

CICERO, *DE LEGIBUS*

FONTANELLA (F.) *Politica e diritto naturale nel De Legibus di Cicerone*. (Temi e Testi 109.) Pp. x + 139. Rome: Edizioni di Storia e Letteratura, 2012. Paper, €24. ISBN: 978-88-6372-482-0.
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In this short book F.'s position is that Cicero, in his famous exposition of natural law in Book 1 of the *De legibus*, presents it as the basis of a system of legislation (never finished) which reflects, and also reforms, the laws, institutions and customs of late-republican Rome. Like many others she raises the question of the relationship of natural law to secular law, and explores various aspects of Cicero's laws on religion and magistracies in the context of contemporary Roman concerns.

The book consists of four articles published between 1995 and 1998, revised only lightly from an editorial point of view and reworked into the first five chapters. The final chapter adds to F.'s earlier conclusions in the light of subsequent research and reflection, but does not claim to be a complete bibliographical 'update'.

The first chapter sets the scene: Cicero, writing after his exile, is motivated by respect for Roman institutions and traditions, badly shaken by political violence, and looks for an intellectual basis capable of unifying Roman laws and rendering them adequate not only to Rome itself but also to the new demands of Italians and ultimately of Rome's empire abroad. Greek philosophy, he thinks, can be put to use in reinterpreting and re-presenting Roman traditions, and hence we find in the *De legibus* that Cicero's proposals for strengthening Rome's archaic institutions are put forward in terms which give them intellectual revitalisation, and often quietly enlarge them to cope with the changed world of the late Republic. F. emphasises from the start the point that Cicero sees his laws as applying not just to the original Romans but to the governing classes of provincial Italy, like those in Cicero's home town where the dialogue is set.

The next three chapters deal with aspects of the religious laws, the first to be produced. F. sees Cicero as attempting to deal with the 'religious crisis' of the late Republic, where religious beliefs had withered and traditional forms were viewed ever more instrumentally as politically useful tools. Cicero aims to re-establish the traditional rituals and practices, but in a moralised form and on a sounder intellectual basis, provided by Greek philosophers for whom piety had long had a moralised content. This aim is interestingly explored in a chapter on Cicero's approval of cult for heroes and for virtues, neither parts of traditional Roman practice. Greek thought is here used to strengthen, rather than to subvert, Roman religion (p. 70): 'il culto ufficiale e quindi ripensato in modo da accogliere le nuove esigenze della società romana'. Similarly F. sees Cicero using the idea of natural law to support the priority over secular law that he gives to pontifical law and *ius sacrum*, the latter seen as part of natural law.

The fifth chapter discusses the laws establishing magistracies, again from the perspective of displaying (pp. 83–4) how Cicero approaches Republican institutions from a viewpoint enlarged by philosophical idealism. As in the *De republica* (which F. brings in later [pp. 126–9] but might usefully have made more use of here) Cicero sees the problems of the late Republic not in terms of historically overstretched institutions but in terms of contemporary Romans failing to live up to, and to develop the virtues appropriate to, their original constitution. The dictatorship is returned to its pre-Sullan role (pp. 90–3), Pompey's restoration of the tribunate is accepted only after Quintus is allowed to grumble about it (*De legibus* 3.19–26) and the secret ballot is essentially abolished (*De legibus* 3.33–9); Cicero looks to an idealised past to provide a reformed future.

The final chapter takes up the point that Cicero, in the very act of making an exception for the Eleusinian mysteries from a general ban on night-time mystery cult celebrations, is taking up the idea that Roman law is becoming the law of an empire ruled by Rome. Cicero aims to show that this is not merely a matter of brute subjugation but of exposure to laws enlightened and enlarged by their embodiment of natural law, so that Rome's claims become universal. F. ends by reminding us of Cicero's later desperate (and unsuccessful) attempt in 43 B.C. to claim the authority of 'right reason proceeding from the divine' (*recta et a numine deorum tracta ratio*) for granting Cassius an extraordinary command in Syria (*Philippic* 11.27–8); but we surely should hesitate to project this opportunism back onto Cicero's earlier thoughts on the way actual laws can embody natural law, or fail to.

The book will be found useful by scholars of the *De legibus*, especially those less familiar with the work's historical and cultural background. Philosophical readers of Cicero will find it limited in two ways. Although F. does note that the Stoic account of natural law is combined with Platonic elements (pp. 123–6) there is little exploration of the way this is done, especially in the long Book 1 passage, or of the significance of Cicero's choosing to complicate his account in this way. F. does not pursue the many literary references to Plato's *Laws* in the dialogue. Cicero quotes or paraphrases obscure passages of Plato's least accessible dialogue, showing deep knowledge of it (*De legibus* 2.45 cites, nearly verbatim, *Laws* 955e–56b; *De legibus* 2.67–8 refers to *Laws* 958d–e; *De legibus* 3.5 refers to *Laws* 701b–c; *De legibus* 2.41 refers to *Laws* 716d–17a). The character of the dialogue in this work is quite Platonic, and very different from Cicero's use of the dialogue form elsewhere. The setting, at Cicero's home estate, is explicitly linked to the setting of Plato's *Laws* (*De legibus* 1.15). F., by focusing so much on the Roman and Italian context of the work, misses opportunities to look in more depth at the relation of Cicero's work to its Greek inspiration, and at the many interesting similarities and differences between their philosophical aims.

The book's engagement with natural law is likewise limited and leaves the philosophical reader wanting to go further. In the *Laws* Plato does not use the term natural law, and indeed rejects nature as an adequate grounding for laws which he regards as the only *real* laws, as opposed to the mere results of political compromises, but his ideas about real law and its divine nature clearly foreshadow Stoic natural law. In a work where Cicero is making use of Stoic ideas but also relating his work to Plato's, a clear examination of the developments of this idea would be helpful, especially the Stoic idea of universalism – laws not just for a Greek *polis* like Magnesia, or for Rome, but 'for all good and stable communities' (*De legibus* 2.34). In taking this over and retaining the idea that the wise person's reason aligns with law in the universe (cf. p. 83) Cicero is committed to a different idea from Plato of the wise person in question and his role as lawgiver of an ideal form of constitution, and faces a different set of philosophical problems, since the universalism makes even more pointed the problems in finding natural law embodied in the laws of Numa (*De legibus* 2.23, 62) and the constitution of the Roman Republic. Discussion would have been welcome on the conception of natural law: is it just normative in an imperative way, making the kind of demand that law does, or does it have to be conceived as being itself lawlike in form? Although leaving us wanting more in this way, F.'s contextualisation of Cicero's work in the religious and constitutional situation of the late Republic is a useful addition to the scholarly literature on a work which is increasingly drawing the attention of scholars and philosophers.

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