 2,24 Ware). Divine status is conferred upon holders of *iura sancta*, which confer holiness on the living who honour their dead with rites.

It is the State’s required *officium* to recognise and foster *dignitas*, the transcendent value of the human person, making conditions right for more ethical (not class-based) optimates/*chün-tzū* (Cathrein 1909:115): In *societas*, *fā*, *jén*, and rites connect to God. Family rite occupies sacred space (a micro-patria) between the State’s purview and the person’s *dignitas*. In Cicero’s *fā*, there are no “secular” gaps in holy praxis where *mens divina* does not judge and *ratio recta* does not organise. *Manium iura* are secured by *do ut des* between heir and shade. “By doing his own duty he secured [eventual] worship for himself and thus his own salvation”. *Sancta sunt* means “each family constituted a cult community. It had its own gods, its own rites, its own prayers and hymns” (Westrup 1:54,57). Senate authority protects parallel home rites *privatim*.

22. *Sumptum luctumque minuunto* stops ostentation. New *kuèi* have *iura* like public gods. Emotion cannot overshadow an honoured shade. Funerary fraud is perjury. Like *ne quis stipem*

cogito, limiting expenses prevents cash trumping *castimonia*, and slighting the *iura* of kuèi. This ends aping of lavish Etruscan funerals and tombs (Maschkin 1953:138). Zulu rite/lǐ is Ciceronian: a stone set securely; a modest burial mound; prickly-pear, euphorbia, or tree-cuttings planted on the grave (Bryant 702). K'üŋ's Scipio Africanus or Demetrius Phalereus was Ch'i prime minister K'uan Ch'ung 管仲 (725-645), effective statesman and no "grübelnder Theoretiker", requiring rite, *castimonia*, and humane law (Forke 1964:74; Hsiao 1979:336). On his fā, K'üŋ said "it is better to be too economical rather than vulgarly ostentatious. In funerals...it is better that the mourners feel true grief, than that they be meticulously correct in every ceremonial detail....Whoever outrages T'ien [by evil] accomplishes nothing through sacrifices" (LY 3,4 and 13; Creel 1953a:30; Lǐ Chi 10). When K'üŋ built too big a grave mound for his mother, it toppled over! Tzū-ssu says "in mourning for parents...no distinction is made between noble and plebeian" (CY 5; Ku); chün-tzū/optimas status is open. Mèng rejects aestheticism: "But should an ugly man fast and cleanse himself, he would be fit to offer sacrifices to God" (4b25; Lau). Dobson's "unprepossessing" stresses *castimonia*. "Neither be fault in any rite here shown / so plenteous nature shall inward virtue crown" (Shi 279 Pound; Ivanhoe 2002:82).

CODE EXPLAINED: PAX DEORUM § 23-30

23. *conclusa quidem*. There you have it, the codex Ciceronianus. “Ex quibus partibus ius constat, cognoverimus, constat igitur ex his partibus: natura, lege, consuetudine, iudicato, aequo et bono, pacto” (Rhet. 2,13). The natural law exposition is incomplete. Codex and comment are alike natural law. Cicero does not intend to cover every last exigency of the application of natural Law to the Roman context, “nur die richtungsweisende Grundsätze....Die leges geben also nicht jede Einzelheit der Rechtsordnung wieder zu der ja nach römischem Verständnis gerade auch die mores gehören” (Girardet 1983:93, 212, 91). *Non multum discrepant*: public and private religion cannot differ at personal whim, unlike Plato (Troiani 939). Cicero’s “*constitutio religionum* does not disagree much with *leges Numa* and *nostri mores*. Numa’s ‘laws’ and old customary laws are thus placed together” (Westrup 4:54; cf. Momigliano 67). He is augur on the arx but interpretes Iovis here also: “The ruler’s main functions [include] educating the people—in ceremonial rites, in social order and in national loyalty” (Chai and Chai 1961:62).

23. *magna lex*. Quintus’ comments show the problem of saying something new while defending mos maiorum. (Cf. Cauer 33.). The kind of praise is more significant than the implied cavil about lack of originality. *Magna lex* is parallel to *vim istius caelestis legis* (9), *mens divina, legem sempiternam*, and *lex vera* (10), in contrast to *populares leges*. If these laws were simply a collection no greater than the sum of its parts, Quintus might have called them “leges”, “corpus legum”, or the like. The singular means that Cicero’s code is parallel to the single divine Law which governs the universe, and is to a greater or lesser degree exhibited in the customs and laws of states. If these laws are Law particularised to specific matters of religio, then their validity as a new-old thing stands. If they are simply copies of earlier “real” enactments, then they inherit the praise of their prototypes. The greatness derives, not from copying Numa, codifying custom, or genre echoes of Plato, still less from originality (a virtue alien to Cicero as to K’üng), but from speaking *for T’ien* and legifying *mens divina*. Putting self-praise in the mouths of others, is a necessary quirk of the dialogue form if there is authorial self-respect. Quintus’ praise reveals that Marcus does not wish to block the reader’s view of natural Law with his own material. *Magna lex* is presented *sane et brevi*. The terser the laws, the more they approach mens divina and early Roman laws. The barer the language, the more freedom Cicero has to explain. *Ne longum fiat* (24) is here. Detail comes later. The revelator malgre lui of Law becomes Marcus the raconteur of legal lore and Marcus the augur theologising on the civic cult. Dialogue is a picnic, not Sinai on the banks of the Fibrenus. Cicero tries to claim credit and get out of his own laudatory way at the same time. By extending the dialogical pretense from the DRP into the present discussion, so that Scipio (murdered by a

popularis assassin) in those books *persuadere videatur* in the author's absence (but to his praise), Cicero runs an enchanted toy-shop where the puppets come to life—to make a theological point. If the ancient institutions really are the best, and reasoned persuasion stands on its own merits as a way, possibly the only way, of truth-seeking and truth-telling, then acceptance of tradition is a “third use of the law”. Measuring up to ancestral standards is tougher than the historicist myth that each succeeding generation knows more, the more of the past it superciliously dismisses as exploitative, self-serving, repressive, or unscientific. Cicero's traditioning gives sureness of available truth: maturity, not naiveté.

23. *Non multum discrepant* is not an accusation. *Optumae rei publicae leges dare* is a feasible project, not a retreat into “speculative wisdom” without regard for jén or statecraft (Hunt 202). *An censes* and *consentaneas* are real questions. Dialogue form invites the real response of the reader far more than either authorial monologue or solo games of deconstruction. “Die Gesprächspartner unmittelbar in der Unterhaltung vorgeführt werden, so daß der Leser gewissermaßen selbst dem Gespräch als Zuhörer beiwohnt, den Dialogpersonen” (Becker 1). This requires humility, or a hermeneutic of openness (unlike E. Schuessler-Fiorenza's “hermeneutic of suspicion”). Commentary is only “a written substitute for original verbal interaction” (Slingerland viii) upon the fā of LY's compilers: “not to present an argument or to record an event but to offer an invitation for its readers to take part in an ongoing conversation...Confucians for centuries learned to re-enact the awe-inspiring ritual of participating in a conversation with Confucius through the Analects” (Tu in Slote and De Vos 10). V. Rubin found ratio recta's freedom to exemplify *mens divina* in civic praxis. “Viewing the ancient Chinese thinkers as *living interlocutors*, I addressed to them the questions that I felt were the most interesting and vital.” (Rubin xxiv).

Sacra privata seu gentilia

Before there was a State, there were tribe, clan, and family.

Roman society was made up of two elements, the familia and the gens. A familia consisted of all those persons who were in some way subject to the power of a pater familias. Religious norms imposed a certain number of constraints and the possible abuse of power by a pater familias was kept in check by strong social control. Familiae with a common progenitor (even if he was a legendary figure) together founded a gens and had a common gens-name. They could hold meetings and pass resolutions that were binding on the members, and they had a common cult. (Tellegen-Couperus 6).

Neighbouring families within a gens would gather at a point (the compitum) where property lines converged. The performance of the li known as sacra gentilia (from gens) was a “cheerful occasion. Each familia performed its sacrifices on its own altar which was situated some fifteen feet

in front of the *compitum* in order that the people worshipping might be located in their own property. With the whole *pagus* (parish) performing this religious ceremony on the same day, there would be a valuable opportunity for a social occasion also" (Rexine 50). Maschkin 1953:122 details the primacy of the family—very *Jú-chiào*—and the centrality of the hearth, or *focus*:

Jede Familie hatte ihre Heiligtümer, ihre Schutzgötter, ihren Kult. Der Mittelpunkt dieses Kultes war der Herd, vor dem der *pater familias* allen Riten vollzog, die jede wichtige Handlung begleiteten; so erklärte zum Beispiel vor dem Herd der Familienvater das Neugeborene als sien Kind. Als Beschützer des Hauses genossen die Penaten Verehrung, die sich um das Wohlergehen und den Wohlstand der Familie verkümmerten. Diese guten Geister waren Mitbewohner des Hauses, außerhalb des Hauses sorgten für die Familie und ihren Besitz die Laren, deren Altare an den Grenzen der Grundstücke standen.

Since home is where the hearth is, and the hearth is often in the kitchen where domestic slaves worked, if they had separate shrines from the family—by no means always the case—that is where they were located, at least in rich urban settings. P. Allison says:

many Pompeian kitchens have *lararia*, while other shrines were located in the atrium and peristyle. These latter *lararia* may have been used mainly by the master and his family, while those in the kitchens may have been primarily intended for servile use, indicating status distinctions in domestic worship with corresponding differences in spatial use. (B. Rawson and Weaver 35).

H. Siber says family cults are subordinate to state cult and exist only on its sufferance (117); writing in the early years of the G.D.R. he overstates this. Only morally bizarre or clearly foreign cults (cf. *privatim, neve novos*, etc.) roused any State interest. As Cicero illustrates later with the *Cornelii*, families were left alone with what others may have seen as minor eccentricities. Indeed, rapacious Verres' plunder of Heius' household gods roused Cicero's particular ire. As in China, the family served as the equivalent of a church (George De Vos in Hejtmanek-Tu-Wachman 116); hence the *shūkyōist* inability to catch the genuine religiousness of early *Jú-chiào*.

The *sacra gentilicia* were sacraments of the clan or gens (Chinese patrilineal clan: *tsù*). "La gens était une unité religieuse, liée par le culte du premier ancêtre, sanctionnée par la règle d'exogamie" (Maspero 1967:20). What W. De Bary calls "the transition from the archaic, clan-centered, 'auguristic-sacrificial' order of the Shang to the formation in the late Chou of the more humanistic, rationalistic but family-centered outlook of traditional Confucianism" did not impair family rites (Eber 119). A new ruler had to keep up a displaced royal house's rites. *Sacra gentilicia* are not amoral. "To worship a spirit to whom one is not bound by a real feeling of duty or respect is idolatry; to see what is right and to act against one's judgment shows a want of courage" (LY 2,24 Ku). *Sacra gentilicia* guard against sorcery.

When he said, 'Sacrifice to a spirit other than of one's own kin, is mere flattery,'—disapproving, that is, of any celebration in honor of a spirit other than that of an

ancestor of one's own family—he did not intend [to construct]...an impassable barrier to the preservation intact of the traditional worship and celebrations in honour of the ancestral deities of the clan and of the family; rather was he attempting here to prevent the infiltration of the new religion of the sorcery masters, and to preserve the original purity of the old feudal ritual celebrations. (Kaizuka 179, 27).

Only blood relatives could keep the feast—cp. Cicero's scrupulosity about inheritance to maintain rites securely. Similarly, Nguni "inheritance was within the agnatic lineage and sacrifices to the shades were the sole concern of members of a lineage" (Wilson and Thompson 118; in Asante cf. Rattray 1929:70). In early twentieth-century China, a paterfamilias kept the faith: "Each evening he climbed the tower atop the main building and prayed to heaven. No incense and joss sticks were set out. There was simply a ceremonial cushion for kneeling and nothing more. He did not use cash from public funds" (Tseng 14).

23. *In nostra re publica in more maiorum* are found "ethics plus precedent plus family" (Atkins in Rowe and Schofield 482). *Ut lex valebat* incorporates *mos maiorum* into the pattern language (*fā*) of Cicero's code. Stoic influence and Roman heritage dovetail exactly. Roman virtues such as *gravitas*, *constantia*, *magnitudo animi*, *pietas*, *fides*, and *iustitia* "on retrouve dans ces nobles traditions ancestrales une parenté indéniable avec l'idéal moral des Stoïciens" (Verbeke in Temporini I:4,39). Critical *mos maiorum* is prophylactic against cultural self-colonisation. Recalling that Cicero's time was *his* "modernity", H. Odera Oruka's warning applies: "Modernity is not ignorance of...one's customs and apemanship of everything European. Whoever is ignorant of what to modernize cannot be modern. At best he can only be foreign" (1990:105). *Mos maiorum* was concrete and non-speculative (Frisch 1949:18), neither mystic nor utopian.

Without Law, any old pattern can be *mos*, for "*mos est meretricius*" (Plautus, *Menaechmi* 5:4:8). Cicero makes *mos maiorum* the unwritten parallel to positive laws. *Maiores* make *mos* holy *fā* and coequal source of *li* with laws and Law. *Mos* is the customary penumbra of positive laws if worthy of the ancestors. Society under *mos* or *lex* alone is un-Roman and un-Jú. Uncritical *mos* is Thrasymacheanism or deadweight habit. Wise affirmation is *ratio sapientis*, not drumbeat memorisation. (Cf. Kaizuka 121.) Un-sage custom and positivism dis-member the State. A State no longer a *societas* of persons *sub mente divina* becomes a state of nature red in tooth and claw, called in Darwinist euphemism "ethnic cleansing". *Duas patrias* explode in a social war of *mores* against *mores*, wrecking shared *dignitas* of all under Heaven: "Von Natur sind die Menschen einander nahe. Durch ihre Gewohnheiten entfernen sie sich voneinander" (LY 17,2; Stange).

If positive law has sole force (O. Holmes, H. Kelsen), then good behaviour is anything with which a person gets away; K'üing warns that rule by positivism creates shamelessness (LY 4,11). Litigation

and iniuria are idols and moral arbiters. Conscience is abolished. Mos alone ossifies shared pietas, or creates a war of diverse pietates. Either solitary *vis* crushes pietas between the upper and nether millstones of anarchy and the savage State. *Castimonia* is gone. Neighbour, fellow-citizen, magistrate, gods, and State are resented hindrances to acting-out, or targets of crime. "We must not commit the mistake of supposing that, because individual rights are guarded and protected by [positive laws], they must also be considered as owing their origin to them" (Cooley 36). W. Menski's insight travels:

Hindu law, like African laws, Chinese law, and even Muslim law, does not start from the assumption that law is in essence state law. [S]uch laws do not accept the centrality of a positivistic 'rule of law'...Hindu 'rule of law' may be similar to natural law...in that there is no generally applicable man-made rule, which everyone has to follow, but there is nevertheless a higher concept that pervades everything. (Huxley 2002:114).

Mos maiorum is disliked in spiritual drought. H. Fingarette calls it

crude and dull...the blind repetition of inherited forms, except perhaps in those cases where the practitioner is particularly dull, in which case perhaps this too is a blessing....[T]he complete absence of rules and precedents makes creativity and innovation impossible....Fingarette...requires us to interpret away Kongzi's repeated declarations of his 'trust in and love of' ancient culture, as well as his widely attested efforts to understand accurately, preserve, and propagate it. We must further suppose that Mencius, Xunzi, and the many thinkers who were to follow Kongzi...all got the Master wrong. (Ivanhoe 2002:5-6).

This negative topos from Schelling (Roetz 1992:12) is idiopathic idealism. Kūng demythologises a secular K'ūng abolishing Chinese theology (Kūng and Ching 97). A priest of Schelling's pre-völkisch romanticism says "li must appear to non-Chinese as an arbitrary circumscription of human potential, stifling individualistic and innovative expression" (Eno 32). Is human nature different for Chinese and (a falsely normative) everybody else? That is racism!

23. Through the augur, *res publica* hears maiores' living voice. *Genus illud optimum* has a solid grounding in time and space. *Tamen* is no excuse for gaps in positive law. Wise and lawful human beings with *ratio recta* and Heaven's ethical mandate set the pace in all spheres of human life. Good custom and good laws combine to make a society where *Lex valebat*. Cicero uses Roman laws as "Mustergesetze" (P. Schmidt 1969:230). All under Heaven who are *boni et firmi* can work for the reification of Law. Cicero's fussiness on right and wrong uses of "lex" saves this from self-congratulation. Our mos of cultural self-hatred and historicist scorn of the chronological other is a post-modern hermeneutical distortion, not a flaw in Cicero. Cracked interpretive lenses do not make crackpots of the ancient sages.

24. Atticus shows that apparatchik assent is not Cicero's desire. *Suade igitur* is a real request. The mock-legislative deference of "as you propose" and Atticus' promise not to debate add a touch of humour. Cicero's warning that he may go on at length, and Atticus' wry query *quid enim agere malumus?* (24:8) keep a light touch. After the magisterial, almost Numa-esque promulgation of the code, this brings the work down to the level tesserae of leisured, entertaining discussion. It brings stylistic time back from the mannered repristination of archaic Rome to the evening of the Republic. Atticus' respectful listening is not a threadbare cover for Cicero's monologue. We have become inured to repartee as the only true form of discourse, recklessly conflating equality of persons (right) with equality of opinion (wrong). In the postmodern pose of victimhood, blinded by promethean romantic egocentrism, we find it hard to see anything but an authorial trick in Atticus' deference. The "c'est ne pas une pipe" objection, that these are only characters in a literary device, misses the point. There is an island between stenography and stentorian fraud. Extended listening is true to life. "Atticus" does what Atticus did: listen to interminable Marcus! Without being princeps contionis or (real life) Jú elder brother, Cicero would have been limited to a bare recitation of laws, while Quintus and Atticus chip in their own, coming up with a committee-compromise.

Uncritical equality ends in violence or silence. Cicero allows speaking, listening, and the possibility of an unconvinced reader. One can quit the game of dialogue, but if one stays, it requires pre-postmodern listening. Plausibility gaps may *lie* in the reader's mind, not the text. When canons are rejected, advocacy is needed. In the third section of DL II, Cicero needs no moral rescue. Hearing him well gives second-level explanations whatever value they may possess. Schmidlin taxes Cicero with over-ambition in DRP/DL for not writing like Gaius (19). This is not Cicerohaß; Romanists sometimes miss Cicero's magistral authority because he is no jurist *plein et dur*. "Rome did not possess a true distinct priestly class", nor did China, but political status was required to do T'ien's bidding (Conte 23; Hattori 107). Magistral priests were guardians of the rites and ambassadors to the gods, representing Rome in gravest duty and most solemn right (Meyer 114, 123).

A novus homo becomes Numan, and an impoverished, homeless Shang aristocrat becomes an uncrowned king:

By referring their fixed rules to antiquity, Chinese philosophers conferred upon their doctrines the greatest prestige possible in the Chinese world" (Creel 1953a 52). The Duke of Chou was a prototypical wise, just, principled ruler without tyrannical aspirations, repressing rebellion, retiring with dignity. Ti or Heaven commands moral statecraft, giving power in ethical accord. Power can be lost by ritual neglect and bad government. (Creel 1953a 10, 17)

"He to the state gives form Sets norm: Why not ten thousand years? How not ten thousand years?" (Shi 152; Pound; cf LY 2,23). T'ien ming depends upon the House of Chou hewing closely to its model founders. The true Numa-men are loyalist Roman republicans and the Chou-partisan Jú.

Moral “legitimism” (Do-Dinh 95) shifts from kings to K’üng, and makes him akin to Roman republicans. For Tzū-ssu, grandfather K’üng sets the fã “as he also does in Mencius... ‘matched with Heaven’ (pei tian)... on the same pedestal with the founding kings of the Zhou dynasty... a rival source of order vis-à-vis the cosmological kingship” (Chang H. in Cohen and Goldman 27). Viêt national hero and emperor Trần Thái Tông (r. 1225-58) proclaimed that K’üng “set up particular patterns and techniques of government for the generations to come” (Nguyễn D. T. 130). Mèng calls himself “custodian of the way of the former Kings” (3b4; Lau). His “moral paragons, such as the sage kings of the past, [had]... enhanced ability to extend their moral feelings” (Ivanhoe 2002:90). Yes: from self to rite, from rite to State, from State to T’ien. They did by example what Cicero does with stylus and code. Hsün declares “The Ru model themselves after the Ancient Kings; they exalt ritual and moral principles; as ministers and sons they are careful to esteem their superiors to the highest degree.... they are clear as to the great principle that safeguards the altars of soil and grain” (8,2; Knoblock). Fã hsien-wáng, “way of the former kings” is not necessarily positive laws of the former kings but a holistic model of government (Cua 1985:148).

Jú-chiào acceptance of monarchy and Roman republicanism are congruent through submission of both State structures to the demands of fas and T’ien ming. The Republic is antithetical to Hellenistic despotism and Hellenic ethnocentrism. K’üng accepted only the *ethical* power of royal sacrality so far as the wáng kept the fã of Kings Wen and Wu and the illustrious Duke 周公旦. Jhering Jú-ly sees that mens divina’s enactment ripple out from family to State. Family integrity is not a gift of the State. The family is surrogate *for* the State and a micro-State itself; as paterfamilias keeps the rites for the family’s good, so rex for salus populi. “Numa, der nach der Sage der Ruf seiner Gottesfurcht und Gerechtigkeit auf den Thron brachte [Jú ruler!], erscheint als der Repräsentant des religiösen Prinzips”. (Jhering 1:95,179,253; cf. Kunkel 13). An illegal Julian god-king is an un-Roman, Hellenistic contrivance. A true Roman king was theologically bound to protect the constitution, or not be king at all (Meyer 1964:22). This duty devolves after the revolution upon Republican magistrates. The consuls or a constitutional dictator had plenary executive but quite limited sacrificial ius including augury *only* on campaign (Jhering 1:271). Cicero cobbles together plenary theological authority: consul, ex-consul, augur, activist, philosopher, even *parens patriae*.

The “top” of the State is missing in DL2. Cicero abhorred pseudo-sacred Caesarism as an overthrow of the mos maiorum. The king’s priesthood as such devolved upon the rex sacrorum and the pontifices, who set up their offices in the old palace, the Regia (Meyer 1964:38). The impotent, decorative rex sacrorum, whose wife carried the title regina, was debarred from all political activity and kept only the kingly “magic power.... He was chosen by augury, and after being “captured” by

the pontifex maximus was inducted—called *auguratio*” (Meyer 1964:21, Frisch 1949:104, Mentelle 1766:109). Without ethical weight, rex sacrorum is in the State but outside civic theology. The Chou wáng by K’üng’s time was also a roi fainéant. Romans accepted kingship—despite its many Etruscan incumbents reminiscent of the Yüan and Ch’ing dynasties—only so long as the kings comported themselves as subjects of fas/Tào. Forfeiting T’ien ming by moral outrage, monarchy was overthrown by fas-minded revolution, just as Chou dethroned Shang because of the depredations of “bandit Chow”, the last Shang ruler.

24. Note the striking internalisation of religion here. *Animo in quo sunt omnia* shows that taboo, ritual purity, and ceremonial exactitude have their place in Cicero’s scheme of religiones. Rite plays itself out most seriously in the internal theater of the religious person’s mind as he approaches *caste*. Just as mens divina holds the universe of fact and spirit together and governs it, so the animus of the religious agent holds attitude and action together in the web of intention. The offhand and the haphazard, the blindly traditional and the itch for novelty, must be set aside. This is purity beyond *casta corpora*. “If the beauty Xishi had been covered with filth, people would have stopped their noses when passing her. And if an ugly man fasts and cleanses himself, he may offer a sacrifice to God” (4b25; Zheng et al.). Li “cannot be reduced to outward compliance with ritualised forms alone. The ‘right’ attitude must be present. One could conceivably go through an ancestral rite, for example, while silently cursing one’s ancestors, but this obviously would not be in accordance with the spirit of li” (A. Chan 2000:250). *Castimonia corporis* is not abolished in favour of spiritualisation. An old Hakka greeting is “have you had your bath yet?”; Cicero first made the body-mind link for Roman *castimonia* (Constable 1994:142, Dörrie 1973:232; cf. Benardete 309). Cicero is neither Platonist nor Gnostic, not part of what Dillon wittily calls a “Platonic underworld” (Athanasias and Frede 11). External and internal must match. The internal is the more important of the two. The comparative ease of remedy for physical impurity shows this. Water and time wash away bodily impurity. There is no remedy offered for *animi labes*. It can be repaired “*nec diuturnitate nec annibus ullis*” without repentance. (Cf. Guillén Cabañero 1999:493.) Rome had to wait for Christian baptism for a rite able to do that, “οὐ σαρκὸς ἀπόθεσις ῥύπου ἀλλὰ συνειδήσεως αγαθῆς ἐπερώτημα εἰς Θεόν” (1 Peter 3:21).

Impurity prevents legitimate approach to the gods. This debarring need not be permanent. Final impenitence is not part of Cicero’s theological vocabulary. Obedience to rightly devised human laws, once one understands what makes human laws rightly devised (or not), affords the person in his right religious mind a bridge to divinity. Obedience to proper human laws remedies, through informed action, internal indifference or rebellion. The slip of the mind can be set right directly by

better thought, better concentration, cultivating reflection and piety, and the awareness of one's religious duties. *Labes* can be transformed into *pietas*. Otherwise, ordinary folk, with their tendency to *labes*, would be kept from any religious life. The need of the religious person for purity is deep. That need is met through qualitative transformation in one's *li*-directedness. *Cum multum animus corpori praestet* does not devalue the body, but adds to the value of the mind. Complete devaluing of the body and sole valuing of the body lead alike to violence, license, and superstition. *Castimonia* requires balance. The balance which preserves the ritual purity of the physical is given by that serious attitudinal focus, which only the pure mind is able to attain. *Li* must be "zeremoniell verbunden mit innerer Gesinnung" (Totok 56). This is not so much a guarded but a guarding optimism. Humans can be adequately religious, but not through rite alone, nor without rite.

25. God-pleasing *probitas* is freedom since *pietatem adhiberi, opes amoveri*. *Sumptum* is its opposite here. Excessive "religious" spending shows the spender's status, not his inner devotion to the god. Why are *pietas* and *opes* antagonistic in the unascetic Cicero? *Religio/li* is for the sake of community and State as much as for the gods or individual worshippers. If aggressive display of wealth indexes reality of rite, this disenfranchises those of lesser means. *Concordia ordinum* is lost and the shared civic character of rite is attacked. The poor become *impii*. Poverty, the economic state of the great majority, removes it from the realm of religious obligation (threatening the standing order). Ontic (not political) equality breaks unless *paupertatem cum divitiis esse aequalem*; some under Heaven is a travesty. Faction perverts religion (Clodian or Caesarian plutocratic populism—or the Christelik-Nasionale blasphemy).

Dios quiere que todos los hombres tengan fácil acceso a él para aplacarlo y adorarlo; no podemos, por consiguiente, cerrar las puertas a los pobres, exigiendo grandes gastos y ostentaciones en el culto, cuando, por otra parte, deseamos, aun en lo humano, que no haya distinción entre riqueza y pobreza. (Guillén Cabañero 1999:494).

Paupertas must not be kept from the gods. Universal reason and divine Mind are not on nobility's short leash. *Pietas* is not a class prerogative. Un-Mencianly, there is no hint in DL of divine favour toward the poor. Debarring poverty is *nefas*. Insulting the *pietas* of the poor dehumanises them. It is Aristotelian/supralapsarian heresy that some persons are ineligible for religious duties—intrinsically estranged from *recta ratio*. Excluding *paupertas* limits the good imperium of divine Mind to "the quality", destroying the universal character of divine Law. If part of the human race is outside its scope, the Law is no longer universal and T'ien is partial. If Law does not cover all within the four seas, how could it ever govern the natural order? Exclude the poor, and the cosmos comes unglued. Despite the half-pun *addito aditu*, the point is deadly serious.

25. If godward pietas *non omnibus patere*, how can its human future be secured? “ ‘ο γὰρ μὴ ἀγαπῶν τὸν ἀδελφὸν αὐτοῦ ‘ο εώρακεν τὸν Θεόν ‘ὄν οὐχ εώρακεν οὐ δύναται ἀγαπᾶν;” (I John 4:20). “If you do not understand life, how can you understand death?”. The gods must be *placandum et colendum* by all. Without shared, rited, harmonised engagement to keep *pax deorum*, the State is not sacred. Since there can be only one *res publica*, divine goodwill is all or nothing. *Placandum* is essential. Cicero avoids images of divine anger and fears an irreligious and lawless caricature of humanity. Bad law and bad rite offend God’s *res religiosa, dignitas*, and *vera lex*. Good law-giving and devout rite-keeping please the gods as we preserve ourselves, not chiefly from their wrath, but from our own. Ritual worship, *colendum sensu stricto*, must be open to all, since all have a moral *officium* of worship and a potentially holy status as citizens. Only one’s own *impietas* or lack of *castimonia* debar from Roman rite. Having gods *separatim* is bad, but having no gods because one is too poor to sacrifice is worse. One with rival gods can contrive a rival “state” as Caesar did. The god-less person might revolt against any state. (Cf. *nullas leges*.) Deity is Law’s *auctoritas*, and Law the *exta*, the State’s fortune-laden guts. A riteless person is not a social stakeholder.

Cicero does not sentimentalise the religion of rich or poor. *Religiones* are universal: the truly human are truly obligated. In sharp contrast to Greece and India, the *dignitas* and *pietas* of the poor are inalienable. There are no “untouchables”. Financial success or failure do not index divine goodwill or disable human rite. *Mens divina* is for all with *ratio recta*. A *religio* of the dispossessed or P. Freire’s “pedagogia do oprimido” never occurred to Cicero. The rich man must not be impious for wealth’s sake. No Roman slave revolt, and no popularis movement among the oligarchic classes, ever had a genuine religious aspect. Religion is absent from any supposed Roman class-struggle (G. Ste-Croix), terminology rejected by N. Maschkin and S. Uttschenko; nor did *populares militate* for social justice. “Ein Bündnis zwischen einem Freien und einem Sklaven blieb jedoch stets das Bündnis eines Reiters mit einem Pferd” (Uttschenko 1978:70).

God is not a frustrated litigant trying to salve his injured *dignitas*. Direct divine punishment is possible, if divine Mind rules by right reason. *Religio confirmari videtur* by human fear, not empiricity of divine action. Divine suasion in the conscience equals external divine action if conscience, laws, and Law are congruent. *Videtur* hints at the difficulty of theodicy. *Praesentis poenae metu* displays ambivalence. *Deus ipse vindex* confesses real power, not ironic helplessness before human *iniuria*. There is no *theologia crucis* in Cicero. Divine punishment and human propitiation both need to occur. The conscience is the battleground of right and wrong. The altars of the Republic witness li’s peace signed with due ceremony. Punishment and propitiation balance each other, keeping *concordia*. Divine honour and Law’s prestige maintain their *iura* against all

comers. If *deus ipse vindex*, being placated and worshipped pleases him. Rites require our defence. God *can* take care of himself.

25. Personal or family *castimonia* and *pietas* do not alienate from civic pax deorum. Cicero forbids *suosque deos aut novos* (ancestors are not oppositional) whose favour might seditiously help a hater of salus populi. Imagine if Catiline—or Clodius—had had his own gods, whom he effectively approached to aid his nefasta plans! Horror at the subversive partisan deification of Caesar and Antonian savagery fills the Philippics. Worship of one's own gods versus the Senate-authorized gods of family and State competitively violates harmonious divine Mind. Republican divine-human commercium is disrupted by *rival* private religio, in contrast to the accepted private face of civic tradition: one's family gods and rites working in parallel to those of others. Freedmen and slaves were targets of Caesarist propaganda designed to break client-patron *fides*. Freedmen were clients of their former masters and full participants in sacra gentilitia. Worshipping Caesar as Father and God was essentially apostasy from the sacra of the *patroni* (Maschkin 1954:129). M. Tullius Tiro, resister-publicist loyal to Cicero and Republic after their deaths, was immune. Eccentricity in rite or idiosyncratic deities brings *ignotas caerimonias sacerdotibus*. Exact rite guaranteed by a magistral priesthood guards against offence by breaches of protocol. Tradition's stream is not polluted or diverted by private experiment. Magistral priesthood fuses piety and patriotism (Hus 127). Augury is "establishment" prophetic witness. Old Marcus' contemporary Tüng Chüng-shu vigorously used omens and obnuntiatio to calm the caprice of unruly Hàn rulers (Taam 57). Religio/li is theological and ethical: "Ceremonies [for] Cicero, pertain to divine worship, which is an act of virtue, that is, of religion, which affords the ceremonial worship of the divine nature. Since moral precepts are concerned with acts of the virtues, ceremonial precepts cannot be distinguished from moral ones" (Rand 34; cf. De inv. 2,161).

26.. *Patres* are both senators and ancestors. Current religion might be subverted by alien gods, strange ceremonies, or foul motives. If the ancestors avoided illicit gods, only then are *a patribus acceptos deos* Just as "laws" of injustice to man or disharmony with Juppiter do not deserve the name, so tradition requires rectitude for validity. Repristinating religious observance is a duty if recent generations distorted the depositum fidei. One's own obedience is required whenever the obedience of others has rightly given. When it has not, the personal cost of repairing ruined custom must be borne to set things right. *Ipsi patres* were not a law unto themselves. They were obligated to convey accurate, efficacious, traditional worship. Any errors are not sanctified by default. Obligation devolves upon heirs to keep or restore mos prisca.

26. *Delubra...in urbibus* are shrines with a purification facility (Guillén Cabañero 1999:495). State use required pontifical consecration.

Pues las ceremonias religiosas del estado sólo podían desarrollarse en un *fanum* (lugar no profano) de cualquier naturaleza: bosque sagrado (*nemus, lacus*), lugar de purificación (*delubrum*, que por extensión significaba a menudo santuario), capilla (*sacellum* o templo propiamente dicho). (Labrousse 93)

Note Xerxes' theological pun: firing the sacred makes a sacred fire. Cicero's objections to this picture of Zarathushtrian practice contrast theocentric and anthropocentric religion. "Eamque unam ob causam Xerxes inflammari Atheniensium fana iussisse dicitur, quod deos quorum domus esset omnis hic mundus, inclusos parietibus contineri nefas esse duceret" (DRP 3,14). Shang and Greek temples both had gabled roof, pediment, and portico (Creel 1936:67). Xerxes will have liked the absence of statues in strictly Jú-chiào temples (Renard 135). To imprison the gods in temples puts the worshipper in control of the gods, and makes authentic worship contingent upon human structures. In light of his prohibiting individually imported gods and his dislike of Panaetius' Stoic scorn of State monuments (DO 2,60), he could hardly follow *Persarum auctoribus*. He uses the first plebeian pontifex maximus (280/279) Tiberius Coruncanius as his stalking-horse in the supposedly irreligious DND. "Ut T. Coruncanium aut P. Scaevolam pontifices maximos te suadere dicas, non eum qui sustulerit omnem funditus religionem nec manibus ut Xerxes sed rationibus deorum immortalium templa et aras evertit" (DND 1,115; cf. Westrup 5:64).

A *delubrum* serves as an urban *lucus*. Whatever error inheres in imperial deification, in Tokyo's Meiji Jingū amid its "thickly wooded grounds...one may enter into communion with the soul of the revered ruler" (Anesaki 1961:16). The patres knew nothing of Persian worship. Its rites are jurally unknown to *nostris sacerdotibus*. Copying Persian praxis would violate protocol and mar tradition. Substantial innovation implies significant deficiency in the tradition, which Cicero will not admit. The Persian view is both oddly concrete and nobly abstract. Cicero never admits that the gods are under house arrest within their shrines and unable to govern universe and State, reduced to the status of (Persian-style?) slaves. Persians take offence at Greek (and by extension Roman) temples as infringing the gods' freedom since *hic mundus omnis templum esset*. Cicero rejects Persian practice whole confessing a non-parochial overarching divine government of the world. Shuddering at sacrilege toward Greek gods and culture, he finds theological contact with Rome's quintessential "other". He does not elaborate on the rightly reported Persian view of the sacredness of the whole world. He rejects only the burning practice, not the benign view. E. Mentelle's ranking of *aedes>fanum>delubrum>aedicula>ara* is not reflected in Cicero (1766:95).

26. *Lucos in agris* can resist imperialism just as Roman *luci* testify to faith not invented by politicians.

The center of every Okinawan village was its *umui*... a grove or thicket...the dwelling of deities. *Umui* were actually natural temples, places of worship. *Umui* were always located on a hilltop and...that hill had to have a *kuba*, a short, runty kind of palm, and *mani*, or boxtree growing on it. The *umui* was secluded and sacred. (Lowry 132).

(Cf. *Leges sacrae* 1-12; LY 3,21.) In China itself, each archaic village had a sacred square as a grove of deity:

un arbre planté sur un tertre au milieu d'un bois sacré. L'arbre changeait suivant les régions. D'après un chapitre perdu du Chou-king, au centre c'était un pin song, au Nord un acacia houai, à l'Est un thuya po, à l'Ouest un châtaigner li, au Sud un catalpa tseu. C'est pourquoi le Louen-yu attribue aux trois dynasties anciennes des arbres différents: au Hia le pin, aux Yin (Est) le thuya, qui était l'arbre du pays du Song; aux Tcheou (leur première capitale Hao, près de Si-ngan-fou, était à l'Ouest) le catalpa. (Maspero 1967:22,172; cf. Chang K. 353).

K'ung "was buried in what is now called the Forest of K'ung" (Hsü 7), a term adopted in Korea for Yugyo academies. Asante kept great pietas at sacred groves, and far to the east "the Gikuyu, who has no 'temple made with hands', selects huge trees, generally Mogumo or motamayo and Mokoyo trees....These sacred trees are regarded...as most Christians regard churches—as the 'House of God'" (Rattray 1923:122, Kenyatta 236). At Rome, before interior shrines to lares and penates, "family cult apparently was observed in groves" (Palmer 126) then called *sacella*, or little sacred place—almost "chapel of ease". An archaic Spoletan inscription gives the rules in archaic Latin:

Honce loucom nequ violatod neque exvehito neque exferito quod louci siet neque cedito nesei quo die res deina [classical Latin *divinum* = divine thing = worship] anua fiet; eod die quod rei dinaï causa fiat, sine dolo cedre licetod [cut down wood = cedre] Sequis violasit, Iove bovid pialcum datod; seiquis scies violasit dolo malo, Iovei bovid pialcum datod et a. CCC moltai suntod; eius pialci moltaique dicatorei [the dedicator of the grove] exactio est. (Warmington 4:154; cf. *dico*).

In his war against unrevised humanity and the private sphere's holiness, Plato forbids private shrines, for "it would not do to have such a thing in the Platonic state" (Rexine 14).

26. *Melius Graii atque nostri* shows the conventional philhellenism of the cultivated Roman and commonality over against the Persian stranger. His strong sense of Roman theological independence allows him this elective affinity. The Persians, Mithras notwithstanding, stood outside the borders of a shared civilisation. Temples serve as a civilisational and li-system boundary marker. Their purpose is *ut augerent pietatem in deos*. The insecure grip we have on pietas/ hsiào (or it on us) require physical focal points. The god who is everywhere is, for Cicero, a god who is

nowhere. Divine Mind and right reason need to manifest themselves. Their human reflection is rite and piety, and these need the staging ground of temples. Pietas requires contact, deference, relationships, intimacy. Religion without temples would be like families without houses: fugitive or nomadic. Living in a house distinguishes Romans, Greeks, and Chinese from nomads. Civilised gods require houses—roving bodily possession of raving barbarian shamans (wu) is unacceptable. (The Persians fade from view as *alternative* civilisation.) Cicero distinguishes Greeks and Romans in common cause by *atque*. He could have said Graii nostri, implying Roman control of the Greek tradition through conquest, or nostri, implying Roman inheritance of the Greek tradition by conquest or apprenticeship. Greek and Roman practices stand together against outsiders, but they are not identical. If they were, as hellenomane philologists contend, Cicero loses his theological freedom as epigone of the Greeks and Roman mos becomes a bad copy of Greek tradition. The crime against *Cylon*, killed by the altar of Athena in 612 B.C., points this up. (Cf. Klotz 1:672.)

26. The gods are our neighbours and fellow-citizens, *easdem illos urbis quas nos incolere voluerunt*. Their visible aedes and templa, and their own unseen presence, summon pietas from the private space of conscience and family into the shared space of public life. Temples consecrated to a particular deity delimit and display holy space and sacred action. An all-purpose temple (one thinks of Voltaire's chapel on his family farm simply dedicated "Deo") is a non-entity: abstract clientela is no clientela at all. The illocal is lost. If the whole world is a temple, sacred space and conduct are the same as all other space and conduct, leading to interiorist pietism or indifference. "Religionless" Roman State cult and "religionless" T'ien worship (let alone kuèi and shén!) is impossible (a sacramentalist Lutheran likewise rejects the other Bonhoeffer's "religionless Christianity"). If action goes "up" into the continuously sacred, then scrupulosity wars against the civic sphere, and pietas becomes superstitio. Such a *sursum corda* leaves one hanging in mid-aether. If action moves "down" into a secular *res publica*, loss of *fas* and *mens divina* disconnects the State from true order of things, contriving a false autonomy in which Caesarism threatens. The *Distinctio* (sacred from secular, holy from humdrum, *fanum* from *profanum*) is lost if everything/nothing is sacred. Pietas is a bridge of relationships across τὸ μεσότοιχον τοῦ φραγμοῦ λύσας, (Eph. 2,14), a torn lattice if cities lack temples. The god who is lost in the bush, unhooded by human hands and hid from civic gaze, is like the Persian king: remote, incomprehensible, despotic. Like all (other) good citizens and magistrates, Cicero's civic gods have civic duties. Their presence creates and *salus populi* requires *societas*, a bond of *religionem utilem civitatibus*. Rite should do us some good. If stateless life is bad, we need gods who will maintain the state. We need *religio* and *pietas* actualised by State cult and by family or civic rites congruent with *mos maiorum*. Cicero appeals to

authority. The apparent tautology, that men are religious when they are religious, shows insight into human motivation. Pietas and religio thrive *cum rebus divinis operam daremus*. The ritual effort of ancient (not merely Roman) religion recognise the effort-value link in natural religion (*opinio legis*). Pietas and religio must be *versari in animis* if godly rite and civic flourishing, are to occur in accord with ratio, mens divina and fas. Aimed rite balances *Pythagoras'* mystic mathematics and *Thales'* panentheism. Everything is full of deity, but rite links God to our concerns on human initiative, so *operam dare* is a theologoumenon. Temples focus awareness of the gods into a specific place, making civic rite possible. One cannot always be in fano as in natura. Cicero rejects Thales' universalisation of shrine-bound sentiment, but *omnes castiores*, echoing "caste", lets Cicero appropriate Thales' maxim. Separation to holiness is implied. Cicero never denies R. Browning's "every common bush afire with God", but "only he who sees" holy ground through religio and pietas "takes off his shoes." The reverence with which certain modern "secular" spaces (Ulundi, Qunu, etc.) are approached makes *omnes castiores*, at least politically.

Modern religious architecture often meets with "it doesn't look like a church". When nature or civic space function undifferentiatedly as sacred space, as a diffused precinctless temple, it fails to focus upon religiones/li by which *omnes* become *castiores*. If it doesn't look like a temple and signal its functional difference, it will not *be* different. In Ciceronian or Jú-chiào rite function follows form. If everywhere is sacred, nowhere is sacred. If all public space is uncommittedly, vaguely sacral, commitment ends and the rites die. Religiones/li which make us *castiores* are time-bound and located acts. How can we do rite nowhere special, without sacred space? *Castiores* are more susceptible to this physical appeal to religious sentiment, and that sensibility ought to be fostered by religious traditions and their representative buildings. Psychological necessity requires the gods to be *in oculis, non solum in mentibus*.

27. *Luci in agris* do what shrines do in the city. *Interpretes religionum* match Jú as watchdogs of li. Original trees left standing when the land was cleared for cultivation, or trees planted for the purpose serve *eandem rationem*. If the trees are original, they remind of the natural order governed by divinity. If specially planted, that is religio/officium, and their tending holy tsü-chuán for their descendants (cf. LY 3,21). The border of field and grove divides profane labour and sacred work/space. Consecrating a grove imitates *mens divina* imposing *ratio recta* on the universe. Memories of the pristine customs of rural life are sanctified and strengthened by parallel urban temples. Holiness of graves and groves fuses when a grove marks a tomb by custom immemorial (Cetshwayo 86); cf. Swazi King Mbandzeni's burial in a sacred grove (Barker 29).

27. *religio Larum*. Cicero now goes inside the home. *Lares* are successors to a domestic cult of Mars (Tabeling 63). Originally, “the *Lares*, guardian gods of house and kin, and not the house-father for the time being [at any given time], were conceived as the real owners of the family property” (Westrup 2:95). The “sense of place” called forth by the old family estate is sanctified by household gods bringing divine patronage into intimate, tangible contact with the daily life of the family. What temples do in the crowds of the city, what groves do in the open fields, the little shrines of the *Lares* do in the house. The *paterfamilias* makes the family castior by establishing sacred space in the house. As householder he imitates the caste approach which he makes as citizen, squire, or perhaps magistrate.

Lares (the *lares compitales*) also watch over cross-roads and intersection of property boundaries. Halliday (28) says that “at such a *compitum* there was a small shrine containing as many doors as there were properties that met. In each property was an altar set back fifteen feet from the door to enable the worshipper to perform the necessary rites on his own ground”. Each worshipper can thus display his *dignitas* and keep his own *pietas*/ *hsiào* intact, without flattery of others’ gods or dilution of his own *castitas* or intrusion upon someone else’s affairs. Sometimes *Lares* worked as building contractors, as an early inscription testifies (Warmington 4:106): “*Hisce ministris Laribus faciendum coeraverunt C. Terent. C. I. Pilomus...haec pondera et pavementum faciendum*”. There is no playing *lares* off against Juppiter or *kuèi/shén* against T’ien: “Wangsun Jia asked: ‘What does this saying mean: “Flatter the god of the kitchen rather than the god of the house”’. The Master said: ‘Nonsense. If you offend Heaven, prayer is useless’” (LY 3,13 Ryckmans). The Chinese *Lares* are called the *wũ szu* or five receivers of sacrifice (Bilsky 1:212). Household worship *neque repudianda est* if the *optimas/chün-tzũ* is to enact the divine moral order. He will have none of the Tokugawa heresy that State loyalty can obliterate family bonds. *Ratio recta* and its holiness radiate outward from home to *gens* to *municipium* to State. The inner motives of the *bonus* and the *consensio omnium bonorum* harmonise. Antiquity is nearer the gods (Schmekel 132; Guillén Cabañero 1999:509), not least because “diese waren nun von dem Glauben an die Unsterblichkeit der Seele durchdrungen, wie namentlich aus allen Einrichtungen und Gebräuchen hervorgeht, die sie in Bezug auf die Grabdenkmäler festgesetzt haben”. *Proxume ad deos* shows an idealised past, “ingenuo, ovviamente, idoleggiamento del passato” (Cancelli 227). Fostering idealised tradition sometimes cannot cope with tangible tradition. Cicero refuses utopianism just as he contemns *superstitio* and magic (cf. *rerumque expetendarum*). Infected by Cartesian dualism between spirit and matter, we may find *neque repudianda* a hard saying. Tradition and critical spirit are often seen as irreconcilable by traditionalist and critic alike. Cicero and K’üng are kin to Gadamer, not Habermas, to Althaus, not Barth. Affirming tradition’s homeliest (holiest?) aspects is neither a

failure of critique nor surrender to sentimentality. Cicero's cult of the Lares, together with his groves and temples, covers the whole of social existence with the web of rite, P. Berger's "sacred canopy", the simulacrum of the vault of Heaven. Cicero's farmstead setting underscores this. It is not a theologoumenon to reject Lares in their very presence, but showing oneself *impius* and *non castus*, lacking serious reverence and social graces. (Newman defined a gentleman as one who never willingly offends the feelings of another; there is no decent theology without good manners. Cicero's trio—even Epicurean Atticus—act as gentlemen toward the Tullian Lares.) Cicero as host and savant devises laws for the republic of the sacred in the *communitas* of the gods. Religious people cannot abandon the *métier* of religion without ceasing to be what they are—in the case of Roman civic theology without ceasing to be Romans. Cicero does not split his life into watertight civic, religious, and family compartments. He integrates sacredness into all spheres of conduct, leaving none to *impietas* or bad manners. Cicero and his Lares are at home at home.

27. *ritus familiae patrumque servare* because early times are closer to the gods, and sacred *per se*. The *res Romana* (like fading Chou) has long been on the Spurgeonesque down grade. Cyclical theories give no help. The best to be hoped for is hitting the "here we go again" at a comfortable part of the ride. This is more than pagan nostalgia for unremembered Eden. *Antiquitas* can be revived by rite. Anamnesis blooms by opening to tradition, copying, if not entirely on our own terms, pristine nearness to *mens divina*. Tradition is a live wire, not a dead hand. Traditional man has the duty to maintain what his ancestors have handed down and to become in turn a transmitting ancestor. The rite people are heirs of Numa and uncrowned kings like K'üing. The one who keeps the rituals of his fathers becomes their equal. What he has gratefully received from them, he graciously maintains to their honour and his gloria. Memory meets rite at the unwobbling pivot, the true heart of *do ut des*. Antiquity gives *li* the force of *imperium* (Bernard-Maitre 34).

27. *a dis quasi traditam religionem*. Note the movement *ad deos a dis* (*manibus*). Cicero nears ancestor worship in this prelude to the discussion of deified heroes. Ancestors are functionally quasi-divine in the rites that bind us to them. The *pietas* we owe them differs only in degree from the *pietas* we owe to the gods and to the eternal order. To maintain lawful religious tradition, and to approach the gods *caste*, becomes political once God or gods link to *familiae patresque*. Loyalty to ancestral tradition in rite implies parallel faithfulness in matters of State. The state is *res publica patrum*, the family *patrum res domestica*:

La idea de que los hombres cuanto más antiguos estaban más próximos a su origen divino, y por ello podemos acercarnos a unos varones primitivos, que al oler todavía a Dios, su creador, ven con más claridad la esencia de Dios, y la perfección humana, y

conocer con menos mitificaciones las cualidades divinas, la expone Cicerón en...Leg. 2,27. Sobre la religión transmitida por los mayores, Nat. Deor. 3,9-10; 43-44. (Guillén Cabañero 1984 2:79)

27. *Herculem et ceteros*. Deifying dead heroes by legislative action or magisterial decree declares *omnium animos immortalis esse sed fortium bonorumque divinos*. Cicero is not making an ontological but a qualitative distinction. All human beings possess immortal souls, but not all human beings famously manifest the virtues Cicero lists below. If these virtues are divine, those who display them par excellence are also qualitatively divine: their character and conduct congrue with natural Law and divine Mind. Barthian incommensurability is illusory. Limited human action can be characterised throughout by pietas, given right internal disposition and proper ritual order. Divinity is discernibly present to *genuine* magistral authority in the heroes' concretised qualities. Qualities can be divinised or personified as actual gods. Deification by decree is not State power to create a new ontological condition of godhead for someone or something which previously existed on a sub-divine ontological level. Deification by decree officially recognises an ethical and religious character already present. The State submits through genuine State law to God's Law *already* conspicuously present in the person and actions of an individual human being. This why Cicero hated the warlord cult of Caesar: illegitimate political power foisting on Rome a spurious god incapable of celestialty, for "Cicéron avait placé dans la Voie lactée celles des grands hommes d'État" (Bayet 189). Deification bound to pietas/hsiào and religio/li is a this-worldly act. When there is no worship, no ritual, no shrines, temples, or sacred groves, there is no divinity. Deification enjoins all these within civic life. These observable constructions serve quasi-sacramentally as signs of true divinity. Those who are honoured with religio, provided the rite is not perverse, may reliably be regarded as divine. *Then* those deified are exemplars (fā-men) of civic virtue/te, and divinised qualities are its signposts. This civic index can go wrong.

28. *Mens*, *Pietas*, *Virtus*, and *Fides*' recognition as gods in Rome's quasi-polytheism, that is, as rite- and obligation-worthy, is analogous to ascribing ethical qualities to God in Semitic monotheisms. *Indigitamenta* are purpose-driven formulas. Deus, like T'ien, is *in se* undefined. Deifying the virtues gives rite and theology to civic obligations. World-governing *Mens* shows in the worshipper's seriousness; the special Senatorial virtue governs the Senate's mediation between gods and citizens (Beard and North 31). *Mens*' festival was 8 June, also kept with *Honos* and *Virtus* on 29 May (Sabbatucci 200). *Pietas* is the holy glue of obligation and deference uniting humanitas/jén/ubuntu and the res publica, "per quam sanguine coniunctis patriaeque benivolum officium et diligens tribuitur cultus" (De inv. 2,161). *Virtus* divides power from futility, glory from

mediocrity, and true humanity from barbarity. *Fides*, personal loyalty expanded and subject to the compacts of civil society wedded to rite, ensures the perpetuation of all obligations. Not even a king dare fail of this loyalty. (Cf. Cetschwayo, *passim*.) *Fides* ties citizen to citizen, ancestor to heir, humanity to divinity.

Honos-cult shows Roman religion's small-town origins (Bailey 144). The earliest rural gods (numina) were no more anthropomorphic than T'ien—almost kami-like—in no way like Greek divine dramatis personae. Pristine Roman religion “abstrakt und unpersönlich ist. Der Genius des Hauses, die Penaten und Laren, die Manen und Lemuren, alle sind unpersönliche Kräfte, Geister, von denen das Wohlergehen der Familie abhängt und die man durch Gebete und Opfer beeinflussen kann” (Maschkin 1953:123; cf. Idowu 61, Jhering 3:400, Laurand 467, Labrousse 84—numen as “la fuerza inherente a un objeto”). *Virtus* resembles tama resident in Shintō kami and sacra. Worship of ethical qualities ethicalises Roman theology and makes rite a moral arena, not mere mannerly prudence. Humans can improve, whether human nature is originally good (Cicero, Mèng) or bad (Hsün). Ethical standards take centre stage in rite which reveres them and not “mythological” anthropomorphs. “Die Wertvollstellungen eines Volkes” evoke the revered P. Cornelius Scipio, whose epitaph speaks of honos, fama, virtus, gloria and ingenium (Classen 1988:292, 302). Yu sees etymological kinship between virtus, ἀρετή, and jén:

The word *ren* was employed in the *Book of Poetry* (a text earlier than K'ung) to describe noble huntsmen. Some scholars therefore speculate that the concept of *ren* means, in a sense, ‘manly’ or ‘manhood.’ If that is true, an etymological parallel between *ren* and virtue (*arete*) comes to the surface. (Yu 323).

We hold primarily to linking virtus and te.

28. *Romae dedicata publice templa sunt.* Replete with virtues' *templa*, Rome is replete with virtue/te. Admiring the shrines encourages Romans to sanctify themselves with virtues in inward attitude and other-directed action. *Boni* possess the evidence of *bonorum* (27), whether the boni are morally good or merely economically advantaged with more leisure for the development and political exercise of virtues. *Omnes boni* are a K'ung-like open-ended élite. This is not a tautology but a demand for public religious and ethical action, correlating inward excellence and outward social behaviour. God and virtue dwell together in *Romae* and *animis suis*. As an anti-Utopian, Cicero admits imperfections: rites *vitiorum*. Since *Mens* and *Pietas* exist, *Contumeliae fanum et Inpudentiae* is absurd. Linking natural moral order and physical order, Cicero makes Abuse and Shamelessness parallel to Fever and Bad Luck. Their temples are a protection racket of meretricious apotropaic magic. City temples reflect city character, and rite shapes human character. Approaching infamy caste is absurd. *Pietas* toward natural or moral evils annihilates all other pietates and wars

against divine Mind and right Reason. The three *araque vetusta Febris et Malae Fortunae* are *detestata* and *repudianda* (cf. DND 3,63; Resta Barrile 195), a category mistake like seeing DL as a failed Νόμοι, philological worship of another bad god. Archaic Romanness is no excuse for bad rite, a “notorious scandal to the philosophers” (Feeney 85). Warding off misfortune and vice depends on ethical *pax deorum* and deified virtues’ rites bankrupting vices’ *comercium*. Cicero’s call to keep (only) the best of ancestral rites is genuinely critical *εποχή* in defence of good tradition oriented to *natura [quae] dominatur*. (Cf. Latte 52) Athens is no prototype for the Ciceros. Atticus never defends the Areopagus’ altars to ὕβρις and ἀναίδεια, resembling the Palatine *ara Febris* (one of three) and *ara Malae Fortunae* on the Esquiline (Girardet 1983:28,157; Resta Barrile 195). Worship at virtues’ temples evokes their emulation. Vice and sickness are hardly avatars of moral divine Reason for emulation (Guillén Cabañero 1999:497).

Fingenda nomina for numina must reflect human achievements, such as *Vica Pota* > *Victoria* from winning and being powerful, and *Stata* from holding one’s ground; her statue stood in the Forum (Resta Barrile 195, Dyck 334). Naming a numen for an activity ratifies its value. Juppiter’s cognomina (*Stator*, *Invictus*) invoke patronal acts on Rome’s behalf or infusable into Rome’s own behaviour. Accomplishment, not communion, is the goal. Some are desiderata: safety, prestige, wealth, and victory. There is not much focus on individual gods in Cicero’s speeches except for Juppiter (Heibges 305-306), de facto equivalent to T’ien as sole deity worthy of true worship; cf *Stator*, Cat. 1,11 and 1,33. Japanese classicist Jū Ito Jinsai “refers to T’ien as the ruler, conservator, the supreme judge and the benefactor of mankind” (Spae 115). K’üing himself

shared the beliefs of his time, inherited from the past and clarified by the holy kings. Otherwise, he spoke quite often of Heaven, the gods, and the spirits, but in an allusive manner, as of things already understood. Gods and spirits existed in unbelievable number: tutelary gods of the home, the soil, the road, the mountains and rivers, the harvest, etc., and of course the ancestral spirits. (Do-Dinh 125).

No other god can serve as court of appeal against T’ien, however. Later Jū-chiào objection to Buddhism parallels Cicero’s objections to foreign gods and to soliciting cash contributions. Worship must redound to *kung*—*salus populi*—by “cultivation of riteness” (De Bary 1998:21 and 1991:20). Cf. LY 1:9, 12:2, 13:4, 14:44.

Invictus is a later addition—entertaining the thought of defeat?—to the great list of *Salutaris*, *Hospitalis*, also *Praeses Orbis*, *Pacator Orbis*, *Sponsor Saeculi Augusti*, *Propugnator*, *Liberator*, *Depulsor*, *Vindex*, *Ultor*, *Conservator*, *Custos*, *Tutor*, *Tutator*, *Valens*, *Praestes*, *Obsequens*, *Fulgur*, *Fulgurator*, *Fulminaris*. (Bouché-Leclercq 54, Mentelle 1766:96). Roman and Zulu multiply divine epithets. God is:

he who bends down even majesties...he who roars so that all nations are struck with terror...he who thunders from far-off...firelighter...He who gives and rots...the

ancient of days...the limitless...the irresistible...the wise one, He who bends down even majesties, He who roars so that all nations are struck with terror, he who is of himself, The One you meet everywhere. (Parrinder 40).

Juppiter worship was lively and heartfelt (Bailey 168). Cicero invoking him as *lex* and *ratio* is genuine personal piety as well as patriotic formalism. During the Catilinarian putsch Cicero “summoned the senate into the temple of Juppiter Stator” (Plutarch 418).

28. *Rerumque expetendarum nomina* get public temples. Righteous/yi civic goals get divine sanction. Does merely what suits the powerful élite get deified? Arguing that these temples are a religion of the privileged misses the point. Seeking good and pursuing it is as Ciceronian as it is Biblical. Virtues and successes ought to be pursued, not left to chance. The person or State in fealty to *Salus, Honos, Opes, and Victoria* enters into divine clientela with these virtues, and his vows likelier to be repaid with possession. *Fortuna* not only bestows, but lures. Cicero was flamen *Salutis* to J. Adams, for whom “Tully...exercises my lungs, raises my spirits, opens my pores, quickens the circulation, and so contributes much to health” (McCullough 45). As Naevius sang (Warmington 2:66), “*iamque eius mentem Fortuna fecerat quietem*”. *Spes* fosters faith in *expectatione rerum bonarum*: virtues, Juppiter’s epithetic aid, and divine comradeship (cf. Minerva!) in joys or vexations. There are three sorts of *Fortuna*: for this day, in planning (“*respiciens*”), and random. “*Primigenia*” governs the whole of an individual’s life and is his *comes*. (We follow C. Keyes’ *comes* and reject J. Powell’s odd *comestum*.) *Fortuna* without *Spes* would be hag-ridden wishful thinking. Why keep rites without hope? Sentimentality does not give *robur* amid *res nova*. Cicero’s pantheon is not a museum curator’s catalogue raisonné of anthropomorphs, but a faceting of the diamond of human labour enacting divine Reason, our excellence mirroring God’s Mind. Cicero’s reasoned, humane, hopeful, soi-disant “polytheism” is at heart a theistic polyfunctionalism resting among the rites of ancestral numina.

29. *In liberis in servis*’ synchysis reflects an ironic bond between free and slave. The free person’s *Lites* and *iurgia* parallel (symbolically) the slave’s *opera* and *labores*. The crushing hard labour of slaves parallels show-trials and lethal quarrels among politicians. After the high-flown disquisition of the code, actual dialogue surfaces. Litigious violence poisons *libertas* as brutal labour bludgeons *servitudo*. The habitual litigant is as bound to the court as the slave to his task. “Slaves and farm animals that were used for the cultivation of the soil and so took part in the *feriae* belonged to *familia*” (Westrup 2:58). Sacred days remedy alienation of free and slave alike (Cauer 62), reclaiming some human time for holiness. The kalendar’s “conpositor” must arrange it so that farm work is *ad perfectionem*. Rest crowns perfection. The brawling, litigating free man, and the slave

whose *requies* is stolen, alike finish nothing, alike forfeit human wholeness. The recurrent prospect of pleasurable rest promotes observance of rites and gentles the soul. Cicero and K'üŋ do not fear “boring” rite, a fear showing pre-emptive impiety. The pious/pia approaching caste brings *recta ratio* to rite. Relief from the daily round enables the person who is pious/ hsiào sacred time to show sacred attitude. Time becomes as much a *templum* as a grove, a shrine, or augural arx. *Loci sacri* and *dies sacrae* are “consecrated”, whilst *loci religiosi* and *dies religiosae* are commemorative (Bailey 25). Cicero has *joie de vivre* enough not to spell out the amusement factor in the *kalendar*; he speaks little of the *ludi*.

Numa anciently reformed Romulus' *kalendar* (Rehak 193). The late Republic's kalendrical mess involved sloppy astronomy, reckless intercalation, seasonal rites totally out of place, court rotas ruined (Bergemann 116, 130). The intercalated month—surprise!—was *Intercalaris* (Gelzer 208). The atrocity of renaming *Quintilis* and *Sextilis* after Julius Caesar and Augustus was yet in the future. K'üŋ speaks to the issue's urgency as part of an overall programme of tradition and social justice; Caesar's isolated reform, however needed (cf LY 3,17 on commemoration of the Chou *kalendar*), is by its isolation un-Jú-chiào:

Set standards for weights and measures, re-establish the offices that have been abolished....Restore the states that have been destroyed, revive interrupted dynastic lines, reinstate political exiles, and you will win the hearts of the people all over the world. Issues that matter: people, food, mourning, sacrifice. (LY 20,1 Ryckmans).

Sacrifices *ad tempus*, keeping kalendrical time synchronised to real time by *ratio intercalandi*, and proper staffing of priesthoods are based in civic reality. Rudd's “air of unreality” (xxvi) is due only to the terminal sickness of the Republic. Cicero's proposals are *meant* to work only in the hands of optimates governing a real Republic. *Posteriorum pontificorum neglegentia* put old-time religion on the down grade. *Deorum singuli singulorum sacerdotes* keep the State cult running on time. Priests are reference-sources: generalists and specialists ensuring backup in case of private ritual ignorance or State crisis. *Concordia ordinum* exists in religion as well as government. Private statecraft is faction or *res nova*. Do-it-yourself *religio* is *superstitio*. Mistakes in ritual, bad intentions in sacrifice, ignorance of the right victim or time, wrong disposition of the rite's agent: these are displeasing to the gods, destructive of tradition, and injurious to the State.

29. *Vesta quasi focum urbis* shows Arpinate Cicero's seriousness and sly humour. Home is where the hearth is, and hospitality. Rome, founded as a city of exiles, has welcome at her heart. Despite their burning aversion to “ecclesiastical” architecture, Persians would have been glad at Vesta's fire bringing holiness into the City's centre. The pontifex maximus' appointment of virgins as her priests and keepers of wills, shows *castitas* keeping holiness. Sexual *comercium* set aside until

honoured retirement, Vestals' priestly devotion to the City's *comercium divinum* is entire. With a wink, Cicero declares them exemplars of *omnem castitatem*. Vestals are the pure *fā* of the concentration and piety all observant persons must bring to rite. Fire kills, and fire keeps alive. It resuscitates the imperilled State: Cicero saw a miraculous (!) fire from cold ashes in Vesta's Temple as divine warrant to crush the Catilinarian putsch (Kroll 127). Cicero's code is largely male but not misogynist. Vestals are a typical priestly collegium, but the only female priesthood (Wissowa 1897:312). Restricting the Cybele cult bespeaks the sexuality-violence link's ability to corrode State and morals. Cicero's defence of women's chastity may offend, but it is *Lucretius'* sexism which denies female steadfastness and sexual continence. Cicero makes it a priestly *virtus* as distinctive as his own augural status as *interpres Iovis*. Vestal chastity is doable, showing the sexually disciplined person responsible in rite. Sexual chastity does not exhaust *castimonia*, but discipline in this turbulent domain bodes well for all of life lived "decently and in order". Female official priests keeping *the* civic fire burning corresponds to women's tending the Lares at home. Priests and ritual masters, women share Reason's power and divine rite.

30. *Ad civitatis statum* shows political function equal to religious/ritual one in divine protection of S.P.Q.R. This is not a theocracy. High status is given to augurs and to Cicero as one of them (Schmidt 1969:54), because "bonos cives natura efficit" (Phil, 13,16). *Mens divina* grants *optimates* to the State for religious leadership. "Heaven has condescended to the common people, creating princes and leaders for them, saying that they are the helpers of God most High, thus placing a mark upon them throughout the world" (Mèng 1b3; Dobson). They have "the duty of awakening those who are slow to understand" (Mèng 5a7; Lau). *Quod sequitur vero* is antithetical to:

those of us who own knowledge, who enjoy literacy, health, self-respect and social status [yet] have chosen to rage against our own gifts rather than to fight for their enlargement in the general public. We have chosen to invalidate our science, to psychiatrize our arts, to vulgarize our culture, to make it unusable and undesirable by those who have yet to know it. We honour no legacy. We receive no gifts. We hand on nothing.... We despise service and are slaves to our own self-degradation. (O'Neill 2).

K'üŋ promoted "the virtues of the aristocracy without its vices" Creel (1949:91); ruined rite reveals civic rot (Slingerland xxiv). Similarly, Cicero's *castimonia* is anti-Caesarian, on the score of promiscuity as well as *pontifex maximus* Caesar's *nefas* atheism.

Cicero opens *optimatus* status to all reverent *cives*, as K'üŋ promotes devout, moral *chün-tzū* exemplarism. Mèng says anyone properly educated can become a Yao or Shun (6b2) through *lǐ*'s "ennobling function" and rejection of political violence (Cua 1998:293, Lacey 75). K'üŋ scorns classism (*lei*) "If there is instruction there is no categorization/*lei*" (LY 15,39; Dawson n.). The refined, ethical *optimas/chün-tzū* models T'ien Tào (LY 20,3) against reflexive oligarchy (Wright

and Twitchett 11; Gernet 33). Hsún prefigures Cicero's open optimism—a true chün-tzu is a Son of Heaven (24; Knoblock), Li turns from elite “*courtoisie*...into universal principles that underlay society and just government” (Knoblock 1:47; De Bary 1991:4, Do-Dinh 97, Høeg 106, Hughes ix, Uttschenko 1978:95). Despite Korean yangban or Roman nobiles, learning, integrity, and ritual devotion qualify for magistracy (Hsún 9), like open-ended rank and status in independent Zululand (Bryant 463). *Optimas/chün-tzũ* status is not based on ethnicity (Smith 207), but on supranational *auctoritas*. Nguyễn Bình Khiem makes sacred civic education essential to true humanity/jén/ubuntu: “Since you were born a man / why don't you read and learn?” (Slote and De Vos 144).

Optimates—augurs above all—are *interpretes* of civic theology. Hsún's terms are “*shih, chün-tzũ,* and *sheng-jén*...‘man of breeding,’ ‘gentleman,’ and ‘sage’...though at times *he uses the first two terms more or less interchangeably*” (B. Watson 19). Like Cicero's overlapping terms, these are all public. Sages and gentlemen are the microcosm of the State, and the State is the macrocosm of gentleman and sages. No tool (LY 2,12; 14,1; 15,6), “as a harmonious and self-sufficient person, the chün-tzu must *not* carry out the ruler's every command...in a state constructed on injustice” (Rubin 26). He does not suss out tyrants and is never a party hack (Maschkin 1954:13). Peril does not denature him; his holy *auctoritas* is not in another's gift. “What the [true] authority says is not irrational and arbitrary but can, in principle, be discovered to be true” (Gadamer 1998:280). Only he is a man in full, worthy to be called a muntu, “der gewisse Überzeugungen besitzt und sie ohne Rücksicht auf die Folgen durch seine Handlungen zu bekennen bemüht ist” (Piłsudski 13). Steeled against the “*faex Romuli*” (Wirszubski 1950:73), *otium* catalysed optimates' ethico-civic leadership. “*Huius autem otiosae dignitatis haec fundamenta sunt, haec membra, quae tuenda principibus et vel capitis periculo defendenda sunt: religiones, auspicia, potestates magistratuum, senatus auctoritas, leges, mos maiorum*” (Sest. 98). *Cum dignitate otium* serves the Republic freely with sacred knowledge, without stupefaction or Epicurean passivity (Sprute 152, M. Ruch 1970:59; Wirszubski 1954:2-9).

CODE EXPLAINED: AUGURATE AS PRIESTHOOD OF FREEDOM § 30-34

30. *consilio et auctoritate optimatum*. State religion must not be left to deificationist populares (Bergemann 148). Civic theologian Cicero is no individualist. The optimates'/chün-tzu's vanguard role gives *consilio et auctoritate* by capable, ethical leaders, whose prestige, power, and persuasive merit rest upon loyalty to *mos maiorum* and *salus populi*. Augury is bully pulpit, apart from scientific status confessionis, refusing to defend *nullum iustae religionis genus*. "Staatsphilosophen sind nicht zünftige Philosophen zu verstehen", but statesmen of long responsible experience (Forke 1964:60). Auspiciam's link to imperium anchored sacred rite in secular power. "Omnes magistratus auspiciam iudiciumque habent" (3,10). *Imperium* holders did ad hoc augury or "res divinae, das auspiciam des Magistrats" (Uttschenko 1956:17, Liebeschuetz 10).

The gods are *placandos*. *Praedicta vatium* must be interpreted to make public policy god-pleasing. The augur speaks truth from power to power within the magistracy, not as amator exclusus like the Hebrew prophets. Roman civic *vates*' predictions are real when useful to the State, interpreted, and ratified by priest-magistrates (a collective son of Heaven). The impious warlord is the spiritual fake and outsider, not the (novus homo!) priest-prophet-magistrate. Augury and State legitimise each other. Solo ἑκστασις or prodigies are excluded. Prophecy indicts reckless policy, not ancestral polity. Raison d'état rules. The augural arx adds divine will to a consularis' views. Like the tribune's sacrosanctity or the constitutional gadfly of the (Korean or Roman) censorate, augurate's thunder is unassailable. Augural science's raw data are secret on the need-to-know basis of an intelligence service: *neque quisquam extra conlegium nosset*. "The *disciplina auguralis* was never, like parts...of the *ius divinum* of the pontifices, divulged to the public" (Bailey 162). Portent and superstition fulminate in mobs. The augur is consultant, not putschist, professionalising Cicero's principled hatred of demagogy. He intends "to protect the [universal] powers of reason...against a modernist *Gefühlkultur*, 'collective passion', politics of the crowd, short-sighted positivism...the 'ruthless egotism'... of the *raison d'etat*" (Koskienniemi 1997:215, citing Lauterpacht).

Augury

Augur derives from *augere*, to increase—the welfare of the *res publica*. He is the "man who asks the blessing" not by prayer but by figuring out divine will through verniseria *auguria* for spring crops, *augurium canarium* to ward off blight, *augurium salutis* "blessing on the life of the State", *auspicia impetrativa* to find out what gods want, *auguria oblativa* to decipher unsought signs, and *nuntiatio* and *obnuntiatio* announcing an omen (Bailey 160; Brink 314). *Auspiciam* first entailed observation of the flight or cries of large birds as signs of the will of the gods for civic policy; done from a *templum* by strict religious rite. (Cf. Mentelle 1766:95). On campaign or in emergencies the

term later included haruspicy or watching how chickens ate (Meyer 1964:123; Warmington 4:212). Augury was purely Roman and haruspicy an Etruscan import (Kunkel 5). Cicero attributes invention of augury to the founder Romulus and to King Numa, underlining the moral seriousness of augurs: what they condemned is unjust (16 and 21).

As in China, fanciful nonsense was out. Oracles were ritual, not shamanic. Divination was “la fille de la religion et non de la magie” (Anne Cheng 53). “Charisma is too ephemeral and mediocrity is too endemic” (K.K. Lee 45). J. Ching’s overfocus on shamanism elides the difference (1977:102): “Together, [king, magistrate, and Jú] represented a kind of lay priesthood, although their dignity and mission flowed more from their education and merit than from any personal charisma.” There is nothing “lay” about it. “Like augury outranking haruspicy, “the milfoil stalks are short on authority, the tortoise is long. Better follow the long one” (Tso 23; B. Watson). Tortoise had to be 100 years old (sic), whose round shell imitated vault of heaven, whose messages were unquestioned and whose contents were “a powerful instrument of government”. The results were infallible, but the costs led to milfoil-divination, and “the tortoise-shell was abandoned after the third century B.C., the old key to the fissures having been lost” (Wieger 15, 21, 81). Cf. CY 24; Odes 50, 58, 114, 193 Karlgren. Lex Ogulnia opening up Roman priesthoods to plebeians dates from 330 B.C. *Avem spicere* was not unknown in China: “In the time of King Kang of Song, a hawk was hatched in the nest of a tit on the city wall. The astrologer, asked to explain this portent, predicted: ‘The strong has borne the great: Song shall rule the world’” (Knoblock 2:147).

Powell’s reduction of augury to gimmickry errs (Rudd and Powell 1998:xvi). Augural rite brought freedom to criticise and transcendent ethics to bear upon political process. Its discipline was “streng, sehr streng” (Jhering 1:354; 4:228; Kroll 124), with great responsibility to get it right. This pushes social criticism through the icing-funnel of rite—and the State wanting it so. Cicero’s Sullan-Senatorial remark on an emergency (DL 3,9), sets forth the basics: “When there are no consuls and no master of the people there shall be no other magistrates. The auspices shall be in the hands of the Senate”. The State must filially follow not triumvirs, dictators ad vitam, or royalist pseudo-princeps, but its “patres” in the Senate—which must follow the augur! Wissowa notes (1902:457) “Cicero freilich in seiner Vorliebe für das Collegium, dem er selbst angehört, scheint in seiner Gesetzgebung den Augurn sogar das Recht, an Stelle der Magistrate die *spectio* (d.h. die Einholung der Impetrativauspicien) auszuüben”. All must obey the augur or die (3,11). Is this another bad joke by Cicero? We doubt it. In *capital esto* “Cicéron introduit ici un véritable fragment des textes officiels des augures” (Van den Bruwaene 90).

Since the State matters, the will of Jupiter/T’ien matters. Rejecting Epicurean indifferent deities who might as well not exist at all, Cicero asks ironically (DND p, 118) “Quod ni ita est, quid

veneramur, quid precamur deos, cur sacris pontifices cur auspiciis augures praesunt, quid optamus a deis immortalibus, quid vovemus?” and (DND 1,6,14) “quid de religione pietate sanctitate caerimoniis fide iure iurando, quid de templis delubris sacrificiisque sollemnibus, quid de auspiciis quibus nos praesumus”. Cicero claims augury’s ius theologica over the whole State, refusing to ape Greek models or concede anything to piscinarian decadence. Augural pre-eminence backs Cicero’s own right to speak of rites and religion.

Et si conferre volumus nostra cum externis, ceteris rebus aut pares aut etima inferiores reperiemur, religione id est cultu deorum multo superiores. An *Atti Navii* lituus ille, quo ad investigandum suam regiones vineae terminavit, contemnendus est? Crederem, nisi augurio rex Hostilius maxima bella gessisset. Sed negligentia nobilitatis augurii disciplina omissa veritas auspicioꝝ spreta est, species tantum retenta. (DND 2,3,8).

Even *if* augury’s technical efficacy is lost, its moral-historical gravitas is unimpaired, continually bolstering the State by conveying *Juppiter’s/T’ien’s* [ethical] will (3,43). It is packaged with haruspicy—no Gracchan ethnocentrism! Stoic Balbus asks “Magna augurium auctoritas; quid, haruspicum ars nonne divina?” (DND 2,4,12). *Ars divina* and *mens divina* are inseparable. “Is God a man, that He should change His mind?”

How did augury work as rite/li? The augurs’ vantage was the arx or templum, whence they faced south to start the rite (Pease 1920:145) like an august Chinese king. Chief was the Capitoline auguraculum; from this sacred citadel their right to prorogue assemblies was absolute (Navarro y Calvo and Calvo 92; R. Palmer 91). Augurs could stop real estate sales if their vantage might be blocked. A seller who ignored this had to refund all the money *without* getting the property back! (DO 3,16,66). Augurs and haruspices alike accepted omens by saying “accipio” or rejected them with “ad me non pertinet” (Jhering 1:353). G. Wissowa gives a detailed explanation:

So wird das Gebiet der *auspicia urbana* im engeren Sinne beschlossen durch die die *urbs Roma* umziehende Grenzlinie des *pomerium*, und ausserhalb derselben liegt eine, nach aussen ebenfalls durch eine feste Grenzlinie abgeschlossene Zone, der *ager effatus*, innerhalb dessen zwar noch zum städtischen Amtskreise *imperium domi* gehörende, aber verfassungsmässig von der Innenstadt ausgeschlossene Staatsakte (wie z.B. die Centuriatcomitien) vorgenommen und für sie die Auspicien eingeholt werden. Alle diese Grenzlinien werden von den Auguren nicht nur noch den Regeln ihrer Wissenschaft abgesteckt und durch Grenzsteine bezeichnet, sondern auch dauernd unter Aufsicht gehalten, damit nicht etwa durch Verrückung der Grenzlinie oder sonstige Störungen die Wirkung des *liberare et effare* aufgehoben und damit die reguläre Auspiciation unmöglich gemacht werde. (1902:456).

How did augury work as “bully pulpit”? Divination purged irrational fear of divine wrath and enabled the State to get on with business (Liebeschuetz 12). State augury “discredit[ed] a tremendous amount of private activity of this kind” (Rexine 50). Obnuntiatio as the “result” of auspiciation was to prevent catastrophe due to imprudent or evil policy (Meyer 1964:125). “Ritual

propriety (*li*) functioned as a public political norm that effectively restrained and disciplined political rulers in premodern East Asia” (Bell and Hahn 7). Nothing hindered Antony, whom Quintus likened to Catilina (CP 8). “Authority without generosity, ceremony without reverence, mourning without grief—these, I cannot bear to contemplate” (LY 3,26 Ryckmans). Cicero aimed some of his most savage invective at Antony’s perversion of the augurate. He calls the defier of obnuntiatio “bonus augur” and “augur verecundus” for pretended auspiciatio without colleagues and brigandage, just as he blasted Antony’s serial flaminiate (Phil. 5,7; 2,110). (On invective cf. Opelt). As Caecilius sang (Warmington 1:518) “insanum auspicium!”. K’üŋ said “If a man has no humanity, what can he have to do with ritual?” (LY 3,3). R. Ogilvie (124) gives augury’s elegy: “The smoke no longer curls up from the sacrifices in the forum; the augur no longer takes his seat on the Capitol to watch the birds wheeling overhead”.

Under the House of Shang, divinatory personnel seeking to know Ti/Shang-ti’s reactions included the king as inquirer, chen-jén his proxy [literally alter ego], p’u-jén divining technician, chan-jén interpreter, shih archivist (Chang K. 32-34, Creel 1936:185ff.).

The religious character of early society is corroborated by...later ritual bronze inscriptions, which come from the early...Chou dynasty, when the court diviners had diminished in influence but the ancestral religion was still going strong. So too was the belief in a supreme being, by then more often called T’ien/Tian or Heaven. (Ching 1993:20).

Divination by scapula, plastron, and milfoil endured. In the eastern Chou times, a priest-magistrate called “t’ai shih [managed]...sacrificial affairs, his main religious functions were to perform divinations, to record and preserve the prayers addressed to the deities by the invoker, and to put down the replies issued by the deities”. Shamans also held officers’ rank in Eastern Chou states (Bilsky 1:193).

31. *maximum autem et praestantissimum ius.* Legal precedence and real prestige give the augurs pride of place. Their veto power and Cicero’s tenure of this office puts *him* first, too. “Augures did not offer a glance into the future, nor did they determine the causes of contemporary misfortune; rather, from signs, according to well-established laws of augury, they have indicated or interpreted the agreement or disagreement of the gods”. In Cicero’s time, augurs possessed the authority to 1) grant or refuse permission for assembly; 2) stop a proceeding underway; 3) adjourn an assembly “*alio die*”; 4) force a consul to resign (Szemler 25, 26). Obnuntiatio included announcing unsolicited signs to the Senate (auspicium oblativum); proroguing comitia with *alio die* (impedire); or raising constitutional objections (vitiare) (Guillaumont 1984:87, Latte 4). This moral ombudsman now has its own momentum. Given widespread disbelief in the augur’s art, and the augurate’s

potential to sabotage State business, why not get rid of it in an ideal code? Augury's prestige protects precisely the *interference* in policy-making which brings *mens divina* to bear. Augurs have *iura*, procedural rights amounting to "constitutional" review. The framework of permissibility, traditionality, *fas* or *nefas* (36), and reasoned consonance with divine Law undergirds augury, not piecemeal (revocable) positivist rights. *Dignitas* is not open to review. *Ius augurum* covers every exigency, a *liberum veto* the envy of any deputy to the Polish-Lithuanian Republica's Sejm/Seimas. Public business was at the augurs' mercy (Bergemann 90, Guillaumont 151). It is an independent right of ritual review over against the pontifices (Bergemann 42), "diese Vorstellung von geistiger Freiheit...unterlag der Kompetenz der Auguren und anderer Priester, nicht jedoch der der Pontifices". As "interpretes internuntii Iovis Optimi Maximi" (De Domo 1,2), augurs speak without let or hindrance. *Quid magnificentius?*

31. *sum ipse augur*. Cicero makes no claims, he claims, by virtue of being an augur, although Richard Gordon reminds us that he is "speaking expressly as a priest as well as a philosopher", just as North says the elite did not segregate religious functions from military and political functions (Beard and North 179, 65). He is a true believer (Guillén Cabañero 1999:503; Cowell 345). The ban on personal enmity between augurs (Beard and North 23) frees Cicero to say what he likes. In fact, Cicero liked being an augur so much that he overindulged at an augurs-only festive banquet and was publicly sick (Eulenberg 22). Augurs' banquets were famed for their culinary extravagance (Kroll 192). Cicero valued the augurate highly because a *homo novus* was usually excluded (Kowalski 126). Ancient China had the same glass ceiling (Creel 1949:188).

His right to judge traditional faith's conformity to *mens divina* sits on the augurs' constitutional perch. His *ius* to write DL inheres in his personal nexus of magistral and priestly *imperium*, his theological fulcrum as *augur*, and his claim to be *sapiens*. He has brought his augural authority from the urban *arx* to the island in the *Fibrenus*. He includes himself—foremost—in his *nihil sine eorum auctoritate*. He has a T'ien-given mission like K'üng, pulled from the skies after young Crassus' death at Carrhae (Becker 14), an *officium*, a *ius*, a portable personal uncodified *auctoritas*. Cicero was nominated to be an augur by Pompey and Hortensius in June 53 (Gelzer 1969:206; Guillén Cabañero 1981 2:32). Clodius' brother Appius was amicable as Cicero's fellow-augur; both men took seriously "the fact that they both belonged to the Augural College, in which not only was a violation of friendship deemed by their ancestors a sin, but into which no one could ever be elected who was the enemy of any member of the body" (Forsyth 2:63). Appius Claudius even dedicated a (lost) book on augury to Cicero after the murder of Clodius by Cicero's henchman Milo. Appius affirmed the effectiveness of augury (Brunt in Griffin and Barnes 193); he and Cicero differ little on

this. Cicero's deadly serious view was unchanging: "als Augur kannte Cicero sehr gut die religiösen Regeln und Vorschriften...doch bis zum Ende seines Lebens blieb Cicero vor allem Politiker und Augur" (Kowalski 139). Boissier says (35) that "he often boasted of having foreseen and predicted the future. It was certainly not in his position of augur, but by a kind of troublesome perspicacity, that showed him the consequences of events, and the bad ones rather than the good". No: auctoritas of personality and office are one.

Cicero's faith that *his mens humana* echoes *mens divina* qualifies him to track the soaring flight of *mos maiorum*, the republican way of the former kings. Friendly dialogists are faux-augurs. Their talk takes on a sacred colouration. Cicero's talk mirrors the individual political action of *Philippi consulis et auguris*. Theology augments what political end-game diminishes of civic power. Policy *per magistratus gestum* must be approved (*probari*). Cicero takes *ius probandi* for himself. Civilian and military decisions must be acceptable to the augurs. All rites must be acceptable to the civic theologian. The gods' good pleasure is manifest in omens, rite, and dialogue. If augury's technical power has faded, Cicero still maintains augural plenipotentiary power over *nagustrates* and assemblies. Seeing lightning prorogued the assembly just as K'üng blanched at seeing it. Votes could be nullified after the fact because of concomitant mistakes in augural protocol (Liebeschuetz 3). *Obnuntiatio* was rare (Liebeschuetz 14). Ironically, in light of Cicero's own real-estate travails with Clodius, he points out that augurs had power to intervene in real estate sales if their vantage point might be obscured or blocked (DO 3,66). A seller who ignores augural prohibition had to refund all the money and does NOT get the property back, either!

Augurs increased from three to fifteen. The Lex Ogulnia of 300 permitted a slight majority of augurs (five of the nine at that time) and *pontifices* to be plebeian. First there were 3, 9, then 15 augurs, originally patrician, after Lex Ogulnia (300 BC) 5 of 9 augurs were plebeian; *pontifices* could also be plebeian under Lex Ogulnia (Altheim 280, Bailey 161, 166). Without any claim to current predictive powers—and augury never was connected to outright miracle (Grant 21)—the *augurate* survives in Cicero's hands as a moral tool for the increase and well-being of the republic.

Cicero was not only an augur but proud of his tenure of that dignity. His pride, however, rests rather upon his natural conservatism and his respect for established institutions than upon religious conviction. As regards the forms of state religion Cicero, as a statesman and a constitutionalist, is keenly alive to their political value. He is a buttress of the established church. (Halliday 140).

W. Halliday errs: there is no church, and the conviction is real, akin to K'üng's Heaven-given mission (LY 9,5) or Polányi's "sense of my calling" as scientist, activist, and religious philosopher (1962:322).

"The signs were taken seriously and occasionally coerced a magistrate out of the blue. Friendship

within the priesthood was meant to reflect the consensus of the nobility. When the nobility was deeply divided in the last years of the republic, the institution could not work" (Liebeschuetz 17,19). The Senate ratified few prodigia, guarding against public panic at wrecked *pax deorum*, and kept augural findings top secret until ratification was complete (Ruoff-Väänänen 141). In ancient China, eclipses, freaks of nature, and natural disasters were warnings from T'ien (Forke 1964:43; cf. Wu in Moore 213).

32. Atticus elicits *video fateorque*. He has something significant to say, enhancing the dialogue's realism. Atticus pits pragmatism against faith. Is beneficent augury, like Voltaire's God, a necessary invention, or does it ascertain the divine moral will? Legerdemain reducing truth to strategy is political superstition. Augury is no Deweyan *nudum signum*. *Ars augurum* has no quotation marks around it. *Egone?* Cicero affirms strongly and at length that divination is more than consecrated folkways, even if C. Claudius Marcellus' *magna discussio in conlegio vestro* denied its revelatory character (Altheim 330; Kroymann in Michel and Verdière 126). Augur and praetor Marcellus wrangled in the College of Augurs with Clodius' brother and Cicero's friend Appius Claudius—precisely because Appius affirmed the reality of augury, just like Cicero (Szemler 154). Linderski's denial of any belief in augury after "the beginning of Roman history" and making Cicero side with Marcellus is mistaken (16). Prosopography proves him wrong, and he misses the theological-moral force of augury as rited political "preaching".

Greek divination *in avibus ceterisque signis* equals *disciplina nostra*. *Μαντική* denotes a Roman reality whose *interpres* is Cicero the augur:

Leaving aside both the mantic of omens and another mantic, different from it but equally low, the mantic of charms of all sorts—by means of a sieve, of meal, of the pecking of grain by a hen, and so on—let us turn to that which had an evident and universally recognized connection with religion. It had two branches, 'atechnic' mantic or *prophesying*, and 'entechnic' mantic or *augury*. In the first case the god addresses man immediately, in the second he sends him signs that require interpretation by an experienced augur. (Zieliński 1926:191).

Si enim deos esse concedimus is a big if. If *eorumque mente mundum regi*, then ascertaining the divine nod on policy is reasonable. If divine Mind is inscrutable, Its governance of the world is moot. Cicero says *eorum mente*, not *mentibus*; polytheism only stretches so far. One divine Mind adumbrates monotheism under the guise and rites of polyolatry, a Jove-led (the divine *optimas?*) ethical *concordia ordinum* among the gods. Warring Greek deities are remote from Cicero's Roman monothelism. This unity enhances the possibility of right human response to the divine will, since there is no competition whereby one deity wills one thing, and another something antagonistic. The regularity of nature (16) makes it a short step from seeing divine government in ordinary natural

phenomena, to seeing special divine direction by portents.

33. *Non negem* is weak. Cicero moves to historical argument. Having begun theologising about divination, he no longer stands *within* it, augur or not. Zenker asks, “sind unsere Priester dasselbe wie die Apostel? Gibt es nicht auch korrupte Parlamentarier in Europa?” (1915:33). Cicero and contemporary “Han literati tended to be critical of diviners rather than divination itself. Few scholars, if any, condemned the practice categorically”, just incompetent or seditious prophecy (Richard Smith 32). Cicero blends *ἐποχή* and ritual conservatism like a less-secular Hsün. “Cicéron constate la désuétude de l’art augural, et rejette aussi bien l’incrédulité que le fidéisme” (André in Michel and Verdière 13). *Sed dubium...qui esse etiam nunc putat* accepts now-lost real divinatory powers (Fontanella 2:196, Görler 160; Jannaccone 117; Kauffmann 22-23). How can Cicero make disobedience to augury a capital crime when he used to deny its reality? Augury enhances an *optimas*’ or group of *optimates*’ moral power over public policy. “Scientific” truth is subsumed by religious pattern language. Augural *li* speaks rational T’ien’s voice of Tào, interjecting of moral critique and veto without legislative process, but with utmost ritual power. “The augurate is...the instrument of the conservatives on whom the stability of the state depends” (Bauman 37). Haury says (227) “Bien que dans le *De legibus* il imposât sous peine de mort les dogmes et rites d’état et rien ne laisse supposer un changement de sa politique religieuse, Cicéron se désolidarise trop mollement de ce brillant protagoniste pour ne point en partager souvent l’hérésie”.

Augury rationalises public discourse by teaching divine intervention on a moral criterion.

It provided a mechanism for tracing the temper of the gods [and]...compelled [politicians] to submit to the superior authority first of the priestly diviners, and then of the senate which in this field as in others had the ultimate say...The central function...was the maintenance of public confidence or, negatively, the avoidance of panic...heavenly diplomacy was being maintained...sons and fathers going to campaign would have powerful supernatural allies...senate and people could decide on future strategy in a rational manner. Without such an atmosphere the republican institutions could hardly begin to work. (Liebeschuetz 8-10).

When the state cult was co-opted by Caesarians, augury and the institutions it encouraged and rebuked ceased to work. Augury resists totalitarianism. Narrowly escaping Stalin’s purges, the future Mzee said: “I wish to put it on record that every rain ceremony that I have witnessed has been very soon followed by rain” (Kenyatta 250). *Permultorum exemplorum* are evidence of things once seen. Working divination was lost by *vetustate et neglegentia*. Divination *apud maiores fuisse duplex*: State and *saepissime* family. “L’espressione [*videtur*] sembra richiamare certo frasario politico deo nostri tempi. Non meno ricco di allusioni e di ambiguità il suo verdetto finale circa l’esistenza della divinazione nel collegio degli auguri: quae (i.e. scientia) mihi videtur” (Troiani 934). Cicero is less concerned with the ‘scientific’ than the political issue of *ars augurum*. The art

of moving policy toward obeying the ethical demands of holiness and right reason has been lost.

34. Atticus' *credo hercle!* and *potissimum adsentior* show rare vehemence and vast relief at finishing with divination. The good Epicurean sees trouble for his unspirituality, missing the civic implications. R. Gordis says that secularists rejecting "any religious or metaphysical basis for natural law need go no further than they wish...however,...beyond their stopping point, the road goes on" (Cogley 255). Atticus recognises precisely that, in the bond of Eleusis (P. Schmidt 1969:68), but only *privatim*. Transcendently loyal to Cicero, he also adjusted easily to totalitarianism. Was it collaboration or carving out a Zoar of decency in an indecent time? When Atticus died in 32, perhaps even he did not know which it was. Ceremonial *de iure belli* does not much interest Cicero, nearer LY than Li Chi. Rites of war and peace are lumped in with haruspicy and various purifications. What matters is *ius ut plurimum valeret et fides* in the conduct of war. Lawful fetial rite must be carefully maintained (Cauer 63). The State as a religious "person" must wage war caste. *Sane quaero* shows realism. Cicero and Atticus talk realistically, reinforcing the credibility of the dialogue's content. Cicero plays at expecting a real argument with Atticus. Nothing happens.

ODE EXPLAINED: HOW GOOD AND PLEASANT IT IS... § 35-39

35. *Nocturnis sacrificiis mulierum* are a delicate question. Cicero's 'yes' protects the heart of urbane personal religion: the mysteries. Women's sexual reputation could suffer (cf. 37). The contrast to Plato's guardians' copulation-festival is total (Πολ. 459e; cf. Lefkowitz and Fant 104). Our sensitivity to sexism notwithstanding, we should take Cicero seriously here. Positive law is not consonant with Law unless manifestly so and *seen* to be so. Rite religion is observable. Inner character shows in *castimonia* and *pietas*. Reputation is more than idle gossip. If a rite or the worship of a foreign god (*ipso facto* exotic or seductive) ruins matronly reputation (*pudicitia* parallels *virtus*), its civic function is subverted. Reputation goes before a theological fall. Contrast the great dignity of the Bona Dea women's rite and the *auctoritas* of the pontifex-maximus-appointed Vestals. Roman positive law, the *senatusconsultum de Bacchanalibus* of 186 B.C., forbade night rites by *anyone*. Meng speaks of *pudicitia*:

The Book of Ritual says: An august lord helps plow and plant to provide sacrificial grains. His wife helps spin silk to make sacrificial clothes. If the animals are not fat, if the grain is not clean, the garments not ready, he dare not perform the sacrifice. And if an official holds no land, he performs no sacrifice. If the sacrificial animals, ritual vessels, and sacrificial garments are not all ready, he dare not perform the sacrifice or offer a banquet. (3a3 Hinton)

On the *SC de bac.* cf. Tellegen-Couperus 39 and H. Bernard, *Le Senatus Consulte des Bacchanales*, Paris, 1908. The key sentence is "Bacas vir nequis adiese velet civis Romanus neve nomen Latini neve socium quisquam". In addition, "sacra in oquoltod ne quisquam fecise velet, neve in policod neve in preivatod neve extrad urbem sacra quisquam fecise velet" (Warrington 4:256), that is, without consular or Senate approval. "Die Trennung der Geschlechter gilt als ein Staatsgrundgesetz. Es gilt nicht einmal als statthaft, daß Männer und Frauen dieselbe Art von Geschenken darbringen (Tscho-schuan 108a)" (Forke 1964:54).

35. *augusta illa mysteria*. Cicero exempts and extols the Eleusinian mysteries, paying homage to the Athenian *mission civilisatrice* of which he and his friends were beneficiaries and colporteurs. Dionysos and the Eumolpid priestly dynasty are *nostrī*. Athens is naturally Atticus' *Athenae tuae*. The dialogist-initiates learned in childhood "to live in another language" (Walcott 17); at Eleusis they learned the grammar of transcendent hope. Forsyth, citing Drumann, thinks Cicero was initiated into the Mysteries while studying at Athens 81-77 B.C. (Forsyth 1:44). Despite his deep love and ratification of Roman *mos*, Cicero's ambitious faith in universal *lex divina* sees it as applicable to the lawmaking of all civilised peoples. Eleusis seals it.

35. *omnibus bonis firmisque populis*. Only ethical and stable nations can receive Cicero's laws or any others consonant with Heaven. A *populus* is *bonus* because it is governed by the *boni*, the optimates, those suited by ethical and political eminence to rule. A nation that is *firmus* is free of *res nova*, has *concordia ordinum* or at least a fixed constitution, and is settled, not nomadic. Any such nation is capable and divinely mandated to receive Natural Law congruent with all civilised experience (Koschaker 346). So much the better that Roman law is the prime exemplar! Althaus (1931:15) affirms that “[ein] Blick in die sittliche Geschichte der Menschheit lehrt, daß...unter aller Entstellung ein starker *consensus gentium* in den Grundnormen vorliegt.”

Confucius remarked: ‘The power of spiritual forces on the Universe-how active it is everywhere!’ It is the fact that there are these forces which makes men in all countries fast and purify themselves, and with solemnity of dress institute services of sacrifice and religious worship. Such is the evidence of things invisible that it is impossible to doubt the spiritual nature of man. (CY 3; Ku in Lin 109).

“Ἔστιν δὲ πίστις ἑλιζομένων ὑπόστασις, πραγμάτων, ἔλεγχος οὐ βλεπομένων” (Hebrews 11,1). R.

Wilhelm says permanent ethical laws valid for every society exist (1923:17 on LY 2,23). Individuals bear sacred duty to *Tào/fas*, says *Mèng*. “There are heavenly people who practice their principles which can be carried out throughout the world” (7a19; Zheng). These are Cicero's *sapientes*. Law and rite reason are shared by all stable, civilised nations. “Nguni, Sotho, Venda, and Tsonga [d]etails varied in the rules of grammar and vocabulary, in the rules of...rituals celebrated, but the framework was constant...They assumed a moral order intrinsic in the universe” (Wilson and Thompson 182).

Cicero has faith that Rome enjoys this shared moral order; it is the “*populus per eccellenza*” (Cancelli 195). This is triumphal, but all who qualify within the four seas can join the parade or lead their own. Cicero envisions (Girardet 1983:14) “eine von Rom ausgehende Normierung der rechtlich-politischen Strukturen der nichtrömischen Staaten (aber zuerst natürlich des römischen [Staat] selbst nach dem Muster von *de legibus*)”. Girardet wrongly attributes to Cicero a Taoist utopian *κόθος* (Girardet 1998:149, 273). “Normierung” does not imply Stoic uniformitarianism. Cicero's project is exportable and universal, but not universally exportable. There is no “*sapientes* of the world unite, you have nothing to lose but your polities!” Cicero rejects polities fabricated by free-lance geniuses. *Mèng*-like, *res publica* is “a collective work of the *populus romanus*” (Conte 87). Cicero does not list standard-compliant nations, but the universalising suitability of real laws to any stable, ethical people makes the laws praiseworthy. If Rome ceases to be *bona* and *firma*, then the laws lose suitability to Rome, and Rome to them. Unless *boni* defend *mos maiorum*, gimcrack nostalgia and sham traditionalism prop up personalist régimes without *res publica*. Without a State subordinated to *mens divina* and proper Law and rite, idolatrous deification prevails.

36. *excipis ego vero excipiam*. A nervous man of right reason is steadied by Eleusis making him heir by rite to Greece's best. Generous, grateful Cicero bows to Atticus, since *Athenae tuae peperisse* the mysteries and *multa eximia divinaque*. Excellence and godliness are not Rome's alone. *Ex agresti immanique vita exculti*, Cicero and Atticus became reverent chün-tzu by initiation *ad humanitatem*: the mysteries bestow cultivation, rited Innigkeit, life lived to the full as reasoning, devout persons. What humble, awe-struck speech: *exculti ad humanitatem et mitigati sumus!* Salvation from rustic life tames wild animals. "Quid narras barbare cum indomitis moribus, inlitterate inlex?" (Caecilius; Warmington 1:488). Cicero, Quintus, and Atticus are *mitigati* from violence to virtue by li's cultural lustre. Kragdadigheid is now nuanced, brittleness supple with reason. Rite is "mansuetudo animorum" (DO 2,15). Hsün says "education intensifies and permanently alters one's basic, inborn nature, like the blue dye that is bluer than the indigo plant from which it comes" (1,3 Knoblock). "The Way of self-cultivation...lies in causing the light of one's inner moral force to shine forth, in bringing the people to a state of renewal, and in coming to rest in the fullest attainment of the good" (TH proemium; Plaks). This is Hün *mitigatio*: "The rites and music that were developed by the ancient sage kings may restrict and rechannel desires so that one may eventually acculturate oneself to desire to act out of moral virtues" (Csíkszentmihályi 2). Levenson (1:103) says "To 't'ien-hsia the kuo-chia' is to take a political power-unit and make it, with values, a civilization....Chinese in their kuo were barbarians among barbarians unless they took the yoke of an ideal way...and set the styles for others. Then the world could be t'ien-hsia, not a congeries of kuo". Eleusis' spirituality arms Cicero for the civic-theological arena.

Yi-ti and other annoyances: what answer from the north?

Mitigati: does all under Heaven mean all? Can every set of hell-on-wheels barbarians be *exculti ad humanitatem*? A recent PRC party-line view of LY 1,1 is that foreigners arrive to learn Jú-chiào (Cheu 2000:xlii). There is no racism in K'üng.

Confucius used a cultural standard in deciding who was a barbarian and who a Chinese....it therefore entirely lost its racial significance and became a purely cultural term....When Confucius called something *yi-ti* (barbarian), its connotations were more or less like those of... the word 'wild man'. (Hsiao 1979:140)

Yi-ti is barbarised in English as yeti. As Rome was uninvited heir to Hellenism, so the Chou were "relatively rude barbarians who overran their more cultivated Shang neighbors...extremely capable men...especially...the Duke of Chou" (Creel 1949:116; Wilhelm 1923:ix). Like Romans and Nguni, the Chou travelled far and long to ensconce themselves. Eberhard claims a distantly possible

Altaic origin of the Chou (1982:15). Barbarians Shun and Wen (the Cultured) were exemplary sages. “I have heard of the conversion of the barbarians by the Chinese but not of the conversion of the Chinese by the barbarians” (Mèng 4b1, 3a4; Zheng et al.). Mèng mocks “the southern barbarian with the twittering tongue, who condemns the way of the Former Kings” (3a3 Lau). This is anti-shamanic, not an ethnic slur. Mèng is stunned that “in der Mongolei wachsen nicht die fünf Kornarten; nur Hirse gedeiht dort. Es gibt dort keine ummauerten Städte, keine Gebäude und Tempel, nicht die Bräuche der Opfer; es gibt keine Fürsten, keine Geschenke an seide, keine Hoffeste; es gibt keine Beamten und Angestellten” (6b10; Wilhelm). Like the Romans in Latin and Greek eyes, the Mongols were a hard case. Appalling conqueror-cousins from China to Hungary, ravagers of all, Mongols were the toughest cultural threat faced by Jú-chiào. Buddhism’s assault being of a different order, and just at the time of Chuhsiist sea-change. In time, the first Míng emperor restored *mos maiorum*. In the mean time, State milfoil divination fought *superstitio*. “Cinggis Qan, like all the Mongols, had a superstitious fear of unusual natural phenomena and used to consult...[Jú] Yeh-lü Chu’-tsai [耶律楚材 who took]...the omens in the Chinese fashion, while the emperor, as an additional safety measure, took the omen the traditional Mongol way by burning the thigh-bone of a sheep” (Rachewiltz in Wright and Twitchett 194).

Under Chinggis Khan’s successor, Ögedei Khan (1229-41)...Yelü Chucai and Inner Mongolian Önggüd [“White Tatar”—then often Christian] men began instructing the emperor in Confucianism. From 1233 on Confucian scholars received the same privileges given Buddhist and Taoist clergy, a descendant of Confucius was enfeoffed as duke, and a Confucian temple was built in the imperial capital of Qara-Qorum. (Atwood 117).

This is high-risk, high-proximity political engagement. Some Jú chose quietism (Tu in Slotte and De Vos 28). Cicero, Quintus, and Atticus knew high risk and quietist lure. Khubilai fostered interreligious dialogue at court, ruling amid “moral activism and esprit de corps” among Yüán/Ōn Jú (Chan H. and De Bary 14, 18). Mongol emperors read and wrote Chinese. Khubilai was an avid student of literature (Franke 30, Wieger 758). Deeper into the snow, Jú-chiào and Chinese influenced Ural-Altai speakers, Tungus, Hsiung-nu, Turks and Uighurs (Gernet 4,18), reaching the Ob and Yenisei valleys (Gernet 4, 18, 42), the Etelköz of Khanti, Mansi, and Magyarok.

36. Cicero testifies fervently to faith coming through rite. Rite draws the *sapiens* from didactic philosophy into theological existence. Rite is not desiccated by propositionalism. *Laetitia vivendi* is the mysteries’ gift of devout joy. Immortality awaits one saved *ad humanitatem*. If “πᾶσα σάρξ ὡς χόρτος” (1 Peter 1,24), the holiest Diesseitigkeit’s evanescence crushes Chou’s Way or *mos maiorum*. Graced by *fama*, jén does not die. Faith in personal survival kindles *spe meliore moriendi*, without which other hope is chatter. Initiate Cicero honours Eleusis as Hellenism’s

pinnacle and confesses personal faith. “The gentleman...dreads suffering but will not avoid what is required by his moral duty, even at the risk of death...How magnificently he possesses all that differentiates him from the vulgar world about him!” (Hsün 3.2; Knoblock)

36-37. *Quid autem mihi displiceat* is sexual innuendo about women’s night rituals in New Comedy and Clodius’ blasphemy. The rite’s intrinsic merits are bracketed. Time of day, deity served, character of women, or benefit to participants are laid aside in contempt for the sexual outrages of a miscreant politician. Women’s dignitas-*displaying* behaviour asserts full personhood. Cicero bases the ban and the vital Bona Dea exemption on the low ground of by-laws, not the high ground of Law/Tào. Intention makes like actions right or wrong (Grimal 1978:181). *Poetae comici*, respecting Roman sensibilities and censorship, gave disreputable goings-on a Greek setting. Greeks were boni and firmi in the mysteries, but otherwise below Roman standards of probity. Clodius’ penetration into the rites of Bona Dea (*ille qui intulit*) impiously up-ended the trope. *Libido* is pure intent and *inprudencia* pure accident. Anti-Actaeon Clodius, the sexual hunter and nefastus voyeur gets away with his life though devoured by the dogs of his desire. Taboo against seeing the sacred with profane eyes is not unique to Rome or Cicero. K’üng’s strong warning to “keep your distance”, so often misconstrued as unbelief, is twin. Moses is forbidden to look upon God’s face, lest he perish by so doing; Isaiah fears that his confrontation with God blazons his own destruction. We have forgotten the peril of accidental contact with the holy and the terror of *inprudencia oculi*, brinkmanship with God ravaging the unauthorised onlooker. The mockery, as much as the sexual scum, made Clodius reprehensible. Atticus cries *nobis nostras ne ademeris!* The philhellene dons his patriotic Roman cap, *ad nostra igitur revertor*, fearing for the stability of mos maiorum. Cicero then shows sensitivity to custom’s claim on ordinary sensibilities. *Fama lux clara custodiat*, especially women’s *fama*. Suppression of the Bacchanalia (186 B.C.) shows the high esteem of pudicitia. However offensive to modern ears, fear for women’s reputation and fear of sexual license under cover of rite, is not sexist gimmickry. *Fama* is the better half of social truth for *all*. Ritual—or sexual—autonomy strikes at Cicero’s mos maiorum. None *dare* be a Cynic/Taoist law unto oneself, flouting convention, mocking taboo, sundering the web of holy rite binding the res publica and curbing chaotic impulses.

In a shame-based society, reputation’s death is personal death. (Hence the Annunciation’s riskiness and its shattering categories of theological and social thought.) He approves *severitatem maiorum*, not Catonian abusive rigour, *ne nos duriores forte videamur*. The “loose” woman lies parallel to the draconian legist. The protector of Roman mos, mitigatus by Hellenism (within limits), shows by Greek parallels ancient Roman severity responding to transcultural reality. Durus, not *durior*,

Cicero wants his *humanitas* to be apparent. *Aristophanes facetissimus* is a surprising ally, expelling from Athens Sabazius, the orgiastic Phrygian pseudo-Zeus linked to Cybele (Labrousse 263). Mockery of a disreputable foreign god ranges him among *mos* and Law's defenders. Syncretism's stew had gustatory limits.

37. *Imprudencia* is accidental violation of rite or inadvertent trespass upon mysteries. *Audacia* flouts convention. Verres, Catiline, and Clodius are *audaces* (Guillén Cabañero 1999:509); how much the more Caesar and Antony who "brawl in the middle kingdom, collect resentments and call it sincerity" (Shi 255; Pound). Spectacular offence is inexpiable, but blunders need repair and minds eased by *consilio*, a *publicus sacerdos* removing *metu* by precise expiation. Clodian or Antonian *religionibus foedas* are beyond the pale. Cicero blasts eroticising the rites. Night brings danger and concealment, privacy and risk. Women are not generally public persons despite their priestly care for *salus populi* in Ceres' rites and as Vestals. Night rites presided over by women are dodgy, and the chief priest of Ceres was a Greek woman granted Roman citizenship. Unless laws and rigour stand sentinel, rites and their women are vulnerable to invasion, violation, and ruin of *fama*. After Clodius' transvestite profanation, *faex Romuli's* knowing leer ruins *castimonia*. Once violated, always a byword. Ceres must be kept totally pure. She gives "vitae atque victus, morum, legum, mansuetudinis [= "taming"], *humanitatis* hominibus et civitatis" (Verr. 5,187).

38-39. Cicero enjoys *ludi publici* with boxing, wrestling, and horse-racing. Musical accompaniment (*modus*) must be *moderata* by law. Now, *cavea cantu vigeat!* Cicero rejects Plato's misomusy in *Politeia* 4. K'üng passionately loves music and frets over its degeneration, concerned for the integrity of rite. (Creel 1949:88 gets this wrong.) *Varios canendi sonos* stir up emotions, swaying *animos teneros atque molles*. Vulnerable youth, unsteemed spirits, and volatile mobs can be twisted by musical propaganda into fosterling-thugs. Catilina's putsch was Gefühlspolitik's Brechtian theatre, a fake revolution complete with real blood. Elected officials staged and paid for *ludi publici*: means, motive, and opportunity to turn popular excitement to factional advantage. Musical *concordia discors* could make *res nova* boil over. Tough old Romans, like once-tough Greeks, *had* been flinty enough to resist. What *incitat languentes et languefacit excitatos* when civic life is vigorous becomes Leitmotiv as *mores lapsi* slither chromatically into decadent *mollitia*. In Cicero's use of public music *moderatio* is vital. *Animus*, the spiritual composite, not *mens* alone, is at risk. Its gubernator, *mens humana*, gift of *mens divina*, must reject destructive—not all—music. He mocks bad taste and mourns the lost *severitate iucunda* of "untamed" Old Marcuses. Unlike Plato he does not panic at *nec tam valde id timendum*. Laughing at those who *cervices oculosque pariter*

cum modorum flexionibus torqueant, Cicero wants music in Concordia with *mens divina's* ǐ (cf. Mèng 5b1). “To develop the good and suppress the bad, it was necessary to know the teachings of the sages, to observe the restrictions of ritual, to incorporate the harmony of music, to cultivate one’s inner power, and to develop a sense of what is right” (Knoblock 1:81). The Li Chi beautifully hails music’s power “to bring about the piping times of peace”, for in otium and rite “a gentleman cannot do without Rites and Music for a single moment” (34, 43; Xu). “When [K’üng] saw the dance of Great Wu [King Wen’s son and King], he said, ‘Splendid! Chou at its height must have been like this!’” (Tso ch’uan 152 Watson; LY 15,11; Odes 208/Karlgren; Wu in Moore 362). “Poetry, rites, and music were a single unit in Confucius’ thinking” (Fang in E. Pound xvi). Hsün 20 says “music embodies harmonies that may never be altered, just as ritual embodies principles of natural order that may never be changed....The guiding principles of ritual and music are the pitchpipe for the mind of man” (Knoblock) and “when music is stern and majestic, the people become well-behaved and shun disorder” (B. Watson).

39. *Pernicies* is *inlapsa*. By 44-43 the free State was falling to *malis studiis malisque doctriniis*: Caesarian warlordism as faux-Hellenistic divine monarchy. Music is the canary in the mine. Violence kills both constitution and capable optimates, laying waste what we call human rights, what Cicero holistically called *dignitas*. K’üng saw warlordism bring autocracy to Lü in 537 (Kaizuka 40). Admiring Cicero gladly lets Atticus keep Athens *his (tuae)*. Cicero is unspartan. He is no Cato aping the old style, nor a neoteric mincing Greek examples. Roman *severitas iucunda* smiled. *Illa severa Lacedaemo* did not. Unlike Orwellian-Platonic Sparta, Athens gentled Roman rigour, still able to shun *mollitia*. There is no deference to Plato anywhere: *sequar divinum illum virum* (3:1) *only* refers to form, not to content (Görler 160).

CODE EXPLAINED: SPOLIATIONS AND SACRIFICES § 40-45

40. Cicero's *in lege* shows his code's unity and this provision's conformity to divine Law. Delphi adds a Greek touch. Keeping *ritibus patriis* is better than random novelty. *Colantur optumi* is better than reactionary traditionalism. The inversion is neat. One expects Cicero to say the quantifiably oldest accords best with *mens divina*. Instead, the qualitatively best, the truest parts of tradition, claim the prestige of age and divine propinquity. Otherwise, jurisprudence and theology are for pack-rats. Theologising about rite, Law or laws would be hobbled by subservience to the accident of a tradition's survival and blinded by the uncritical attribution of antiquity to this or that custom. *Ratio recta*, not antecedence, makes a custom *deo proximum* and nearer that Law which *does* predate positive laws. (Cf. Westrup 3:137.) Law shines from *natura* through *consuetudo* to *lex*: laws' power *propter vetustatem* is contingent, not absolute (De Inv. 14).

40. *stipem sustulimus*. Cicero forbids the Idaean Great Mother to milk the Roman cow dry, rightly diagnosing the financial parasitism of superstition. Importunate sanctified browbeating (if no more incisive exercise is at hand for the *galli*) can enslave the consciences of people who have *animos teneros atque molles*. *Superstitio* is religious excess violating custom and proportion, an attempt to corner the market of sacred *comercium*. All sacrificial religion involves expense. Why single out religious mendicancy? The violent devotion of the *galli* is utterly unlike the *mos maiorum* (gladiatorial contests notwithstanding) and immoderate giving urged by *galli* could slash household prosperity. Holy cadging *exhausit domus*, destroys family stability and drains patrimonies like modern "cults". If DL is late, Beuker's guess that this is a veiled gibe at Terentia is just possible (Beukers 144); prior to their divorce, not so. Commerce in sacrificial victims in properly Roman rites is acceptable if like anything else in religion it is accessible to the poor and mantled in seemly qualitative antiquity *deo proximum*. K'üng castigates Tzu-kung one who grudged the cost of a sheep at the cost of the rite (LY 3,17). As at *consilio*, anxious consciences are to be freed from scrupulosity, not mired in it by *castrati* hawking Cybele's blessings. Again, *Quod est* in more *maiorum* is *optimum* if reasonable and true to God. Cf. Dörrie 237.

40-41. A *sacrilegus* steals temple property or its entrusted *vota*, valuables or pledges on contracts or religious vows. "Het votum is een contract (*sponsio*) met de godheid" (Brink 178). Temples served as ancient banks and safe deposit boxes. The examples, Greek for the sake of the right "tone", show temple-trusts' importance by showing important persons making *vota*. Loot requires security. Irony meets hardheaded practicality. *Poena*, primarily fines, hit a *sacrilegus* where it hurts! This *poena* is not *comercium* necessary to *religio*, but *religio* necessary to *comercium*. Apostate minister Yang Hu

stole the Lü State's temple treasures (jewel and bow; Kaizuka 25). Like a *senatusconsultum ultimum*, the solemn Asante legal curse blasts the *sacrilegus*, whose impious/wú-hsiào attack on *mos maiorum* is so foul as to plague and dishonour his *dii manes*: “Wo samanfo nfa ye ti nwe. May your ancestral spirits chew their own heads” (Rattray 1929:310). (Asante—colourfully togate today for its li!—resisted Nkrumah's unanimist imposture.) The customary Roman informal malediction on grave-disturbers was “may you be ‘*ultimus suorum*’”, the last of your line (Westrup 1:63). *Nihil sane...disputandum* that perjury and incest violate divine Law. Depravity cannot dialogue when truth is in *statu confessionis*. Of some evils civilised existence demands horror *loquendi*. Perjury and incest qualify, despite Clodian bribed juries and Greek tragedy. Asante law and Cicero equate incest to murder (1929:304), crimes attacking State and family, betraying the basis of polity. Disdaining to legitimise the detestable by argument is not fudging, once the Sages' premiss that some things are *contra naturam* is granted. “Clever talk can confound the workings of moral force” (LY 15,26 Waley).

41. This transcends Plato's prissiness (Νόμοι IV:716e). Consider the giver, gift, and getter of *donis*. An *impius* is polluted and immoral. *Impietas/wú-hsiào* makes him no true worshipper, child, brother, client, or citizen. Placating the gods' anger, let alone enjoying the *voluntas beneplaciti* in Deo, is impossible for a despiser or his deceptive gifts. *Comercium* needs an exchange rate. Like Christ and Belial (2 Cor. 6:15), like T'ien and “bandit” Chow, *dii* and *impii* have unconvertible currencies. No one's word, divine or human, is bond where neither *pietas/ hsiào* nor *right/yi* creates a medium of exchange. Could gifts by *impii* placate? *Ne audeant!* Do ut des? Divine anger might lash out at a mocking giver, and the agenbite of inwit turn to civic disaster! Total disconnect between giver and getter bars any self-respecting Roman god with a Roman's *dignitas* and *severitas*, let alone divine justice, mind, and right, from taking so tainted a gift. No human can steal a moral march upon God. Gentlemanly disgust aside, impiety mars rite's polished machining: nothing runs true. *Qua sit mente futurus deus [?]* Approving a gangster's shambolic ritual acts skews the framework of li. If human deceit provokes divine *ira* by religious *iniuria*, since the *impius* is a perjurer by rite, *all* divine-human *comercium* for *salus populi* might skid from *concordia* into *discordia*, *pax deorum* into *lis deorum*. *Mens divina* or *mens Dei*, mission- and mandate-giving T'ien shows high dudgeon over low dealings. If a *vir* can be *bonus*, a *deus* *must* be. Before his furious digression, Cicero repeats: financial and religious integrity go hand in hand. Do not vow without *diligentium votorum*. *Sponsio* with gods must be at least as good as among humans. Cicero sees covenant through the wrong (anthropocentric) end of the telescope. His “we will obey and we will do” is no Sinai, but pact and *pax deorum* still ground integrity.

41. Cicero piously makes *commemoratio* of sacrileges against his family's *sacra* during his exile in 58-57, neatly inverting *commemoratio*'s usual recollection of great ancestral deeds. Abstention from *sceleratum exemplis quorum plenae tragoediae* forcefully uses autobiographical narrative to illustrate theological conviction. Tragedy—even in its origins as rite—cannot match the perils of the brothers and Atticus. *Pietas* and *jén*/human-heartedness record injustice as personal pain. “Someone said at a TRC public meeting I attended, ‘At last we have a state with a human face!’” (Villa-Vicencio and Verwoerd 160). This is no guarantee, as phrasemaker A. Dubček found. Without “law written upon the heart” the human face remains a gorgon petrifying liberty and rewriting history to excuse moral failures. Even liberated moderns need ethical augurship. *Volam* indicates expectation with *auctoritas*, almost a command. Pathetic recounting of “legal” savagery will *diis immortalibus gratum potius videri quam grave hominibus*, as gods and Romans share remorse and righteous anger. *Omnia discessu meo iura polluta!* This typifies abuse visited upon any *bonus* when State terror vitiates all vows, oaths, and rites. Public corruption pollutes all *sacra* and stains all *pietates*. The sacred republic is profaned by a *nulla lex*: *Lex Clodia de capite civis Romani* (Ciaceri 2:49). Not Cicero alone, nor only the augurate, but the whole citizenry are hurt (Laurand 469). Expulsion and usurpation of land by *templum Licentiae* insult the Tullian Lares, whose *li* and *iura* are *ab impiis religiones tam prostratae*. It is Sophiatown in microcosm: the same anguish, profanation, and gimcrack ascendancy. Cicero's fury is profound. If only the pure may approach the gods, now all approach is undone and holiness mocked. Lares are guarantors in divine *sponsio* of family *sacra*. Illegal banning ousted lares' shrine by a whore-house and Minerva by the prostitute Tanagrea, Clodius' “*libertas*”. Peisistratos used a tall girl as a live fake Minerva to decorate his entry into Athens; Clodius employed a call girl (Mentelle 1822:45). Cicero's trusting his Minerva to Juppiter's *aedes* is an act of faith. Wisdom seeks sanctuary as the *sapiens* flees for his life, sharing the priest-statesman's terrors of exile. Loathing of “personal enemies” helps validate “institutions by their conformity with Stoic natural law...an extrinsic support for the institutions of Rome as they recently have been.....[he] weighs both history and theory in the balance of partisan interest and personal grievance” (Colish 103). Oddly like Sulla's constitution, considering the dictator's bemusement at upstart Marcus, whose bravery he grudgingly admired, DL is constitutionalised gloating. In 51 he relished rite revenge upon his enemies “*sine funere oblitus cruore et luto*” (Pro Mil. 86). Our Cicero of 44-43 condemns Sulla's paranoid desecrations four years after Marius' death. (Cf. Mentelle 1766:361, Schmidt 1969:268.) Minervist Cicero declares *nos, qui illam custodem*.... Earlier he said “T”: *vereor reticebo discessu meo*. *Nos* shows solidarity in the trials of exile among the three friends. A *bonus*' sorrows are shared by listening *boni*. Cicero's deep rage

pulls him nolens volens to his feet, possessed by *anima naturaliter oratorica*.

Quid praeclarus? The Mencian child-like heart's oratorical overflow makes intimate dialogue ring true. Cicero just cannot resist the lure of speechifying. Resistance text bursts into flame. We get a glimpse into Roman personal piety. Cicero's carries away the *custodem* of Rome *ex nostra Domo in ipsius patris domum*, entrusting her to her pater's potestas. (Cf. Mitchell 1991:138.) Cicero cliens Minervae is his patron goddess' *obedient* patronus. Her status becomes his even in banning. The image becomes the represented deity. As high religious art or low good-luck piece, Cicero rescues Minerva from profanation. He takes wisdom with him by being sapiens; character becomes worship and rite. This is antipode to sacrilege: he places the sacred in the sacred (Juppiter Capitolinus's hospitality) with holy hands, a pledge against his vow to return. K'üng's distress cry "only Heaven understands me" is kindred. Placing his Minerva in the temple of Juppiter Capitolinus parallels *Clisthenes'* putting his daughters' dowry in the temple of the Samian Hera. Minerva is goddess and goal, dowry and daughter, defender and defended. Recounting this story now, after Tullia's death, adds shattering, unspoken pathos: Juppiter defended Minerva from profanation, but Cicero could not defend his deeply-cherished daughter from death.

Minerva Help of Romans

Who was Minerva? "Minerva autem quae vel minueret vel minaretur" (DND 2,67). The Etruscans, ruled by lucumones, warrior-priests, had a trio of deities Tinia, Uni, and Menrva, corresponding to Juppiter, Juno, and Minerva, of whom Minerva was Italic before she was Etruscan (Maschkin 1953:75,124). Cicero's fervent Italic piety shows in De Domo's peroration "Quocirca te, Capitoline, quem propter beneficia populus Romanus Optimum, propter *vim* Maximum nominavit, teque Iuno Regina, et te custos urbis Minerva, quae semper adiutrix consiliorum meorum testis laborum exstitisti...teque Vesta mater..." (De Domo 144). On 19 March, the eve of her festival, he had fled Rome after merging propaganda with pietas by entrusting his pocket Minerva to Juppiter Capitolinus' aedes. "Minerva doveva dunque proteggere la capitale durante la sua assenza" (Sabbatucci 110, Beukers 50, Kumaniecki 1972:285). Next day with horrid irony the "lex" Clodia was passed, Cicero's Roman house looted and burnt and his Tusculan villa razed (Gelzer 1969:139). He dreamt of his fellow-Arpinate Marius, who admonishes him to bravery (Forsyth 1:242). The arch-civilian moderate optimate sees a military, militant popularis in his dream, reinforcing Arpinate old-boy solidarity and signalling Cicero's representation of the entire sacred republic, not just of one element. Cicero's first stop upon his return from banning was to worship at the same temple of Juppiter on the Capitoline, sanctifying his person and his victory. "Zwar hat Cicero äußerlich schon als Oberpriester, der er wurde, treu an den alten Gebräuchen der römischen

Landeskirche festgehalten, wie er sich ja stets gern altständig bezeugte und dem Glauben seiner Vorfahren feierlich seine Ehrfurcht darbrachte” (Eulenberg 78). Like the appearance of the kilin heralding K’üŋg’s death, the Minerva in the temple of Juppiter Capitolinus was shattered in a storm at the turn of the year 43; it was restored at public expense, but both Cicero and the free, sacred public sphere were doomed (Everitt 297; Frisch 1946:168).

43. Cicero’s retelling of his acts of piety under duress and his vindication is not only vainglory but hope that the pious will prosper and the impious will suffer and be shamed. *Non solum vita cruciati*: riteless death is *dedecus*, the last breach of protocol reducing amoral Clodius to dust. Quintus grimly says *secus aliquanto videmus*, after giving the gods *meritas*: the thanks due a soldier. Gloating reminiscence scarcely palliates the *current* prosperity of the evil. (Cf. Cauer 90.) *Non recte existimamus* if we miss the true nature of punishment—or Cicero’s self-identification as suffering incarnation of the State. He warns against pressure of public opinion, lest *opinionibus vulgi rapimur in errorem nec vera cernimus*. If common consent has it, it likely has it wrong. Public opinion guts intelligent belief and ruins right perception of poena and mens divina. Death, suffering, and legal conviction strike the crowd as proofs of divine penalty. If they are right, then exile and its sorrows, not to mention the prospect of assassination, prove Cicero—and every other victim of state injustice—as sufferer to have been in the wrong. Vulgar-positivist misery loves company, since *multis bonis viris accidisse*. Bad things do happen to good people. Public evils fail as reifications of divine anger, and as diagnostic indicators of human goodness or evil. Real punishment is *tristis*, lies in the *eventus* of evil actions, and inheres in evil actions *per se ipsa*. Nobody gets away with anything, and no evil policy or person is ultimately successful. Cicero shows an optimism about history and human conscience difficult for us to credit, but it is a triumph over civic despair and religious cynicism. Marcus’ irony gains in poignancy what it loses in accuracy from our post-43 perspective. The last sentence is a festival of figures: rhyme in *nisi odissent nobis fuissent*, anaphora in *tum tum tum*; alliteration in *cupiditate conscientia*; synchysis in *modo timentis vicissim contemnentis*; and echo in *perrupta corruptela*. Since Cicero the orator is hero of the argumentum ex eventu, his art is theological defiance against the noise of violence.

44. *reprimam*. Cicero *can* praise himself cum causa et cum fine. His enemies bribed men, not gods, since the impious cannot deal in divine comercium. Cicero has *plus poenarum quam petivi*. Tortured spirits in life and bad reputations after death constitute divine punishment. Witnessing this causes the good to gloat, analogously to K’üŋg’s rejection of returning good for evil, since that would leave good unremunerated (LY 14,34). Partially observable divine retribution makes the

good feel better, since retribution reaffirms the reasonable government of the world by divine Mind. *Exitium* produces not just iudicium but *gaudium*. Cicero's emotional honesty is cold and clean as the Liris, healthier than seeing, like Yáng Chu and Epicurus, all evil as illness and all ethical judgement as intolerance.

45. Νόμοι (12:955e-956b) lists permitted offerings: *agri aurum argentum*. Cicero is *non tam restricte*. The earth is *ut focus domiciliorum*, a holy hearth covered in human homes each with its own holy hearth (Michel 2003:522). Reconsecrating land, beyond making *cultum segniorem*, declares that prior holiness never really existed. Since the earth is already sacred to all gods, reconsecration lawlessly alienates the earth from divine freehold: *sacrilegium*. Giving it back to them by acts of consecration is temerity at worst and restitution—not pietas—at best. Human competitiveness and rivalry predestine ostentatious gifts of gold and silver to excite envy and sham, not a competitive pietas. Prohibiting ivory *ex inani corpore extractum* is trickier. Animal sacrifice meets no criticism. Ivory artworks initially appear superior, since the durable physical gift would adorn the temple, enrich the god, and enhance the City's holiness. Scavenging from carcasses is not pious rite in the god's presence. The victim's life is not presented in the bloodshed of religious rite. No matter what beauty a carver imparts, the ivory is a secondhand, and the carved ivory a third-hand offering. The issue of blood may be hidden in stipulating that a woman must complete a woven offering within a month, lest menstrual blood (or the menstrual period as "bloody" time) affect the gift's simplicity. (Cf. Bailey 264.) Like K'üng, Cicero has no use for human sacrifice. The last legal human sacrifice at Rome (at any rate, of two Gauls and two Greeks) was in the Second Punic War, 218-201 B.C. (Cowell 34). Only custom *Deo proximum* may be kept. "Chinese civilization came with the notion of a moral god; at the beginning of the Chou dynasty this affirmation of morality led to the development of humanism and rationalism". Chou decisively extirpated Shang human sacrifice (Hsü in Eber 24). K'üng's noble boast "I follow Chou!" includes horror at Shang human sacrifices. "Confucius said, 'He who first made wooden or clay figures to bury with the dead must have had no posterity.' So he said because the figures used for that purpose bore the human semblance" (Mèng 1a4; Zhang et al.) These might give the monstrous idea of burying live attendants—the very practice the made figures replaced. Brutal Ch'in did just that, to the horror of normal Chinese (Shryock 29). "It is not in compliance with the rules of rites to bury the living with the dead" (Lǐ Chi 15 Xu). "Killing the living to send off the dead is murder" (Hsün 19 Dubs 1928:138; Chang K. 291, Ching 1993:38). Jú-chiào rite used simple things. "Even when sacrificing coarse rice or vegetable broth, [K'üng] always does so with reverence" (LY 10,6; Dawson). L. Bilsky (1:73-75) lists bulls, a *suovetaurilia* (how Roman!), sturgeon and carp, millet,

rice, and onions. Shi ching brings pickles, wine, and a red bull (210; Karlgren). LY 20,1 mentions a black bull sacrificed to Shang-ti. Roast ox replaced burning wood in sacrifice to T'ien because it smells nicer (Forke 1925: 79).

45. *Haec illi placent* is almost *ista*. Cicero exposes excessive detail or scrupulosity while feigning deference to a stylistic model. What he leaves unexplained makes his quotation sound odd. Why *should* white be more appropriate for a god? Archbishopal rainbows malfunction similarly (Song 1999). Plato fretted over colour; we moderns of the 700's A.U.C. are beyond such trifles. Always angling to display mastery, Cicero's (deliberately?) unwieldy quotation shows him to be no acolyte of Plato. Human frailty and finance call for his more flexible laws. Political realism drives out (Paleo-) Academic rigidity. Cicero concurs with Plato on consecrating arable land, even calling it *superstitio*. A sexual and warlike metaphor (*ferroque subigendam*) spins Plato's prohibition on offerings of iron or bronze—the stuff of armaments. Cutting the earth with a plough echoes sacrificing a victim. Social austerity plays no part in Cicero's rites. Worsening human dearth by reverence for the earth is rejected by *non tam restricte*. Rhetorical flourish becomes feigned self-effacement of quotation. Catching himself and starting over shows the realities of long, learned talk, not the requirements of system. Atticus' abrupt *habeo ista* wants a new topic. Cicero's compliment to Atticus' *miram memoriam* smooths the awkwardness. Admitting a memory lapse, Cicero shifts to pontifical law. Atticus, by admitting personal interest as the spur to his own memory, gives Cicero the deference needed for lengthy treatment. Playing Alphonse and Gaston, Cicero and Atticus talk civilly about a complicated topic.

PRIEST CICERO VS. PONTIFICES-AT-LAW § 46-54

46 ff. The inheritance section is abstruse. G. De Plinval's summary is as clear as any:

Situation très simple à laquelle va faire suite un mode d'attribution plus complexe, dû selon Cicéron à l'intervention des pontifes Publius et Quintus Scevola. Ce sera le droit contemporain de l'époque de Sulla et César. En voici les données. Hiérarchie nouvelle comporte: a) l'héritier; b) le légataire le plus favorisé; c) l'ayant-droit du fait de possession (*usucapio*): *qui usu ceperit plurimum*; d) le créancier principal qui se couvre sur les biens du défunt; e) le débiteur qui aura négligé de purger sa dette (48-49). (1969:303)

Even though this is often historical rather than technical juristic language (Schmidt 1969:134), Cicero dismounts his theological ass and rides the casuist's Brahma bull, with predictable results: a fall from *grace into confusion*. With *tractabo, quoad potero*, Cicero modestly denies any intent to treat pontifical law exhaustively. This excuses any omissions, and moves the dialogue along, skirting a morass of technicalities. Cicero rescues law for theologizing, concentrating on the essence of law, not just particular stipulations. *Qui modo ingenio possit* can thus become a (silent) partner in this most monological section of DL. The popularis tribunician lex Voconia of 169 "restricted the agnatic succession of females". By Cicero's time optimates ignored it (Van Den Bergh 363).

Pontifices

King Numa "numero pontifices quinque praefecit" (Livy 10,1,8). Bouché-Leclercq (12, 19) calls them "une confrérie de pieux ingénieurs....Le collège des pontifes fut une école de théologiens". They had charge of the precise protocol of *pax deorum*, religious and state archives, and the kalendar (once writing was introduced in the 6th century). O. Tellegen-Couperus explains:

Ius and fas are also linked (a) by...the king who was the leader of the state in...both ius and fas, and (b) by the fact that during the first 150 years of the republic law-making was in the hands of the college of pontifices....For them the priesthood was not a profession; it was an honorary position which they generally held while they exercised a political function. (Tellegen-Couperus 18).

The secret lore of the *libri pontificales* could only be read by them, but the XII Tables were free-standing and vaguely hostile to this arrangement (Kunkel 95), and "as early as 367 BC...jurists who were not necessarily pontiffs began to give *responsa* to citizens" (Tellegen-Couperus 48; cf. Wycisło 164). Pontifical hearings were public from the beginning of the third century B.C. They set the *dies fasti* and *nefasti*, proper and taboo days on which State and legal business could and could not be undertaken (Maschkin 1953:14). Cotta, Cicero's mouthpiece, extols his office. "Itaque ego ipse pontifex, qui caerimonias religionesque publicas sanctissime tuendas arbitror" (DND 1,61).

In DL, pontifices chiefly gave ritual *responsa*.

Cicero...self 'n regsgeleerde van formaat, het in een van sy werke [De Or. 1,212] gesê dat 'n regsgeleerde (*iurisconsultus*) bevoeg moet wees *ad respondendum et agendum*

et ad cavendum in alle aangeleentehede betreffende die reg en gebruik wat deur individue in die staatsbestek benodig kan word. Elders [pro Mur. 9.19] noem hy ook *scribendi* as 'n funksie wat doe pleiter moet kan uitoefen. 'n Insae in die werksaamhede van die Romeinse regsgeleerdes laat verder blyk dat hulle hul dikwels besig gehou het met die uitleg (*interpretatio*) van regsbeginsels as ook met onderrig (*docere*) van studente en ander wat 'n beroep gedoen het op hulle kennis van die reg. Ons kan vervolgens kortlik kyk na wat hierdie funksies behels het. (Van Zyl 1977:31).

The sequence was interpretare, respondere, cavere, agree, scribere, docere. Cicero the augur seizes pontifical authority by writing code, refusing to render to (Julius) Caesar what was Caesar's, becoming the 'antipontifex'.

Most pontifical archives were housed in the Regia, the former royal palace, residence of the pontifex maximus. (A few were in the aedes of Juppiter Capitolinus; Maschkin 1953:17, 158.) He held a highly restricted imperium for a few rites (Meyer 1964:110). Weber-Schäfer notes royal-pontifical elision (10): "Der König, selbst ohne größeren Machtapparat, wird immer mehr in die Rolle eines Pontifex Maximus ohne eigene Regierungsbefugnis abgedrängt." The comitia elected the pontifex maximus. Other priests were co-opted by their collegia or named by him (Uttchenko 1975:47). He exercised great power and prestige, but three ordinary pontifices could overrule him (Rawson 1978:69; Szemler 1972:24)

Cicero owed the restoration of his property on 29 September 57 BC to pontifical intervention. Lack of popular consent enabled the pontifices to declare its consecration illegal (Ad Att. 4.2,3; Kumaniecki 1972:305). Jones (98-101) compares them to Greek ἐξηγηταί. J. Kenyatta speaks of Gikuyu pontifices, the "*kiama kia maturanguru*, i.e., dignified elders [who] settle the knotty points of law and custom" (108). When the patrician elder is a tyrant cutting the knots of tradition, atheist Caesar as pontifex maximus scandalised religious Romans. Caesar *did* rectify the badly deranged kalendar, adding 67 intercalary days between November and December 46 to fix the 'neglegentia pontificorum'. On 1 January 45 he set up a solar, 365 day year with one intercalary day every four years (Mitchell1991:268-69). Cicero took all this personally. Caesar began the deification rot, enraging Cicero: "als Pontifex maximus stand er [Caesar] an der Spitze der römischen Religion. Seine Bildsäule wurde in den Tempeln gemeinsam mit denen der Götter aufgestellt, in einigen Inschriften, die allerdings privaten Charakter tragen, wird er sogar Gott genannt" (Maschkin 1953:363). Cicero exposes pontifical Fach-inflation (§ 47), but self-deifying atheist Caesar as pontifex maximus suborned the system, creating "a 'crazed language' accountable to nothing, a discourse that has no referent, so that its falsity can never be demonstrated" (Hountondji in Imbo 23). Crazed reference casts ghoulish light on kalendrical precision. Cicero dated his arrival in Ephesus as governor "the 600th day after the Battle of Bovillae", Clodius' murder by Cicero's thug Milo (E. Rawson 1975:166). He was *counting!*

Die uitgangspunt is dus dat die regs-kennis by die priesters berus het. Selfs na die totstandkoming van die *lex xii tabularum* was dit nog so, want hulle is die persone wat kan verklaar wat die betekenis van die bepalings is: die bepalings wat dikwels meer spreuke as iets anders is, terwyl dit nie altyd so duidelik is wat alles daarin steek nie. Dan ook het die priesters geweet hoe presies by die proses opgetree moes word en dus moes die party tot 'n geding of iemand met 'n regs-aangeleentheid by hulle vir leiding aanklop. (Van Warmelo 56).

Watson (1971:6-7) sets up the Scaevolae-Cicero tussle. "Cicero is scornful that the Scaevolae, who believed that no one could be a good pontiff unless he knew the civil law, should, because of their knowledge of the civil law, give advice on avoiding the *sacra*." Chang K. (185) details Shang intercalation and the rise of a kalendar. Chou included a grand archival scribe, analogous to the pontifices (Maspero and Balazs 25).

47. sive erroris obiciundi...sive...ignorazione docendi. 47—53 treat misuse of pontifical authority. Cicero asserts a right to speak with higher authority than pontifical technocrats. "Cicero...did not write as a jurist. The witty gibes that he levels at the jurists show that he did not think of himself as a jurist" (Stein 1978:19). He thought himself *at least* a jurist. A lacuna follows 53; the text resumes in mid-sentence. *Perpetua sacra* are at risk from abuse of religious law by pontifices. Cicero's Jú-chiào bugbear is jargon. Experts solving their own obscurities is a protection racket, alienating citizens from rite, ruining pietas. Casuistry run amok turns austere rational laws into a thornbush of technicalities. The layman is overawed by legal lore appearing *plura et difficiliora* due to self-interested obfuscation. Obfuscation can cloak oppression; as A. Lembede said in a law library barred to his study, "this is what the b----- have kept away from me" (Meer 84). Real skill is *scire aliquid* and *quaedam ars etiam docendi*. Casuistry should bring transparency to *fas/Tào* and relief to consciences. Pius to his revered political mentors the Scaevolae, loophole-finders for grateful clients (Bergemann 126; Jolowicz 1954:86-88; cf Atticus in 1,13), Cicero courteously says they are mired in details, not dishonest: "as you serve your parents you should remonstrate with them only slightly" (LY 4,18 Ware).

The Mucii Scaevolae, "Lefties", got the cognomen from an ancestor who burnt his own hand to show contempt for King Lars Porsena (Eulenberg 12). Like "Terror" Lekota, P. Mucius Scaevola was a famous ballplayer before entering politics—and after (Kroll 255). The Scaevolae were hereditary guardians of legal lore:

Insigne giurista era stato Publio Muzio Scevola, console nel 133...Conosciuta assai presto la filosofia stoica alla scuola di Panezio, Scevola l'augure non era però fautore della snobistica grecomania, che nella seconda metà del II secolo cominciava a diffondersi nella cerchia della aristocrazia romana. (Kumaniecki 43).

Publius Mucius Scaevola (p.m. 130-115) edited 80 books of *annales maximi* (Maschkin 1953:15; Szemler 122). “*Iuris scientiae P. Muci commendavit domus*” (DO 2,147). His son, Q. Mucius *Scaevola Augur* cos 117 lamented jurisprudence’s decline (DO 1,40; 2,65). He was uncle of Sullan Q. Mucius *Scaevola Pontifex* (cos 95, p.m. 89?-82); on Cinna’s orders in 82 “*ante simulacrum Vestae pontifex maximus est Q. Scaevola trucidatus*” (DND 3,80; Høeg 33, Mitchell 1979:88)

Scaevola Augur was the *fā* for Cicero’s civil courage in personifying *mos maiorum*. In Phil. 8:31, he says that his chief wish is to emulate Q. Scaevola Augur who came every day to Senate during the Marsic war. He was a personal link to Roman greatness. “Svigerson af den Lælius”, his home brought Cicero into direct contact with the Scipionic circle (Høeg 32). Cicero calls him “*ioculator senex ille, quem noras*” (ad Att. 4,16,3); the two young men met in Scaevola Augur’s house. The atmosphere was like that in the salon of the great Asante jurisconsult and equally benevolent old man, Rattray’s legal mentor Kofi Duro, “chief of the town, and also high priest of Ta Kora, a perfectly charming old gentleman with a benign and intellectual face...and various other hangers-on who came out of curiosity” (Rattray 1923:175). Scaevola Augur fostered the theological, priestly, and political interests of the ambitious Arpinate. “Schon von seiner Jugendzeit an zeigte Cicero großes Interesse für philosophische und religiöse Fragen. Sein erster Kontakt mit der Theorie und Praxis der Auspizien erfolgte wahrscheinlich während seiner Lehre bei dem berühmten Augur Q. Mucius Scaevola” (Kowalski 126). To the end of his life Scaevola Augur kept *salutatio*, or salon, with great courtesy and charm (Kroll 189). Cicero worries about wearying the aged Scaevola. Here Cicero imbibed the great reverence for age and the conversational niceties marking all his dialogues, unlike the later Plato, who lacks courtesy and *μίμησις τοῦ βίου* (Becker 5,15,20), droning on like A. Hitler at the Berghof. “This he normally does through the person of a character labelled ‘Socrates,’ while the other participants in the so-called dialogue are reduced to making approving noises at irregular intervals” (Rudd and Wiedemann 9). Real dialogue does not treat the hearer as an object (Crusius 37). Courtesy, or *shu*, is essential. K’üng defines it “Do not impose on others what you yourself do not desire” (Dawson 1992:155). *Shu* also embraces “deference, altruism, reciprocity, and consideration. One either displays excellence in oneself (and this anticipates deference from others) or defers to excellence in another” (Berthrong 1998:21). Liveliness ends what as minor grapholecticians we may call passivity (passivity + servility).

Scaevola Augur’s nephew *Scaevola Pontifex* was a close friend of Crassus (Mitchell 1991:2), whose doomed son preceded Cicero as augur. The Senate extolled Scaevola Pontifex’s governorship of Asia in 98 as a model of probity (Kumaniecki 47). This *fā* served Cicero and the Cilicians well in his governorship there in 51. Cicero calls him “*moderatissimo Q. Muci[us]*”, wishing to excel even him in civil law (DO 2,57 and 1,34). Scaevola Pontifex distinguished “on

Stoic lines...(i) mythical deities, celebrated by the poets with incredible and unworthy narrations; (ii) philosophical deities better suited for the schools than the marketplace; (iii) civic deities, whose ceremonies it is the duty of state officials to maintain, interpreting them so as to agree with the philosophers rather than the poets” (Arnold 383; Mayor 213). This parallels Varro’s tripartite theology. He was famed for helpful *responsa* (van Zyl 1977:38). Scaevola Pontifex wrote the first civil-law text-book, *Iuris civilis libri XVIII* (Kumaniecki 64). Arpinate Cicero appreciated Scaevola Pontifex’s insistence on honest farm contracts and his requiring (invoking Fides) the phrase *ex bona fide* in all commercial contracts (DO 3, 62,70).

K’üing’s obscure mentor was Tso K’iu-ming (Stange 20; Kaizuka 66). Hsün, a Cicero-like wunderkind at Chihsia Academy, said one must be gentled “by the instructions of a teacher and guided by ritual principles...there is nothing better than being intimate with a worthy teacher” (Knoblock 3; 23 B. Watson; 1 Dubs 1928:242). Old Marcus might have said of Chinese tirocinium, “if you wanted your son to have more than a practical education you always had to send him to the Jú, however much you might grumble that they were stuffing the lad’s head with a lot of nonsense” (Graham 33). Cf. Do-Dinh 99, Granet 98, Roetz 1998:22, and CY 12.2. This was “training by teachers who were in fact government officials, of men who were already in the government or were destined by heredity to rule...to implement the conduct of government according to the existing pattern” (Creel 1949:76). Compare Hsün’s exemplary magistracy in Lan-ling from 255-237. Retiring at eighty-three, he enjoyed the locals’ “profound respect...He encouraged learning; indeed he himself was a compendium of the learning of the age” (Dubs 1928:24).

47. *Quam magnum illud Scaevolae faciunt!* Cobbler, stick to your last! Scaevolae wanted pontifices to know “canon” law *and* all of civil law (1,14). *Totumne? Quid ita?* Cicero defends accessibility. Universal mastery would swamp religious law and “professionalise” the pontificate. Disciplinary bloat by which *quod positum est in una cognitione... in infinitum dispertiuntur* would shut out skilled amateurs from dialogue on pontifical *Fach*. (Cf. Blatt 145.) Atheist Caesar’s maximate made a joke of it. Excessive technicalisation would make busy magistrates incompetent pontifices—a gnostic subversion of State religion. Dignified Romans seeking *responsa* on riteful duty sink to ignorant, craven beggary:

Let some intelligent layman ask [a lawyer] to explain: he will not go very far before taking refuge in the excuse that the language of craftsmen is unintelligible to those untutored in the craft. Such an excuse may cover with a semblance of respectability an otherwise ignominious retreat...putting off with a show of wisdom the uninitiated interlocutor. (Cardozo 1921:9-10).

Roman law that expressed and guarded *dignitas*, the intrinsic moral value of the public person, was slandered by National Socialism as individualist and asocial (Koschaker 157). Cicero defied blood-soaked *superstitio* as did P. Koschaker, and King Cetshwayo, who said “there is no man in Zululand who does not know the law” and abolished the proscriptions and human sacrifice indulged in when King Shaka’s Ch’in Caesarism blighted Zulu polity (Cetshwayo 92; Krige 172). At Rome written law limited pontifical whim—and arbitrary rule. The true jurisconsult is anti-Delphic, the *faqih* عريف dare not be a fake (Ezzati 220). His *auktoritas* must clarify, not propound riddles. One critic imagines that Cicero may have been influenced by the Greek notion of a king as νόμος ἐμψυχος, itself Jú-chiào in tenor (Born 128). Cicero saw the *Republic* as ensouled law and himself as transmitter of its holiness. *Quod cum religione coniunctum est* is the pontiffs’ proper business. Calling the religious aspect of civil law *quantulum* does not dismiss it, but it shows Cicero’s respect for his Scaevola mentors by calling DL 2 a trifle in ironic self-deprecation. It can be condensed down (in contrast to the awful inheritance maze) to ensuring that *perpetua sint sacra*. (Cf. Westrup 2:104). DL is no less for not being a hornbook any more than LY is less for not being Li Chi. Condensation from *quantulum* to *perparva* to *una* enhances Cicero’s rhetorical *auktoritas*. Θεολογίζειν equals gnomic density, as with K’üng.

48-50. *exposite* †. Begin at *haec iura pontificum*. Religious obligation devolves (tortuously) upon heirs—legal, not necessarily biological. “Upon the death of the testator the *heres institutus* took over the *sacra* of the family and joined in the *dominium* of the family property. The instituted heir *ipso jure* became *heres sacrorum*. The testament was, so to speak, a weakened form of adoption” (Westrup 2:127). Despite *familiis produntur*, hard realism guards rite from vagaries of sentiment. Sacred *comercium*’s benefit nexus works here. *Sacra* devolve in turn upon the heir getting the bulk of the estate, or the dead man’s chief creditors, or in the last resort his chief debtors (!) or *quippiam ceperit*, anybody who got anything. *Someone* will be bound to the rites (and their costs). Do ut des beyond the veil guarantees *perpetua sint sacra*. (Cf. A. Watson 1971:129; Westrup 4:220) One who evades *religiones* by a loophole in inheritance law is unlikely to be *pius/ hsiào*, as *parsimonia* puts *castimonia* to flight. Scapegrace testamentary battle-cries like *ne sacris alligaretur*, *sacris alligari*, *quam sine religione capere liceat*, and *res est ita soluta* betray betrayed *pietas*, holy duty now only insipid drudgery. Heirs scheme to shirk the rites as pontifices exceed their brief and fritter away *auktoritas*. *Quid ita?* Cicero dislikes being caught between *quaestiunculae* and theologoumena. Divine ratio is routed as pontifices miss what matters. Juristic speculation, *راي* (قانوني) (Ezzati 221), replaces public service with performance art and justice with jargon.

Appius Claudius published pontifical lore in 304 BC, but technicality-bloat has created this mess of credulous pedantry. “Et quoniam mihi videris istam scientiam iuris tamquam filiolum osculari tuam, non patiar te in tanto errore versari ut istud nescio quid quod tanto opere didicisti praeclarum aiquid esse arbitrere” (Pro Murena 23). How did we get here? *Haec nos a Scaevola!* This is recent pontifical ingenuity, *non ita descripta [or: descripta sunt ab antiqui]*. Cicero’s maze shows *omnia pendere ex uno illo*: rite goes with property. *Caste adire* (24) is almost gone. *Tribus modis sacris adstringi*: inheritance, legacy, or any bequest. *Cum pecunia sacra coniungi* trumps state of mind, despite *multo esse in animis id servandum magis* (24). On the scapegrace feint see Borkowski 211ff; Schulz 1951:239-265, 280-309; Jolowicz 1954: 123-133 early and 252-267 later Republic.

51. Cicero saw himself as a near-specialist in pontifical law “with contempt for its more pettifogging aspects” (Rawson 1975:14), sounding like Lariviere on Indian jurisconsults run amok: “Are these rules just so much brahmana overkill? Were they ever observed? Did anyone care? Were the brahmanas just speaking to themselves or to a small group loony enough to take them seriously?” (A. Watson 1996:80; cf. Graham 7; Sherley-Price 209) B. Cardozo warned lawyers:

You think that there is nothing practical in a theory that is concerned with ultimate conceptions...while you are doing the journeyman’s work of your profession...[When] you pass to higher problems, instead of its being true that the study of the ultimate is profitless, there is little that is profitable in the study of anything else. (1924:23)

We are wary of *quaestiunculae*. “In the commentaries drawn up for the Classics, the northerners spent themselves in voluminous collections, examining the text in its minutiae, whereas the southerners were interested in the purport of the text and had little interest in exhaustive discussions of all possibilities of interpretation” (A. Dien in Wright and Twitchett 52) Along with our Arpinate Italian, let the southerners *be* southerners, on K`ung’s fā of let the father *be* a father, the son *be* a son, the minister *be* a minister, and older and younger brothers *be* older and younger brothers.

Professionals writing for their fellow professionals cannot be helpful to the long-term prosperity of scholarship, and in a shrinking world it would be particularly tragic if specialists in ancient cultures totally failed to communicate with the wider public...[We]...should do our best to try to achieve a piece of inter-cultural communication and make the *Analects* as intelligible as possible to people of our own culture. (Dawson xxvii).

So Cicero did for Roman rites, and K`ung for Chinese religion. Perhaps this is our mission from Heaven in a new Age of Warring States. Ch`un-chiu shih-tai 春秋時代.

52. *Quaero a vobis, Scaevolae* announces *auctoritas* to those he politely calls *homines meo quidem iudicio acutissimi*. “Ex asse römische *iurisconsulti*”, they taught Cicero that “die Kenntnis der *ius*

civile ist mit *honor, gratia, und dignitas* verbunden” (Hamza 1984:57, 51). Cicero grandly claims them and rebukes them. Exquisite *acutissimi* have conflated pontifical and civil *iura* and *scientia*. Clarity is gone. Fas/Tào is lost. Cicero demarcates public and family *li* with *consilio*. Scaevola smeared the sand mandala. Right rite is essential to *salus populi*. If ritecraft is arcanised into guild-knowledge doled out like scarce bread to starving proles, rite shrinks to a mere shadow and *pietas* to a Fach, no longer a mark of every bonus. *Quodam modo tollitis* throws Romans back before the publication of pontifical lore. (Cf. Westrup 3:71.) Perhaps *hac scientia eluditis*, but Everyman and expert are rendered irreligious by garbled civil and sacred law. “*Habeo ius pontificum quid huc accessit ex iure civili?*” warns of peril to rite. The fear is real. If *pecunia sacrorum molestia liberaretur*” (quoting Scaevola; Strasburger 17), then the person freed by cash from the *molestia* (!) of family rite and honouring ancestors is free indeed. *Opes adhiberi, pietatem amoveri* is overturned. Anti-law becomes law, and *scientia* stupefaction. “The hereditas sine sacris became a common proverb....The decree of [Tiberius] Coruncanus [250 BC] was probably motivated by a growing tendency to leave agnates with the empty name of heir when no male *sui heredes* existed” (Pölonen 120; A. Watson 1971:164). Blood heirs were preferred as likelier to be faithful. Vietnamese Nho giáo law specifically entrusted women with inherited sacra: “A woman in the Lê Code had inheritance rights not only in the general estate of her parents but also in the special portion of the estate reserved for ancestor worship called ‘incense and fire’ property (hương hỏa)” (Ta in McKnight 44). (Cf. Ho in Bell and Hahn 293-310.)

53-54. *sitque ea non....* † J. Vahlen (1871:110) mulls the lacuna in vain. N. Rudd and J. Powell (1998:143) say the lost text discussed devotions to the ancestors. Of all things to lose from a Jú-chiào perspective! Conversation resumes on an easier theological topic: sacralisation of time. (In Zurvanism time sacralises everything else.) December replaced February as the Roman religious year’s end in Decimus Junius Brutus’ consulate in 138 B.C. His status as *doctum hominem sane* gained lustre by his offering *hostia maxima parentare*. (Cf Phil. 1,1 on parentalia.) Consul Brutus and Accius were *perfamiliares*, and Decimus Junius Brutus a “King Wen” (like Atticus) and a man of religious feeling (like Quintus). Glory redounds to Cicero as sacred legist and *perfamiliaris* with urbane Atticus. Decimus Junius Brutus’ great learning clears Cicero of inexpertness if *pontifices* carp. Consular fasces were kept in the grove of *Libitina*. Cicero’s careful detail enhances *auctoritas* as jurisconsult and *dignitas* as consularis, symbolically set at the State’s pinnacle.

CODE EXPLAINED: MATTERS OF GRAVE IMPORTANCE § 55-65

55. Cicero moves suavely from specificities of the kalendar and parentalia, to the manes in general, and a clipped discussion of the os resectum. In all but the most brutalised exigency, the fate after death and the rites of death matter greatly, correlating to the depth of regard for the dignity of the human person. In a fragment of DRP (f.i.s. 4; Powell) “idque ipsa natura non invitaret solum, sed etiam cogeret”. Stable manes-rites show stability in the civic-theological realm. Since antiquity is next to divinity, the burden of proof lies with well-regulated change (LY 9,3). Rited afterlives of soul and *fama* are bellwethers of all other li. Rites *deorum manium* ask duty, reverence, and limited mourning. §55-57 are original (E. Rawson in Temporini I:4:346). The amaDlozi (Cetshwayo xi) still hold sway: “By cultivating respect for the dead, and carrying the memory back to the distant past, the moral feeling of the people will waken and grow in depth” (LY 1,9; Ku, citing in Latin Ps. 72,5: “cogitavi dies antiquos et annos aeternos in mente habui”). “How irrepressible is the spiritual power in the manes!” (CY 16; Hughes). From archaic times, watchful waxen images were reverently installed in the atrium and taken out only to witness the more solemn burials. Archaic offerings to the dead at their tombs were violets, wine-soaked madeleines, and beans. Cared-for shades were “gute Gottheiten, Manen”, but spurned shades could become lemures, “bösen und rachsüchtigen Kräften” (Maschkin 1954:245; 1953:123). Manes still teach mos maiorum with augural approval. “Habeo auctores ac magistros religionum colendarum maiores nostros: quorum mihi tanta fuisse sapientia videtur” (Har. Resp. 18).

55. There is *tanta religio sepulchrorum*, such great li of tombs. “Li here is...a definitely religious principle, and this explains the disproportionate emphasis given to funeral ceremonies in the Jú-chiào system. The detailed descriptions of funeral ceremonies in the Liki are overwhelming” (Lín Y. 238). Sacra sanctify suum cuique and dignitas. Cicero follows Old Stoics (Quintus?) who *negent* that every extant burial custom automatically *fas esse* (cf. Tusc. 1,108’s horror-show). Aulus Torquatus *iudicavit* to permit only ritually proper burials of family members. Would Torquatus approve the riteful burial of one of one’s *own* members? The amputated leg of A. Lopez de Santa Anna was buried at his behest in 1843 with all the pomp of Mexican Church and State. Tenochtitlán’s *hostia maxima* were omitted. Thus modernity taxes mos maiorum.

Suum cuique reigns. Fas separation of families’ domains is absolute. Ill-rited burial is impious to gods above and below, an évolu’s hell of “shame at heredity” (Walcott 48). The great power of immemorial tsü-chuán shows in burying a long line of ancestors at one site, localising the legal stipulation to regard the dead as gods. This codifies veneration of ancestors, fusing it with hopes for

afterlife and deference to the gods amid the (*tremendum*) surrounding family tombs. Brooding *fas* protects *pietas/hsiào*. The living enact family solidarity within a divinely rational and rited universe and *apud maiores nostros*. They are gods/shén, *qui ex hac vita migrassent*. Joseph of Arimathaea's offer of a tomb for the executed Jesus might seem to alienate one family's religious epicenter to another family's subsequent control, but K'üing would have praised the kindness/jén. for One Who even in death "οὐκ ἔχει ποῦ τὴν κεφαλὴν κλίνῃ" (Luke 9,58). "When a friend died homeless Confucius would say 'entrust the funeral to me'" (LY 10,16 Ware). Mèng wanted such rejection of "wolfishness" (4,17 Dobson).

55. Cicero indulges his "Neigung zur Etymologisierung" (Schmidt 1969:238), deriving *denicales*, days of the dead, from *nex*. The dead are ranked with *ceterorum caelestium*, the remainder of the heavenly ones; the afterlife enjoyed by human beings is like the life of the gods. They are *quieti dies feriae* as befits an optimistic view of the future life and restraint in mourning (see below) requiring cleansing ceremonies (Toynbee 50). *Denicales* are days of recollection and solidarity between living and dead, like the Mexican Day of the Dead, not days to re-open grief's wounds. The family shares vicariously in their *caelestes'* honour *in deorum numero*. Family pride enjoys a holiness which is beyond time and an unbroken communion with *qui ex hac vita migrassent*. Observing the time affirms the belief. Belief requires enactment in sacred time. Kroll (130) lists other unintelligible words: *offendices, obstitum, refriva, lumemulia cum rapinis*.

55. The dead have only gone *ex hac vita*; *migrare* signals movement, not annihilation. Cicero goes beyond agnostic optimism, in light of 64, to outright affirmation of eternal life; observing the *denicales* shows *pietas/hsiào* and illustrates after all ἐποχή conviction of divine value in human endeavour. Do the *mens sapientis* and *mens divina* run in parallel only to be mocked by Yan Hui or Tullia's early death, or the assassination of Marcus and Quintus? If our destiny as honourable magistrates at Rome or fearless royal ministers in China is to be reckoned among the other heavenly beings and receive the retrospective *pietas/hsiào* of the living and citizenship with the gods in a divine *res publica*, then rite's *comercium* links Heaven and earth. "Reverence and respect for ancestors and, by implication, living elders has a very practical concern...ancestor worship is a form of generalized reciprocity; it is a form of exchange between the living and the dead" (Watson in Hejtmanek 91). Cicero details timing and riting the legal status of graves in the conviction that graves are ports of entry into a new commonwealth, not testimonies to mortality or desperate safeguards against fading *fama*. The dead and their days enjoy *magnam religionem caerimoniamque*. The composite bow of *religio/li* aims theology's arrow at the target of Reason. Rite is never a purposeless phenomenological blank. Rite and *religio* bind the living, the "divine"

dead, and the gods in a *res publica sacra*. Rendering *suum cuique* requires that *denicales* not conflict with other personal (*ipsius*) or public (*publicae*) *li*.

55. Cicero craftily attributes to the other dialogists and the reader enough expertise in rite for him to skip details' *edisseri a nobis*. This time Cicero skirts an unwanted discussion; he is a *civic* theologian not a liturgiologist. His *praeteritio* gives a list of funerary customs: the end of mourning time, the sacrifice to the Lar, the ceremonial amputation, the pig sacrifice, and the onset of tomb-holiness. This sequence restores the surviving family to the conversation of the living, rids them of impurity, and arranges *comercium* with the (new) *maiores/ kuèi*. The reiterated *quae finis...quod genus...quemadmodum...quaeque...quo tempore* show the limits: thus and not otherwise, here and not there, now and not before. Death is given its due and kept in its place. The dead are honoured and sent packing. Honour requires reverent attention and forbids overdoing it. Table X, entitled 'Of Sacred Law', says no more than ten flautists can be hired to play at a funeral (Borkowski 29, Kroll 134). Klotz (1:683) reminds us that the text has been a mess for four hundred years and remains so. *Os resectum*, cutting off a finger for token inhumation when cremation was done, could become an unnatural prolongation of mourning for later burial at survivors' whim to stretch out mourning for ostentation (Warmington 3:499).

56. Burial is *antiquissimum sepulturae genus* as the practice of the ultra-patrician gens Cornelia shows, not (permitted) cremation (Cf. E. Rawson 1972:38; Toynbee 39). *Sepelior* and *sepultura* are used as generic terms. Multiculturalism trumps Greek and Roman hostility to Persia/Parthia—young Crassus' death in battle against Parthia in 53 gave Cicero entrée into the augurate. Solid nations include even Rome's eastern foe. The burial of Cyrus—seen through Xenophon's *Cyropaedia*, a disguised polemic against Athenian impiety—parallels that of Numa, most pious of Roman kings. Lawful monarchy, *mutatis mutandis*, can be Ciceronian, though he himself is no monarchist. Xenophon is called "philosophus" (Ad Q. fr. 1,1,24). *Operimentum* shows reverence for earth not as biological source but as craftsman like a stereotypical Roman matron, or Penelope weaving the shroud for Odysseus, cleverest of men. Cicero's hatred of tyranny was forged during the Sullanum (Hammond 134). Roman theology and Arpinate fellow-feeling are outraged. Sulla? *Tam sapiens fuisset quam fuit vehemens*. Sulla is *impius* violator of his own Cornelia tradition and of the rightful, rite-full burial of Marius. This "zwecklose Vergewaltigung mußte unbedingt mißbilligt werden" (Cauer 114). Ordering his own corpse to be burnt lest it be desecrated in turn, Sulla enters his own guilt. *Primus e patriciis Corneliis*, ordinarily the highest praise, is ritely the total opposite. Cyrus' metaphor-rich, dignified burial and Numa's burial laden with Roman civic

holiness are paralleled by Marius and Scipio Africanus. Adorned by valour and piously buried, *Marii reliquias apud Anienem dissipari* on Sulla's orders. The conservative dictator wars against ratio recta and pietas, impius towards his own sacra gentilicia, atrox towards Marius' grave, lost in *acerbiorē odio*. Emperor Philip V, visiting Luther's tomb, was urged to dig up the heresiarch; he replied with asperity that he did not make war upon the dead. Sulla's nefas act prefigures imperialist outrage. In 1913 the *sacrilegus* French Résident Supérieur in Indochina looted the tomb of Nguyễn Emperor Tự Đức (1829-83; persecutor of Christians) and sold its treasures to fund colonial administration (Buttinger 429). A more anti-Jú-chiào and un-Roman act is unthinkable. In contrast, Ennius' poetry adorns Africanus' tomb. Africanus, is *vere situs*, buried by family custom. *Siti* is rightly used of *conditi*. All are *sepulti*, whether buried or cremated. A burial place does not become a *sepulchrum* with religious significance, until proper rites are performed and the proper *porcus* slain by the popa. *Communiter venit usu*, all the dead are *humati*, sensu stricto buried in earth. The term is *proprium* to those *quos humus iniecta contexerat* by pontifical law, but casting a piece of sod on the pyre causes it *habere religionis*. Then, and only then, *multa religiosa iura conplectitur*. Fixing an exact holy time fosters pietas/hsiào, like K'üng's three years of mourning.

57. Laws of burial apply to death at sea. *In mari proiectus* is adequate. The surviving family was *puram* once the sow was sacrificed and *triduum ferias* of total mourning observed. Timing depends upon notification. But then, how much of the sea *denique conplectitur* as a sacred grave? Marking the spot is impossible. Ratio recta forbids regarding the whole sea as a grave barred to commerce and war, so Cicero says nothing on maritime sacred space. Cicero distinguishes death *in nave necatus* from death in the sea itself, *in mari mortuus*. If on land the inhumed body is *situm quasi operimento matris obducitur*, then death in the sea itself is enactment by nature of a burial rite. *Praeter piaculum et ferias* removes pollution of physical contact with the dead (*piaculum*) and with the time of death (*ferias*). Death in the sea does not make the sea, condign with divinity as natural realm, impure. Cicero here follows a decree by the famed ball-player and pontifex maximus P. Mucius Scaevola in 131 B.C.; Kroll interprets *necatus* colourfully as murder on ship-board (134). Death on a ship, as a mobile seaborne extension of human settlement, requires the same rite as a normal death on land. Death while travelling also required a Zulu rite/li to normalise the untoward: "When a proper burial is impossible...the...intention to perform burial rites may be indicated by placing a small bough or stone on top of the head" (Krige 160). The text fouls at *piaculum pati*. Whether *porcam* or the odd *porco femina*, the pig makes it a legal grave (Toynbee 50), just as the goat sets the legal and purificatory seal, "imbuzi yokugez' izandla", on Zulu funerary mos maiorum (Krige 165). K. Appiah gives a funny and pietas-full account of a modern

philosopher at his father's funeral, coping with *mos maiorum* getting in the hands of the surviving *maiorum* (Appiah 1992:184).

58. *quaero ecquidem sit in legibus.* Atticus maintains Cicero's stance against conflating pontifical decrees and civil law. Civil *legibus* are distinct from *pontificio iure*. *Video pauca sane, Tite*, is realistic informality despite the dry technicalities. Cicero displays his learning with a back-handed compliment to Atticus' expertise. Bits of data are *non ignota vobis*. Cicero controls the flow of detail, and keeps the following monologue courteous. This reassures the reader that new territory is not alien. After a maritime excursion, we are back on, if not under, home turf (*gleba*). Civil laws about disposition of the dead *non tam ad religionem spectant quam ad ius sepulchrorum*. *Ius* is secular right, not religious rite (as *multa iura complectitur* above). This secular right/religious rite distinction is slight, since the antiquity of the Twelve Tables makes them close to the divine. Augur Cicero muscles in to pontifical territory here, since the XII Tables—replica metal or wooden tablets—were in their custody (Burdick 101), giving them interpretive *jus primae noctis*.

The Tables were compiled by *decemviri legibus scribundis* in 451-450, ratified by *comitia centuriata* in 451 and 449, and promulgated as code in 449. The Tables were a response to consular caprice, but "struggle of the orders" is misplaced class analysis (Borkowski 6, 28; Maschkin and Uttschenko reject seeing an *ordo* as a Marxian class). The actual bronzes were destroyed by the Gauls in 390 (Coleman-Norton 51). In the Soviet philological tradition, Maschkin defends the full authenticity of surviving Tables (1953:142; cf. Kunkel 23). "Sie sind im Grunde nichts weiter als eine Aufzeichnung des Gewohnheitsrechtes" (1953:136; cf. Warmington 3:xxvii). Applying to all *ordines* (as *chün-tzu* remonstrances were applied to all by K'üng), they were *ius Quiritium*, citizens' law (Meyer 1964:63, Cathrein 1909:19). There was no standard text. Reconstructions rely on Cicero, Livy, Pliny, Gaius and Ulpian. Cicero accepted early traditions' historicity. The Tables were indigenous, even if Cicero overcredits the Greeks. He may have held the mistaken *évolu* belief in Solon's wooden *ἄξονες καὶ κόρβεις* as prototype (Jones 106, Kunkel 24, Van Zyl 1979:22, Warmington 3:xxix, Westrup 4:107). The Tables are a repository of *jén*, promoting "una vita veramente umana sotto l'usbergo e l'egida del diritto di Roma" (Righi 137). Specific echoes in DL include: *post funus faciat* X5W; *ne acerrae* X6W; *addito* X8W; *e fraude esto* X9W; *invito domino* X10W; *bustumve usu capi* X11W.

Leges regiae were the Tables' predominantly religious predecessors. Appeasing the gods motivated many commands: no funeral rites were performed for a man struck by lightning—Juppiter had killed him. Numa allegedly decreed that no one should sprinkle wine on a funeral pyre (Borkowski 27; cf. Krige 175, 219). As in Ghana, "utterances became the *themistes* of his descendants" (Rattray

1929:3). For late Republican Romans the Tables were *Ulundi in print, Ch'ü-fu in code*.

They were always *fons omnis publici privatique iuris*; for Cicero they surpassed all the books of the Greek philosophers, at least in usefulness and seriousness....In their monumental assonances and alliterations, in the staccato rhythms of their parallel *cola*, these laws unfailingly produce the effect of a judgment against which there can be no appeal. (Conte 17, 20, citing Livy 3,46).

Cicero somewhere calls them a *carmen*: not necessarily a song or spell, but any powerful archaic text. (Cicero's code is a civic-theological *carmen* against idolatrous absolutism.) "For Livy the text of a very ancient treaty is a *carmen*. The same word is applied to prayers, oaths, prophecies, judicial judgments, and lullabies for babies". *Carmina* are like *li*: the earliest are religious. This writer's first *carmen*, both rite and song, was "Jesus Loves Me", taught him by his grandmother. "Rituals are by nature conservative and inviolable, and they evolve more slowly than religious sensibility; and the Romans are a people noted for conservatism" (Conte 22). The Tables were never obsolete, even when their language became difficult to read, serving as "eine unverrückbare, feste Grundlage" for *fas* (Jhering 2:63,67).

K'üing pried Chou lore loose, taught it widely, and awakened love of antiquity (Liu 1955:38). "We should make Wen Wang's (statutes=) rites our pattern, we daily secure the tranquillity of the (states of) the four quarters..." and "clear and continuously bright are the statutes of Wen Wang" (Shi 268, 272; Karlgren). No Shang laws survive. Tzu Ch'an, prime minister of Cheng (†522 BC). was famed for jurisprudence, fearing "that the general plebs, that is the 'mean man', is carried away by his hot-headedness to policies which court disaster" (Kaizuka 79,88,106). "Tzu-ch'an...promulgated the first written Chinese code as early as 536 B.C. Probably the most remarkable man of his time, he won Master K'üing's praise as being the epitome of the 'princely man'. At his death the Master wept bitterly, observing that he had a love bequeathed by the ancients" (Liu 1955:107). His laws were inscribed on bronze tablets (Chang K. 201), like the XII Tables.

58. Inhumation and cremation are sensibly barred *in urbe*, copying Table X, *propter ignis periculum* (Borkowski 29). A funeral pyre in a city of packed *insulae* with wooden superstructures could turn from honourific departure to deadly holocaust. (Cf. Prieur 50; Westrup 2:96 re: Tables 10,1.) There are two kinds of fire. The funeral of a political faction's leader could blaze into riot or *res nova* with volatile emotion and firebrands for firebrands. *Clari viri* are safely in the distant past. The city is for the living, but temples make it the place of the gods. Reckoning the dead *in numero deorum* obviates any conflict. *Neve urito indicat* may contradict the laying of sod giving a place of cremation its religious character. The dead were originally buried beneath hearth or threshold (Westrup 1:47). *Quid clari viri?* Atticus' question shows law's developmental side, Cicero's reply

its unchanging aspect. Cicero justifies burying prominent men in the city *virtutis causa* either by ius predating the Twelve Tables or a special exemption. Exemptions show the law's *vis* sufficient to require formal exemptions, rather than being ignored or interpreted down to nothing as a *lex otiosa*. Honouring *virtus* palliates the changed *fā non tam religionem spectant*.

58. Burials must not be *in loco publico*. By pontifical decree, *locum publicum non potuisse privata religione obligari*. Distinguishing private and public *li/religio* is important. The family is not a State creation. It has its own sacrality and obligations, which it must perpetuate and the State must not subvert. These rites have integrity under Heaven, and do not exist by civil law's sufferance. Civil law may only *regulate* family *pietas/hsiao* and *religio/li*. If a family owns the land, burial makes it a religious precinct (Roby 1:409). We note the inherent *nefas* of modern population relocations. "The funerals by means of which great political families like the Scipios demonstrated their wealth and political achievement [was] central to the political unrest of the 50's B.C." (Rudd and Wiedemann 8); how much the more the funeral of Caesar! By forbidding private burial in public places, a significant protest congruent with the Philippics against Caesarism in the hands of Antony (Frisch 1946; Cathrein 1909:322), Cicero's selective endorsement of pontifical decree shows that it is *nefas* for the State to be a family's private property. (One might generalise this to party or "race".) He demarcates public and non-public and between *res publica* and tyranny. Roman oligarchs say "l'état, c'est nous", no one family has *ius* to say, "l'état, c'est nôtre famille". State is not family. Another death squad victim, H. Odera Oruka, summed up Antony's *nefas* Thrasymacheanism:

Fascism is a political system which sacrifices all human rights and even humanity in general for the promotion and glory of what is conceived as the national interest and noblest goal. Aminocracy, on the other hand, is a form of government which sacrifices all human rights and ensures a vigorous practice of inhumanity. (Odera Oruka 1990:122).

Removing graves at the aedes of Honour looks like State-sponsored impiety, but *inventā lamina* prove the temple came first. Long neglect did not de-consecrate the site or absolve the *res publica* from its religious duty to Honour. Removing the graves removes an *intrusion* of private religion upon public cult. Caesarist hijacking of civic theology is obliquely indicted. *Non potuisse obligare* shows that family and State obligation cannot rule the same place.

59. Although *iam nemo discit* the XII Tables, Cicero concurs with them that *minuendū sumptus sunt lamentationisque*. Our trio of initiates into *cum laetitia vivendū cum spe meliore moriendū* (36), have emotional ties to Athens and a theological hope of immortality. Since death brings neither the annihilation of the person nor the extinguishing of a good reputation, it ought not

occasion unlimited grief. (Writing this is poignant aplomb after Tullia's death and his own psychiatric breakdown.) If the dead are *in deorum numero*, a fã of death as unalloyed misfortune sets laws in conflict and insults the gods' dignitas. *Magna religio* (55) toward the dead requires seemliness in mourning. Cicero links financial and emotional excess and injury: as *extenuato sumptu*, so *mulieres genas ne radunto*. All gouging is prohibited. "Women mourners must refrain from mutilating themselves or displaying excessive grief" (Borkowski 29, citing Table X). This follows Solon's 594 B.C. fã, showing off Cicero's Hellenism even though Solon's laws foundered upon "le caractère léger des Athéniens" (Mentelle 1822:45; cf. Frisch 1949:160, Hamza 1984:55). Fakery and hysteria are nefas/wú-Tào. Restricting land consecration keeps land in cultivation. Funeral sumptuary laws prevent squandering inheritances and keep money in families. Dignitas and severitas must not be forfeited for display's sake. These curbs are *locupletibus fere cum plebe communia*. Arriviste Cicero is no leveller, but equality in death is *maxime e natura*. Where the XII Tables meet the actuarial tables, Law sets aside wealth and station. This nod to egalitarianism is a brief exception: *tolli fortunae discrimen* does not survive the funeral. These anti-Cesarist sumptuary laws prevent a tomb looking like a temple (Du Mesnil 1879:176). A *ricinium* is a double thickness women's scarf worn to the funeral and then thrown on the pyre, honouring the dead. "When any friend died who had no one to perform the last offices, [K'üng] would always say: 'Leave it to me: I will bury him'" (LY 10,15; Ku). Mèng says funerals are not "a question of beauty, but of expressing all that's in our hearts" (4a7 Hinton).

Li rites controlled extravagance, but guarded against mean-spiritedness and niggardliness. The point of sacrifice was not expiation or forgiveness. Sacrifice was social not personal. In sacrifice and funeral rites, *li* ritual stressed the need for genuine emotion rather than an outward show with no inward feeling. (Knoblock 3:53).

Simplicity is central. Hsún says (19; B.Watson) "The spreading of a plain white cloth in the imperial carriage, the donning of the hempen cap at the suburban sacrifice, and the wearing on an only partly tied hempen sash during the mourning rites—all these have the same significance".

59. Both boys and girls memorised the XII Tables *ut carmen necessarium* in their education for civic service. "Girls and boys were equally educated for civic service and in "a thorough study of the Twelve Tables and the set of legal precedents". As women's status and education "increased... legal restrictions based on gender were...eventually abrogated, placing women juridically on par with men. (Van Den Bergh 364; cf. Van Zyl 1977-24-26). Devout Ciceronian P. Hountondji memorised the first Catilinarian (2002:xii), a good propaedeutic to fight for civil society. Children memorised Hsiào Ching (Chên 1908:8). J. Wu recalls how "even in the early days of this century, when the modern school had begun to be introduced in China, *Mencius* was still used as a text on

ethics and Chinese literature. You can hardly imagine how electrified we boys were when the instructor, an old Confucian scholar, read aloud, or rather chanted, the sonorous sentences of Mencius. There was a frankness, even brusqueness about him that appealed to us boys. The very style was full of vital spirit *Ch'i*" (1965:16).

59. *Neve lessum funeris ergo habento*. The XII Tables 10,4 forbid whatever it is. Lucius Acilius *susplicari vestimenti aliquot*. Cicero guesses *quasi lugubrem eiulationem*, public wailing by *mulieres*, hired female mourners (thus coming under sumptuary law). Were fees pro-rated according to display of bodily harm as well as decibels and duration of wailing? Appuhn (423) guesses "la même racine peut-être que le verbe grec λίσσομαι se trouve dans Plaute (*Truculentus*, IV,1)". In Cicero's time XII Tables were intelligible only with glosses, so *L. Aelius* Stilo's guess of a lamentation is as good as any (Fleck 257; disgustedly, Bonfante 2:87); he himself is to be distinguished from the earlier commentator on the XII Tables *S. Aelius*. (Mentelle 1766:26). Bryant (726) says "one hardly expected to find any social links between the Zulus and the Ancient Romans", but that ritual ululation is one, though Romans "lost" the happy sort of ululating. Knoblock (3:xiii) laments "words whose meaning no one knows, named arguments that no one can reconstruct, preserved whole arguments that no one has convincingly interpreted, and forms of argumentation that cannot be adequately explained". *Ut vox ipsa significat* gets us nowhere. It may come from *laedere*: self-inflicted injury (Borkowski 29) by the grieving women beyond *genas ne radunto*. *Lessus* may come from *letum*: some sacrifice, possibly a suicide, or a now-forgotten death rite. C. Lewis derives it from *latrare*, to howl like a dog; A. Dyck says "keening" (404). *Veteres interpretes'* term *vestimentum* may have euphemised an abhorred obsolete rite. Cf. K'üing's horror at human sacrifice; cp. anti-galli laws.

59-60. *Haec laudabilia et...communia*. The nod to Stoic egalitarianism is tempered by *ferre*. The cliché of death as the great equaliser curbs the pride of the rich and the envy of the poor, propping up *concordia ordinum*. Ultimate human equality is *maxime e natura*, and *tolli fortunae discrimen in morte*. Neither envy nor scorn of the honourable dead is fitting; only the wicked dead deserve social scorn. The dead, ritually equal in their send-off, reckoned *in deorum numero*, settle among the *kuèi* and *shén*, bidding farewell to *fortunae discrimen*, luck and artifice. *Luctus augetur* by lavish spending. "Ὅπου γὰρ ἔστιν ὁ θησαυρὸς ὑμῶν ἐκεῖ καὶ ἡ καρδία ὑμῶν ἔσται" (Luke 12,34). Manipulation of private sorrow is as nefas or wú-Tào as delaying the *funus publicum* to manipulate political emotions. Cicero excepts *bellicam peregrinamque mortem*. Prohibiting *serviles unctura* and *circumpotatio* controls emotion and curbs sottish ostentation. Banning

perfume, garlands, and incense keeps display, cost, and manes cult—keep your distance—within bounds.

60–61. *illa iam significatio*. Suum cuique. *Laudis ornamenta* celebrate the renown of the dead, not the opulent mourning of the living. Prohibiting *ut uni plura* [† *funera*] *fierunt* rules out inflating the deceased's gloria for snobbish or political advantage. The civic and anti-regal *corona virtutis* was worn by the father as stand-in for the dead son who won it, who (vicariously) wore public honours one last time (Warmington 3:502). This crowns the father as sacred fā of the son's virtus/te. *Lex...iubet* shows that this is a required custom. (Cf. Pliny, N. H. 21,7.) How Cicero must have grieved that no such custom crowned the fathers of predecendent brilliant daughters! *Neve aurum addito* prevents showy burials taking gold out of circulation or restoring gold to circulation by posthumous dentistry, grave-robbing, or rooting about in the ashes of the pyre for bits of gold. Burial or cremation leaves *auro dentes iuncti* in place. The dental bizarrerie shows *quam humane excipiat altera lex*. True law stops ghoulishness. Cicero again distinguishes burial and cremation (*aliud habitum*). He keeps the XII Tables' ban on degenerate practice *quod erat factitatum*. Automatic *forum bustumve* ostentation was forbidden (Westrup 2:97). *Duae...leges de sepulchris* finish Cicero's review of the Twelve Tables with by-laws on distance between pyres or burial mounds and forbidding squatters in a tomb or its forecourt. *Incendium veretur acerbum*: not only fear of fire, but fear of one family intruding on another's sacred turf. Blocking appropriation by *usu capi* imposes on the family the principle requiring State removal of graves from the derelict temple of Honour. Holiness imparted is permanent. There is no deconsecration. *Ius sepulchrorum* harmonises with other *iura* to promote stability. Why so much about graves? Tullia is dead.

61.. The Twelve Tables are fās, *sane secundum naturam* matching mens divina and ratio recta. (Cf. Fleck 256; Bonfante 1:118.) *Natura* is *norma legis*, judging a positive law's flaws or perfection, and the test of its being a law at all. Altering the XII Tables would undermine faith in res Romana as lawful and civilised ab initio. He does not grant indefectibility to all Roman laws, agreeing with Chrysippus that all constitutions ἡμαρτήσθαι (SVF III:324; Aalders 87). Cicero does not presume that the ming or *secundum naturam* character of the XII Tables gives total coverage of all religiones/lī, as the omission Atticus points out proves.

Cicero contrasts lex and mos (fā embraces both; K'üng's supposed distrust of positive law is a retrojection of hatred toward Ch'in Legalism—K'üng was no anarchist or endorser of royal whim). Public funerary customs enshrined *in more* are kept: games, lictors, state eulogy, and music, covering personal, family, and public rites. Infamy was the outward and visible sign of the evil

man's tortured or stupefied conscience. *Honoratorum virorum laudes* set the seal of civic glory upon distinguished public careers. Burial/cremation imposes binding ties of hallowed observance. In rite, no vir bonus dies alone. Death cannot rend the sacred fabric of good fama. *Cantus ad tibicinem* is called, after a now-unknown Greek word, *nenia* or *νηνιάριον*. This opens for Atticus' interjection, by which Cicero shows that he does not close his critical eye by accepting the XII Tables. Cicero weighs Roman and Athenian law. *Natura norma legis* is fulcrum.

Funus publicum with "panegyric and public dirge" (Toynbee 55) was a special honour, just as *ius imaginum* and ancestor-worship (*ius sacrarum*) were at first restricted to the nobility (Scott 2).

Distingúianse el *funus indicativum* y el *funus tacitum*. Los primeros funerales los anunciaba un heraldo, que invitaba al pueblo, anunciándole las ceremonias principales, como juegos, etc.; este honor solamente pertenecía a los personajes principales. El que daba juegos ejercía por ello una especie de autoridad pública, y sin duda por esto se le concedían *lictiores*. (Navarro y Calvo and Calvo 133)

It fosters *mos maiorum*. "When the dead are honored and the memory of remote ancestors is kept alive, a people's virtue is at its fullest" (LY 1,9 Ryckmans). Of Teng's Crown Prince, "Is he not a good son!" said Mencius. 'At the funeral of a parent, one should give one's best....I have heard something about the funeral rites which have been observed ...since the Xia Dynasty, that is, the three-year mourning period, the mourning dress made of rough hemp with a hem, and the eating of nothing but porridge" (3a2 Zheng et al.). H. Maspero explains the ancient Chinese *funus publicus*:

C'était un rituel minutieux et compliqué. Les cérémonies se répartissaient en deux tours. Au moment de la mort, après le rappel de l'âme—le nom crié trois fois du haut du toit—c'était au milieu des lamentations la toilette du mort; puis, le lendemain et le surlendemain, on exposait le cadavre au milieu de ses vêtements funéraires, pendant que le fils, en vêtements de toile blanche non ornementée, recevait les visites de condoléance; venait enfin la mise en bière, avec dépôt provisoire du cercueil au pied du hall de réception et une petite offrande de grain et de viande séchée. Plus tard, quand le tombeau était achevé, avait lieu d'enterrement. C'était une procession à laquelle tous les parents, clients, et amis prenaient part: en tête, un sorcier brandissait une hallebarde pour chasser les mauvaises influences, puis venait le char du cercueil, entouré de toiles blanches, suivi d'une bannière portant le nom du défunt et d'une voiture chargée de victimes. Les fils, suivaient, vêtus de blanc † (Maspero and Balazs 19).

At that moment of writing, Maspero was arrested by the National Socialists for the crime of being a Jew, taken to Buchenwald in "une voiture chargée de victimes", and murdered.

62. *gaudeo sed [cedo] requiro*. Atticus spots a moth-hole of ostentation. Tomb-building can create waste of wealth and denial of equality in death. Cicero's quick mending confirms his twofold satisfaction. First, he is glad that *iura ad naturam accommodari*. The use of *accommodari* significantly indicates that natural Law does not require rigidly following a single immutable pattern. (Neither of one single culture nor of one single theologian such as Aquinas: that is

positivism manqué.) The proposed Tullian and received Duodecimal laws are made civically (not by revelation) to match the natural order, and shaped by magistrates to accord with *mens divina*. Latitude is inherent. Diversity of custom does not preclude congruence with nature. All under heaven covers a lot of ground. The coexistence of inhumation and cremation shows this. *Ad naturam accommodari* permits Cicero's project to be applied in a non-Roman context, however much *his* Rome may be in line with the mind of Jove. People can improve the congruence of laws to Heaven's ethical mandate. It has happened before, in Atticus' and Cicero's judgment, and nothing precludes it happening again or elsewhere upon reasonable men and women's faithful reflection. Yet Roman particularity is affirmed. *Maiorum sapientia* delights Atticus. He uses *sapientia* where *mos* is usual, echoing Cicero-as-sapiens in earlier discussion. *Sapientia* is deliberate, cultivated, arising as a second order expertise out of the first order social experience comprised in *mos* or *mores*. States cannot be wise in se save by anthropomorphic metonymy, but human beings can cultivate wisdom and apply it to the matrix of *lǐ* and *fǎ* (in the wide sense) where they serve, vote, advise, and rule, and by whose virtue/*yí+jén* become holy and moral. *Accommodatio ad naturam* and *sapientia* are very close. Nature and divinity, republican law at Rome and *Jú*-guided royal charisma, sacredly converge. The sample problem of gaudy tombs demands rational accommodation and a solution consonant with *lǐ/religiones* under the gaze of God, even as the *novus homo* takes a poke at the tinsel urban aristocracy (Atkins in Rowe and Schofield 480).

62. *recte requiris*. Cicero turns to Greek models for needed *accommodatio*, keeping face for Roman patriotism and intellectual philhellenism. Atticus' criticism is just ("recte requiris"). Disparaging *ista* is used of the wretched excess of Figulus' tomb. (Cf. tortoise in LY.) Death isn't what it used to be. The ancestors had *minimam olim cupiditatem* about tombs. *Legis interpretes* apply funerary sumptuary law primarily to tomb construction. The dead, numbered among the gods/ *kuèi+shén*, receive *pietas/ hsiào* and *religio/lǐ* due them by devotion and rite. Grandiose building projects rob them of their due: *emptum et luctum remove a deorum Manium iure*. Bowing to Atticus, Cicero turns to Athenian *sapientissimis legum scriptoribus*. The kowtow is fake: a few remarkable museum pieces, not a *fas*-bound *res publica*. "Incredibile est enim, quam sit omne ius civile praeter hoc nostrum inconditum ac paene ridiculum...hominum nostrorum prudentiam...maxime Graecis antepono" (De Or. I,197). Traditioned praxis beats theory (Van Zyl 1991:2,8).

63. *Athenis iam in more sunt: a Cecrope*. Cecrops is venerated for wisdom, antiquity (1570 B.C.), and the implicit parallel to Numa (Mentelle 1822:23). *Ut sinus et gremium quasi matris mortuo tribueretur* echoes *quasi operimento matris obducitur* (56). Cecrops, Cyrus, and Numa are

returned to earth's bosom. Burial's ancient universality show its accord with *mens divina*. Cicero augur and consularis is thus a better traditioner than the reactionary dictator Sulla. Devolution of the rite upon nearest relatives resembles the long disquisition on inheritance. Cicero ably copies real conversation, in which threads are apparently dropped to be picked up again allusively. Sowing grain cleanses the earth of death-pollution (*solum autem frugibus expiatum*) and prevents wasting even tiny parcels of arable land in soil-poor Greece (cf. Νόμοι 12,955e). Cicero's prohibition of the consecration of fields, based on the impossibility of a resacralisation of the already sacred earth, finds a symbolic echo here. Sacrality imparted by grave-making is subsumed under the grain-bearing, maternal, and sacred ground. Sown grain (remember Eleusis!) shows that the grave is not violently carved out of the sacred realm by the ferrum used to make it, but is literally insinuated into the holy earth. Approved feasting and garlanding (*epulae propinqui coronati*), are contrasted with the previously condemned *circumpotatio* and *longae coronae*. Moderation of enactment ratifies rite's sacredness. Flamboyance erases pietas and the religio with it. Restrictions *de mortui laude* are a forlorn hope. Athenian law's stipulation of truth-telling in eulogy is necessary and impossible. Praise-songs dare not be farcical. Embellishment and deception, which fool no one, are verbal equivalents of architectural ostentation and financial excess. The human lust vicariously to glorify surviving propinqui by glorifying the dead, along with counting the dead among the gods (Ciceronian, not Athenian), make stopping grandiosity impossible.

64. *posteaquam*. Solon's law against *sumptuosa funera et lamentabilia*, was taken directly into Table X. Despite bromides about early purity and later rot, if funerary excess was unknown to the XII Tables, why provide against it? Antiquity's being next to godliness is no absolute. Best practice should be kept or restored. Barring face-gouging and *lessus* passes from Solon through XII Tables to Cicero's own views. The "apostolic succession" of home holiness and civilised oikoumene keeps to the high road of dignified restraint, and away from the low road of hysteria or wildness.

64. *De sepulcris autem nihil...amplius* copies Solon (Hamza 1987:82). Work-hours are a sumptuary index, allowing nothing *operosius* than three days' labour for ten builders; in Plato (Nomoi XII:958d), *quinque homines quinque diebus* (68). Athens allows only State eulogies like Roman *honoratorum virorum laudes* (62). Demetrius of Phalerum, ruler of Athens 318-307, was *non solum eruditissimus, sed etiam civis e re publica maxime tuendaeque civitatis peritissimus* (66). Cicero thought him the "athenische Cicero" (Fleck 236). His Μουσείοιον was the first university. His τυραννίς (coup d'état, not followed by "tyranny") was "intelligente, grematigde, skoonheidsliewende en kleurvolle" (De Vleeschauwer 183). Brilliant reviver of bleeding Athens

(DRP 2,2), sign of God's governance (DRP 1,7,12), unjustly exiled "patria pulsus" (De Fin. 5,54), rectifier of terms and lover of antiquity, Demetrius "*mirabiliter* doctrinam ex umbraculis eruditorum...produxit" (3,14). He used non-elenchus "quietum disputandi genus" (DO 1,3). Mèng says "to ignore Duty in serving the ruler, to ignore Ritual in taking office and renouncing office, to deny the Way of ancient emperors in your speech—that is chitchat doing nothing" (4a1 Hinton). The State is aedes of virtue/ἀρετή. Statecraft beats theory (Becker 24).

Desecrating tombs is vis publica like "illegal...arms, false imprisonment, affray, rape, prevention of burial, tampering with the courts...breach of citizens' right of *provocatio*" (Crook 269). Marcus Aurelius waved Demetrius away in "The Autocrat Talks to Himself":

“Υπαγε νυν, καὶ Ἀλέξανδρον καὶ Φίλιππον καὶ Δεμήτριον τὸν Φαληρέα μοι λέγε. ὄψονται, εἰ εἶδον, τί ἡ κοινὴ φύσις ἤλεθεν, καὶ ἑαυτοὺς ἐπαιδαγωγῆσαν. εἰ δε ἐτραγῳῖδησαν, οὐδεὶς με κατακέκρικε μιμείσθαι. ἄπλουν ἐστὶ καὶ αἰδήμον τὸ φιλοσοφίας ἔργον. μὴ με ἀπαγε ἐπὶ σεμνοτύφιαν. (Marcus Aurelius 248).

“Go on now, tell me about Alexander, Philip, and Demetrius of Phaleron—if they knew or cared to observe common nature, and taught themselves how. If they performed tragedy, nobody can make me ape them. Philosophy's task is simple and demure. Don't make me veer off into self-importance.” Only a despot could be so humble; boastful Cicero and K'üing risked all without prudery. Quintus wrote tragedy—and lived it bravely.

CODE EXPLAINED: INTIMATIONS OF IMMORTALITY § 65-69

65-66. *Pittacus vetat.* Limiting funeral attendance to family members curbs extravagance and restrains grief. Cf. Westrup 1:61. *Auget enim luctum concursus hominum*: the more the maudliner. Absence of a crowd prevents funus becoming factio, the midwife of revolution; it also ruins showing off. Display out of guilt toward the dead may remain, not display to impress, inflame, or incite. Demetrius shows himself *non solum eruditissimus, sed etiam civis*. Pre-dawn funerals curb citizen crowds *non solum poena sed etiam tempore*. Who is about at such an hour but slaves? Who can see in the dark but brigands? Adornments are limited to a little column (*columella*), a table (*mensa*), or bowl (*labellum*). Exiled and destitute, *omnibus ereptis nostris rebus ac perditis* (42), Cicero left only the little Minerva, *illam custodem*, as aide-memoire in the Temple of Juppiter. When the dead leave the living city, they need only what preserves fama forever. Anyone who *violarit, laeserit, fregerit* (64) a tomb is *sacrilegus*. Memorials and memory have iura. Thus far your Athenians' funerary laws, says Cicero in deft compliment to Atticus. (67). Solon, Pittacus, and especially Demetrius are model legists, proving *mens divina's* universality and restrained pietas/hsiào. Cf Twele 204.

67. Keeping land arable and epitaphs sober. Plato *vetat ex agro culto ullam partem sumi sepulchro* and *ne plus quattuor herois versibus* (68), hexametres such as "mors animam eripuit, non veitae ornatum apstulit" (Warmington 4:52). Many *laudationes* were puff pieces, "mendosior falsi triumphi, plures consulatus, genera etiam falsa" (Brutus 16,62). Quiet pride and family sacral solidarity are palpable: "haec est domus aeterna, / hic est fundus, heis sunt horti, / hoc est monumentum nostrum". Scipio Hispanus' four-hexametre epitaph is lapidary: "virtutes generis mieis moribus accumulavi / progeniem genui, facta patris patie / maiorum optenui laudem, ut sibi me esse creatum / laetentur, stirpem nobilitavit honor" (Warmington 4:42 and 8). K'üng also wanted modest grave-markers (Renard 117; cf. Lattimore). *Mortuorum corpora* must be treated *sine detrimento vivorum*. Fire-safety rules set distances between pyres. The fragile urban food-supply is kept safe. The living have fas-priority over the dead, since only the living keep rites and render pietas/hsiào. If iura of the dead hurt the living, resentment ruins reverence as living persons and hungry ghosts starve. Irony crushes holiness if those safely *in numero deorum* lose divine honours by the starvation of those yet mortal.

68. *deinceps dicit de immortalitate animorum.* Is this private theology, this "fede aperta nell'immortalità, concessa di dio, dispensatore dell'universo" (Righi 108)? No. "An vero tam parvi animi videamur esse omnes...nobiscum simul moritura omnia arbitraremur?" (Pro Archia 30).

Again, no. *Mens divina* rules the fate of soul and State. Good people possess “mentes divinae...atque aeternae” which after death “ad deorum religionem et sanctimoniam demigrasse” (Pro Rab. 30). “Doctrines of the soul and of after-life existence belong not only to religion [sic] but also to...politico-jural and moral custom” (Fortes and Dieterlen 126). Cicero strongly affirms the immortality and divine origin of the individual and his soul, the immortality and reward of the sacred dead, and the punishment of the irreverent. (Cf. DRP 6,13-26, the *Somnium Scipionis*; Resta Barrile 4, Ricci on Ch’un Ch’iu Fan Liu 4,184). K. Latte says no one seriously thinks the *Somnium Scipionis* reflects Cicero’s real views. In T’ien’s name, why not? R. Popkin dissects the anti-belief canard, a hermeneutical dead duck assuming faith is cant: “Pro-religious views are assumed to be necessary camouflage to avoid persecution and censorship...If we could read between the lines (as all good scholars do anyway) and *read their unwritten works*, we would find a multitude of secret atheists, conducting a war of science against religion” (Latte 29; Lakatos and Musgrave 1968:2-3; cf. Wycislo 9—on the principate, *not* the late Republic). Atticus, though a political trimmer, was too spiritually honest to tolerate blatant dissimulation by his dear friend Marcus; Stoic Quintus would have laughed such fakery to scorn. M. Ricci does likewise (4,179).

De Div. is not probative (Schofield 1986:48). Early-dating of DL may be subtly secularising, making De Div. a “last word” on religion, annulling DL as a confession of Cicero’s faith. It was not Christian saving faith but it *was* faith: “It is much for a man like him, who did not boast of being a Cato, to have been so firm at his terrible moment; the more timid he was by temperament the more I am touched at finding him so resolute in dying” (Boissier 77). Cicero makes “affirmations éloquentes et sereines de l’immortalité de l’âme et de la récompense céleste promise aux grands citoyens” in authentic accord with Roman State religion” (Dumézil 503). Cicero wrote to Atticus (10.8.8) “quamquam tempus est nos de perpetua illa iam, non de hac exigua vita cogitare”. As he said earlier of the caelestis vita (Tusc. 1,75) “Quo cum venerimus, tum denique vivimus; nam haec quidem vita mors est, quam lamentari possem, si liberet”. Cp. “τίς με ρύσεται ἐκ τοῦ σώματος τοῦ θανάτου τούτου;” (Romans 7,24). Cicero expects “in ewiger Glückseligkeit lebendes Vernunftwesen” coram Deo (Goedeckemeyer 163; Bailey 218). Zulu and Roman beliefs saw a “very close and intimate relationship [cf. imagines] and association...within the lineage between the departed and their survivors. ‘My father is departed, but he is,’...the father is present and active” (Berglund 29). “Within the lineage” echoes K’üng on flattery of another’s manes.

K’üng’s personal piety was underestimated:

To the disciples it appeared that, in normal times, and in his usual health, Confucius had never offered prayers to any spirit, but in fact, he had prayed to the regular spirits at state religious functions. Confucius did not reject religion out of hand; he was

imbued with a deep religious faith in the traditional spirits recognized as orthodox by the state, and by the community in general. (Kaizuka 115).

When he says that he has been praying for many years, not just in crisis, he shows he is not slave to his emotions and that the State religion *is* his kind of praying. Ku H.'s LY 7,34 makes it plain:

On one occasion when Confucius was sick, a disciple asked that he would allow prayers to be offered for his recovery. 'Is it the custom?' asked Confucius. 'Yes,' replied the disciple, 'in the Book of Rituals for the Dead it is written, 'Pray to the Powers above and pray to the Powers below.' 'Ah,' said Confucius then, 'my prayer has been a long—lifelong—one.'

R. Wilhelm likens this to Paul's 'pray without ceasing'—hardly indifferentism and contra J. Legge not prayer-less arrogance (1923:74; Ku vii, Sherley-Price 64). At the heart of the matter,

Jedes Gebet ist eine Hinwendung des Menschen an ein anderes Wesen, dem er sich innerlich aufschließt und mitteilt, rede des Ich zu einem Du. Dieses Du [ist] aber ein Wesen, das deutlich die Züge der menschlichen Persönlichkeit trägt: denken, Wollen, Fühlen, Selbstbewußtsein. (Klostermaier in Schebesta 71).

K'üŋg's religious observance included prayers, festivals, fasts, oaths, mission. "He was a God-filled man" (Mei in Moore 153). His calm boast "Heaven vested me with moral power. What have I to fear from Huan Tui? (LY 7,23 Ryckmans) reflects settled faith in T'ien's providence. (Cf. Sherley-Price 59, 87; Wilhelm 1923:xxii; Wu 1965:8; Yeh 43, 57, 59 also re Mèng 2b13).

Mèng remains this-worldly also, but without "denying a future life—indeed tacitly recognizing it in the offices for the dead" (Soothill 1939:41). K'üŋg was not *scheinfromm*:

Direct references to Heaven point not only to a profound piety toward Heaven but also a kind of 'prophetic spirit' in Confucius who claimed to have a special relationship with Heaven....[W]hen his life was put in jeopardy...Confucius was quoted as saying, "I am born with virtue from Heaven, what can Huan Gui do to me?" On another occasion, referring to his rapport with the beyond, he made the remark, 'Isn't it Heaven who really understands me?' Such observations and others betray a strong sense of trust in and support from Heaven. (Chang H. in Cohen and Goldman 23; cf. Granet 105, Roetz 1992:313).

K'üŋg shared archaic belief in the soul's immortality (Chan in Moore 288; Ching 1977:175 and 1993:19,35; Cook in Overmyer 150; Renard 52, Wieger 13,21,122). Without it, "the institution of ancestor-worship and the practice of filial piety in Confucian teaching would be meaningless" (Cheu 2000:vxiii). Jewish theologian and Naturrechtler D. Novak says (45) death "is a relative leaving, not an absolute non-being. Non-being would be an impossible escape from God's judgment. 'Where can I go away...in the world below, you are there.'" (Psalm 139:7-8). St Augustine says "we made bad use of immortality, and so we died; Christ made good use of mortality, and so we live" (DDC 1,29).

69. Cicero contentedly tells Quintus and Atticus *habetis igitur explicatum*. They spent the afternoon with theology, throneless queen of the sciences, all of them seated on terra firma hard by the river-bank. Not every question has been harried. Civic theological conversation completed *uno aestivo die* becomes a sacred offering (Appuhn 336). Cicero drew the “whole duty of man” as a reasonable creature of God active in public life and rite. Cicero was too Roman to claim special inspiration or dogmatic finality. Antiochus taught boastful Cicero profound theological humility. He receives fraternal praise from Quintus, loyal unto death after his Caesarian aberration, and encouragement from Atticus, the suave survivor. “Wie groß und welcher Art war eigentlich das echte Risiko für Cicero und seine Mitwisser?“, asks Strasburger (64), champion of the resistance reading of Cicero’s late work; political murder of the brothers and co-optation of Atticus by the totalitarian régime. Sed scripta manent.

ISSUES OF INTERPRETATION

Cicero: Is it theology?

“A complex of sentiments and emotions common to all religions everywhere is as much of a chimaera as an epistemological category which will contain all religious objects” (Horton 26). Noting one hundred and fifty attempts, “jeder Areligiöse meint zuständig zu sein für eine Definition der Religion. Aber die Areligiösen machen es sich zu leicht. Sie sprechen nur aus, was nach ihren Wünschen Religion sein sollte—nicht was sie ist. Das wollen wir uns lieber von gläubigen Menschen sagen lassen.” (Schebesta 38). We know it when we see it. “We need to study individual history more and taxonomy less” (Berthrong 1998:201). Following M. Flacius Illyricus, we read the text as a holy and humane text on its own terms and trust what Cicero “said he believed” (Linge in Gadamer 1976:xiii; Popkin in Lakatos and Musgrave 1968:4, Warnke 5). DL, like other holy texts, “can hold up to any of the questions that any hermeneutic raises” (Kellerman in Maxfield 7). We honour DL’s moral integrity, its author’s *fides*, and a commentator’s limits. DL’s focus on praxis (rite) makes it theology. “Synthesis through symbolic manipulation and ritual praxis is not...a philosophical argument, however. The justification of a praxis—explaining why it works—is a philosophical enterprise known as ‘metapraxis’” (Kasulis 94). Theology and metapraxis are one. Cicero’s “convicciones religiosas” about “los problemas teológicos” were that God made the universe and the consensus gentium and is a Mind constantly active. Worship is our response to gods’ concern for human affairs. A free contemplative life follows death. One must “vivir al servicio de la patria” to be received into the council of the gods, since divine power is manifest in civic commitment. “Destruir la superstición no es destruir la religión...El hombre debe ser sincero en sus dogmas o creencias, de tal manera que en los actos de todos los días refleje sus propias convicciones” (Pimentel Álvarez xiv, xvii, lvii, 7). Cicero’s augurate is praxis-ground for the faith that is in him, with *li* as a field and a mission (cf 31) to write DL2 as theology. J. Pimentel Álvarez shows that even DND is religious. Cicero is not “scheinfromm” (Kroll 2; all the more Troiani and Heibges 932). “He wrote with great sincerity, did not tease or play the Greek, as Plato and Aristotle do. I hope God will help Cicero and such men as he to the remission of their sins—and if he must remain out of grace, then at least be some levels higher than our cardinals, and the bishop of Mainz” (Luther in Grislis 145). W. Soothill (1939:20) wanted to meet K’úng in heaven. Cicero

truly believed in what he was saying and he lived his life in accordance with the religious precepts which he preached to others. His belief in man’s natural propensity to love his fellow-man, coupled with the close relationship existing between man and God, has led to Cicero’s being considered to be a precursor of the Christian doctrine. (Van Zyl 1986:79).

That last honour will have amused Jove-devout Cicero. Cotta, Cicero’s voice in DND, “declared

that ‘as a Cotta and as a priest’ he accepts the religion of his forefathers; he certainly speaks also for the author, consular and augur as he was” (E. Rawson 1975:236).

“His convictions...belong to Cicero *qua* person, not Cicero *qua* Academic...[Neo-]Academic philosophy... allowed you to have such convictions, provided that you...did not mistake them for demonstrative truth....In philosophy Cicero may have been a sceptic, but in real life [!] he believed in the *res publica* and the Roman virtue” and had “a profound belief in a supreme being, ruler of the universe” (Powell 1999:22,31; Rolfe 167; Navarro y Calvo and Calvo 90). Cicero fervently invokes fellow-Arpinate Marius, *parens patriae* “Et C. Mari et ceterorum virorum sapientissimorum ac fortissimorum civium mentis, quae mihi videntur ex hominum vita ad deorum religionem et sanctimoniam demigrasse, testor me pro illorum fama, gloria, memoria non secus ac pro patriis fanis atque delubris propugnandum putare” (Pro Rab. 30), or his invocation “O di immortales! Ubinam gentium sumus? Quam rem publicam habemus?...Magna dis immortalibus habenda est atque huic ipsi Iovi Statori, antiquissimo custody huius urbis, gratia” (Catil. 1,9 and 11).

If the *De Officiis* is theology, as magistrate-turned-bishop St Ambrose thought (Koschaker 33), then so much the more is DL. H. Holden adds DND, *De Div.*, and *De Fato* (xiii). Trollope makes Cicero a Broad Church “C of E” broad church country gentleman, calling him “soft”, “sweet”, “tender” (1:35), which Cicero would have found a bit soft, sweet, and tender while Quintus got sick in his mess-kit. Trollope meant to praise with his conceit of a Lord Tully of Arpinum Heath, a decent, kindly country squire. He confuses two ancestral pieties deliquescing, but caught a bit of Cicero’s spirit. “To him, ginger was always hot in the mouth, whether it was the spice of politics, or of social delight, or of intellectual enterprise” (Trollope 1:33). K’ung always ate ginger (LY 10,6).

Receiving *odium theologicum* is proof one is a theologian. Caesarian M. Gelzer stoutly defends Cicero. “Wenn jedoch Augustin schließlich Cicero nach dem 14. Psalm zum ‘Toren’ macht, ‘der in seinem Herzen spricht, ‘es ist kein Gott,’ so tut er den Neuen Akademie Unrecht, wie das Ende von Nat. deor. 3,95 zeigt. Auch der Cotta des Dialogs erklärt sich als Philosoph, nicht nur als Pontifex (1,62) für die Existenz der Götter (3,93;95)” (Gelzer 340). “What is Athens to Jerusalem? What is Cicero to the Psalms?” (Tertullian in Sigmund 27). What is more shūkyōist than Montanism? What is less Montanist than Cicero resembling the OT “Spannung zwischen Geschichtlichkeit und Prophetie” (Seel 401)? The Israeli neo-Mommsen says Cicero the crypto-Epicurean demolished the imposture of religion (Mandel 96; cf. Latte 295). Guessing Cicero’s belief is *sacrificium intellectus*, J. Kroymann likes Cicero, but misses *ἐποχή*. After P. Altheim and kingly W. Kroll, he declares Cicero free of dissimulation at whatever cost (Michel and Verdière 117, 128).

With all *pietas/ hsiào* to those who founded this writer’s religious body, R. Rattray (1923:87) was

right: “I have never heard in the past of use being made in the Basel Mission schools of any of the great truths which will be found common to the West African and Christian religion”, nor of natural knowledge in Roman and Chinese civic theology. “Multiplex meaning” steers us safely past hypercompartmentalising the ancients (Gluckman in Fortes and Dieterlen 137). In Roman law “Religion, Morals, and Law are not at first distinguished because of their common divine origin” (Westrup 3:67). This theologoumenon is akin to K’ung’s non-distinction between precept and fā in LY. We re-enthroned the queen: “In the mediaeval universities Theology was Queen, and knowledge was an integrated whole around the throne; but with the dethronement of theology...knowledge became divided into different disciplines, each claiming an independent validity” (Wilson and Thompson vii). Getting beyond this escapes undue Eurocentrism (Hsiao 1964:112-115; Stange 23). As cultural chauvinists attributed a *deus otiosus* to mission-field populations (Idowu 61,65,67,144), Hellenocentrism dismisses Roman religion as poor relative to the Greeks. “Traditional disregard for the cultural power of Roman religion joins in a powerful conspiracy with the aestheticizing long-ingrained tendency in the study of Roman literature” (Feeney 7). “All non-Western traditions are tarred with such brushes in a constant barrage of critique for the sake of criticism, not in a spirit of critical analysis” (Menski in Huxley 2002:111).

Jú-chiào is not a religion “if we take the perspective of the Europeans” (Ku 11). As non-Europeans, we do not, amazed that Eurocentrism manages without Rome. “La philosophie ne se distingue pas de la religion....Dans l’ancienne religion chinoise, comme dans l’ancienne religion romaine, nous trouvons en honneur le culte domestique-celui des Ancêtres ou des Mânes-et les cultes des génies locaux” (Bernard-Maitre 21; cf Gernet 27). This unity includes political thought. “The terms...*dao* (the Way), *jiao* (doctrine or the tradition) and *li* (principles or laws) are all...suitable to denote philosophical thinking, political ideal, ethical norms and religious practices” (Yao 41). Intellectual-spiritual life *jingshen shenming* is one (Pfister 11). Segregating theology and philosophy is a dyshermeneutical Enlightenment schism; it is best “wenn man die bisher meist auf ‘Dogmatik’ und ‘Ethik’ verteilten Stoffe in einem behandelte, als das in sich untrennbare christliche Dogma” (Althaus 1931:9; Chan 16; Ching 1977:xix; Gadamer 1998:178,308,311; Grondin 1994:57; Moore 3; Nicolescu). Cicero’s Hàn contemporaries found “history, government, science, and religion...were so intertwined that the imposition of later categories risks anachronism” (Csikszentmihályi xv). Viêtnam kept classicist holism, “defamiliarizing such ‘foundational’ intellectual boundaries....the Vietnamese are the enemy of imperially minded theoreticians” (Woodside in Elman-Duncan-Ooms 117). Octave Ogirashebuja warns: “To reduce everything to clarity of discourse leads to heresies of thought”, while “reading with a wide-angle lens” is more serviceable (Ogirashebuja in E. Ruch and Anyanwu 39, Villa-Vicencio and Verwoerd xii; cf.

Hodgson 17, Horton 19, Schulz 1936:20). Seeing beyond shūkyōism with the lens of theology? Fiat lux! DL's late date sharpens Chroust's regret. "Philosophy could not redeem its promise...[it] was no satisfactory compensation for religious faith", causing "significant transition from an ethico-practical point of view to a religious standpoint in philosophy." (Chroust 200).

We respectfully believe Cicero and K'ung when they say it's about gods. (Cf. Glucker in Dillon and Long 42-43; Middleton). Authorial intent guards against whim and cultural insensitivity (Conte 3). There is a dialogic, republican need to trust in truthful speaking. "Die *Wahrhaftigkeit des Wortes* ist unerläßliche Vordingung alles Vertrauens und damit aller Gemeinschaft" (Althaus 1931:73). Augur and Sage "remind us how the issues we were discussing looked from their point of view" (Sundkler in Fortes and Dieterlen 2; cf. Berglund 5). We approach *caste*, not from

idle curiosity or kindly superiority, nor...merely inspired by love of knowledge. I approached these old people and...their religious beliefs in the spirit of one who came to them as a seeker after truths...with all the reverence and respect I could accord to something which I felt to have been already very old, before the religion of my country had yet been born as a new thought. (Rattray 1923:89)

After all, "colonialism is a form of pride...based on the assumption that anyone who is not like me is somehow...inferior and ought to be straightened out" (E. Ruch and Anyanwu 190). Historicism and positivism are cruel mental colonialism. Cicero and K'ung do theology, no matter Hu denies it. We prescind from exclusionary definitions "It was quite impossible...to make a tidy separation...and leave theology out of it". (Armstrong 5). Faith in Roman religion plus a philosophical theology marked a *sapiens* (Lieberg in Temporini I:4:68). Athanassiadi and Frere (2) warn of a „predetermined notion of monotheism and polytheism" (2). for many Greco-Roman pagans "thought that to worship [various gods] was just a matter of acknowledging God's ordering of the world and hence a way of worshipping God himself. It is difficult to see that calling such a position 'polytheistic' does justice to it." L. Douglas shows our difficulty: "What is the word for God? he asked. Which one, inquired Esther innocently. The only one, he said severely. Theos, she replied, after a little pause" (Idowu 165). Required rite moves Cicero and K'ung squarely into theology. Lest we see this as mere philosophy with incense, "Die Religion unterscheidet sich von der Philosophie vor allem dadurch, daß sie ein gottesdienstliches Leben schafft" (Klostermaier in Schebesta 65; cf. Gadamer 1998:116). Idowu (25) ridicules riteless religion: "'Nor name nor form nor ritual word / But simply following Thee.' That is all very well!" K'ung, Cicero—and Luther—would also smile. One *must* do the rite thing—and that bridges theology and political rights, especially rited enactment of

the natural right...to be filial...the relationship between filiality and rights is analogous to the relationship between religion and rights in the modern West. Since practicing the rite of filial piety was an absolute obligation for Confucians, that

practice was entitled to the same protection as the free exercise of religion in the West....It is a human right to carry out the rites and so to behave properly. A government must not prevent the people from doing so and, equally important, to the degree that it does hinder them, its legitimacy is reduced and, ultimately, may be entirely lost. (Schrecker 411; cf. Appiah 1992:108)

The rigid split between philosophy and religion/theology is Enlightenment-era and European (Ching 1993:8). The split works “only if one decides to essentialize all religions narrowly or arbitrarily—only if one allows ethnocentrism to play a role” (Aklujkar 454; cf. Jochim in Clart and Jones 78). Civic theology is also wider than shūkyōism. The term shūkyō (Japanese: religion) is predicated upon shū, a bordered religious community demanding exclusive allegiance. A faithful Roman, were Roman religion a shūkyō, would keep the rites of Bona Dea—but would not dream of Eleusis. “To inquire in Japanese whether someone is ‘religious’ (*shūkyōteki*) may seem a little like asking them if they are ‘sectarian’ or ‘dogmatic’” (Kasulis 29-31). Kung protests, “You don’t yet understand people, so how can you”—“especially Neo-Academics”, interjects Cicero! Rite and political life, priesthood and magistracy, were inextricably fused at Rome; also in Cicero’s case, jurist and theologian (Atkins in Rowe and Schofield 479; Koschaker 338 contra Barth).

En conjunto, pues, la inspiración del De Legibus, en donde se halla el código que hemos presentado, es verdaderamente religiosa, pero su religión no es ciega y fatalista como en los tiempos antiguos, sino mucho más racional, mucho más moral e íntegramente intelectual. (Guillén Cabañero 1999:521).

All but Epicureanism were “*the theological schools*” (Buckley 153). “Cicero’s religion here is not political philosophy but his own version of the religion of Numa: it is therefore civic religion with a cosmetic taken from philosophy” (Wardman 54). We end with the man. “However much he may have wavered, in his supreme moments he kept the faith” (Wagener 370).

It is a long road from Diocletian to the Diet of Worms: like Ch’in, like church.

Il fallait adopter une attitude, et puisque Cicéron se trouvait du côté des chrétiens, Cicéron devait être confonder dans la même disgrâce, voire la même persécution!...L’histoire aurait failli voir que des dialogues philosophiques de Cicéron et les livres saints de l’Église fussent brûlés aux mêmes feux de la persécution de Dioclétien! (Testard 224).

St. Jerome admitted and lamented his addiction to Cicero. “Gregory the Great at the end of the sixth century wanted all Cicero’s writings destroyed because the charm of their style diverted young men from reading scripture” (McGregor and Ross 54). M. Luther did not know East or South Asian religion, but honoured pre-Christian Sages (Grislis 143, 145).

‘Nachdem Cicero in großen Sorgen, im Regiment gesteckt ist und große Bürde, Mühe und Arbeit auf sich gehabt hat, doch ist er weit überlegen Aristoteli, dem müßigen Esel, der Geld und Gut und gute faule Tage genug hatte. Denn Cicero hat die feinsten und besten Quaestiones in der Philosophia behandelt: Ob ein Gott sei? Was Gott sei? Ob er sich auch menschlicher Händel annehme, oder nicht? Und es müsse ein ewig

Gemüt sein' usw....Denn das ist ein sehr gut Argument, das mich oft viel und hoch bewegt hat und mir zu Herzen gegangen ist'—daß nämlich die Ordnung des Weltalls auf den Ordner hinweist. Seine Meinung...faßt er in den Satz zusammen: 'Wer die rechtschaffene Philosophia lernen will, der lese Ciceronem'....Und nun noch die schönen und herzlichen Schlußworte: 'Cicero, ein weiser und fleißiger Mann, hat viel gelitten und getan. Ich hoffe, unser Herr Gott werde ihm und seines Gleichen gnädig sein'! (Luther cited in Zieliński 1929:204).

Further:

die heroici e singulares viri, die nicht "sine afflatu, das ist ohne ein sonderlich eingeben von Gott" reden und handeln. Ihre Weisheit spricht mit der Autorität des sachlich Richtigen...und gilt deshalb für alle als Norm...die Redaktion des weltlichen Naturrechts. Sie ist die Frucht infralapsarischer Auslegung des göttlichen Naturgesetzes durch den natürlichen statt durch den geistlichen Menschen. (Heckel 105, cf. Luther using DND 2,66 with Psalm 101).

J. van Lerberghe is *pious*. "Cicero miste...de openbaring, den echten grondslage van den waren godsdienst, het ware Licht dat de geesten richt en helpt op den weg naar de waarheid. Dit Licht zou eenige jaren later opstijgen uit Judaea en getuigen van de waarheid... om hunne voeten te richten op den weg av vrede" (188).

Classical Jú-chiào: is it theology?

The philosophy-theology distinction is always contextual, never absolute. There is an unfair need for an apologia of Jú-chiào as a religious tradition, not demanded of the religions of the West or of India and K'üing gets rejected as a religious founder for not acting like other religious founders. That begs the question, imposing western—including Indian—fā upon China or Rome! (R. Taylor 1998:80). Nonreligious elements, also seen as disqualifiers, shows its character as civic theology. Nho Emperor Thai Tong (1225-68) saw past hypercompartmentalisation through a praxis-lens, brightly "Philosophy-religion is not different in its universality but only in its application which must take into account the practical conditions" (Nguyễn D. T. 140). Two postmodernists declare "our Confucius is undogmatic"—made in Our image—denouncing Lau's metaphysicalism for seeing Confucius as moral, and whitewash the jacaranda by proclaiming "Confucius is arguably the most influential thinker in the history of the human race...and we are therefore reluctant to ascribe preacherly, authoritarian, or dogmatic qualities to his pronouncements" (Ames and Rosemont 1998:19,53,35). Anesaki M. sees Jukyō as "entirely secular ethics"—Buddhism and Shinto for religion and *only* morals for K'üing, while Zen is ethically deficient. Yet he says "Though the word is often used with a physical connotation, the Heaven is nevertheless the ruler of the world, endowed with ultimate intelligence and will, if not quite so omnipotent a character as the Christian God" (Anesaki 1961: 21,31,33,37). Rectification is needed. Antiochus and Cicero (and adamant

theist Tüng Chüng-shu) *knew* that undogmatic did not mean secularist. I. Eber calls the secularist reading of K'üing a "fallacy" (Eber xiv). The agnostic image is a retrojected construct of post-Sung rationalism, and Western shūkyōism, for K'üing himself is "ganz und gar kein Rationalist...[er ist] des felsenfesten Glaubens" (Zenker 1926-27 1:169; cf. Bresciani 42-43, Henderson in Cheu 2000:61). No Chinese commentator for 1500 years after K'üing calls him agnostic (Spae 123). "I follow Chou" entails "la religion théiste et animiste des trois premières dynasties" (Bernard-Maitre 9; cf. Lieberg on Cicero). The locus classicus is LY 7,35, after the disciples have said they pray according to the received public formulae: "In that case, I been praying for a long time already" (Ryckmans). "When Confucius and Mencius condemn acts of inhumanity and unrightness on the part of oppressive rulers, they speak with a prophetic voice sounding much like Hosea, Joel, Amos, and Nahum among the prophets of the Old Testament" (De Bary 1991:12). Benjamin Schwartz "used to think Xun Zi was an exception, but a careful reading revealed ...a deep faith...that the nonhuman universe is the source of all values, aesthetic, moral, and so forth....Maybe this is not, Schwartz argued, theistic, but it is profoundly religious" (Hejtmanek 118). Considering the chaotic times Hsün, like Cicero, endured, H. Creel (1953a:236) remarks that one "whose house is on fire does not sit down in the midst of the flames and compose a treatise on logic." In ancient China, "the ritual religion li-chiào, with...doctrinal as well as ritual prescriptions for 'proper behaviour' in family and society...helped to keep alive the older cult of veneration for ancestors, and the worship of heaven" (Ching 1993:60). Indonesian Jü in a majority-Muslim country call Jü-chiào agama (religion) and K'üing its nabi (prophet), and hold Sunday services with a sermon, readings from the four Books, and hymn singing under the direction of a haksu (priest) or bunsu (lay preacher)" (Cheu 1993:241). This terminological syncretism is not so different from Hellenistic flavouring in Roman religion, especially Cicero's grapholectic.

Whether out of cultural appreciation or shūkyōism, "early Catholic and Protestant missionary-scholars called the canonical Confucian texts "classics" rather than scriptures" (Berthrong 1998:4). This planted the seed of a secularist view of them, especially against the Chuhsiist backdrop. Ricci was an exception to the mere moralism, competition-obviating view. "[Ricci held] that the Confucian classics contained not only ethical truth acceptable to all mankind including Christians, but...even theology consonant with Christian conceptions" (Treadgold 2:13).

H. Dubs calls him an inarticulate anti-Pyrrhonian who "kept his religious views to himself. But there are enough occasional statements in the *Analects* to show what Confucius really believed...The authentic sayings...show clearly that the personal religious belief of Confucius was a high monotheism" (1959-60: 167, 171). Dubs' catena includes Heaven's deeds 8,19; rejection 6,26; undeceivable 9,11; bereaves K'üing 11,8; reveals Its will 2,4; curbs violence 9,5/7,22. This is

crowned by the audacious claim that whoever understands me understands Heaven (14,37), closely akin to Cicero's faith that *mens divina* and *mens sapientis* are kindred.

K'üing rejected superstition and hated Taoist quietism and mysticism, because

religion...is vital to the true of heart, and superstition [is] a pointless distraction...respect for one's fellow human beings, reverence for ancestors, and an understanding of higher powers were implicit. Empty ritual disgusted him: what mattered was that worshippers meant what they said, and put it into practice in the world at large. (Clements 106, 116).

He was a "staunch believer of God (Tian)" shown by his defiance of Huan Tui and Ode 254 "Great Heaven is intelligent, and is with you in all your goings; Great Heaven is clear-seeing, and is with you in your wanderings and indulgences" (Cheu 2000:xviii). LY 11,11 stressed human compassion, not religious indifference, let alone agnosticism or atheism. It opposes not faith, but Taoist "social dropouts" and the (transcultural) quietist "wish to keep one's hands from getting dirty at the expense of throwing the great social order into chaos" (Slingerland 216ff.; cf LY 18,5 and 18.7). Atticus is squirming. "Each 'civilized person' has a divine commission (T'ien Ming) to carry on the sacred cultural tradition and revive it....The mandate of Heaven [*res publica*] is no longer the monopoly of the king, but is to be shared by each individual who is educated and realizes his social responsibility" (Chiu 207). "Priesthood of all believers" is a civic priesthood of all chün-tzu, all optimates. K'üing was not a founder of a religion (we would say not a *founder* of a religion) but he had a "mission sacrée" interior to our reason *and* coram Deo et spiritis (A. Cheng 62, 77). "Confucius had not the slightest doubt of the will of Heaven and, doing his best, reposed in the decrees of Heaven....For this reason, even we who are not Chinese bask in his virtue" (Hattori 108). Chiào combines beat+filial+imitate (cf. παιδεία); tsung chiào was "to cover the *Western idea* of religion" (Soothill 1939:15)—not to cover "religion". By contrast,

'philosophy', ché hsüeh, is...derived from Greek. Only recently, under Western influence, China has come to have the concept of philosophy as a distinct discipline, separate from politics, economics, religion, etc....Scholars, both Chinese and western, have too seldom tried to analyze Chinese thinking on its own grounds and in its own terms. Too often they have carried to the task a ready-made yardstick of Western philosophy. (Creel 1953b:74)

These nineteenth-century neologisms intruded upon the older chiào/lineage. Jú-chiào "experienced a long evolution before the entry of such more technical terms as 'philosophy' and 'religion' into the Sino-Japanese vocabulary" (Ching 1977:xv; 1993:2). "Philosophy (ché-hsüeh) and religion (tsung-chiào)" entered by Japanese translations of Western books. "Before that, all intellectual traditions—Confucianism, Taoism, Buddhism and others—were designated 'Teachings' (chiào) or 'Schools of Thought' (chia)....Sanskrit vocabulary also lacked such technical terms as 'philosophy' and 'religion', and relied on the term dharma to designate traditional teachings" (Ching 1977:xxv).

Dialectic, no; grapholectic, yes.

Cicero is the “makar” of Latin theological-philosophical grapholect, a “faithful servant...of what it will carry into the future” (Miłosz 2002:215). What is a grapholect? E. Haugen’s term used by W. Ong, means “a transdialectal language formed by deep commitment to writing. Writing gives a grapholect a power far exceeding that of any purely oral dialect....But, in all the wonderful worlds that writing opens, the spoken word still resides and lives” (Bright 50-71, Ong 8). Dialogue carries on the apprenticeship Cicero served with the Scaevolus. “Human beings in primary oral cultures...learn by apprenticeship” to the wise old men and women who specialize in conserving” (9, 41) the *mos maiorum*. Unlike Plato’s mannequins, Cicero’s interlocutors are lively; even for one as vain as Cicero, “it is hard to talk to yourself for hours on end” (34). “Texts are inherently contumacious”, yet “early writing provides the reader with conspicuous helps for situating himself imaginatively...in dialogues...which the reader can imagine himself overhearing. Or episodes are to be imagined as told to a live audience on successive days” (Ong 79,103).

When Plato in the *Politeia* proscribed poets, he did so...because they stood for the old oral, mnemonic world of imitation, aggregative, redundant, copious, traditionalist, warmly human, participatory—a world antipathetic to the analytic, sparse, exact, abstract, visualist, immobile world of the ‘ideas’ which Plato was touting. (Ong 167).

Platonists and Hellenomanes scorn Cicero as a dialogist—he is human, all too human. Chuhsiists shelved the real, humorous, quirky, vibrant K’ung Chung-ni in favour of an imaginary stuffed-shirt character. Through pietas and Roman conservatism, Cicero keeps closely to narratised form without the “agonistic oral verbalization” (45) of *elenchus*. Dialogues were intended to be read aloud (115). Why was a Latin grapholect needed? Languages are political vehicles and traditioners of wisdom, as South African instructional-language conflicts show. Latin intellectuals were *évolus*, conducting business in borrowed Greek: “*Graecia capta ferum victorem cepit et artes intulit agresti Latio*” (Horace, *Epist.* 2,1,156). Captive Greece in this case really did take victorious Rome captive. Cicero made it his business to invent a Latin theological and philosophical vocabulary. As he said of Varro in *Acad.* 1:4 “Your books led us home, when we were wandering like strangers in our own city”. He boasts of improving what he borrowed. “*Ipse ad meam utilitatem semper cum Graecis Latina coniunxi*” and in this “*magnum attulimus adiumentum hominibus nostris*” (DO 1,1; cf. DRP 2,30). K. Wiredu alleged that a concept unutterable in Akan makes no sense—not just to him, but at all (Wiredu 104ff; Hountondji 1996:168). That Ghanaianises “the absurdity of the ‘romantic Hellenist’ view that Greek is the only perfect instrument of philosophical discourse” (Powell 1999:285). Cicero did not lay down and die in the face of language difficulty: he set to work, and won. Suzuki D. engages in racist question-begging, claiming that

terseness, brevity, strength, and classical purity are desirable in certain forms of literature, and for this purpose the Chinese language may be eminently adapted. But while logical accuracy and literal precision are the first requisites, those rhetorical advantages...are actually...even a hindrance to philosophical writing. (Suzuki 11; *contra* cf. Kasulis 44).

Fearless anti-imperialist and anti-racist E. Zenker exposes the fallacy:

Die Chinesen haben für den Begriff 'Freiheit', 'frei' kein Wort, woraus man geschlossen hat, es fehle ihnen auch der Begriff selbst; nach derselben Logik hat man auch aus dem Umstande, daß die Chinesen kein Wort für 'Gott' haben, geschlossen, sie seien nach ihrer ganzen Geistes-und Gemütsanlage ein atheistisches Volk. (1926-27 1:49).

Lexical equivalency is a silly search: "ancient Hebrew is just as lacking in a term for 'self-subsistent universals' as is the Analects" (Schwartz 1985:74,88). "To be confounded by the presence or absence of a particular term is to fall prey to linguistic determinism—the notion that without a word for a concept, one cannot know the phenomenon the word represents" (Lariviere in A. Watson 1996:76; cf. Klostermaier in Schebesta 42, Odera Oruka in Graness and Kresse 26). "The Chinese readily converted certain new ideas into familiar terms, even though the equation might not be exact....dharma, 'law' or 'truth,'...was rendered by the Chinese fǎ, 'law,' 'system,' and 'method'" (De Bary in Eber 114). P. Hountondji (2002:201) quotes K. Wiredu's *later* plea, "let us learn to think in our own languages." Cicero knew as populariser-magistrate-augur (cf. De Fin. 1,4) what education minister Hountondji knew (1996:168): "Rather than treat our languages as objects of science [cp. Varro], we should practise them as vehicles for it—though they may need to be enriched and transformed if we are to raise them to the level of complexity necessary". Cicero's "dovere civile" matched K'üing's T'ien-given mission: voicing Latin theology by rectifying (absent) terms and making Natural Law speak Latin (Righi 1, Rommen 1998:23; Eulenberg 82; Dörrie in Due 225). As grapholect-maker he loathed "tam insolens domesticarum rerum fastidium" (De Fin. 1,10). His vaulting ambition was "to beat the Greeks at their own game....He portrayed a whole class of philhellenes opposing his project" (Murphy 493; cf. Mitchell 1991:274). Cicero's rebellion against cultural hegemony asks "Quod si haec studia traducta erunt ad nostros, ne bibliothecis quidem Graecis egebimus" (Tusc. 2:6). Roman honour is at stake. "Quodsi Graeci leguntur a Graecis...quid est cur nostri a nostris non legantur?" (De Fin. 1,6).

Liberation is not easy. "The elaborate apologia offered (in Acad. Post. 4-12) for writing in Latin...recurs...at the outset of nearly every one of Cicero's philosophical works. The frequent recurrence...as well as its elaborateness shews how strong was the prejudice which Cicero sought to combat" (Reid 1880:93). Cicero won, word by word, rectifying absence of names as he "triumphed over the pride of an unlettered people, and the difficulties of a defective language" (Newman 261;

cf. Marrou 258), invoking God and making Rome the paragon of religious republicanism. He was mindful of *salus populi*, even (especially?) when he did not distinguish between his own glory and that of Rome. He insisted, “as politicians with an interest in communication with their public have always done...that the language used must be comprehensible—even when, as in the *De Legibus*, the *populus* was not physically present to hear the discussion” (Harries in Clark and Rajak 57). In the DL, Cicero sacrifices to the citizenry as if present! As in *Philippics* 8 he insists that Antony’s war against the Republic be called war, so DL rectifies names, bestowing voice and vote upon the Latin language, empowering it to do on and *in* its own terms everything which Greek long since could do, and doing it to serve an enduring State—something of which the Greeks were incapable. Volscian was dead and Oscan was dying. Cicero gave Latin theological life. R. Collins glowingly likens him to Buddhism’s Chinese colporteurs—an accolade we Jú regard glumly. “The chief idea importers become energy stars” (Collins 286, 445). “Cicero certainly did not father all the words for which his work is the earliest evidence, [but] he does remain author of a great many”; cf. *qualitas* for ποιότης and *magnanimitas* for μεγαλοψυχία (Daube 1969:44). Cicero does not lecture: he gives voice.

The Chou were also barbarians lacking “tradition of a literature or history of their own” (Creel 1936:171). Making a grapholect is not just a technical challenge, but a required rectification. “The true ‘practising of the Way’ is the practise of the government and the education of the people” (Hattori 101). Like Cicero on his mission *civilisatrice*, Wang Yün (1227-1304) translated Jú-chiào works into Mongolian expressly to foster religion and the rule of law—*capta Graecia* and all that! (Cf. Chan and De Bary 7.) Ming *Ru* Christians were “using Confucian terms to express their faith” (Pfister 47). Attempts to create theological vocabulary for Shintō were total failures (Hardacre 77, but cf. Kasulis’ brilliance). R. Neville says it is unnecessary to read Chinese in order to be, if not a profound innovator, a productively original student (43).

Translations

Were the readers of Cicero’s works ignorant sub-Hellenic *yī-ti*, relying on his Latin? No! “If there is an authentic possibility for the development of a third epoch of Confucian humanism, its message will be communicable in languages other than Chinese” (Tu in Eber 12). A. MacIntyre echoes Radhakrishnan and speaks for us. “I do not read Chinese, so what I write about Confucianism must necessarily be to some large degree tentative and exploratory. It is my task to ask questions rather than to supply answers” (Wang 151). Theological comment humbly speaks among “die Gebildeten überhaupt, die nicht in der Lage sind auf die chinesische Texte zurückzugreifen” (Zenker 1926-27:1:ix). The non-Sinologist can arrive at “ein einigermaßen richtiges Bild” by comparing enduring translators and trusting their agreement (Forke 1924:112; cf. Bodde 1954-55:232). *Chan W.*

commends Lin Y., Legge, and Waley, noting Waley's rejection of Legge's Chuhsiism. He questions Ware's scholarship but calls it vital...extremely readable"; Best translations of CY and TH are Ku H's. in Lin (1954a: 343). R. Dawson says Waley is a "magnificent interpreter" whose notes are taxing to the non-Chinese reader; Ryckmans is the most useful (xviii). A. Forke likes Legge, Zottoli, and Couvreur (1924:112), and C. Harbsmeier commends Pound for literary beauty (140). Leslie considers Legge and Couvreur basic, Soothill Chuhsiist, Wilhelm "original", Ware unreliable, and Waley brilliant, recommending Wilhelm, Lin, and A. Rygaloff (1959:46). Taam notes Ku's European parallels and finds the "Yokohama" Soothill useful, along with Couvreur and Wilhelm (150).

Precursor of Augustus—monarchist malgre lui?

Is the *rector rei publicae* (DRP 6, DL 1,39) a precursor to the principate or a hero of republican resistance? *Rector* is another term for *paedagogus*, a slave who escorted children safely to school (Van Den Bergh 354). Quintus himself uses principes in the plural (Laser 9-10 contra principate abusus linguae). It cannot be Augustus because Cicero is ethical and Augustus is not (Dörrie 1973:240), whose *pietas* toward his adoptive father was a mere cover for his own megalomania (Mentelle 1766:11). The *rector* is not a monarch but a renewer of liberty (Maschkin 1954:52) and leading statesman (Rudd and Powell xii, Atkins in Rowe and Schofield 496). Recalling Cicero's passionate hatred of tyranny formed under Sulla, he is no monarchist and DL has no proto-principate material in DL (Hammond 134, Luck 69). The range of meaning in this and similar phrases—moderator rei publicae and gubernator and tutor—does not support one-man rule, contra C. Meier (439) and L. Mazzolani (120). Otium does not hint at pax Augusta (Wirszubski 1954:9). The only rest Augustus gave Cicero was death. DRP and DL are "not the harbinger of the approaching Principate, but...the swan-song of Republican constitutionalism based on... 'libertas in legibus constitit'", free of royalism (Wirszubski 1950:87; Uttschenko 1956:181), a view strengthened by DL's late date. Guillén Cabañero (1999:491) rejects any attribution of Ciceronianism to the principate, since destroying mos maiorum severs it completely from the res publica (1999:491). It does not Napoleonically "include the revolution"; DL has no Bonapartism. *Parens patriae* is loyal to constitutional rule, as K'üng said. "Hold it [office] without weariness; execute it with loyalty" (LY 12,14; Huang).

Cicero's ideal statesman is retrospective, not a contemporary (Douglas 32, Dickinson 314, Wheeler 54). Who, then, is it? C. Høeg observes with a smile that Cicero was the only candidate "maaske med Ungtagelse af Demetrios fra Faleron" combining philosophy, eloquence, and statesmanship (296; cf. Habicht 42). Cicero was first declared parens patriae after the suppression of Catiline

(Hammond 111); terms such as rector, tutor, procurator, and gubernator coincide in his person (Maschkin 1954:49, following Wipper). Did Cicero see *himself* as a post-K'üng “uncrowned king”? By no means. The mistaken idea that Cicero is an epigone of the Greeks has fostered this error. Plato and Aristotle want a single individual who is βασιλικός if not outright βασιλεύς (Powell 1994:26). Cicero does not (Colish 102; Maschkin 1951:351). Even so enthusiastic an admirer of the principate as Hammond, who attributes real republican content to it, says that a monarchist reading of Cicero “smacks of Nazi thought” (Hammond 140, 165). M. Pohlenz says nefaste “[Ciceros] Führer ist kein jugendlicher Stürmer, kein Revolutionär, der einen Wunschstaat gründen oder sein Volk von innen heraus erneuern will” (1934:140). J. Vogt had great Zivilcourage: “Ich glaube, man kann diese Spielereien der Grammatiker mit dem Hinweis auf den Bedeutungswandel des Wortes ‘Führer’, den wir selbst erleben, auf sich beruhen lassen”; what motivated Cicero was not anticipation of the principate but blocking extremist terror by an appeal to old republican restraint (Vogt 1935:56-57).

In modern English...being a good citizen is a matter of obeying the law, performing one's (usually quite limited) public duties and not annoying the neighbours. The connotations of *optimus civis* are very different. Cicero's Best Citizen is a person who displays political excellence, πολιτική ἀρετή, in the highest degree; in other words, a statesman or governor, who contributes fully to the running of the *res publica* and achieves personal eminence within it. (Powell 1994:27).

Why not Cicero himself? His beau ideal republican statesman is “der optimus civis, der praestans vir, der πολιτικός...ein idealisiertes Selbstporträt...Weder der Terminus rector noch der Terminus princeps haben also einen monarchischen Beigeschmack” (Uttschenko 185). As *parens patriae* (like Marius; Pro Rab. 30) Cicero had no wish for any future Great Helmsman, overthrowing the Senatorial collective amour-propre which he always served and celebrated. One might as well make W. Rathenau into D. Eckardt! “In an age when power politics were unusually dominant, he was unusually principled” (Douglas 10). Cicero raged against the dying of that light with unbearable plangency. “Doleo me in vitam Paulo serius tamquam in viam ingressum, prius quam confectum iter sit, in hanc rei publicae noctem incidisse” (Brutus 330). Cicero uses princeps for Senatorial leaders, and his State is an open oligarchy, nothing more and nothing less. “Der Begriff der auctoritas, mit dem Cicero operiert, liegt ganz und gar in dieser Sphäre”. Principes is no different from Greek ἀριστοι. “Von einer Neigung Ciceros zum Prinzipat kann überhaupt nicht die Rede sein”. Precursorism is a bourgeois myth. (Uttschenko 1956:181,183, citing Heinze). “*Princeps* refers to the *type* of the eminent politician, not to his *uniqueness*. Cicero seems to be thinking of an elite of eminent persons....Cicero does not prefigure what happened in the Augustan period...but aims at keeping the role of the princeps of the republican form of government” (Conte 190).

Cicero's real statesman-ideal requires this rectification of terms. To call Sulla "Felix", for example, is an "insult to reason and humanism" (Mentelle 1766:367). Those who rectify terms/names "question and expose the ridiculousness of a discourse that thinks it can confer nobility on the most vulgar police dictatorship by pompously christening it a 'dictatorship of the proletariat' [and reducing Marx's thought] to the dimensions of a truncheon" (Hountondji 2002:121). Hsún says:

The sage improves original nature and gives rise to acquired training. When there is acquired training, there are rules of ritual and righteousness. When there are rules of ritual and righteousness, there are legal measures. All these social institutions are formulated by the sage. But the sage still resembles the multitude...in his original nature; he is in contrast to them in his acquired training. (Chai and Chai 1961:167).

He remains rector rei publicae as wáng's fade. Hsún "refused to the princes the power of legislating ad libitum; the imbecility of those he knew, was probably the cause of this denial" (Wieger 269).

Hàn Dynasty: imperial republicans in power

Refusenik Sinologist V. Rubin found K'üng's "capacity to inspire even a brutalized generation of men" (De Bary in Eber 112). Refuseniks came to power in the Hàn Dynasty. After the contempt for God and spirits of Ch'in Shih Huáng's "positivistic debacle", the massacres of Jú, and the Hoxhan attempt to obliterate all traces of religion in a totalitarian China, the Hàn emperors and thinkers—except the Chinese Lucretius, Wang Chung—built a pious State on the ruins of Thrasymachean Ch'in. Instead of State versus the people, "Chia Yi [賈誼 200-168] hoped for 'the people to sing and the ruler to respond in harmony'" (Hsiao 1979:476). He hated Ch'in. Jú-chiào was endorsed by Emperor Wu-ti (r. 140-87 B.C.; Renard 34). In 31 B.C.—ill-omened year at Rome!—"Emperor Cheng established a sacrifice to Heaven (Tian) that displaced the [Ch'in] imperial sacrifice to the five powers". Yang Hsiung (53 B.C.-18 A.D.) said 'if one looks up to the Sage then one knows other theories are lesser ones', imitating K'üng's friendly dialogue in his own writings to foster humanitas and iustitia, jén and yí (Csíkszentmihályi xxv,19,21). At the height of this evocation of K'üng, Nam Viêt submitted to the Hàn imperium (Buttinger 92); Viêtnameese Nho never lost hearty faith in classical Jú-chiào. O for a thousand Tüngs to sing our great Confucius' ways! Tüng Chüng-shu (179-104) was the great Hàn civic theologian. His Ch'un ch'iu fán lü, "Luxuriant Dew of the Spring and Autumn", whether written by himself as tradition says or a posthumous digest of his words, was social criticism in the guise of commentary. Like Cicero, Tüng wanted heartfelt rite and *castimonia* instead of opus operatum (Queen 41,189,205). His style is openness. His substance is deep devotion to mos maiorum/tsü-chuán paragonised in K'üng, the "bearer of divine knowledge" with combative theological and political conviction (Queen 3, 231 likens the Hàn view of K'üng to Moses). The appeal to K'üng avoids oversplitting Mèng and Hsún and focuses upon morally

watchful and civic-minded, if somewhat depersonalised, T'ien (Weber-Schäfer 1963:29, Csíkszentmihályi 4). Tough-minded Tüŋg “did not compromise his integrity” (Queen 38), but he knew when to shut up, unlike Cicero. Nearly executed on factional trumped-up charges in 127 and barely rescued by the Emperor himself, with Attican prudence Tüŋg retired, having made his mark for Heaven, Law, and *mos maiorum*. Jurisconsult in the florescence of Hàn jurisprudence upon Jú-chiào lines, he defended augury as predictor and civic-theological bully pulpit, the fulcrum for reverent application of Natural Law (Chai and Chai 107, cf. Ch'un chiu 30, Fung 198, Needham and Wang 2:525, Queen 25).

Just as augury guided Roman magistrates in subordination to *fas* and avoidance of *nefas*, so augury guided the Hàn emperor in submission to the Tào and avoidance of *wú-Tào*, or *nefas*. “During the Hàn, Confucius’ association with divination practices was well established. Confucius was also credited with the ordering and definitive interpretation of some of the commentaries to the Changes, and with the authorship of others” (Csíkszentmihályi in Van Norden 2002:152). Without the scholar-priest’s approval, advice, and warning, imperial policy was *nulla lex* (Queen 229). The ruler serves Heaven, earth, and humans by reverent sacrifices, fraternal love, and filiality. “He sets up schools for the nobles and in the town and villages to each filial piety and fraternal love, reverence and humility. He enlightens the people with education and moves them with rites and music” (Ch’un ch’iu 19 quoted in Chai and Chai 108). Did it work? It did. When the Hàn briefly fell to the “usurper” Wáng Mǎng 王莽 (r. 9-23 A.D.), he redoubled public emphasis upon K’üŋg and the Tào of Heaven (Bernard-Maitre 61). Meanwhile, Augustus reigned over the ruined liberty of Rome and reduced *mos maiorum* to a political gimmick, a “religion of politics”, as E. Gentile called Fascism, that destroyed Roman civic theology and left a changeling in its stead. “Die Zivilisation der Tschou-Dynastie [war] besser als die griechische, die der Han besser als die römische” (Chen Huan-chang in Forke 1964:108). The first is true to friends of *fas* and Tào, and the second we leave in abeyance, esteeming both. Did Rome and China know one another? “*Li-hsuen* referred to the Roman Late Republic” and reports a “first recorded date of Chinese arriving in Rome in 27 B.C.” (Wang Y. 52-53). There was trade with China in Augustus’ reign, but no intellectual contact. “Glass beads made in Egypt found their way to China, apparently in some quantity, as early as the third century B.C.; and Chinese silk was one of the five principal commodities that comprised the foreign trade of the Roman Empire. But even extensive trade does not always bring about the interchange of ideas” (Maschkin 1954:481, Creel 1970:10). Marcus Aurelius sent an embassy to Loyang in 166, where a medal of Antoninus Pius was found. Their coins from 166 have been found in Viêt Nam (Buttinger 244).

Mommsenism: absit omen!

No one now “misses anything important by not reading” Cicero (Van Norden in R. Wang 115; *contra* Dyck viii). Perhaps. “With Romanticism’s preference for Greek over Latin and for Volk over elites, Cicero’s fortunes began a decline from which they have never fully recovered” (Conte 206; cf. Feeney 7; Niebuhr 3:194). T. Mommsen is *papa* and *victimarius* of this bleak cult. Conceding he was an adroit speaker, like K’üŋg’s heckler Mou Wei-shêng (LY 14,34), Mommsen says Cicero “assumed a liberal cloak...a notorious political trimmer” who “belonged to no political party or...to the party of material interests” (1958:205,267,278-279; cf. National Socialist view of Roman law dissected by P. Koschaker). The “pusillanimous consul” full of “brainless conceit” displayed against Catiline “his talent for giving a kick to the beaten party...vain agitation and scheming”, hatred of positive law and “most brutal tyranny bankrupt in cold blood” (1958:320,288-290). Perfidious, servile Cicero “danced around the aristocracy like the witches around the Brocken”; the failed DRP and DL show “even Marcus Cicero at last persuading himself that he did not adequately discharge his duty as a citizen by writing a dissertation on concord” (1958:339,344,410,446). This mega-crocodilian harangue about sowing havoc exempts DL’s prologue. “Nowhere perhaps is the comparative freshness of this landlord-life more clearly revealed than in the graceful Arpinate introduction to [DL2]...a green oasis amidst the fearful desert of that equally empty and voluminous writer” (541).

Caesarist *superstitio* drives him. If Caesar is a togate Bismarck and god on earth, Cicero is a wretch. J. Reid scotched the “admiration for ‘men of blood and iron.’ Had Cicero by any chance been author of a proscription, he would probably have been one of Mommsen’s heroes” (1885:26; cf. Colish 65 on Thiaucourt and Hirzel similarly). “It is seldom that one hears these principles propounded by the Wielders of Power themselves, but rather, among historians, political theorists, and philosophers” (Frisch 1949:13). Violent optimism and virulent amnesia demand perfect humanity. Banning the imperfect, they loathe the fact that “perfect characters are only found in novels...those whose quick impressions carry them away, like Cicero, speak out, and they are very much blamed” (Boissier 18). Cicero and K’üŋg could not keep quiet. K’üŋg paid with forced retirement, Cicero with murder by a ‘State’ death squad. Mommsen’s theological root was hatred of *lex divina*. “Das dürfte der tiefere Grund sein, warum manche Geschichtschreiber, z.B. Th. Mommsen...so maßlos abfällig und verächtlich von Cicero reden...Nicht die Gerechtigkeit hat diese mit Galle geschriebenen Worte diktiert” (Cathrein 1909:190). By 1939 J. Klass exposed “Ciceros innere Abneigung gegen den Diktator“ as “regelrechter Haß”⁴; banned persons are to be exterminated (226). Lucretian E. Burriss rejects the charge of theological fraud, and W. Burkert that of glib deviousness, since commitments cost Cicero his life (Burriss 528, Burkert 176). K. Ziegler

(later Ehrenbürger of Göttingen for fearless anti-Nazi activism) cries out:

Wer aber so gekämpft hat wie er mit dem unbezweifelbaren Ausblick auf ein gewaltsames Ende, wenn der Kampf mißlang, wie es denn gekommen ist, dem darf man bei aller sonst bewiesenen menschlichen Schwäche Mut und Charakter nicht ganz absprechen. Cicero ist oft in seinem Leben unentschieden und haltlos gewesen. *Er war es nicht* auf den beiden Höhepunkten seines politischen Lebens, als er führen durfte: in dem glücklichen Kampf gegen Catilina und in dem unglücklichen gegen Antonius. (Ziegler 1934:315; cf Schulz 1936:235).

G. Brandes, whose Detroit Institute of Arts portrait remains the very model of a modern major Mommsenite, labels Cicero, Brutus and Cassius terrorists, traitors, and morons (Maschkin 1954:62). Here lies “intense Had til de...Optimater, der vilde forhindre Cæsars Eneherredome, som om de preussiske Junkere, der modsatte sig Ønskerne om en nationale Rigsstyrelse. Herhjemme har denne hadefulde Foragt for Cicero faaet sit stærkste og mest veltalende Udtryk i Georg Brandes’ Cæsarbok” (Høeg 7). Righi deconstructed Mommsen’s *pensiero debole*, “criterio del successo storico”, and historicist *πόθος* for Prussia, Germany’s Ch’in (98). This philological warlord’s proscription was “un’inimicizia personale”, packaging Hegel with Drumann’s Catilinism in a “teoria del successo”. Since Cicero lost he is an enemy of the Volk according to social Darwinism (Ciaceri 1:vii,xixff.; cf. Brzózka 291, Ezzati 49; *pro De Vleeschauwer* 213). “The criteria of the study of Caesar are efficiency and success, those of the study of Cicero morality and humanity. That is what the whole argument is about.” (Douglas 8; Cochrane 38, Dorey xii). On the other hand, “it is in the cold of winter that you see how green the pines and cypresses really are” (LY 9,28 Ryckmans).

Gaston Boissier took the auspices:

I mistrust those...who...pretend to judge Cicero from his correspondence. Those concessions that must be made if we wish to live together they call cowardly compromises. They see manifest contradictions in those different shades a man gives to his opinions, according to the persons he is talking with. They triumph over the imprudence of certain admissions, or the fatuity of certain phrases, because they do not perceive the fine irony that tempers them. To appreciate all these shades, to give things their real importance, to be a good judge of the drift of those phrases which are said with half a smile, and do not always mean what they seem to say, requires more acquaintance with life than one usually gets in a German university. (Boissier 19).

Anthony Trollope adds,

If we come across a warrior with his crested helmet and his sword and his spear, we see, no doubt, an impressive object. If we could find him in his night-shirt, the same man would be there, but those who do not look deeply into things would be apt to despise him because his grand trappings were absent. Chance has given us Cicero in his night-shirt. (1:326).

The doyen of scholars on Cicero’s letters taxes Marcus with “flabbiness, pomposity, and essential

fatuity” and Quintus as “a small man, irritable, querulous, and weak” (Shackleton Bailey 279, Dyck viii; *contra* Benario 20, Stockton 69). The fair-minded will prefer W. Williams et al., E. Winstedt or U. Blank-Sangmeister.

Despite its miserable record on K’üing and savagery against Jú scholar V. Rubin*, the Soviet professoriat resolutely defended Cicero. N. Maschkin exposed the proto-Fascist myth of Caesar as unideological, and diagnosed “ein mit Rassismus verbundener Modernismus” in post-war Anglo-American philology, which dismissed H. Frisch as less than *au courant* with British academic fads and for using a “difficult” language requiring “struggle” (Maschkin 1953:52,72 *contra* Allen 1948:224; cf. Hammond 150). Frisch himself notes Anglo-American joy at Caesar’s deification (1946:33). Ignoring Danish Communists’ hatred of the Socialist Frisch, S. Uttschenko defends his courage and objectivity:

Richtig ist Frischs Beobachtung, daß in der Historiographie des 19. Jh. die Vorliebe für Caesar und die kritische Einstellung gegenüber Cicero dominierte, während nun, da der Faschismus die letzten Reste der Freiheit mit Füßen getreten hat. Frisch mußte die faschistische Okkupation Dänemarks erleben, der natürlich Wunsch entsteht, die frühere Einschätzung Ciceros zu revidieren. (1978:286).

The patriotic openness of Marcus, Quintus, and Atticus is antithetical to Stoic cosmopolitanism and modern nationalism. (Cf. Koschaker 351).

Is Cicero worth it? We read Cicero and K’üing under the aegis of *Hakka mos maiorum* they prefigured: “honour the gods and worship them, be a hero and love your country” (Eberhard 1974:40). I follow Chou! and “recalibrate the baloney meter” (Budziszewski 171). We heed Beninois philosopher-politician P. Hountondji’s command (1996:52) not to be ashamed of reading K’üing or Cicero (1996:52). J. Burckhardt thought more was at stake than our view of Cicero: “resistance to the course of Prussianisation” made anti-Mommsenism “metaphysically necessary” (Burckhardt 1998: 19,21). Driven by fanatical Platonism (Messina 2), the sustained attack is like the Pikong campaign of the Cultural Revolution (sic): genocidal Maoism wearing cornflower blue. Rehabilitationist scholars ranging the ideological spectrum from non-political scholars (a most strange species to Cicero or K’üing) to democrats, reactionaries, Fascists, and Communists, sharing at Mèng’s well the honourable instinct of rescuing a great soul from slander. A devout Caesarian who dislikes Cicero thunders against the Manichaeism of the Mommsenites: “diese grobschlägige Einteilung im Gute und Böse hat im 19. Jahrhundert großes Unheil angerichtet, indem Drumann und Mommsen in ihr allzuviel Ähnlichkeit mit den Parteiverhältnissen der eigenen Zeit erkennen wollten” (Gelzer 45; likewise Smethurst). Conversely, Cicero-hagiographer C. Middleton, after deploring the million dead in Gaul, affirms Caesar’s nobility of character (1804 2:461). K. Bringmann recognises Cicero’s egomania and political illusion “without the need to depict him as a

mediocrity, a hypocrite, or a schizophrenic" (Colish 77, approvingly; cf. Führmann, Habicht 5, Laurand 549). Rehabilitation finds a vociferous champion in M. Messina, who wages a hundred-page Philippic against Mommsen and includes a "wanted" poster for himself from Leipzig—for disparaging Mommsen! (Messina 29-125, 153). K. Kumaniecki, who knew the consequences of Hitlerism and Leninism first hand, says "Solo i numerosi lavori di R. Heinze, e soprattutto le ultime monografie di M. Gelzer (1939) e O. Seel (1953) segnano il distacco dalla concezione mommseniana." He recommends Boissier, Ciaceri, Sihler, and Zieliński (cf. bibliography) as well as Arnaldi 1948, Morawski 1911, Petersson 1920 (Kumaniecki 8-9).

With Romanian charm N. Barbu accused Cicero's detractors of envy toward the

'maximus orator Romanorum'. Quocumque tandem adspectu Ciceronem, eius vitam, opera consideremus, clara luce patet magnam, amplam, splendidam, suavem, dulcemque fuisse eius humanitatem atque usque ad nostra tempora maximum oratorem Romanorum non solum fontem doctrinae rhetoricae, non solum specimen exquisiti oratoris, non solum magistrum antiquitatis, non solum aedilem, praetorem, consulem amantissimum patriae fuisse, verum etiam, ante omnia, hominem eximia, praestantissimaque humanitate praeditum. (Barbu 1968:21).

Quintilian warned "Modeste tamen et circumspecto iudicio de tantis viris pronunciandum est, ne, quod plerisque accidit damnet quare non intellegunt" (10,1). If only A. Waley applied this to Mèng! In an irony Cicero would have savoured, his betrayer Augustus said it best. The old Princeps caught one of his grandsons surreptitiously reading Cicero, who was of course in bad odour as a Republican. He asked the boy what he was reading, took the scroll, gazed at it, and gave it back with the admonition, "λόγιος ἀνὴρ, ὃ παῖ, λόγιος καὶ φιλόπατρις" (Plutarch, Cicero 49,5), in eerie echo of Ssu-ma Ch'ien on K'üng's "Scipio" Tzu Ch'an (581-521 BC): "Er war ein tugendhafter Mann, der sein Volk liebte und seinem Fürsten treu diente" (Shi chi 42,14 in Forke 1964:96).

K'üng has his own Mommsens, the horrific Pikong reign of terror aside. In early Meiji, "the old science was denounced as dull stupidity and Confucian teachers were branded as *fuju* 'rotten literati'" (Anesaki 1930:333). Imperialism had no use for moral imperium. [Jukyō was twisted by Japanese fascists akin to Deutsche Christen and National Socialism; even W. Gundert was dismayed. Still, perversion of a Weltanschauung is not an indictment of it, but its betrayal. Chan W. 陈荣捷 dismantles Fung Y. 馮友蘭. In the service of Maoism Fung spoke "only in Marxian-Stalinian terms, whether willingly or not" (Chan W. 1954a:157). Mao understood the threat of holiness and the menace of humanism as thoroughly as the Legalists of old: "He buried 460 scholars alive; we have buried forty-six thousand scholars alive...You revile us for being Qin Shi Huangs. You are wrong. We have surpassed Qin Shi Huang a hundredfold" (Mao in Lieberthal 195). Asian historicist democrats joined the chorus, as Jú-chiào "became a stand-in for whatever undesirable baggage seemed to impede progress, be it authoritarianism or feudalism" (Ko-Haboush-Piggott 4). "If the

student...is often tempted to become impatient with Confucian sententiousness, he has only to read the writings of the Legalists to come back to Confucianism with open arms, and to realise something of that profound humanitarian resistance to tyranny which forms the background to the sacrificial liturgy of the Wên Miao” (Needham and Wang 2:204). J. Needham’s defence of Juchhe shows lack of *ἐπιτομή*, not that he erred on K’üng. A. Waley is contemptuous of Mèng. “When language as intemperate as this is used of a philosopher, we naturally suspect that there must be a failure of understanding on the part of the critic, but when the philosopher in question happens to be one of the greatest in the ancient period of China, the suspicion cannot easily be dismissed”. He calls Mèng “very cheap”, who ever stood like Nathan pointing at David, whingeing that Mèng “had a habit of parodying the views of those with whom he disagreed” (Waley 1939:141,146). So did Cicero: parody versus proscription is courage, not cheapness.

* Sinologist Wm. De Bary and popularis U.S. senator Alan Cranston freed Rubin from the USSR. We own the late Senator Cranston’s copy of *Individual and State* with Rubin’s handwritten thanks.

Dating and Completion of DL

Early-daters Appuhn, Griffin, Rawson and (hesitantly) Schofield say DL is incomplete (Crook-Lintott-Rawson 489.717; Schofield 1986:47). Appuhn argues from Cicero’s silence on DL in a letter to Varro about researching *mos maiorum* in April 46 that it was never readied for publication (Appuhn 220). Büchner guesses a planned eight-book DL was dropped when Cicero went to Cilicia (Büchner 1961:82, 1971:433). Other early-daters are Avallone, Boyancé, de Plinval, Pohlenz, Ziegler, and once P. Schmidt (Wiśniewski 136). Schmidt argued DL is not valedictory (P. Schmidt 1969:16,21). The disproportionate funerary material belies this. Does one write to anticipate his own assassination? Thinking Cicero “got religion” on the augurate’s sawdust trail is very weak (cf. Guillaumont 1984:55, Leonhardt 53) and enjoys no text support. Gudemann pinpoints the early date in January-April 52, after Clodius’ murder and before the loss of freedom of speech under the *lex Pompeia de vi et ambitu* (930). Ostensibly Cicero would not have praised Pompey afterwards. By that logic Scipio was alive when DRP was written!

While taking DL as DRP’s twin in 52, P. Grimal sees their perfect accord—liberty and contingency accompany NL and our enacting it—with De Fato, indisputably from 44 (Grimal 1978:181). Late-dater Hammond sees DRP, DL, and the late DO as totally consistent (136). Early-dater Gucker denies all work- and time-consistency, saying Cicero vacillated on Pyrrhonian (Humean) corrosive scepticism. Cicero’s lifelong allegiance to the New Academy and mature eclecticism supposedly founders upon “absence of any support for scepticism in the *de republica* and *de legibus*” (Dillon and Long 6). Gucker errs on consistency and on Cicero’s variety of scepticism. “Much which has

been referred to inconsistency should be attributed to generous temper” (Newman 257). That requires a critic’s generous temper. Such consistency also characterised the public Cicero. “It says a great deal for his intellectual tenacity that he maintained his beliefs during the years when Caesar’s astonishing career reached its climax and the pillars of the Republic finally came crashing down...He never sold his beliefs” (Everitt 184, 321).

Levine says the date question is

notoriously difficult and perhaps *insoluble* in view of Cicero’s own complete silence...the author’s attested caution in dealing theoretically with contemporary political affairs or institutions *sua persona* may well explain his hesitation to give this work his imprimatur until his very last days, if even then. (Levine 148)

Totok says flatly: “Abfassungszeit unbestimmt” (306). Beukers helpfully says 52-46 approximately; well, yes (Beukers 220). Hentschke regards dating as unsettled after 100 years of controversy, pointing out that P. Schmidt dropped his early-date view in favour of uncertainty. She offers a summary of late date arguments (Hentschke 118, 122). Early daters see a shift from faith to unbelief after Tullia’s death or a “disillusionment with state religion...increasingly exploited by the Caesarian faction” (Beard 33). Cochrane says the opposite (42).

M. Ruch espouses a *middle date* in 46, seeing Cicero’s coerced ‘retirement’ under Caesar sparking praise of ‘otium’ apart from his other uses of ‘otium’ and its use as an optimate watchword (1958:130, 249; cf. Van Zyl 1986:36, Wiśniewski 138). Dickinson, Gelzer, and How say DL was begun in 52 and greatly revised in 46 (Dickinson 261, Gelzer 273, How 24). How warns not to take Cicero’s self-deprecating wisecracks seriously, both his airy disregard of his philosophical and theological work as “ἀπόγραφα sunt” (Ad Att. 12,52) and his ironic praise of Plato. Keyes (1937:403,412,416) affirms completion of DL after labour in 54-52 and 46-43 (cf. Wardle in Clark and Rajak 190). We have no indication that more than the five (partially) extant books were intended. Differing scale of comment on different laws proves nothing. Grilli says work extended from April-September 46 to 44 (MacKendrick 330). M. Ruch nobly says of a *possible* late date:

Si le De Legibus est vraiment de 44 ou de 43, ce qui ne l’empêche pas d’avoir été conçu et même commencé dès 46, on ne peut qu’admirer une fois de plus la constance et la grandeur d’âme d’un homme qui, au milieu de troubles bien plus graves encore de ceux de 55-date du De Oratore-est capable de faire preuve d’un extraordinaire pouvoir d’abstraction. (M. Ruch 1949:21).

Late date (November 44 to March 43) follows a minority view going back to J. Chapman (“Chapman’s Homer”) in 1741. All late works protest political decadence and cult of personality, bidding defiance with the sole weapon of the word in “a return to open political combat” (Bringmann 255, Zieliński 1929:4, Atkins in Rowe and Schofield 502). Late in life Cicero shifted “his argument from the rational and natural to the historical and practical and from there to the

partisan and personal” (Colish 104, Ross 21; cf Bresciani 255 on K’üng). This is humanist *pietas* toward ancient heroes, the Yaos and Shuns of Rome, “d’éterniser la mémoire des grands hommes qui ont honoré et servi l’humanité” (Mentelle 1766:iv) and makes most sense if DL and Philippics are contemporary. M. Hammond (incompletionist, like Atkins) accepts Robinson’s arguments, saying DL was finished after the Ides (126, 130, 194). R. Labrousse says just before the Ides (12). E. Robinson argues that DL is Cicero’s last work (1943:109). This is persuasive and helpful to understanding DL as a resistance document. (He is incompletionist. Only DL and De Partitione lack a non-dramatic proem; Pohlenz 1938 says dramatic prologue replaces it.) Robinson cites the “total irrelevance of the De Legibus to the political circumstances” of May 51—November 44 (1951:300). “Cicero, having begun the work after November, 44, and having completed it in all essentials during his temporary return to power as head of the senatorial party in the struggle against Antony (Leg. 3, 14; 29 may be interpreted as relevant to this period), finally abandoned the design of publishing it when his political situation became desperate about the middle of 43” (1943:112). It is a *logical* sequel to DRP, but there is no evidence that *any* sequel was contemplated before 51, and no hint through 44 that DRP was less than definitive on statecraft (Robinson 1946:321). There is silence on DL through the last letters to Atticus in November 44. Cicero’s catalogue of works in De div. 2,1-7 omits it. Late date is

confirmed by numerous parallels in the Philippics of 44-43...many well-known reminiscences of the late philosophical works... difference in the spirit, manner, and method of the De Legibus as compared with the De Oratore and De Republica...passages that seem to point to the preexistence of the De Natura Deorum and De Divinatione and treat matters formally considered in the Academica, De Finibus, and other late works...suggest that these, too, were in Cicero’s mind as he wrote. Points of contact with the De Officiis, otherwise the latest essay extant today, are particularly common. (E. Robinson 1946:321).

Frisch 1942 conclusively likens DL and the Philippics. (Cf. Marrou 1936.) It is a testament and final riposte to Caesarism; thus Reitzenstein (P.Schmidt 1969:16). Tiro’s role as publisher favours a late date (Cowell 64).

Cicero never lost his fire. “In his latest writings he has not gone down, nor become dry...always a freshness about him” (Niebuhr 3:95). William of Orange said:

‘Il n’est pas nécessaire d’espérer pour entreprendre ni de réussir pour persévérer.’ La plus haute forme d’action est sans doute celle qui se fonde sur la vertu toute pure, sans salaire ni complaisance. Cicéron s’en aperçoit à la fin de sa vie, après une existence entière passée à combattre vainement les menaces de la tyrannie, après l’échec de beaucoup d’espérances personnelles et familiales, après la mort de sa fille Tullia. (Michel 1967-68:115; cf. LY 14,38)

“Unermüdlich auf dem Posten sein, niemals nachlässig handeln und stets treu die Pflicht erfüllen” (LY 12,14 Moritz; cf. 9,28). Rite and age incline to the late date. De Bary (1991:35). “Confucius

says, 'Take your stand in the rites' (8:8) and 'Unless you study the rites you will not be able to take your stand' (6:13)." Only an older man can do this (2:4). Could the Cicero of 52/51 take his stand in the way he does in 44/43 in DL? We doubt it. See Mèng's (self-?) portrait (3b2 Lau; brackets ours):

A man lives in the spacious dwelling [mos maiorum], occupies the proper position [arx auguralis], and goes along the highway [State moral leadership]. When he achieves his ambition he shares these with the people [Cicero acclaimed *parens patriae*, *augurate*]; when he fails to do so [Clodian exile or Caesarian 'retirement'] he practises the way alone. He cannot be led into excesses when wealthy and honoured or deflected from his purpose when poor and obscure, nor can he be made to bow before superior force [Phil., DL]. This is what I would call a great man [*sapiens*, *rector rei publicae*].

Eclecticism empowers resistance: "His mind benefits from possessing all that is in the world. Therefore, the exigencies of time and place and consideration of personal profit cannot influence him, cliques and coteries cannot sway him, and the whole world cannot deter him" (Hsún 1,14 Knoblock). This is what civic theology—and *ἐποχή*—were *for*.

Isocrates the fore-runner

Isocrates' similar approach was doubtless an influence; direct borrowing is unnecessary. Seeing him as Cicero's antecedent, not Quelle, helps Roman (and also Chinese) civic theology enjoy proper dignity. Both men were Mommsenism's targets, "roughly handled...dismissed as mere journalists" (Smethurst 1953:317,319). The problem is not Roman, still less Chinese thought, but the interpretive privileging of Greek thought. Panhellenic patriot Isocrates, with an irony he would have relished, helps rectification. Against Hellenocentrism, "it is in the main the Isocratean-Roman (literary-rhetorical-liberal), rather than the Platonic (scientific-mathematical-dogmatic) tradition which has prevailed in modern Western Europe....On this ground alone...the Isocratean-Roman tradition should be taken seriously" (Douglas in Temporini I:3:98, cf. Bacci 163). Like Cicero, Isocrates cherished "the art of speaking well and the art of living well" (Hadot 51). An episode from Plutarch, though it does not involve Isocrates, exemplified his praxis-orientation which makes magistrate Cicero and ex-minister K'üng better guides than mere theoreticians like Plato (225):

Thus Xenocrates once taught a class on the thesis that 'only the sage is a good general.' Eudamidas, king of Sparta, had come that day to the Academy to listen to Xenocrates. After class, the Spartan, showing admirable good sense, said: 'The discourse is admirable, but the speaker is not credible, for he has never heard the sound of trumpets'. (Plutarch, *Sayings of Spartans*, 220d)

K'üng mused "Ein solcher Mensch hat zwar viel gelernt, aber welchen Nutzen hat es?" (LY 13,5 Moritz). Praxis holds T'ien ming. "The difference between [Hsüntze and Aristotle] is that between a magistrate and a professional philosopher...the difference of orientation of the philosophies of Confucianism and of Greece" (Dubs 1928:41). Hsiao (1979:100) compares Isocrates to K'üng. His

Solonic restoration (cf. Areopagitica) is like K'üŋg's repristinating Chou—or Cicero's defence of mos maiorum. "Quae est enim [philosophorum] oratio tam exquisite, quae sit anteponenda bene constitutae civitati publico iure et moribus" (DRP 1,3)?

Cicero inherited Isocrates' cultural open-access policy (Jones 53), sounding no uncertain trumpet. "He sees the combination of reason and concrete realism as the mark of Roman philosophy" (Atkins in Rowe and Schofield 498). Plato simpers that there is, he supposes, φιλοσοφία τις in Isocrates (Phaidros 279). Isocrates shoots back, calling his civic praxis φιλοσοφία; moreover, he

rejects also the teaching and writing of all the dialectical philosophers of his time, including most prominently Plato and Aristotle, as not worth bothering with. He gives his reason quite clearly in the *Antidosis* (261-9; Cf. Hel. 5, Panath. 27-28, Ag. Soph. 7-8, 20); the practice of philosophical dialectic in the manner of Socrates and Plato, he claims, like the cosmological theories of the 'ancient sophists', does not and cannot provide one with ideas that are of any use whatsoever in reasoning about or deciding any of the practical questions arising in private or communal life. For that reason it is not even entitled to the name 'philosophy' (*Antidosis* 266, 285). (Cooper 72)

A thinker *and* statesman outranks a "Nur-Philosoph" (Norlin 1:xviii, Gelzer 1969:214; Zenker).

Like Cicero, Isocrates was vain and loathed demagogues (Norlin 1:ix,xvii). Like Cicero and K'üŋg, he is no racist. His Hellenism rests on culture, not ethnicity or Senghorian blood-mysticism (Paneg. 50). The Gennadeion's motto declares of all within the four seas, "Ἕλληνες καλοῦνται οἱ τῆς παιδείσεως τῆς ἡμετέρας μετέχοντες". His broad-spectrum Hellenism has no "fake unanimism" and nothing narrowly Athenian. The Greek-speaking Kulturraum is one κοινὴν πατρίδα where city-states have honoured places, like Cicero's *duas patrias* (Pan. 81). He attacks Plato's utopian *Politeia* and *Nomoi* for "τοῖς νόμοις καὶ ταῖς πολιτείαις ταῖς ὑπὸ τῶν σοφιστῶν γεγραμμένοις" (Philip 12). Active into old age like Hsün, he wrote *Antidosis* aged 82 and *Panathenaics* in 342 at age 94 (Norlin 2:183, 368). "If the gods bother, they like what I've said" (*Antidosis* 321).

Isocrates never held office despite being a prominent isiLomo (Cetshwayo xi); like K'üŋg, he saw civic theology as "a way of life, a saving religion of which he conceives Athens to be the central shrine {Paneg. 50} and himself a prophet commissioned by the gods...{Philip 149}" (Norlin 1:x). His most famous student was Timotheus, commander at Athens from 378-357, forced unjustly into exile at Chalcis (Norlin 2:228), just as Cicero was banned from Rome. Isocrates thus found the apt statesman-disciple K'üŋg sought in vain. Isocrates affirms Greece's ancient kings as moral patterns and sage rulers like Numa, Yao, Shun, and the Duke of Chou (Panath. 138). Mos maiorum/tsü-chuán, "περὶ τῆς τῶν προγόνων ἀρετῆς" (Panath. 5), must be maintained (Panath. 5). Boasting that Athens was the first lawful (non-despotic) State, "πρώτη [πολιτεία-ἰσῆ] γὰρ καὶ νόμους ἔθετο" (Pan. 39), this is not for Greeks alone. There is "a workable morality which is acknowledged by all" (Norlin 1:xxv cf. *Antidosis* 4), but no simple positivism. Even the State which he devoutly believes

to have been god-manufactured, θεοποίητον, can be corrupted, more by bad laws than by bad attitudes (Areop. 38) “μαλλον τοις ἐκεῖ νομιμοις ἢ ταῖς αὐτῶν κακίαις ἐμμένοντας” (Areop. 59, 38), like Cicero’s *nullas leges*. Quaestiunculae impede access to gods and law: “ἐπειτα τά γε πλήθη καὶ τὰς ἀκριβείας τῶν νόμων σημεῖον εἶναι τοῦ κακῶς οἰκεῖσθαι τὴν πόλιν ταύτην.” Burial-duty is “founded on ancient usage and observed by all men as of more than human origin” (Jones 169). It is fas to bury enemy dead (Pan. 52). Statesmen and war-heroes are καλουμένοις ἡμιθέοις (Pan. 84). Initiates of Eleusis (Pan. 28-29; 380 B.C.) “ἡδίους τὰς ἐλπίδας ἔχουσιν”. He condemns bad gods without abolishing (Cicero) or disdain (K’üng) their worship (Philip 117; 346 B.C.). Isocrates took umbrage at the Persian burning of Greek temples (Pan. 155). Ruined rite and ruined attitude are alike condemned (Areop. 29,30).

Virtue is common to all because all share in the divine Reason (Ant. 84,255). Government, not theory, concretises tradition for both Isocrates and Cicero (Smethurst 1953:284), taught by rhetoric, not dialectic. Smethurst traces a lineage from Aeschylus (Zeus’ will is arbitrary) through Protagoras (State as moral educator) past Plato’s totalitarianism back to Aristotle’s empiric approach, and on through Isocrates’ praxis and Panaetius’ Stoic theology to Cicero himself. Resolute against escapism, Cicero makes Isocrates the most direct prototype of his own approach (1955:112-113). On both men Smethurst says “of their sincerity there can be no doubt. They were fighting for the best and the highest that they knew...a reverence for honor, justice, and morality such as too few of their contemporaries possessed” (1963:315). K’üng

se croyait *un homme d’action*, un administrateur et politicien capable de ramener le monde dans la véritable voie; son rêve n’était pas d’écrire ses idées, mais de les réaliser par le gouvernement d’une principauté qu’un souverain lui aurait confiée....Ce n’était pas une système philosophique, c’était la science du gouvernement. (Maspero 1955:449).

After all, “‘Sire,’ a cultivated Confucian told Kao-tsu, the first Han Emperor, ‘you can win an empire on horseback but you cannot keep it without a doctrine’” (Do-Dinh 162). This lifts the sage above the talented politician. Isocrates is a solvent to Platonic supremacism, worthy predecessor of Cicero and worthy near-contemporary of Mêng. Isocrates is artful and practical, but Cicero and K’üng remain urgent. Isocrates’ question “if the gods bother” was answered “yes!” by Cicero and K’üng, at great cost to themselves and great benefit to us, their contemporaries. We are in their debt, and under their challenge.

Chu Hsi and Thomas Aquinas

Two giant trees must not hide the forest. For comparison of Chu Hsi 朱熹 and Aquinas, cf. Prazniak 140. Cicero’s ratio recta is scarcely the Thomist positivising of *lex divina* with Roman Catholicism

declared its sole arbiter. “Iam vero illud stultissimum, existimare omnia iusta esse quae scita sint in populorum institutis aut legibus” (DL 1,42) let alone a particular shūkyō. Urbs Roma is not exempt from Cicero’s critique. We prefer open-systems architecture to ecclesia Romana’s user licensing. A Dollfussard social theologian shows the positivisation: “‘Christian’ natural law...includes the conviction that the Church, in virtue of its divine mission, is the unfaltering guardian and infallible expounder of the same” (Messner 1938:492). The Islamic equation of natural religion with pre-Qur’anic Islam is similar; cf. Qur’an 30,30). Pope Benedict XVI rejects the Thomist monopoly, excluding it from his civic theology: “Heute scheint diese [thomistische] *recta ratio* nicht mehr zu antworten, und Naturrecht wird nicht mehr als das allen Einsichtige, sondern eher als *eine katholische Sonderlehre* betrachtet....Dieses Instrument ist leider stumpf geworden” (Ratzinger 2005:25,35; *contra* Doheny). Tillman protests “privileging Zhu Xi and Neo-Confucianism in our discourse on China” (Elman-Duncan-Ooms 34, 64). Chuhsiiism is so different from classical Jú-chiào, and so *creative in its own right*—not “stumpf”!—that metapraxis linking Cicero and K’üing need not include it. (Cf. Bernard-Maitre 5, 109.) We follow here Itō Jinsai, Naturrechtler and militantly classicist Japanese Jú (Spae 8, 79).

Rectification cries out to T’ien for vengeance! “Since the newly-created school bore the true face of neither Confucius nor Mencius, why should it borrow their names while subverting their unique and useful aspects....I say that by giving a false label to both Confucianism and Buddhism, it in fact even misrepresented itself” (Liang 1959:27; cf. Ching 1977:11).

Tchou Hi procéda à l’égard du bouddhisme et du taoïsme d’une part, du confucianisme pré-bouddhique de l’autre, à peu près de la même manière que saint Thomas à l’égard du christianisme et de l’aristotélisme, mais à l’inverse: alors que saint Thomas christianise Aristote, Tchou Hi veut épurer le “paganisme” antique de la Chine de ses accréions médiévales, sans même se rendre compte, tant les doctrines du bouddhisme et du taoïsme avaient profondément marqué la tradition médiévale dont il prétendait se dégager, des emprunts qu’il leur faisait pour donner une métaphysique au confucianisme. (Demiéville in Chow:x)

It syncretised non-Jú-chiào (and non-Chinese) elements, making it a new intellectual enterprise:

The new schools of Confucianism...blatantly incorporated into their doctrines everything from Buddhist epistemology and Daoist cosmology to philosophical diagrams and methods of contemplation. Of course, their *rhetoric* tended to be anti-Buddhist and anti-Daoist, sometimes vehemently so. (Bell and Hahn 26)

A notion of total loss of Tào after Mèng’s death down to Chu Hsi took hold (Haeger 499, 504; cf. Anabaptist doctrine of the fall of the church). M. Ricci polemicises the distinction with his slogan “ch’in ju p’ai fo” (22): dialogue with Jú-chiào and repudiate Buddhism (cp. Cicero on Stoics and Epicureans, or our Lord on Pharisees and Sadducees). Ricci rejects “beggars seeking to eat other

peoples' leftovers" (8,570; cp. Cicero's independence of Plato), but, arguing for papal supremacy over the Chinese State, Ricci falls into shūkyōteki Thomist positivisation (8,521-526).

Chuhsiism is less believing or theological than K'üng-Mêng-Hsún thought. "M. Ricci said of this Neo-Confucianism, 'This is not Confucius!'" (Creel 1949:258; Ross 65, 177). It is "agnostic and materialistic" rationalism, but K'üng is genuinely—conventionally—religious (Steele xxii-xxiii). O tempora! O mores! "The Scholars having become atheists and materialists could no longer rely on the ancient theism. The glorified Manes no longer spoke to them, the great tortoise was mute" (Wieger 657). Chuhsiism has lost the dialogic and aphoristic style of early Jú-chiào. As musical change shows political change, so rhetorical change reveals changed confession. "Later speculation...developed an *aphoristic* mode of expression into a complex metaphysical system" (Tabātabā'i 25; cf. Lín Y. 5). "Western" liking for system must not lead us astray any more than shūkyōism. Comparing K'üng to Akan anyansafo, K. Gyekye (1995:18) put paid to the notion that the aphoristic isn't serious. Biblical wisdom literature and the aphorisms of our Lord enable Christians to affirm that the aphoristic is real theology. Korean Yugyo is Chuhsiist and racist (D. Chung 26, Deuchler 4, 17, 141) akin to Christelyk-Nasionale distortions. By 1300 it ranked Chu Hsi above K'üng. Vietnamese Nho giáo is sharply classicist, less popular, and non-popularis.

Japan-Viêt-Nam contrast

Is the imperial lineage-cult in Japan imported Korean yangbanism raised to a Staatsprinzip? Loss of T'ien ming through evildoing and duty to overthrow a tyrant (cf. Hsún 3,23) is absent in Japanese Jukyō (Tomikura in Hori 107; Kasulis 86; Wieger 701). Racist imperialism perverted the "all under Heaven" (Murakami 111). Is it still Jú-chiào? "Unlike in China (as well as Korea and Vietnam), where, in principle, the emperor, even if a sacral figure, was 'under' the Mandate of Heaven, in Japan he was sacred and seen as the embodiment of the gods, and could not be held accountable to anybody" (Eisenstadt in Tu 1996:179; cf. Gundert 156). The shogun aped this "and neither legitimized his position through Confucian theory nor worshipped Heaven. Instead, he worshipped the ancestor who had founded his dynasty, regarding him as a Buddhist-Shintoist god" (Watanabe in Tu 1996:120). Julius and Augustus will have applauded.

Nho giáo, introduced in 1 AD, is "le patrimoine spirituel, moral et social du peuple viêtnamien. It is theological: "Le problème soulevé depuis toujours est de savoir si le seigneur d'En-Haut est un Être personnel et transcendent" T'ien is "un 'Être personnel et intelligent' qu'ils considéraient comme le 'Maître de l'Univers....C'est le suprême Justicier qui récompense les bons et châtie les mauvais" (Joseph Nguyễn 127, 147). First hall for K'üng veneration or Khổng Tử Từ was consecrated in 1156. King Lê Thần Tông, reigning 1460-97, was a Nho of repute. "Choices made by Nhoists to

serve or to retire arose from historical contingencies in which philosophical imperatives ambiguously called for obedience both to the ruler and to one's own conscience" (Taylor in Elman-Duncan-Ooms 343-347, 339). Nho giáo informed resistance to French occupation, including scholar Trần Trọng Kim (1882-1953) who, in the name of resisting France, became prime minister in the last days of Japanese occupation. Trần embodied Nho difficulties of a statesman: respublican patriot-scholar of Ciceronian otium or quisling (briefly) for Japanese fascism? The opprobrium of collaboration overshadows his fostering of patriotic tradition and freeing of the press. Trần linked K'ung to Greek and European thinkers (362) as Ku Hung-ming had done. His massive, untranslated (*vae nobis indoctis!*) *Nho giáo* (reprint Hồ Chí Minh 1992) offered theological criticism:

Our land of Việt formerly venerated and worshipped nho giáo, considering it the only correct *creed*. Morality, customs, politics, all and every matter took nho giáo as essence. But those who followed nho studies, from past to present, excessively esteemed outer form to the extent of there being a spirit of error and much was lost. (Taylor in Elman-Duncan-Ooms 361)

This breathes a Ciceronian spirit, seeing the need of "repairing the ruined house" through mens divina, thiên lý (Mc Hale in Elman-Duncan-Ooms 412).

Arpinum is near Huê. "Rural literati" consciously chose classical Nho giáo over Chuhsiiism. "There continued to be a strong market for the less metaphysical, more politically concrete thought of the original Confucian philosophers....Primordial Zhou-era Confucianism continued to have an unproblematic popularity with the Vietnamese elite" well into the 20th century (Elman-Duncan-Ooms 17, 128, 130, 521). Japanese Jukyō's intense nationalism, blind loyalty to the emperor—antipodal to K'ung and Mèng's respublicanism!—and its co-optation by militarist imperialism, is a grave distortion akin to Caesarist-Augustan co-optation of Roman State cult. Thus, it is excluded, apart from a few interactions with Shinto echoing Roman dealings with Greek influence. Any "mystical notion that culture is carried 'in the blood'" (Wilson and Thompson 73) is un-Roman and un-Jú. Racism—Suzuki D. is an example—and lineage-fetish wreck *ratio recta's* universality. We attend upon sages. We stop our ears to such noise to hear them clearly in a civic arena of frail compromise and hard realities, exemplified by the dilemma of Dr Trần. Traditions are Gadamerically much tougher than their critics. Beyond the broken robot, the road, the Tào, goes on.

The Philippics

Political emergency and sagely writing go hand in hand. Among the late works the Philippics as resistance document are the political voice of DL's theology. Fas is respublican or it is nothing. "Populum Romanum servire fas non est" (Phil 6,19). A. Luthuli declares *nefas!* similarly:

I also, as a Christian and patriot, could not look on while systematic attempts were made...to debase the God-factor in Man....To remain neutral in a situation where the

laws of the land virtually criticised God for having created men of colour was the sort of thing I could not, as a Christian, tolerate. (Callan 55).

As Luthuli's chiefship undergirded his religious critique, so Cicero was endowed—not quite in proper form, since the censors did not award it—with the title *princeps Senatus* for the first time (Frisch 1946:248). Cicero's *Minerva*, *commendata* to the temple of Juppiter Capitolinus, which was broken in a storm—evil omen!—was repaired on 19 March 43. Cicero excoriates Antony's violent impietas against the *sacra gentilitia* and the sacred republic. Still at stake: "Hic arae sunt, hic foci, hic di penates; hic sacra, religiones, caerimoniae continentur; hoc perflugium est ita sanctum omnibus, ut inde abripi neminem fas sit" (De Domo 109). The new Clodius, Antony, is a monster making a mockery of the augurate. His abolition of the (constitutional) dictatorship (Phil. 1,31) "branded the name of Caesar with everlasting infamy" (Frisch 1946:129), opening perpetual tyranny for whichever warlord came out on top. Octavian twisted family piety to tyrannical ends. Instead of being properly named Gaius Iulius Caesar Octavianus, he is Gaius Iulius Caesar (filius). The *sacrilegium* is not impiety toward Octavius or devotion to Caesar, but that one cannot be adopted by a god or accede to deity unless one is a "real" son. Dolabella also "vobis...moenibus patriae...huic urbi...dis penatibus...aris et focus omnium nostrum...denique naturae et humanitati inventus esset inimicus (Phil. 11,10). A father's grief burns in the ferocious words. The *parens Tulliae* and *parens patriae* are one man, who "den Sieg des Antonius schildert als den Triumph der zügellosen Soldateska, die den väterlichen Herd und die Heiligtümer bedrohe" (Maschkin 1953:370). A leader without abasement before God is "ein Affe" (Althaus 1937!:15).

K'üng, Mèng and Hsún stand in solidarity with Cicero. "The best Confucians have always spoken out fearlessly...whether the cost might be exile, prison, or death" (Creel 1953a:180). Cicero died for the Republic as a holy thing. "If one is ready to lay down one's life when one confronts danger...one may surely be considered a complete man" (LY 14,12; Dawson). "Lofty-minded *shi* and humane men do not seek to preserve their lives at the expense of humanity; rather, they give their lives to attain humanity" (LY 15,9; Huang).

Religious commitment can call for certain forms of action, the outcome of which is very uncertain. That is a risk. Loss, suffering, and even death may be involved. That is a risk. Advice given may...ask for action that challenges the very basis of one's security. That is a risk...[which] may still be taken *precisely because* of the religious commitment. (R. Taylor 1990:8)

"Not the wild wind nor the roar of the chariots / But the ruin of Chou's way / Breaks me" (Shi Ching; Pound 149). "K'ung regarded it as his personal mission to restore [Chou's] ancient order, to put the world back together again...[disdaining] those among his contemporaries who sought to *usurp* the titles and trappings of this ancient and honorable way of life". "Seated on high, he is not

lenient [Caesar was, Antony was not]; performing the rituals, he is not reverent [neither Antony nor Caesar was]; confronting mourning, he is not grief-stricken—How can I bear to look at all this!” (LY 3,26 Huang). K’üing rebuked unsparingly “men who would have felt as much compunction about having Confucius tortured to death as about crushing a fly” (Creel 1949:12; Fingarette 45). Mèng denounced savage warlords in “un langage ferme, noble, et quelquefois singulièrement hardi” (Yuan 239). “How can they be thought great men? Have you never studied the rites?” (3b2; Lau). Their minions “are known today as optimal ministers; of old, they were called despoilers” Mèng (6b9 Ware). After Mèng, Ju defended morals, statecraft, justice, and tsü-chuán against bad rulers, threatening loss of T’ien ming (Zenker 1915:31). Evil rulers “despise ritual and moral principles, and prize instead valor and feats of strength. When they are poor, they become robbers; when they are rich, they become predators. An orderly age is the opposite of this” (Hsün 20,6; Knoblock).

Xun Qing was oppressed by a chaotic age and lived under the intimidating threat of stern punishments. On the one hand there were no worthy rulers, and on the other hand he faced the aggression of Qin. Ritual and moral principles were not observed....The humane were degraded and under constraint. The whole world was lost in darkness. Conduct that strove after completeness was ridiculed and derided. The feudal lords engaged in the greatest of subversions. (Eulogy on Hsün; Knoblock 3:269)

K’üing defines Cicero’s defiance. “The gentleman is not a utensil” (LY 2,12 and 3,24; Huang). *Therefore*, “Heaven shall use the Master as a wooden bell”.

CONCLUDING REMARKS: HOLINESS, HUMANISM, AND CIVIC HOPE

Resistance: “for your freedom and for ours”

“All these...would save the world in their own way or blow it to bits....Terror has become the technique of States. Freedom won by centuries of effort is lightly surrendered. Fear is over the world, and our hearts are failing us” (Radhakrishnan 1940:112). From conservative E. Burke to revolutionary Kossuth L., resistance to State terror found inspiration in Cicero (Messina 86). What is to be done after our natal century of “Что делать?”? Resistance requires holist anti-racism. “Wir steigen von dem hohen Roß unserer kulturellen Überlegenheit diesen Asiaten gegenüber herunter, und anerkennen die ungeheure Überlegenheit der fernöstlichen Sozialmoral” (Zenker 1915:39). “If a gentleman is reverent and avoids error, if he is courteous in his dealings with others and observes the obligations of ritual, then all within the Four Seas are his brothers” (LY 12,5; Dawson). “He made no distinction among the categories of men (LY 15,38) and...it would hardly be anticipating to say, as Trần Trọng-Kim did, that he was anti-racist” (Do-Dinh 112). Aung San Suu Kyi said:

It is a puzzlement to the Burmese how concepts which recognize the inherent dignity and the equal and inalienable rights of human beings, which accept that all men are endowed with reason and conscience and which recommend a universal spirit of brotherhood, can be inimical to indigenous values. (Kelly and Reid 119)

True resistance is an act of faith in Ciceronian perspective:

Mais l’humanisme à quelques rares époques piès, a-t-il jamais été autre chose qu’un acte de foi? Acte de foi dans la personne humaine, sa richesse, sa mobilité, ses ressources insoupçonnées. C’est pourquoi il importait de redécouvrir la personnalité de Cicéron, si souvent déformée par les préjugés individuels ou collectives. (M. Ruch 1970:1).

Cicero and K’üing would have been bewildered by satyagraha; as in pre-colonial African statecraft, they held imperium because without corrective right, “authority wilts” (Fortes and Dieterlen 136).

T’ien ming does not settle upon tyranny:

Nothing lasts forever, not even dictatorships. The Thousand Year Reich barely made it to twelve....The 70-year endurance of the Communist regime in Russia and its 40-year survival in Eastern Europe are unique. This knowledge should serve as encouragement to holding out...though the mills of the gods do not grind as finely as they should, they do grind. (Vagts 702).

Nor did Ch’in last long; the fate of the Mao dynasty in the emperor’s new Armani suit remains to be seen. An anonymous Vietnamese poster in 1861 put it best: “If you persist in bringing to us your iron and flame, the struggle will be long. But we are guided by the laws of Heaven, and our cause will triumph in the end” (Karnow 89).

Humour resists brutality. Cato (!) said of Cicero ‘ως γελοῖον ὑπατον ἔχομεν, the consul’s quite a kidder (Plutarch, Cato 21). What C. Harbsmeier and Lin Y. see in K’üing was famous in Cicero.

“Cicero jokingly connects himself with the king [Servius Tullius] in *Tusc.* I 38” (Hammond 186). His “Humor og Selvironi” must not be taken at face value. Cicero can see both the comic side of history and “en religiøs Sandheds Magt” in it (Høeg 9, 305; Davies 1971:106). Cicero would have roared at K. Kumaniecki’s stint as pornographer (smuggling intelligence for the Armia Krajowa) and his expertly faked disinformational radio addresses. (Michel and Verdière ix). Our *sapiens* “*docere*...teaches them something, *movere*, he arouses their moral fervor, and *delectare*, he, and they, have a little fun” (Rand 133). K’üng’s humour requires more excavation, but he “articulates what in Danish (but not, unfortunately, in current Norwegian usage) we call *lune*: a mild, subtle and very communicative form of humor...certainly not inconsistent with mild irony, or with deep moral conviction” (Harbsmeier 161).

DRP is a “Pronunciamento für die Republik und gegen ihre Bedränger...politisches Gegenwartsprogramm mit antimonarchischer Spitze”; how much the more DL! (Schur 42; cf. Strassburger.) The late works are “ein Appell, der kein Taktieren und Paktieren dulden will, der den Sieg fordert oder den eigenen Untergang” (Führmann 1986:7) Resistance, religion, and reason are merged by his “imperiosa volontà” (Righi ix). Suicide-fetishist republicans in the principate adored fanatic Cato’s baroque *hara-kiri* (Clarke 65). Cicero was forgotten when “flippancy of attack, prettiness of expression, and glitter of decoration prevailed over the bold and manly eloquence of free Rome” (Newman 300). Melodramatic suicide thrilled, but protest by rite, text, and life bored: Lucan, his uncle Seneca the Younger, and Mishima Yukio were media spectacles, not martyrs. Cicero’s fight and death are imagines in the atrium of all resistance to tyranny. (Proscription’s technology changes, not its horror. In 1942, Frisch wrote (302) “In the ancient authors there are long lists of the victims, and their terrible fate is recounted in great detail, which, however, it is not necessary to describe in our own days.” Cicero is a vanguard fighter (Brzózka 297) like K’üng and Mèng. Mocking Hitler’s Vergil, L. Riefenstahl, V. Buchheit (253) calls Cicero’s legacy “Triumph des Geistes”. R. Kirk says “Cicero was a man of brilliance who set his face against a military revolution, and lost, and paid with his life”, inspiring anti-positivist resistance to National Socialism “upon Ciceronian grounds” (Kirk 106, 113). Socialist resistance leader H. Frisch took courage from late works of the “coward” (W. Drumann calls *Philippics* “das Gekläff eines Feigen”) as he published—in Denmark in 1942:

In our day we know a little about making parliamentary speeches in the face of machine-guns. It was easy for Brutus and Cassius to urge Cicero on to go to Rome (while they themselves carefully kept out of town), but to Cicero Rome meant the Senate, and the Senate meant the unquestionable leadership of the opposition, thus FIGHT. (Frisch 1946:140,122).

After expulsion from the Riksdag, Frisch used Cicero “to uphold for the students and myself the

image of freedom” (Frisch 1949:7). In 1942, Ciceronian F. Blatt spoke dryly of foreign nefas versus Danish fä and jén:

The resistance of a people to foreign influence very often is most clearly manifested in the domain of law....[Roman law] has been instrumental in creating a feeling for a number of values which this very day deserve to be safeguarded, and I therefore consider it of general interest to spread a certain knowledge, if not of the technical terms of Roman law, at least of its principles. (Blatt 158).

Cicero speaks to our times. P. Koschaker’s work is explicitly a resistance document defending Roman law (and Cicero) against National Socialism’s demand for its extirpation as “materialist”, and against *nullas leges* “mit tosendem Beifall aufgenommen” (Koschaker xi, 134). “Der Götze Revolution ist der Gegenspieler rationalen politischen Handelns....Entmythisierung ist dringend nötig, damit die Politik ihr Geschäft wahrhaft rational betreiben kann” (Ratzinger 2005:16-17). Cicero and K’üing were no democrats. Both were republicans who hated tyranny. K’üing called for rectification of names. Can we call it democracy? “Confucian theory of the Mandate of Heaven, based on the responsibility of the elite, is more congenial to democratic polity than, say, the divine right of kings”, and Mèng is an outspoken democrat (Tu 1996:346; cf. Zenker 1915:9,29). “Cao Jiao asked, ‘It is said that all men may become Yaos and Shuns. Is that true?’ ‘Yes,’ said Mencius.” (6b2; Zheng et al.) The Republic of China on Taiwan shows the democratising capacity of Jú-chiào after decades of Kuómíntǎng authoritarian rule (De Bary 1998:4); K’üing’s birthday 28 September, Teacher’s Day, is a State holiday. C. Jochim declares “Confucian tradition is not simply compatible with democracy; it has been awaiting it” (Clart and Jones 66).

Postlude

This is not the final word. That claim, in a theological paper, is blasphemy. There is one final Word: Jesus Christ, Alpha and Omega. As Cicero did not wish to detain the aging Scaevola overlong, so this writer offers a belated *captatio benevolentiae*. As St Augustine said:

This book has ended up longer than I wanted or expected it to be; but it is not too long for the reader or hearer who welcomes it. Anybody who finds it too long should read it in parts if he wants to have a complete knowledge of it, and anybody who is not interested in such knowledge should not complain of its length. (DDC 4,166; Green)

Mens divina and *ratio recta* are as manifest in Cicero and K’üing’s conversations as in the promulgation of laws or the acts of righteous monarchs. Cicero has done his best to make the mind of God manifest in an intimate circle, maintaining reason, not cancelling it, and keeping the conversation, whatever may be its lapses into monologue, open to the reader’s own new participation, finding response in a failed politician’s immortal talk of decency and Heaven’s mission with students in Lü. “La vérité est que, théoriquement, Cicéron est toujours resté fidèle à

son État idéal, mais dans la pratique il n'a pas toujours en le courage de le défendre. Par sa mort tragique, tout en montrant quelles étaient ses vraies pensées, il a expié ses inconséquences politiques" (Barbu 1964:147). The republic of the sacred remains in flower by the banks of the Fibrenus, on an island in time, surrounded by ceaseless currents of violence. The republic of the sacred is an imperishable realm of talk, and talk an immortal sacred realm.

Commentary transmits talk into writing, not as stenography but as music-performance, making as it were a meta-grapholect. It heals disciplinary fracture (Gonda 34, Jansen 86), not by reader-response, but by responsiveness and responsibility. Out of fashion as this may be, when commentary weakens the human voice, totalitarianism becomes the more seductive and traditions the more easily perverted by it (Henderson 3, 223). We dare not say that commentary is "the legitimate form through which truth is approached" (Scholem 289), but it is a pontifical way of reading that bridges the gap from talk to praxis.

Brigde-reading precedes praxis. We know "the tediousness of collecting an infinite number of testimonies" (Middleton 1:xx), desiring to hear clearly the Sages' living voice. Shūkyōism does not limit theology: Cicero and K'üng prove that. If politics or philology enhance theology's templum, may this augur well. Otherwise,

Dialogue and monologue are silenced [by]...those of the left who want to abolish memory, and those of the right who want to regulate it...You ask with a laugh, can the leader of a great technical undertaking practise the responsibility of dialogue? He can. For he practises it when he makes present to himself in its concreteness, so far as he can, quantum satis, the business which he leads. (Buber 38, 44).

Tradition is like a Thou "in relationship with us" (Gadamer 1998:358). Thou vivify, *objects* do not. K'üng invites *encounter* when he calls himself a transmitter, not an innovationist (LY 7,1). Dialogue's labour is its own triumph, the métier of K'üng, Mèng, Hsün, and Cicero. A North African of *duas patrias* knew this:

Mais il savait cependant que cette chronique ne pouvait pas être celle de la victoire définitive. Elle ne pouvait être que le témoignage de ce qu'il avait fallu accomplir et que, sans doute, devraient accomplir encore, *contre la terreur* et son arme inlassable, malgré leurs déchirements personnels, tous les hommes qui, ne pouvant être des saints et refusant d'admettre les fléaux, s'efforcent cependant d'être des médecins. (Camus 278).

Looking at Roman faith and Chinese wisdom literature, or Roman statecraft and Chinese missionary passion, remind us that holiness and humanism go together. We believe *extra Evangelium nulla salus* without dismissing the theological character and the phenomenological holiness of our ancient teachers, and one may acknowledge literary greatness without losing the treasures of rite and religion. The poverty of shūkyōteki hermeneutic in understanding Cicero and K'üng is clear: neither Epicurus nor K. Barth nor A. Ezzati (19). Such simplisms as: either a

politician *or* a theologian, either a philosopher *or* a priest, either a reformer *or* a ritualist, ought to have been laid to rest by the civic-theological intersection of religion and liberation in our own day. We discover that our Sages buried the *os resectum* long before our day and that a ku is still a ku whether it is a ritual implement of natural or revealed religion. Cicero never admitted the necessity of a forced and culturally insensitive choice between being statesman, priest, theologian, philosopher, and belletrist; K'üing is equally, and on his own terms, theologian, ritualist, gadfly, strategist, counselor, and Sage. “Helaas is een levende mens niet te vangen in een formule”; a multivalent muntu embodies “een allenverenigend Humanisme” (Beukers ix,xi,89).

What Cicero and K'üing combined cannot be undone by failures of imagination or failures of nerve. The marriage of true minds is not dissolved in our day by nineteenth-century divorces (Beukers x; Boissier excepted). Comparing ancient Chinese and ancient Roman religion, rite, and theology is as legitimate as any contemporary comparative-religions scholarly exercise. The imperfections of a first attempt at this specific bridge-making do not nullify the augury for more productive scholarship by wiser scholars in future. Sage illuminating sage is ubuntu on a high level: their shared humanitas/jén, our filial privilege to listen again, to see afresh, and to find foundations for future praxis where previously it seemed there was *nihil enim his in locis nisi saxa et montes*. On such hilly terrain, holiness, humanism, mos maiorum, exemplary royal heritage, republican dialogues—and universities—flourish.

Marcus Tullius Tiro, Cicero's freedman and fellow resistance-fighter, published DL to defy a State gone mad—after deciphering Cicero's insane handwriting (Eulenberg 113). Tiro was likely the editor of DL (Reifferscheid 269; cf. Strasburger 18). He certainly had the civil courage for it. “[Tiro] wrote his biography, he brought out his unpublished works; that nothing should be lost, he collected his smallest works and witty sayings” (Boissier 112). Res stat. We lack the universal Fachkompetenz against which Cicero warned pontifices! Cicero might have polished DL—had he kept his head. Treating only Book 2 avoids guesswork. We have no illusions about definitiveness of a first commentarial attempt (Totok xi), in this case, to see Cicero and K'üing in their true colours *as theologians* in the light of Mediterranean and Chinese classicism, at times refracted through the prism of contemporary African thought. Res incipit.

Quintilian tells you: “ille se profecisse sciat, cui Cicero valde placebit”. Travelling the Tào from China to Rome is hard. We would not make you a weary Kikō Saden. “Japanese sinologues have traditionally employed the term Kikō Saden or ‘Duke Hsi Tso chuan’ to describe...readers who approach the work with every intention of reading it cover to cover, but whose good intentions desert them by the time they reach duke Hsi...or about one-sixth of the way through” (B. Watson 1989:xxxv). You are among Jú and “os homens tullianos” (Martins 376). Mèng says:

Noble scholars in one village befriend noble scholars in another village. Noble scholars in one country befriend noble scholars in another country. Noble scholars throughout all beneath Heaven befriend noble scholars throughout all beneath Heaven. And when the friendship of noble scholars throughout all beneath Heaven isn't enough, we can also rise to converse with the lofty ancients. How can we fail to know them utterly by chanting their poems and reading their words? And we also converse with their age that way. That is lofty friendship. (5b8 Hinton).

Stange gives it strikingly: “Gleichgesinnte kommen und zu *Freunden werden*” (LY 1,11 Stange).

Cicero is your contemporary though you smile at his religious faith, distrust his limited scepticism, or scorn his political failure. His holiness is outward, visible, other-directed, discountenancing M. Luther's sinner “incurvatus in se”. His humanism is no quietist hot-house virtuousness, but ubuntu necessarily en-act-ed in the civic sphere. Neither holiness nor humanism is any ethical good without defence of one's neighbour: compassionate jén-praxis, not secularity, drives K'üng's “this-worldly” call to engage life before theologising upon death. Choose between “friends of liberty and flatterers of power” (Middleton 1804:2:371). Give ear to K. Appiah's *captatio benevolentiae*:

Whatever your training and wherever you live, gentle reader, imagine your fellow readers...before you ask why I have explained what does not need explaining to *you*. When you find me ignoring what you judge important, or getting wrong what you have gotten right, remember that no one in our day can cover all these areas with equal competence and that that does not make trying any less worthwhile. (1992:xi).

Cicero's ‘enthousiasme communicatif’ (Guillemin 230) dares you to find your voice after politics-as-religion silenced civic theology in “hell-holes of the grossest forms of oppression” (Ntsebeza in Villa-Vicencio and Verwoerd 3; Gombos *passim*). B. Malinowski calls totalitarianism superstitious “religious convictions” (Kenyatta xii). K'üng and Cicero de-sanctify violent theological fraud, defending T'ien fā among “*τοσοῦτον ἔχοντες περικείμενον ἡμῖν νέφος μαρτύρων*” (Hebrews 12,1) who ran the race of public faith. To read Cicero's sketch of a rite-full *res publica* and hear K'üng's call to be *chün-tzu* is a rite of many republics: political, theological, and intercultural. Sage and reader exchange voices. Cicero does not let us down. He invites us in.

Qui manet in totius orbis ampla sede; qui constitutus est in totius orbis summa dignitate; qui tenet totius orbis magnam viam; qui, compos voti, cum populo prosequitur illas; qui non compos voti, solus tenet suam viam; qui divitiis et honoribus non potest depravari; qui paupertate et humilitate non potest immutari; qui minis et vi non potest incurvari: illum dicas magnum virum! – Mêng K'o 3b2 (Couvreur)

All the world's work that is waiting to be done is the business of us Confucians.
–Yen Yüan 1635-1704 (Creel 1953a:226)

T'i T'ien Hsing Tào! Accomplish the Way for Heaven! –Arthur Wright (1960:12)

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