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School of Social and Political Sciences

**A Righteous Pagan in the Starry Heavens? Cicero's
Republicanism and his Just War Principles**

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Abstract

This dissertation provides an exegesis of Cicero's writings on justice in warfare which, as far as I have been able to determine, has never been carried out in the English language. The method employed is a close reading of three of Cicero's philosophical works: *De Re Publica*, *De Legibus*, and *De Officiis*, with occasional reference to and critical analysis of some secondary literature on matters broadly related to his just war thinking. I construe Cicero as drawing intelligently on a number of ostensibly incongruous schools of Greek and Hellenistic philosophy and bringing them to bear on Roman history and practice in such a way that what emerges is a highly innovative and juristic conception of the just war informed by his unique brand of republicanism. By way of conclusion, I point to his legacy in the just war tradition which is commonly taken by scholars to begin in his successor, Augustine, and as an indication of Cicero's enduring relevance, I apply his style of thinking to both a contemporary problem in the ethics of warfare and the field itself which studies them.

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A Note on the Referencing Style

In this paper I use the Harvard referencing style throughout, except for works authored by Cicero. For the latter, various translations and editions exist. For the reader's ease of reference, I follow the standard method of citation which identifies the relevant book and/or paragraph number(s). For example, De Officiis Book I, paragraph 34 is cited as (*Off.* 1.34). For the *De Officiis*, I have used the M.T. Griffin and E.M Atkins edition (1991). For *De Re Publica* and *De Legibus*, I have used the James E.G. Zetzel edition (1999). Full reference details for these texts are given in the bibliography. *De Finibus* was accessed online on 4th September 2016 at www.penelope.uchicago.edu. *Pro Caelio* and *Philippicae* were accessed online on 4th September 2016 at www.perseus.tufts.edu.

Abbreviations

I use the abbreviations of Cicero's works as they are set out in the Oxford Classical Dictionary (1996):

- *Cael:* *Pro Caelio*
- *Fin:* *De Finibus*
- *Leg:* *De Legibus*
- *Off:* *De Officiis*
- *Phil:* *Philippicae*
- *Rep.* *De Re Publica*

A Note on Patriarchy and Meaning

One of the weaknesses of this paper is an absence of any discussion about the gendered qualities of the politics, philosophy and history discussed. These qualities are inscribed in the very language used. For example, the reader will find phrases throughout such as ‘the wise man’ and the general ‘he’, where ‘the wise person’ and ‘he or she’ would be more appropriate. I have made a conscious decision here to stand in line with the tradition analysed, sacrificing some accuracy for the sake of exposition. It should not be taken that I am untroubled by the tradition in which I stand. That honour is generally associated with military prowess for men and chastity for women is something that continues to trouble me, and I look forward to studying it in detail at a later date. For now, my concern is to uncover Cicero’s own thinking on republicanism and justice in warfare, so I have chosen to bracket the problem of patriarchy.

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I wish here to express deep gratitude to four scholars who have influenced the writing of this dissertation. First, to my supervisor, Dr. Cian O’Driscoll. He has done me the greatest honour at this very early stage in my academic career by inviting me to write the chapter on Cicero in a forthcoming book he is editing with Dr. Daniel R.

Bruntstetter on just war thinkers in history. From this invitation and the work I have completed on the chapter to date has come the broad structure of the argument in the following pages. Cian has also provided me with very wise counsel when I have found myself chasing social scientific rainbows in the history of political thought (though I may continue to doggedly chase them). Second, I would like to thank Prof. Catherine Steel for taking the time to discuss Cicero’s extraordinary life and works with me, and for reading an earlier draft of this paper and providing some very important critical comments. The final draft is indebted to her vast knowledge of Cicero. Third, I thank Dr. Jed W. Atkins for writing the magisterial *Cicero on Politics and the Limits of Reason*. Reading this book was an important watershed in my studies and Dr. Atkins’ intelligent, compassionate, *Ciceronian* approach has left an indelible mark on me. Moreover, an ensuing email exchange we had set me off in yet more fruitful directions. Finally, I would like to express my thanks to Rev. Dr. Kevin Francis for revealing to me during my undergraduate years in his own distinctive way the penetrating importance of utopian political thought. His teachings have been constantly in mind as I have written this paper. Any errors found in it have nothing whatever to do with any of these scholars; they are mine alone.

Introduction

The Catechism of the Catholic Church states that in the period between his crucifixion and resurrection, Jesus Christ descended into Hell "...as Savior, proclaiming the Good News to the spirits imprisoned there" (Catechism, Art.5.632). His mission was not to save the damned, but to "free the just who had gone before him" and the significance of this event is that it concluded his messianic mission, namely, "the spread of [his] redemptive work to all men of all times and all places" (Catechism, Article 5.633-634). It was not the fault of Marcus Tullius Cicero (106BCE – 43BCE) that he lived and died before Christ was born. The latter's 'harrowing of hell' gave Cicero the opportunity to hear the Good News, and if he was just, he would ascend into Heaven. Dante Alighieri in the 14th Century was less charitable than the Catechism. In his epic poem *Divine Comedy* (Alighieri, Canto IV), Cicero remains trapped in the first circle of Hell, otherwise known as Limbo, along with other virtuous and intellectual giants such as Socrates, Plato and Aristotle, because Christ in his harrowing saved only some of the faithful from the Old Testament.

The reader might be relieved to know that the foregoing and present paragraph is the last they will read of my theological meditations in this paper. The subject with which I am concerned here is justice in warfare, and in particular, Cicero's account of it. The reason I have begun with some theology is that the just war tradition in Western culture is very often understood to originate in Christianity, specifically the political theology of St. Augustine of Hippo (Dyson, 1998), and so it is in this context many of us will be conditioned to consider Cicero's fate, whether in terms of his soul or his just war thinking. On the former, he might be with Dante in Limbo, or with Christ in Heaven, but there is also a third (more metaphorical) option involving the starry *cosmos* itself which the reader will need to consider carefully in the second chapter;

on the latter, Augustine was profoundly influenced by Cicero's writings in general and he adopted some of his just war principles in particular. Quite apart from these Christian 'roots', at least ostensibly so, the secular concepts identified by James Turner Johnson (1975), the pre-eminent living scholar who studies the history of the just war tradition, also lead back to Cicero.

The general point to which I am driving at above is that Cicero is unjustly disregarded in the ethics of warfare as it is studied today. Very few histories of the tradition care to mention him, and those that do tend to provide only a few cursory remarks before moving swiftly on to Augustine (Bellamy, 2006). A few works dealing specifically with the subject appear to have been published in French and German (see Dyck, 1996: xvi – xli), but us monolingualists in the Anglosphere have to make do with fragments of books and articles addressing the matter only peripherally. Frederick R. Russell (1975) in his *Just War in the Middle Ages* spends three or four pages of his introduction discussing the Roman just war with reference to Cicero, but his analysis, though informative, lacks normative depth. Richard Tuck's *The Rights of War and Peace* (1999) corrects for this somewhat and relates Cicero well to the humanist stream of thought feeding in to the modern era, but again Cicero as a just war thinker is by no means his primary concern. *The Ethics of War* edited by Reichberg, Syse and Begby (2006) pulls together a number of readings of classical and contemporary just war thinkers and has a chapter dedicated to Cicero, but exegesis is (rightly) kept to a bare minimum. One has to leave the just war literature and approach the Classics literature for more sustained studies. But even here I can find nothing published specifically on Cicero's just war thinking. There is plenty on his philosophy and his politics, and there are countless works on Roman warfare and imperialism in general,

but these are all geared towards a particular audience which is at some remove from those studying both the contemporary ethics of warfare and its history.

To go some way towards correcting this lacuna, I aim in this paper to provide an interpretation of Cicero's just war thinking that can be of service to the just war tradition. I have approached this project by closely reading three of his works on political, moral and legal philosophy, namely, *De Re Publica*, *De Legibus* and *De Officiis*. The first chapter sets down the historical, biographical and intellectual context in which Cicero operates. I move on in the second chapter to extract concepts and arguments from the three texts mentioned above which I regard as important for an understanding of Cicero's reasoning about justice in warfare. This leads me in the final chapter to consider a number of controversies arising from the preceding discussion concerning his particular breed of republicanism, his conceptions of honour and glory, his perspective on Rome's empire, and his pioneering use of the concept of the *jus gentium*, the law of nations or peoples. By way of conclusion, I pick out some points in the just war tradition which indicate the importance of what he has bequeathed, and I also highlight the enduring relevance of his thought by applying it to a couple of discourses within the ethics of warfare as it is studied today.

Cicero's general reputation in the history of political thought has had its ups and downs (Wood, 1988:2ff.). Augustine transmitted something of his classical virtue to the Middle Ages, but it was not until the discovery by Petrarch in 1345 of letters Cicero had written to his friend Atticus that an appreciation of his humanism developed. He became an educational staple in the Renaissance, with his mastery of rhetoric in particular exerting a profound influence on the European imagination. His republicanism would be closely studied, respected and criticised in various measures by thinkers such as Erasmus, Machiavelli, and Bodin. Moving into the modern era,

Harrington and Locke would carry the Ciceronian torch into the 18th Century where his reputation reached its peak. Both his philosophy and his rhetoric chimed loudly with the zeitgeist of the Enlightenment, eliciting gushing praise from the likes of Voltaire and Montesquieu. Conservatives and revolutionaries alike could find value in his writings; Burke in many respects imitated his style and Robespierre admired his scepticism and republicanism. With the onset of the Romantic era and mass politics in the 19th Century, however, Cicero's fortunes waned and he has struggled ever since to regain the glory of the past. On the one hand, the elevation of emotion over reason left little space for rationalism, and on the other, industrialisation led to mass enfranchisement, ushering in an age of democracy which squeezed out aristocrats like Cicero who prized the rule of the best for the sake of the rest. Theodor Mommsen's seminal *Roman History* was viciously critical of Cicero, portraying him as a confused philosophical amateur and an indecisive politician (Wood, 1988:7). Only in the past decade or two has there been something of a sympathetic revival in Ciceronian studies, and this paper is a modest contribution to that endeavour.

Many of the ancient Greek philosophical works which have had an influence on the development of the history of thought have been lost, and the portrayal of Cicero as a mere compiler and transmitter of this philosophy to his Roman contemporaries led to a significant body of Ciceronian research that concentrated on source criticism. This led to neglect both in terms of analysing *how* Cicero responded to the philosophy he studied and also the philosophical contributions he himself made in his writings.

Some Classicists have moved to address this neglect and this paper builds on their work for the benefit of those who study the ethics of warfare (Fox, 2007; Atkins, 2013; Zarecki, 2014). A closer look at Cicero's life and work reveals that he had a vast knowledge of Greek philosophy and sought to bring it to bear on Roman practice

in such a way that it could benefit the commonwealth. A creative amalgamation of seemingly disparate schools of Greek philosophy and uniquely Roman concepts in Cicero leads to a body of work which “deftly appropriates, transforms, and, at times transcends” his predecessors (Atkins, 2013:2). Despite the relative indifference to him in the tradition, there will probably be a general understanding amongst just war scholars that he was profoundly influenced by Stoic philosophy. This is not wrong, but my general approach in this paper is to foreground the influence of the scepticism of the New Academy in his thinking, to provide a more nuanced perspective on his reasoning about justice in warfare. With all the necessary preliminaries now made, let us begin to interpret Cicero.

CHAPTER ONE: Contexts

1.1 Introduction

My purpose in this chapter is to set the exegesis in its appropriate context. The first section relates a history of the Roman republic, highlighting the nature of the constitution which emerged, before focusing on her rapid expansion in the 2nd Century BCE and some of its political consequences, both internally and externally. This leads us into the 1st Century, the Ciceronian age, which is a momentous time of political tensions and intrigues. There is only space to pick out some of the significant tensions of this period, before the fall of the republic towards the end of the century. The second section is given over to a brief biography of Cicero, again highlighting only some of the key events of his life. It traces his education at Rome, Athens and Rhodes before jumping to his consulship in 63 and the Catilinarian conspiracy. This is followed by his exile in the 50's, his return a short time later, and finally his fate during the civil war between Caesar and Pompey, and his execution in 43. The final section sets out the intellectual context in which Cicero thought and wrote. It details the importance of history and rhetoric in Cicero's writings, before moving on to brief descriptions of the Greek schools of philosophy which Cicero brought to bear on his own society, namely, the Old and New Academies of Plato, Aristotle and his followers the Peripatetics, the Stoics, and finally the syncretism of his friend Antiochus of Ascalon.

1.2 History

In this section, I can give only the broadest of outlines of the historical circumstances in which Cicero operated. There are countless ways in which one might approach the Roman republic's history, as the massive literature on the subject can attest (for standard texts, see Sabin, van Wees & Whitby, 2007; Crook, Lintott and Rawson, 1994; Rowe and Schofield, 2000). The standard story that seems to emerge is one in which Rome is established some time in the eighth century BCE and ruled by a succession of six kings until the last is expelled in 510, when a period of republican politics begins. This period is normally split into the 'early' 'middle' and 'late' republic, culminating in its dissolution and the establishment of the principate in 27 BCE. Although in many respects this narrative captures something of the truth, it can often obscure the nuances and complexities of events, and lull the reader into a sense of Rome's 'destiny'. One should beware of hidden teleologies; the Roman republic was by no means a monolithic entity chained to immutable laws of history (Flower, 2010). With these caveats in mind I can proceed to give some historical context.

Following the expulsion of the last king, a magistracy was created in his place consisting of two consuls whose term of office was one year (Rowe and Schofield, 2000:478ff.). They were the supreme military commanders of the state and initiators of legislation. The council who advised the king remained; their office became known as the Senate. Less senior magistracies would be created over time: praetors dispensed justice and governed the provinces; aediles oversaw the administration of the city; quaestors were responsible for the treasury; and the plebeian tribunes protected the interests of the lower classes. By the second century BCE these offices were formalised into a rigid career ladder known as the *cursus honorum*. Citizens pursuing public service would achieve honour and glory both on the battlefield and in working

their way up the different magistracies to the apex of the consulship. The Senate, whose role was to discuss policy and provide advice to the magistrates, was itself largely comprised of ex-magistrates. Although its role was advisory in theory, its advice was authoritative and rarely contested in practice. Its composition was largely dominated by a few wealthy, land-owning families, but magistrates outside of these ranks were not unheard of. Another wealthy land-owning class, the *equites*, would buttress their own wealth with financial and commercial ventures as Rome expanded, and although as a class were generally unconcerned with public office, they were not prevented from pursuing it. Individuals that made this transition from the *equites* to the senatorial class were known as *novus homini* (new men).

Republican Rome was without doubt a highly militarised community. Whether this reflects an inherently aggressive and expansionist impulse or an able readiness to defend herself from aggression in an unstable international system is for the reader to carefully consider. Indeed, it is one of the purposes of this paper to draw out some of the issues involved in thinking the matter through. What is significant to note at this point is the effect that war had on Rome's internal politics. Whether through aggression or in defending herself and her allies, Rome was incredibly successful in the wars that she did fight and with victory came a rapidly expanding empire. Her armies likewise had to expand and in 107 BCE the military conscription of the peasantry was passed into law (up until this point, it was only land-owning citizens who had fought Rome's wars). Peasants began to find, however, that upon returning from battle they had been dispossessed of their livelihoods. The land they had worked on had often been seized by avaricious landlords or they were forced to mortgage or sell off their neglected farms at a significant loss, and their labours were replaced by a steady stream of agrarian slaves that their fighting had helped secure (Wood,

1988:34). The ensuing destitution of the peasantry and agitation for land reform gave rise to an ideological division in Roman politics between *populares*, who sought to enhance the people's influence on government policy, and *optimates*, who argued for stricter controls on popular government and the primacy of the senate. The expanding Roman armies came to hold considerable collective power, destabilising the senatorial elite. Bonds of loyalty strengthened between soldiers and generals, increasing the latter's powers to the extent that they could overwhelm the government with force should they find any senatorial decisions unfavourable.

As Rome fought a number of wars on several fronts with increasingly varying levels of success, her internal tensions also gave rise to a series of civil wars in the first century BCE (Gruen, 1974:6ff.). An *optimate* general, Lucius Cornelius Sulla, unprecedentedly marched on Rome in 88 while he was consul, following the reversal of the senate's decision, under the influence of ex-consul Gaius Marius and plebeian tribune Publius Sulpicius Rufus, to grant him command over the first Mithridatic war. Sulla restructured Roman politics to strengthen the senate against popular rule and returned to battle in the East. In his absence, Marius had again become consul and declared Sulla a public enemy, culminating in Sulla's marching on Rome for a second time in 82. The senate appointed him dictator of Rome and he enacted a number of constitutional reforms designed to restore its primacy. He also had slaughtered some 2000 *populares* nobles he perceived to have acted against the public interest, and doubled the membership of the senate from 300 to 600. Sulla resigned his dictatorship in 81, 'reviving' republican politics and securing the consulship of 80. He retired the following year to his country villa in order to write his memoirs, and died in 78.

Precedents had now been set for the infraction of generals and their armies into Roman politics. Marcus Licinius Crassus and Gnaeus Pompeius Magnus (Pompey)

had rose to prominence in support of Sulla and, with Julius Caesar, the three secured total power over the republic in 59 by forming an unofficial alliance which has become known as the First Triumvirate (Gruen, 1974:83ff.). It was not to last. Crassus died in battle in 53 and civil war broke out between Pompey and Caesar in 49. Both were ultimately assassinated and a legally sanctioned Second Triumvirate was formed between Marcus Antonius (Mark Antony), Gaius Octavius (or Octavian, great-nephew and adopted son of Julius Caesar), and Marcus Aemilius Lepidus in 43. It legally outranked even the consuls of the Republic, but it soon too dissolved (Wood, 1988:31). Lepidus was stripped of his powers and sent into exile in 36, and Octavian and Antony fought against each other in the final civil war of the Roman republic between 32 and 30. Octavian won this war and became the first emperor of Rome as Caesar Augustus in 27.

The first century BCE as a whole was marked by a series of civil and foreign wars, the dissolution of senatorial solidarity, ever-changing groupings of allies and complex intrigues. The general thread running through all of this, and the main cause often attributed to the fall of the Roman republic, was the immoderate passions for personal honour and glory in her leading citizens at the expense of the common advantage (Long, 1995:225). A closer look will be taken at these values in the third chapter; for now it is sufficient merely to note that they were values intrinsic to Roman society, they contributed significantly to her military successes, but by the time of the late Republic - by the Ciceronian age - they could pit general against general and Rome against other nations.

1.3 Biography

Cicero's extraordinary life is another subject on which justice would require more space than I have to set it out (Rawson, 1994). He was born in 106 into an equestrian family in the small town of Arpinum, seventy-five miles outside of Rome. The family's landed wealth and powerful connections ensured that Cicero received the best possible education when he moved to Rome in 96, commencing his studies in rhetoric, philosophy, law and literature under some of the leading conservative nobles of the day (Wood, 1988:44). Following a brief stint of military service in the Social War and the commencement of his law practice in the courts, Cicero's education in philosophy began in earnest. He travelled to Athens and Rhodes between 79 and 77, absorbing more philosophy and rhetoric, and upon his return to Rome, he resumed his law practice and began his political career, ultimately securing the consulship in 63 at the minimum age of 42. This was a remarkable achievement for a gentleman of equestrian rank with very little military experience.

The year of his consulship saw the conspiracy of the populist senator Lucius Sergius Catilina (Catiline), who was praetor in 68. During 64, Catiline ran alongside Cicero in the elections for the consulship of 63, but ultimately lost. During 63, he stood trial for his role in the Sullan proscriptions, was acquitted, and decided to run again for the consulship of 62. With reduced political support, he lost this election as well and resolved to seize power illegitimately. Among the motivations of Catiline and the other conspirators were the frustrated debt cancellation and land reform policies of the *populares*, as well as their own exclusion (for a variety of reasons) from public office (Gruen, 1974:418ff.). The conspiracy to seize power was exposed, Catiline fled into exile and, after a *senatus consultum ultimum* (a senatorial decree designed to replace the office of dictatorship in times of existential threat to the republic), five of the

conspirators were executed without trial and Cicero was hailed as “the father of his country” (Rawson, 1994:60ff.).

However, matters were to take a different turn with the consulship of Julius Caesar in 59. Caesar assisted Publius Clodius Pulcher, a long-standing enemy of Cicero, in the securing of the plebeian tribunate, and Clodius had a law passed criminalising Cicero’s execution of the Catilinarian conspirators without trial. Cicero fled into exile in 58, a broken man. By 57, however, the tempestuous winds of fortune had changed yet again. Clodius was spewing violence on to the streets of Rome, which in turn was materially affecting the ability of the assemblies to pass laws, but the violence was countered by the new tribunes Titus Annius Milo and Publius Sestius, both of whom Cicero would later defend in court (in the case of Milo, against the murder of Clodius in 52) (Rawson, 1994:122ff.). Conditions were favourable for the recall of Cicero with the assent of both Pompey and Caesar (who by this time were in fact, if not in law, controlling the republic along with Crassus), and he returned in September of 57 to wide acclaim and with a very carefully-worded speech of thanks.

His debt of gratitude to Caesar and Pompey was enormous and led him frustratingly into a number of actions, not particularly relevant to the present discussion, which he otherwise (probably) would not have taken. There is a general sense of despondency in Cicero’s *modus operandi* in the 50’s, at least as evidenced in his letters, and he withdrew to some extent from public life (to our own good fortune) in order to write political and legal philosophy (Rawson, 1994:122ff.). *De Re Publica* and *De Legibus*, subjects of discussion in the next chapter, were written at this time. The First Triumvirate was also falling apart and Cicero returned from his governorship of Cilicia in 50 to rumours of a civil war brewing between Caesar and Pompey. It broke out in 49, with Cicero throwing his lot in with Pompey, and Caesar’s armies defeating

Pompey's at the Battle of Pharsalus in 48. Cicero returned to Rome with a pardon from Caesar in 47. Again, he largely withdrew from public life and sought consolation in philosophy (particularly upon the death of his daughter Tullia in 45), writing a number of works during this period, including the *De Officiis*, another subject of the next chapter. With the assassination of Caesar in 44, Cicero returned to public service to rally the senate in the face of Mark Antony's tyrannical grasping for power. But in 43, Antony formed the Second Triumvirate with Octavian and Lepidus. One of their first actions was to issue a list of proscribed citizens, and Cicero was named on the list. He was executed at the hands of Antony's death-squad on 7th December of that year (Rawson, 1994:278ff.).

1.4 Philosophy

Setting out the intellectual context in which Cicero thought and wrote is a particularly important aspect of this paper, because his reputation still unjustly suffers from the perception that he was a rhetorical master concealing a philosophical ineptitude. To be sure, his reputation for rhetoric is wholly justified; he was well-schooled in the subject and one only has to refer to anything he wrote to witness his magnificent eloquence. I will address the charge of philosophical ineptitude momentarily, but for now, it is important to emphasise the intimate relation Cicero saw between rhetoric and historiography. Like all Roman citizens, he had a profound respect for the *mos maiorum* ('the customs of our ancestors') and regarded the transmission of its practical wisdom with the utmost seriousness. The writing of history, he argued, was a branch of oratory. Above all, it is truth that should be transmitted through tradition and the orator, with his wide-ranging background knowledge and deep understanding

of politics, is the best placed for historical investigation and exposition. In Cicero's *De Oratore*, one of the characters, Antonius, admires the rhetorical skills of the great Greek historians, saying, for example, of Thucydides that "...he is so exact and clear in expression that you cannot tell whether it be the narrative that gains illumination from the style, or the diction from the thought." (*De Or.* 2.56). The necessity of telling the truth in the writing of history is ever-present; "the completed structure however rests upon the story and the diction" (*De Or.* 2.63). We are wont, in an era steeped in the Kantian categorical imperative, to regard rhetoric as inherently mendacious, but it is incredibly important for our understanding of Cicero that it need not be. In itself, he regards it as a neutral but necessary pursuit which can be used for right or wrong reasons.

On the subject of philosophy, it is difficult to know where to begin with Cicero. He had a vast knowledge of all the Greek philosophical schools and marshalled them together in subtle and complex ways in his own writings. Perhaps the best beginning is made with Plato and Aristotle, whom Cicero described as "those divine geniuses" (*Fin.* 1.7). Aristotle's influence is particularly apparent when Cicero first approaches the writing of philosophy in *De Re Publica* and *De Legibus*, with their attendant discussions of law, justice, constitutional change and the best practicable state and citizen; we find that his philosophical writings "do not differ greatly from the Peripatetics..." (*Off.* 1.2). The highest praise however, seems always to rest with Plato. The quotation just made from the *De Officiis* is immediately qualified: "... (for we both want to be Socratics and Platonists)." (*Off.* 1.2). Plato's influence can also be seen across Cicero's moral, political and legal philosophy, but perhaps in a more fundamental way than Aristotle's; like Plato, Cicero has an abiding concern throughout his work for both the normative force of reason and its limits in practical

affairs (Atkins, 2013). This is wholly in line with the Platonic tradition out of which Cicero traces his philosophical lineage.

Plato's Academy, however, underwent a process of evolution under successive scholars. Cicero identified a split between an 'Old' and 'New' Academy when Arcesilaus became its Head around 266 BCE (*Leg.* 1.39). The fundamental difference between the two phases lay in the stress Arcesilaus placed on scepticism. This is an epistemological doctrine that shies away from the possibility of certainty in knowledge. To be clear, it is not to say that there is no such thing as truth (an ontological claim); it is merely to assert the impossibility of our attaining it (an epistemological claim). Those who do believe in a principle of epistemic certainty are described in philosophy as dogmatic (without any pejorative connotations). Plato's Old Academy was dogmatic insofar as it saw its system of ideas as approaching or achieving a general unity, and thereby certainty. The first sceptics, the Pyrrhonists, were more radical than the New Academy or even Descartes in the modern age, extending their doubt as far as to the principle that everything should be doubted (in a similar style to poststructuralists and postmodernists today). The New Academy's scepticism was moderate, entertaining the notion of probability. Around 87 BCE, the Head of the New Academy, Philo of Larissa, fled to Rome as a refugee of the Mithridatic Wars, and there Cicero absorbed his teachings. The characteristic approach of the moderate sceptic is to suspend judgment on a given issue until all sides of the debate have been heard, the evidence assessed, and a conclusion reached as to what is probable (Coleman, 2000:248). Cicero time and again in his works extols the virtues of the New Academy. It is precisely the school of thought he sees as most closely resembling the original Socratic scepticism and it this mode of philosophising which allows him to wander freely among the different schools, assenting to their

arguments according to the extent that they seem truthful. It is a pragmatic way of thinking that encourages tolerance towards those who may disagree and humility in terms of our own wisdom.

Still, a little dogmatism is never off the table for Cicero. His epistemology may be rooted in the New Academy, but his ethics are to a very large extent derived from the teachings of the Stoics (Coleman, 2000:250-251). It is from this school that Cicero takes up and develops his theory of natural law in *De Legibus*, so central to his ethical outlook and just war thinking. It is based on the idea that the universe is rational, humans share in this reason, and therefore we have moral duties to others not only in the *polis* but also in the *cosmopolis*: the universal commonwealth, or the human race as a whole. Here we see again as we did in Plato the tensions between philosophy and politics, between the rational perfection of nature and the customary standards of political community. The early Stoa were austere in their ethics; only a community of sages, the perfectly wise, could be virtuous (Colish, 1985). The rational commands of nature necessarily dissolved the conventional practices of humans, but in his capacity as a Roman statesman with the utmost respect for the *mos maiorum*, Cicero was concerned to preserve conventional practices. By the time Panaetius introduced Stoic philosophy to Rome in the second century, the austerity of Stoic doctrine had been relaxed somewhat. Panaetius himself was concerned to give practical advice on moral conduct to those who were imperfectly wise but nevertheless had virtuous potential; citizens could *progress* towards virtue, and the irrational faculties of humans could be channelled appropriately by the rational faculties, or to give the latter their proper names, the classical virtues of prudence, justice, courage and moderation (Coleman, 2000:251). Between 79 and 77 BCE, Cicero was taught by Posidonius, a pupil of Panaetius. Posidonius was a somewhat unorthodox Stoic, drawing on extrinsic

sources to build quite a unique breed of Stoic ethics which saw both the irrationality of human desires as impervious to rational control and the necessity of using non-rational means to deal with them (Colish, 1985:45). His outlook is similar to Panaetius' insofar as the subordination of the irrational is in agreement with nature, but we see in Posidonius an emphasis on power rather than reason in this subordination (Erskine, 1990:192-204; Edelstein, 1936:305-316). Both philosophers would come to exert a significant influence on Cicero's moral and political philosophy, and by extension, his justification of Rome's *imperium* (a concept which signifies both power and reason: rational control).

Another significant influence on Cicero's thinking was his friend Antiochus of Ascalon, a member of the Academy and pupil of Philo's who abandoned moderate scepticism and returned to the dogmatic teachings of the Old Academy. Antiochus stressed the fundamental unity of thought between the Academics, Peripatetics and Stoics, arguing that the alteration of doctrines we see across these different schools of philosophy are merely differences in vocabulary rather than substance (Atkins, 2013:167). The influence of Antiochus can be seen particularly in *De Legibus* where Cicero sets out his Stoic-inspired theory of natural law, but links this theory back to Platonic doctrine (Leg. 1.55). Over-arching this dogma is, of course, Cicero's moderate scepticism. In the words of A.A. Long (2003:199):

“This dual allegiance to Philo and, with qualification, to Antiochus, is a highly intelligent interpretation of the Academic tradition. It allows Cicero to draw heavily on Plato and Stoicism, in advocating positions he strongly supports, while preserving an exploratory rather than dogmatic style, and reserving the right to criticise Stoics and even Plato on occasion”.

This is a valuable reflection to bear in mind as we proceed to consider not only *De Legibus*, but also *De Re Publica* and *De Officiis* in the next chapter.

1.5 Conclusion

In this chapter, I have provided the reader with some contexts for what follows. The first section provided a history of the Roman republic, showing the nature of her mixed constitution, the different social classes that comprised Roman society, the war-like character of international relations at the time, and the internal and external tensions which arose from Rome's rapid expansion in the 2nd Century. The second section traced the life of Cicero from his early education, on to his rapid rise through the *cursus honorum*, and finally to the chaos of the 50's and 40's which culminated in his execution. The final section set out the intellectual context of Cicero's writings, highlighting the significance for him of history and rhetoric and describing the influence of different Greek philosophical schools on his way of thinking. Cicero's project of bringing Greek philosophy to bear on Roman practice, of articulating a number of these modes of thought in Latin for the benefit of not only his contemporaries, but also his commonwealth and posterity, is one to which philosophers in general look askance. Finding the 'ideal' city manifest in Rome as she has developed in history, for example, has been seen "as unphilosophical as unhistorical" (Finley, 1983:128). This is to neglect the fact that Cicero is not only a philosopher, but also a statesman. As well as cultivating wisdom for its own sake, he has a concrete responsibility to the commonwealth and regards the wisdom gained from philosophy as essentially a tool of statecraft. As John Adams was to say of Cicero in the 18th Century: "As all the ages of the world have not produced a greater

statesman and philosopher united in the same character, his authority should have great weight” (quoted in Atkins, 2013:1). With this thought in mind, we can proceed to interpret Cicero’s writings.

Chapter 2: Texts

2.1 Introduction

The previous chapter sought to give some historical, biographical and intellectual context to Cicero's writings. With this background in place, I move on in this central chapter to a close examination of three of his works in political, legal and moral philosophy: *De Re Publica*, *De Legibus* and *De Officiis*. The first section considers the first two of these works, with the purpose of setting out the foundations of Cicero's theory of natural law and, more generally, his republican way of thinking. The next section moves on to the *De Officiis*, Cicero's work on practical ethics, where some content is given to the natural law. It then focuses in on the just war principles that Cicero sets out in this text. The overall purpose of this chapter is to draw out Cicero's thinking in such a way as to foreground a general problem that he is trying to solve: the problem of reconciling pure reason with the irrationalities of human affairs. This is expressed throughout as the problem of reconciling the rational with the actual. I extract three Roman concepts central to Cicero's republicanism – *potestas*, *auctoritas* and *libertas* – in order to clarify his method of reconciliation. I also draw on the different Greek philosophical schools described in the previous chapter, in particular the scepticism of the New Academy, to shed further light on how he goes about tackling this fiendishly complex philosophical problem.

2.2 De Re Publica and De Legibus

I bring these texts together in one section because, very much like Plato's own *Republic* and *Laws*, they are twin volumes. In the first, Cicero deals with the question of the best kind of commonwealth and best kind of citizen, and in the second, he

moves on to a discussion of the best practicable laws for the protection and preservation of both. Following Plato again, Cicero writes them in dialogue form, meaning that his own position is obscured by the literary context (Atkins, 2013:17). Adding to our labours of interpretation are the facts that *De Re Publica* has come down to us in a fragmentary state (about one third of the complete work is extant) and the opportunity and civic necessity of returning to politics meant that Cicero left *De Legibus* incomplete and possibly unrevised.

De Re Publica is set in 129BCE, with Scipio Aemilianus (destroyer of Carthage) and other nobles discussing the best kind of commonwealth and the best kind of citizen. Book I sets out to discover the best kind of commonwealth, drawing on the simple types of constitution identified in Greek philosophy: monarchy, aristocracy and democracy. Their virtues and vices are all pored over before it is established that the best kind of constitution is a judicious blending of all three: a monarchical element holding *potestas*, an aristocratic element holding *auctoritas*, and a democratic element holding *libertas*. The latter concept, *libertas*, signifies the power to do as one pleases, though it should be noted that this covers both ‘negative’ liberty (absence of constraint or domination) and ‘positive’ liberty (self-mastery) (Berlin, 2003). *Libertas* resides in the people. The concept was as contested in Cicero’s day (not least because of his own contributions) as it is in our own. We will have occasion to consider it in more detail in the next chapter, but it is the first two concepts that are more important for our purposes here. *Potestas* signifies power derived from nature (or law). In Roman government it resides in the magistrates, but it is important to remember that for Cicero the concept itself is rooted in nature, namely something that transcends government in the colloquial sense. *Auctoritas*, or authority, is something altogether different to power; it signifies a source of origin, responsibility, experience and

advice. In Roman government, it resides in the Senate. The concept's etymological root is *augere*: to augment or increase. In the words of Michael Oakeshott, to have *auctoritas* is "to be a teacher, not a commander" (quoted in Atkins, 2013:108). The *auctor's* status arises from the fact that he stands in an unbroken line of tradition that stretches back to a given foundation (the foundation of Rome in the present context). Change should occur only after advice has been given by *auctores*; advice that it is unsafe to ignore if one is interested in augmenting rather than uprooting foundations. Because it is a recurring theme in this paper, it is important to note in the concept of *auctoritas* the way in which it ties together permanence (foundations) with change (augmentation) (Arendt, 1963:179ff.).

In Book II, Scipio recounts a history of Rome to show that, precisely because of the collective wisdom of her statesmen over time, her mixed constitution is the *realization* of the best practicable. He bases the justice of Rome's constitution in the *auctoritas* of ancestral tradition, or convention. But later in the discussion, his friend Laelius seeks to ground justice in human affairs with reference only to the *potestas* of nature which, as the Stoics argued, is a ready solvent of convention. His definition of natural law has had a profound impact on the history of political thought:

"True law is right reason, consonant with nature, spread through all peoples. It is constant and eternal; it summons to duty by its orders, it deters from crime by its prohibitions. Its orders and prohibitions to good people are never given in vain; but it does not move the wicked by these orders and prohibitions. It is wrong to pass laws obviating this law; it is not permitted to abrogate any of it; it cannot be totally repealed. We cannot be released from this law by the senate or the people, and it needs no exegete or interpreter like Sextus Aelius. There will not be one law at Rome and another at Athens, one now and

another later; but all nations at all times will be bound by this one eternal and unchangeable law, and the god will be the one common master and general (so to speak) of all people. He is the author, expounder and mover of this law...".
(*Rep.* 3.33)

The universe is rational because the god reigns over it with right reason, which is the true law. Humanity, alone of all living creatures on earth, shares in this divine reason, giving rise to virtue when our conduct agrees with the rational order of things. Law (right reason) is a normative concept on this reading; it prescribes our behaviour.

Laelius grounds justice with reference to the *potestas* of nature, whereas Scipio does so with reference to the *auctoritas* of tradition. The overall structure of *De Re Publica* invites us to consider this gap between the natural, ahistorical, necessary and immutable on the one hand; and the conventional, traditional, contingent and changeable on the other (Atkins, 2013). Cicero, in line with his New Academy scepticism, has removed himself from this conversation so that his own *auctoritas* does not prevent us from arriving at our own judgment. He leaves the debate deliberately unresolved; this is a difficult philosophical problem we all must work through by the use of reason. How can we reconcile the rational and the actual?

De Legibus is set in Cicero's own day, with the author as the main character, in discussion with his brother Quintus and friend Atticus about the appropriate laws for the best practicable commonwealth. Cicero's *auctoritas* returns, as it should: although philosophical enquiry is under way, a statesman is now legislating for the commonwealth and there are limits as to how much philosophy (the rational) can be brought to bear on politics (the actual). A more detailed account of natural law is given in Book I. Books II and III are the remainder of the extant work and represent Cicero's account of the conventional laws of the commonwealth and how they come

to *participate* in the natural law. A tripartite division of law is given: the natural law, the law code that Cicero sets down for the best practicable commonwealth (religious and constitutional law), and the civil law (those written laws specific to a given people) (*Leg.* 1.17). Natural law is the measure of justice and injustice and must be brought to bear on the other types of laws. These other types of laws are not perfect expressions of the natural law. Instead, the natural law is progressively modified and adapted to the contingencies and irrationalities of human affairs. Constitutional and civil law are imperfect expressions of, or “in accordance with”, the natural law insofar as they are shaped by its commands and prohibitions (*Leg.* 2.13). As in Plato’s *Laws*, and against the Stoics, Cicero regards the rational as supporting, rather than undermining, the actual. This is of a piece with his wider project to make Greek philosophy available to Roman practice.

But how can fallible human beings come to fully comprehend the right reason which is the natural law in the first place? *De Re Publica* concludes with a dream that Scipio is having, where he meets his father and grandfather in the heavens, the final resting place for virtuous statesmen (*Rep.* 6.9 – 29). He looks down on the earth and recognises its relative insignificance, at the same time as he can see the perfect rationality of the universe that surrounds him. Earthly rewards such as the glory to be found in public office are seen as nothing compared to virtue itself, which is its own reward. He wakes up with the image of the perfectly rational universe in mind. The implication is that the statesman should resolve to nurture the only eternal thing on the face of the earth, the human soul, so that both he and the commonwealth can flourish. Such statesmen will rise to the place in the heavens where he met his father and grandfather in his dream. Here we arrive at the crux of the problem. This vision of the rationally ordered universe, the natural law in all its perfection, is a utopia. Holding

this vision in mind is just as necessary for the commonwealth as its journey of approximation. Precisely because humans are fallible they require this vision. From this fallibility arises the *auctoritas* of ancestral tradition: "...there never was a genius so great that he could miss nothing, nor could all the geniuses in the world brought together in one place at one time foresee all contingencies without the practical experience afforded by the passage of time" (*Rep.* 2.2). Utopia may not be reached through history. But what does emerge is the best practicable regime, through many statesmen down the generations nurturing the virtue in their souls. We have seen law described by Laelius as right reason, consonant with nature. Cicero also states that "when this same reason is secured and established in the human mind, it is law" (*Leg.* 1.18). But the commonwealth needs more than conventional laws in accordance with nature; it needs institutions – customary standards of social behaviour – as well (*Rep.* 4.3). The best practicable laws and institutions – and here we can start to think about the just war principles of the universal commonwealth - are attained by nurturing virtue in the soul. Citizens, especially leading citizens, must be as morally upstanding as they can be for the sake of the commonwealth. We are ready now to add some content to the natural law and to consider Cicero's just war principles.

2.3 De Officiis

Written in 44BCE, a year before his death, *De Officiis* (On Duties) is Cicero's final philosophical work and is considered by many to be his masterpiece, although the curious interplay between the rational and the actual is just as evident here as in *De Re Publica* and *De Legibus*. The *De Officiis* is a work on practical ethics, written in the form of a lengthy letter to his son who was studying in Athens at the time. Modelled

on a work by Panaetius (now lost), it consists of three books. The first asks: what is honourable (*honestum*)? The second asks: what is beneficial (*utile*)? And the final book is given over to specific examples where the honourable and the beneficial appear to be in conflict. Cicero takes for granted in this work the Stoic doctrine that whatever is honourable is beneficial, whatever is beneficial is honourable, and only one whose reason is less than fully developed will ever see the two as being in conflict.

In approaching what Cicero refers to as the honourable, we must look to the natural law. Its most fundamental tenet is self-preservation. As humans who share in the divine reason, there arises a natural sociability that leads us to seek our preservation in the formation of communities. The very basis of community is justice, the cardinal virtue that takes pride of place in the *De Officiis*. Cicero sub-divides this virtue in two: justice proper and beneficence (Rowe and Schofield, 2000:509). Of justice proper, three foundations are identified: harm no one without cause, serve the common advantage, and keep faith with others (*Off.* 1.20-23; 1.31). Actions in accordance with these foundations are both honourable and beneficial. Serving the common advantage involves treating “common goods as common and private ones as one’s own”, whereas keeping faith with others (*fides*) refers to the importance of mutual trust for the preservation of community (*Off.* 1.20ff.). Beneficence is that part of justice concerned with the kind actions that promote fellowship (*Off.* 1.42-59). Two types of injustice are identified: harming others without cause and failing to prevent the harm of others (*Off.* 1.28). Note how generally these tenets are pitched. For example, goods need not be material, harm need not be physical, and keeping faith need not be dependent on written contracts. The natural law is modified and adapted to the

conventional, and for the conventional to be honourable, it must be in accordance with the natural law.

Although written as a letter to his son, publication of the *De Officiis* would also provide moral guidance for the young nobles who were statesmen-in-waiting. Such statesmen would necessarily contend with foreign affairs so Cicero deals explicitly in the text with justice in warfare (*Off.* 1.34-40 for the main discussion). He begins with a statement worth committing to memory:

“There are two types of conflict: the one proceeds by debate, the other by force. Since the former is the proper concern of man, but the latter of beasts, one should only resort to the latter if one may not employ the former. Wars, then, ought to be undertaken for this purpose, that we may live in peace, without injustice; and once victory has been secured, those who were not cruel or savage in warfare should be spared.” (*Off.* 1.34–35).

From our perspective, we can see here in embryo the *jus ad bellum* categories of last resort and just cause. We might also see the *jus in bello* category of discrimination, and even a concern for the *jus post bellum*. But there is more to be said. The beast-like properties of humans that lead to the occurrence of war in the first place are the result of a less than fully developed reason. Our natural condition is peaceable and sociable, and the Roman commonwealth most closely approximates this ideal. Just causes of war will arise then, most often when non-Roman commonwealths, less in accordance with the natural law, harm Rome or her allies in some way. Less beast-like than everyone else, Rome will fight these just wars only in order to secure peace without injustice. Historical examples are adduced to demonstrate Rome’s beneficence in accepting some defeated nations into Roman citizenship, such as the Aequi and

Volsci, and to highlight the absence of any mercy shown to Carthage and Numantia (*Off.* 1.35). Cicero expresses doubts about Rome's utter destruction of Corinth, but believes (somewhat implausibly) that it occurred because her continued existence was perceived to have posed an existential threat to Rome. On more than one occasion in his rhetorical speeches, Cicero tries to persuade his audience that the *threat* of physical force is violence in itself – psychic violence, or fear and terror - and here we find it has made its way into his more philosophical writings as well (*Caec.* 42 and 46; *Phil.* 5.31; *Off.* 1.24). 'Harm' is defined permissively enough that justice can be identified in pre-emptive strikes (the just cause of self-defence). More interestingly, perhaps, is that Cicero finds justice in the ruthless, beastly prosecution of war (the *jus in bello*) when the survival of the commonwealth is at stake. Acting beastly can be a *virtue* where the beastly actions of others threaten the very existence of the commonwealth. We will return to this thought later, and more than once, but notice here also the interplay of the rational and the actual. Cicero's just war principles in the above quotation are both rooted in the natural law and exemplified in ancestral tradition. Indeed, the practices of his ancestors are viewed through the prism of natural law: was Corinth destroyed through pre-emptive self-defence? Philosophy is brought to bear on history, the rational on the actual, and the result, both here and in Scipio's account of the rise of Rome's mixed constitution in *De Re Publica*, is a somewhat idealized history. Such are the limits of reason in practical affairs; philosophy seems to have slid imperceptibly into rhetoric. But should we expect any less of statesmen who have nurtured virtue in their souls? Their abiding concern is the protection and preservation of the commonwealth.

It is important to reiterate that Cicero regards acting beastly as a last resort. Although at times it may be necessary to save the commonwealth, it is most unseemly in all

human beings, who all share in the divine reason. One of the marks of a beast is treachery and Cicero singles this trait out as highly iniquitous; it destroys human fellowship of any kind. Thieves and liars are the scourge of every society. When wars are fought for anything other than the survival of the commonwealth (again, of which more later), one must keep faith even with those whom one is fighting. From our perspective, we see this speaking to the *jus in bello* when Cicero describes the honourableness of past warriors such as Regulus and Fabricius who kept oaths made to their enemies despite the fatal cost to themselves and the un-fatal but nevertheless high cost to the commonwealth (*Off.* 1.39, 3.99-111). We also see it speaking to the *jus post bellum*, in that any ensuing *just* peace in the universal commonwealth requires the absence of deceit. And again, these principles of justice in warfare arising from *fides* are both rooted in the natural law and exemplified in ancestral tradition.

Returning to the issue of just cause, and bringing in another contemporary *jus ad bellum* category – proper authority – Cicero has recourse again to ancestral tradition:

“A fair code of warfare has been drawn up, in full accordance with religious scruple, in the fetial laws of the Roman people. From this we can grasp that no war is just unless it is waged after a formal demand for restoration, or unless it has been formally announced and declared beforehand.” (*Off.* 1.36)

The *fetiales* were a college of priests tasked with the oversight of international affairs. History (mainly Livy’s, written in the late first century BCE) relates that the institution was borrowed wholesale from the Aequi, a neighbouring people, as far back as the eighth century BCE. The procedure involved the striking of treaties and the performing of rites which called the gods to witness the securing of oaths. Any perceived violation of a treaty would involve more rites, the contents of which were

essentially a formal demand for restoration made in the presence of relevant individuals of the foreign power. A period of time would be provided for restitution to occur, but if this time elapsed without redress, the *fetiales* would approach the Roman government of the day, informing them that a just cause for war was present, who in turn would then decide whether or not to wage the war. If it was to be waged, the *fetiales* were tasked with issuing a formal declaration of war to the enemy, which took the form of more rites and a bloodied spear hurled into enemy territory (Russell, 1974:6). The idea behind the institution was to ensure that Rome never fought aggressive wars. What is striking to note for our purposes is that the earliest known testimonium for the *fetiales*' role in declaring war dates to the early second century BCE from a Roman senator, Lucius Cincius Alimentus, writing a history of Rome. Cincius dates its provenance to the eighth century, but his sources are unclear (Ando, 2010). Significantly, in all extant sources after he wrote this history, no mention at all is made of the *fetiales*, or indeed of any international norms of justice, until the time that Cicero starts referring to them in *De Legibus* in the mid-50's (Ando, 2010; *Leg.* 2.21). The *fetiales* are finally recorded as actually declaring war in the lead-up to the Battle of Actium in 31. It is plausible to conclude that this is a further example of Cicero's (and indeed Livy's) idealization of history. Evidence is scant that procedures were actually in place to ensure just cause and proper authority for Rome's wars in ancestral tradition, but it is entirely understandable why Cicero would see them there and argue that there *should* be such procedures: they would be in accordance with the natural law.

Another contemporary just war category that has some purchase on Cicero's thinking is proportionality. *Fides* as an aspect of justice is important here, but other virtues are

foregrounded in his relevant discussion in the *De Officiis* as well, namely wisdom and courage:

“To charge rashly into battle and engage the enemy hand to hand is monstrous and beastlike. But if the necessity of the occasion demands, one must fight hand to hand, preferring death to slavery and dishonourableness ... It is also the mark of a great man in times of unrest to punish the guilty but to preserve the mass of people, holding fast to what is upright and honourable, whatever fortune may bring ... We must never purposefully avoid danger so as to appear cowardly and fearful, yet we must avoid exposing ourselves pointlessly to risk.” (*Off.* 1.81-83)

One’s life must be put on the line for the commonwealth as the situation demands and no more. The wise man will be a good assessor of risk, weighing up costs and benefits, all the while upholding *fides* by focusing punishment only on the unjust. Such prudence results in great deeds that are both honourable and beneficial. It may seem that to lose one’s life is not beneficial, but the wise man knows that the common good and the private interest, the honourable and the beneficial, are identical:

“We are not born for ourselves alone, to use Plato’s splendid words, but our country claims for itself one part of our birth, and our friends another ... men are born for the sake of men, so that they may be able to assist one another ... When you have surveyed everything with reason and spirit, of all fellowships none is more serious, and none dearer, than that of each of us with the republic. Parents are dear, and children, relatives and acquaintances are dear, but our country has on its own embraced all the affections of all of us.

What good man would hesitate to face death on her behalf, if it would do her a service?" (*Off.* 1.22 and 1.57)

Once again, justice in warfare is rooted in the natural law and exemplified in ancestral tradition (recall Regulus and Fabricius). The cultivation of our souls, our reason, gives rise to virtue and we can see that Cicero regards this as *civic* virtue. Patriotism is supremely honourable and beneficial; the true patriot achieves glory. This is republicanism proper: the merging of the individual's identity with the commonwealth's identity. Some controversies emerge with this line of thinking which will be discussed in the next chapter. For the moment, let us simply reflect on the character of the republic. There is a judicious blending of *potestas*, *auctoritas* and *libertas* in its constitution; mixed government is one of its enduring characteristics. Citizens of the republic are distinguished by their moral duties and responsibilities more than their rights. Cultivating virtue in their souls allows for the successful discharging of these duties, and this is understood as civic virtue, the rewards for which are honour and glory. Civic virtue is found in public service, whether in politics or on the battlefield. Having surveyed it with reason and spirit, the good citizen is rationally and emotionally bound to the commonwealth; he is a patriot, and will put his life on the line for the common good. The wise man will discern what the common good actually is, and act appropriately.

Insofar as Cicero, statesman and philosopher, in his life and in his writings, may be said to have discerned the common good and acted appropriately (virtuously), he will have attained honour and glory, and he will be residing in the starry heavens with other wise statesmen. But recall Scipio's dream: the earthly rewards of honour and glory are as nothing compared to virtue itself, which is its own reward. We will consider this puzzle in the next chapter. For now, let us draw out the character of

Cicero's republican way of thinking and how it shapes his just war principles. The common good is seen as "the well-being of citizens, the safety of states, and the calm and happy life of humans" (*Leg.* 2.11). This formulation is pregnant with possibilities and risks; we have citizens, states and humans all brought together in a single conception of the common good. A kind of precarious balancing act between the Roman commonwealth and the universal commonwealth seems to occur in Cicero's thought, the latter plainly the influence of the cosmopolitan Stoics. He provides some guidelines for negotiating these dual responsibilities in the context of discussing beneficence, and even though surveying things with reason and spirit results in a patriotic commitment to Rome herself, he maintains that it is not a competition and enjoins us to become good calculators of our duties (*Off.* 1.42-60). As the *potestas* of the natural law commands, we have duties to preserve and protect both the calm and happy life of humanity in general and the well-being of citizens (of both our own and other commonwealths, or 'states' as Zetzel translates it here) in particular. Combined with the *auctoritas* of tradition, which not only evinces the *potestas* of nature in the collective wisdom of statesmen over time but also prudently pays regard to the irrationalities of human affairs, Cicero discerns principles of justice in warfare, which will inevitably occur in an imperfect world: fight only to secure a just peace; fight only on proper authority and after a formal declaration has been made; fight only in defence of the commonwealth or her allies; and fight (where appropriate) with *fides* and beneficence. In the *De Officiis*, Cicero conducts a trailblazing experiment to reconcile the rational and the actual when thinking about war. He *grounds* reason in the *potestas* of nature, sees it *manifest* in the *auctoritas* of tradition, and with a canny combination of both, formulates just war principles in accordance with the natural law. These principles aim at the *libertas* of both the Roman and universal

commonwealths, which in some sense must be *a* commonwealth. On this reading, the Roman commonwealth fights just wars, and in her victories expands, bringing a just peace to progressively larger areas of the universal commonwealth. One might heuristically imagine a circle expanding until it aligns with a larger, pre-existing circle. In other language and contexts, this expansion is referred to as (defensive) imperialism, but Cicero, looking back on Roman history, maintains that her empire could more truly have been titled *patrocinium*, which we can roughly translate as ‘protectorate’; it was attained with justice (*Off.* 2.26-27). But is it maintained with justice in his own day? He goes on at this point to lament the egotistical machinations of the Sullas and Caesars of the late Republic. Although he has used the dogmatic Stoics to ground reason in nature in the *De Officiis*, there is also the ever-present scepticism of the New Academy.

2.4 Conclusion

This chapter has been concerned to interpret Cicero’s mode of reasoning in relation to his just war principles. An examination of *De Re Publica* and *De Legibus* has uncovered a concern of Cicero’s to bring the natural law, which is necessary and ahistorical, together somehow with everyday human affairs, which are contingent and historical. The problem is set before the reader in *De Re Publica* but never actually resolved, though the tools for doing so are given in the concepts of *potestas*, *auctoritas* and *libertas*. Cicero’s scepticism is to the fore here, urging the reader to think the matter through for themselves and decide on the solution they believe to be probable. In *De Legibus*, Cicero moves on to write the conventional laws of the best practicable commonwealth, creatively applying the teachings of both Plato and his

friend Antiochus to his Stoic-inspired theory of natural law, such that civil and constitutional law can be seen to be *in accordance with* the natural law. Scipio's dream in *De Re Publica* discloses the utopian element in Cicero's thought; despite the practicalities of writing conventional laws, he forever holds a vision of the rational perfection of the universe in mind and cultivates the virtue in his soul which partakes of the same perfection and leads to the preservation and protection of the common good, which has been formulated as the well-being of citizens, the safety of states, and the calm and happy life of humans. In the *De Officiis*, some content is given to the commands of the natural law in order to provide practical advice to potential statesmen. A number of just war principles are set down in accordance with the natural law but we also repeatedly see them manifest in ancestral tradition, much as Rome's constitution emerged in history as the best practicable regime. This grounding and manifestation of the just war principles in reason and history speaks to the complex task Cicero sets himself to reconcile the rational with the actual, and the republican concepts of *potestas*, *auctoritas* and *libertas* are deployed to shed light on the statesman-like, that is, the *practical*, way in which Cicero goes about the task. Republicanism gives rise to a particularistic patriotism, but Stoicism is ever-present in Cicero and the cosmopolitan commands of the natural law give rise not only to the just war principles, but also the predicament of Rome's empire. Cicero's Stoic ethics leads him to regard this empire as properly called a protectorate insofar as Rome's rule is just, but even with the foregrounding of cosmopolitan ethics in the *De Officiis*, his New Academy scepticism is still present: he is no longer sure about the justice of Rome's *potestas*. It is time to consider in more detail some of the controversies that are beginning to surface.

Chapter 3: Controversies

3.1 Introduction

The previous chapter provided a particular interpretation of Cicero's philosophy that paid due attention to the various Greek schools of thought he brought to bear on Roman practice and the creative ways they were put to use in reconciling the rational with the actual. By the end of the chapter, however, some tensions emerged and it is the aim of this chapter to consider them in some detail. In the first section, we will consider what seems to be a fundamental tension between republicanism and cosmopolitanism, and in particular the republican values of honour and glory which informs this tension. The second section moves on to consider another of Cicero's just war principles deferred from the last chapter in order to place it in its proper context: that wars fought for the glory of empire should be waged with less bitterness than wars fought for the survival of the commonwealth. In the final section, we move on to an interpretation of Cicero's civic humanism and the problem of savagery, before concluding with some reflections on Cicero's approach to these controversies.

3.2 Honour and glory in the *res publica* and beyond

The argument in this section requires that some definitions be set down at the beginning. Cicero's republicanism, as we have seen, generates a deep rational and emotional commitment to the commonwealth, a fundamental value of which is the *libertas* of the people (Skinner, 1992). It will be remembered that *libertas* signifies both self-mastery and the absence of domination. This value is manifest in Cicero's description of the common good as "the well-being of citizens, the safety of states, and the calm and happy life of humans" (*Leg.* 2.11). Honour (Latin: *honor*) is an

incredibly rich concept. For our purposes, I will define it as a subjective feeling of worth *and* an objective validation of that feeling from others (Hatch, 1988). Glory (Latin: *gloria*) is a kind of superlative of honour, signifying great fame or renown. Honour and glory are conferred by the people upon those individuals whose actions live up to its values (in this context, *libertas*). A people, using the definition Scipio provides in *De Re Publica*, is “an assemblage of some size associated with one another through agreement on law (*iuris consensus*) and community of interest” (*Rep.* 1.39). This definition of a people is perennially scrutinised by scholars. Janet Coleman’s understanding is very helpful for what follows:

“The ‘state’ [*res publica*] is identified with its people’s *concern*, its people’s *business*, through an agreement over *ius*, meaning both what is agreed to be right and hence, normatively, what is law, where there is a shared advantage, interest, utility (*utilitas*) being served. The emphasis is on an agreement, an acknowledgement, of what is in the collective interest.” (Coleman, 2000:277, italics in the original)

How far *iuris consensus* and community of interest stretch beyond Rome’s borders is precisely the balancing act Cicero needs to make between the Roman commonwealth and the universal commonwealth. To what extent is the human race a people? How far is there a universal commonwealth, such that he can talk about the common good as involving the ‘safety of states and the calm and happy life of humans’? Wars in fact occur, so the answer must be: not very far. An *emotional* commitment to the community appears only to be possible amongst proximate human beings who share a way of life, and it is precisely this emotional commitment that is required to generate the level of civic engagement that would lead one to lay down one’s life for the common good (Hanasz, 2006:283). Despite the best efforts of the Stoics, republicanism all too easily becomes exclusionary: non-citizens find themselves less

morally relevant (Linklater, 1998). Surveyed with reason and spirit, it is our own country that wins our hearts and minds. Yet a Stoic commitment to grounding reason in nature must lead Cicero to see wise men the world over having *iuris consensus* (understood as agreement on the natural law) and, with the *honestum* and *utile* brought together in the *De Officiis*, there is community of interest amongst these sages as well. The universal commonwealth appears to be held out as the same utopian vision as witnessed in Scipio's dream; a vision just as necessary to the Roman commonwealth as its historical and contingent journey of approximation amidst the irrationalities of human affairs. The *potestas* of nature (*justice* in warfare) must be supplemented with the *auctoritas* of tradition (*justice* in warfare). The journey of approximation takes place in a reality of a world of states, a world of different peoples, a world of humans progressing towards virtue instead of a world of sages or gods, and so the *libertas* of these different peoples is not aligned. A judicious blending of *potestas*, *auctoritas* and *libertas*, in the Roman or any other commonwealth, provides for the best practicable way forward.

Preserving and protecting the *libertas* of the people begets honour and glory, both of which attach (in an imperfect world) to public office and military prowess. Cicero, both in his life and in his thought, emphasises the former and downplays the latter (Off. 1.74-78). He is perceptive enough to see that military prowess, at bottom, is beast-like and close to our socially destructive passions, yet realistic enough to acknowledge its necessity. Indeed, it is in accordance with the natural law that a commonwealth preserves and protects the well-being of its citizens, which must include their security; the 'safety of states'. Only the honourable and glorious rise to the position of statesmen; the plural of *honor* is *honores*, which signifies the public offices with which the people reward outstanding individuals. But one must take care:

I have defined honour as a subjective *feeling* of worth, an emotion, and Cicero warns that the passion for honour and glory "...is slippery ground indeed: scarcely a man can be found who, when he has undertaken toil and confronted dangers, does not yearn for glory as a kind of payment for his achievements" (Off. 1.65). Greed can insidiously corrupt men's souls and their reasoning, and Cicero readily invokes examples from the recent past, in particular Sulla and Caesar, who succumbed to their selfish passions for glory to the detriment of the common good (Off. 2.23, 2.27). Indulging these passions led them to rule with fear and undue cruelty.

The question of whether to rule with love or fear is an ancient problem that can be traced at least as far back as Thucydides. In Rome, the issue was raised by the famous sceptic of the New Academy, Carneades, in 155 BCE, when he addressed the people across two days, on the first with a speech arguing in favour of justice, and on the second with an equally powerful speech arguing that government was impossible without injustice. Book III of Cicero's *De Re Publica* recreates these speeches as a debate on the justice of Rome's empire between Philus and Laelius, although he alters Carneades' version by giving the argument for justice the last word. Philus, arguing from the side of the actual, contends that law arises not from nature but from convention. Laws vary from time to time and place to place and are written because humans are fundamentally motivated by utility, or what is beneficial to them. Hence, as there is no universal standard of justice, Rome's empire, although perhaps beneficial to herself, cannot be called just in a universal sense. Laelius, arguing from the side of the rational, as we have seen, has recourse to a universal standard of justice in the natural law. He puts forward a number of arguments, one of which is that it is in agreement with the natural law for the strong to rule over the weak for the latter's advantage. We will consider this in more detail below. But he also argues that Rome's

empire is just because she has fought just wars. These wars were all defensive in nature, with the aim always in mind of securing peace without injustice. The salient argument for our purposes here is that the glory of Rome's empire is grounded in the same justice, in particular, the beneficence she has shown to those conquered and brought under her reign.

Although the speech is left unresolved in *De Re Publica* (and has come down to us in a somewhat fragmentary condition), Cicero in the *De Officiis* seems to side decisively with Laelius on the matter: "...there is nothing at all more suited to protecting and retaining influence than to be loved, and nothing less suited than to be feared" (*Off.* 2.23). Richard Tuck (1999:20) argues that for Romans "...glory consisted precisely in the capacity to overawe one's rival and thereby render one's self safe from attack" and interprets Cicero's claim that the only just cause of war is to live in peace "unharméd" (*sine iniuria*, which is translated in the last chapter as 'without injustice') as a reflection of this Roman tendency to strike at a perceived threat, ostensibly in self-defence, which would not only neutralise it, but also, and perhaps primarily, deter others as well in a demonstration of military pre-eminence. This is akin to P.A Brunt's claim that "Roman reactions to the possibility of a threat resembled those of a nervous tiger, disturbed when feeding" (Brunt, 2004:173) While Cicero does indeed regard glory as "of the greatest assistance in conducting matters of importance" (*Off.* 2.31), we should hesitate before tying this utility so closely to the use of force in the way that Tuck and Brunt do. Historically, Romans may have seen the value of glory in these terms, and it may even *in fact* have had this effect whenever Rome went into battle, but as A.A. Long (1995) argues, Cicero in the *De Officiis* sets out to reformulate the concept for his contemporaries. Glory as an instrument of terror does not form part of Cicero's theory. Instead, he grounds it in an ethical framework

derived from Stoicism. In Cicero's argument, it is inextricably linked with justice, and so it becomes associated with the love, trust and admiration – rather than the fear and intimidation - of others (*Off.* 2.31-38).

On the surface, it looks like Cicero is losing faith with the *auctoritas* of tradition: the actions of military generals like Caesar seemed to be wholly in line with the customs of their ancestors, placing high value on self-sacrifice and patriotism and thus achieving glory in the name of the commonwealth (Griffin, 1996:278). By using reason to reconceptualise glory so that it is brought in line with justice, it looks like Cicero is turning away from the practical wisdom of his forebears. But recall the structure of *De Legibus*, where Cicero *qua* statesman rather than Stoic philosopher sees the rational as supporting rather than undermining the actual. Reason, for all its limits in political matters, is brought to bear on practice in such a way as to benefit the commonwealth, which is the over-riding concern of the statesman. Cicero could see as plain as day that the intemperate passions for glory were ruining the Republic and so it was necessary as a matter of practical wisdom to set it upon the foundations of justice. Indeed, for Cicero, *true* glory is achieved if the situation demands that the statesman sacrifice 'his own' glory (*Off.* 1.83). In this respect, he can be seen to question the *auctoritas* of tradition and simultaneously stand wholly in line with it.

This is a sophisticated attempt to reconcile the rational and the actual, creatively applying a dogmatic doctrine (the natural law) from Stoicism to the contingencies of Roman affairs. But consider again Scipio's dream in *De Re Publica*. The wise statesman knows that the earthly rewards of honour and glory are fleeting; in the grand scheme of things, they will melt away in the onward march of history. Scipio gains the insight that virtue is in fact its own reward and leads to *true* glory (*Rep.* 6.25). In the *De Officiis*, Cicero is at pains to point out that dissembling and generally

seeming to the people to be virtuous leads only to a false glory which is ephemeral; it is much better to *be* virtuous and achieve the true glory which “takes root and spreads its branches” (*Off.* 1.43). From the perspective of the starry heavens, even this true glory will wither and die in the fullness of time, but this is beside the point; virtue is indeed its own reward, but true glory is still to be preferred than the false glory which is bestowed on the basis of fear and dissimulation. Glory, it will be recalled, is useful to the statesman in matters of importance, and it is by being what we wish to seem that it is achieved. Being virtuous, being just and beneficent, involves ruling with love rather than fear. Fifteen centuries later, Cicero’s advice on these matters would be inverted by another republican, Niccolo Machiavelli, who counselled that seeming is better than being, and that the statesman should rule with fear rather than love (Bondanella and Musa, 1979). Machiavelli’s realism in international relations is well known; he has done more than most to emphasise militarism in the history of republican thought. As we have seen, however, Cicero’s brand of republicanism grounded in a utopia is rooted in a civic virtue which rules with love.

3.3 Waging War for the Glory of Empire

In line with this advice to rule with love, Cicero counsels in the *De Officiis* that wars fought for the glory of empire, as opposed to wars fought for the very survival of the commonwealth, should be waged with less bitterness (*Off.* 1.38). Beastliness in such wars is unjust, because one is fighting other commonwealths who in some degree are in accordance with the natural law, insofar as they have created conventional laws and institutions for their common advantage; they are sociable peoples. Again, historical examples are adduced; Cicero roots his just war principle in the rational and the

actual. Placed in the category of wars fought for empire and thus were due milder treatment are the Latins, Sabini, Samnites, Pyrrhus and the Carthaginians (*Off.* 1.38). The first four did in fact receive milder treatment, including Roman citizenship, but the inclusion of Carthage here is a surprise given that it was razed to the ground. When Carthage was mentioned in discussing who should be spared in warfare (those not cruel and savage: see *Off.* 1.35), Cicero did not dissent to its brutal destruction. He made an observation that it was utterly destroyed, nothing more. Now, discussing conduct when fighting for empire (as Rome definitely was with Carthage), Cicero states explicitly that the Carthaginians “were breakers of truces, and Hannibal was cruel” (*Off.* 1.38). Beastliness, in other words, and justice required a beastly response. Still, they remain in the category of ‘rivals’, wars fought for rule or empire, rather than ‘enemies’, wars fought for survival. As to the latter category, Cicero invokes the wars fought against the Celtiberi and the Cimbri. The former in particular is a hard-sell: it is difficult to characterise the Celtiberian wars as threatening the existence of the Roman commonwealth (Harris, 1979:209-210). Possibly Cicero has in mind here that it may have been a war of survival for the Celtiberi, but not for Rome (Dyck, 1996:149). All he claims is that they were enemies rather than rivals. But would this justify Rome’s beastly prosecution in battle with them? In his commentary on the *De Officiis*, Andrew R. Dyck cites a German scholar Harald Fuchs who identifies here a crossing of two classifications, characteristic of Cicero’s wider project to bring Greek philosophy to bear on Roman practice: on the one hand, we have the Roman distinction Cicero makes between *de Gloria* (wars fought for empire) and *de Salute* (wars fought for survival), and on the other, we have the Greek distinction made between the civilized and the savage (Dyck, 1996:149). The Greek rather than Roman

distinction would neatly fit all of these nations into their respective categories, but of course Roman conduct towards Carthage would still remain a problem.

3.4 Humanity, Inhumanity and the *Jus Gentium*

Cicero himself repeatedly makes a distinction in his works between the civilised and the savage. This is intimately linked to the extent to which one's reason is developed. Civilisation arises from natural sociability, whereas savagery destroys those social ties that bind communities together. When savagery rears its ugly head, when conventional laws and institutions give way to brute force, the natural law at its most fundamental, self-preservation, emerges. This is when the beastly prosecution of war can be a virtue and the tenets of realism come to the fore. But at these moments, paradoxically, we are less than human. In the *De Officiis*, Cicero provides a tripartite division of law similar, but not identical, to that given in *De Legibus*. There is the natural law, the law of nations or peoples (*jus gentium*), and the civil law (*Off.* 3.23, 3.69; see also *Part. Or.* 37.129-130, quoted in Conklin, 2010:484). The middle category has changed. I want to suggest that this reflects a move from Cicero's legislating for the Roman commonwealth in *De Legibus*, to legislating for the universal commonwealth in *De Officiis*. Cicero is the first ancient in whose extant works we find the term *jus gentium* used in a technical sense. We all have the capacities for reason and speech and it is only through these capacities that a people, that is, a commonwealth, will emerge. Different peoples, different nations, form through the development of reason and speech, and the *jus gentium* emerges unwritten as an expression of the natural law, relevant to the contingencies of human affairs (Conklin, 2010). The just war principles set down in the *De Officiis* are written

expressions of the *jus gentium*. Savages, however, by definition and deficiency of reason, cannot be part of a people, nor can they form a people. They sit outside of the protections of the *jus gentium*, that is, the just war principles as Cicero sets them down. But what happens when we link this back to his discussion about waging wars for empire with less bitterness? Carthage had all the appearances of a commonwealth, so one would have thought it was protected by the *jus gentium*, but its leader Hannibal was cruel and the Carthaginians were breakers of truces. Despite the appearance of a commonwealth, Hannibal and the Carthaginians were in fact savage. The Celtiberi were savage as well and so were rightly called enemies. Looking at Rome herself, Cicero was ‘the father of his country’ when he identified the Catilinarian conspirators as an existential threat to the commonwealth and visited the natural law at its most fundamental and beastly on them with summary executions, which without the fascistic *senatus ultimum consultum* would have been unconstitutional. He could also castigate Caesar because he “overturned all laws of gods and men” (*Off.* 1.26), and justify his assassination, and he would be harsher still with Mark Antony in his *Philippicae*. Making the point more generally about those archetypes of savagery, he states that:

“there can be no fellowship between us and tyrants – on the contrary there is a complete estrangement – and it is not contrary to nature to rob a man, if you are able, to whom it is honourable to kill. Indeed the whole pestilential and irreverent class ought to be expelled from the community of mankind” (*Off.* 3.32).

The justifications of tyrannicide, the just and beastly treatments of other types of savagery, the just war principles and the justification of empire all seem to fall into place with Cicero’s natural law theory. But the reader might still find something

jarring. The fact that a hierarchy of societies develops according to natural law, with Rome as the most civilized at its apex, is very convenient and has implications for how even international law as we know it today might discriminate unjustly (Conklin, 2010). Who decides where the line is to be drawn between civilization and savagery? Can a commonwealth remain a commonwealth if its leading citizens are savage? What implications does this have for the justice of any empire which is ruled by a savage? The debate between Philus and Laelius in *De Re Publica* speaks precisely to these concerns and is left deliberately unresolved. Cicero in the *De Officiis* appears to endorse Laelius' position: it is only the wise man – he who has nurtured virtue in his soul - who can make these determinations. The foregrounding of natural law based on dogmatic Stoicism in the *De Officiis* is made precisely in order to throw our moral duties into relief. But it should not lead us to conclude that these are Cicero's final words on the matter, still less that he intends to provide us with *answers* of any kind. The scepticism of the New Academy which has been foregrounded in this paper should give us pause for consideration. After speaking of the international injustices of the 2nd Century plebeian tribune Tiberius Gracchus, Laelius concludes his justification of empire in *De Re Publica* as follows:

“If that license should become customary and spread more widely and should transform our power from right to might, so that those who are now our willing subjects should be held by terror, even if those of us who are getting on in years have almost finished our watch, I am still concerned about our descendants and about the immortality of the commonwealth, which could be eternal if our life were conducted in accordance with ancestral laws and customs” (*Rep.* 3.41)

This neatly encapsulates, I think, Cicero's general outlook; the realistic scepticism of an *auctor* co-existing as a matter of necessity with the dogmatic stoicism of an *imperator*. The *potestas* of nature and the *auctoritas* of tradition are both necessary for the *libertas* of fallible humans. The best practicable solution in this imperfect world is the *res publica*. But in the absence of a global *iuris consensus* and community of interest, this is impracticable internationally and so, paradoxically but necessarily, empire for Cicero becomes the best practicable solution to the problem of international relations. In Book I of *De Re Publica*, Scipio provides a fascinating discussion of monarchy, which stands out from the comparatively briefer discussions of aristocracy and democracy. Out of the three simple types of constitution, monarchy is his preference because "...if there is a kind of royal power in men's minds, there will be the rule of one element, namely judgment (that is, of course, the best part of the mind); and when judgment rules, there is no place for lust, none for anger, none for rashness" (Rep. 1.60). The best part of humanity's 'mind', the Roman commonwealth, rightly exercises *potestas* in the international sphere. Irrational, cruel, beastly and angry 'peoples' such as the Carthaginians and Celtiberi are rightly subdued by the most rational commonwealth. Augustine preserves a fragment of Laelius' justification of empire in Book III of *De Re Publica*, where it is held that it is in agreement with nature for the strong to rule over the weak for the latter's advantage (Rep. 3.36). So long as she is just, Rome's subordination of both the civilised and the savage in the international sphere is glorious. But this needs refining. Subordinating the civilised is just only insofar as it is beneficent, whereas subordinating the savage is just because it preserves the common good understood as the safety of states. Another fragment preserved by Augustine here distinguishes between two types of rational rule (Off. 3.37a). One is like the mind ruling over the body, a king ruling over

his subjects, or a father ruling over his child, that is, the rule is constitutional and corresponds with how the civilised are ruled over or 'directed' in an empire (with beneficence). The other type is like the rational part of the mind subduing the irrational part, the passions, like a master subdues and 'controls' his slave. This is unconstitutional, an exercise of force (*vis*) and corresponds with how the civilised rule over the savage. The argument is too fragmentary here to interpret with much confidence. Zetzel (1996:307-308) finds in it a justification of slavery over the 'flawed', the beast-like or inhuman. It is perhaps possible to see the influence of Posidonius here as well with irrationally ruling over the irrational. In the present context, Rome's empire would be glorious in any event because both forms of subordination are just; the love, trust and admiration would come from civilised peoples for the subjugation of the savage. Whatever the argument here, the problem remains that the wise man and rational commonwealth are never perfectly wise or rational and will not always be able to distinguish civilisation from savagery. Nevertheless, they are the best placed to do so. All we can hope for is to supplement *potestas* with *auctoritas*, and to this end, Cicero writes the *De Officiis*, both for the moral education of statesmen and for the glory of Rome's empire. Sceptical Cicero recognises the irresolute nature of the problem and offers his unique brand of republicanism as the best practicable solution. This style of thinking is still in play even beyond the borders of the Roman commonwealth itself. Jed W. Atkins (2013:116), in discussing *De Re Publica* and *De Legibus* states that Cicero aims at "relaxing reason's reign, even while continuing to hold it as normative". This can be extended to the *De Officiis* as well. It perhaps best sums up the general character of Cicero's philosophy and it is the very stuff of just war thinking.

3.5 Conclusion

In this chapter, I have considered three controversies that arose from my interpretation of Cicero's philosophy. The first concerned a tension between republicanism, cosmopolitanism and the values of honour and glory which attach to a particularly republican conception of *libertas*. These values are manifest in Cicero's thought in both the rational (where they are grounded) and the actual. Moreover, glory has purchase in the universal commonwealth. This has led scholars of a realist persuasion to regard glory as an instrument of terror in Cicero's thought. I have sought to show that Cicero in fact grounds it in justice, in particular, the love, trust and admiration of others, rather than their fear and intimidation. Centrally important here is being rather than seeming virtuous. This leads to the second controversy, which is the just war principle that wars fought for empire should be waged with less bitterness than wars fought for survival. Problems arise here in the historical examples Cicero cites, which in turn leads us to the third controversy: the problem of savagery. Determining who is protected by the *jus gentium* turns out to be a tricky business, and Cicero's republican way of thinking comes to the fore here, even beyond the borders of the Roman commonwealth. The necessity of holding both Stoic *potestas* and sceptical *auctoritas* together, in a characteristically republican way, is thrown into relief here. In the final analysis, it pays for the reader to keep both in mind when thinking about either Cicero's own just war principles, or justice in warfare more generally.

Conclusion

Rather than fill this valuable space with a summary of the preceding arguments, let me assume the reader still has them fixed in mind so we can lift our heads up from Cicero's own writings and survey the surrounding landscape. The first issue I want to consider is his legacy for the just war tradition. One of the very few contemporary texts recognising his contribution subtitled the chapter dedicated to him as "Civic virtue as the foundation of peace" (Reichberg, Syse and Begby, 2006). This is an excellent summation of his legacy. Starting from the moral imperatives of the natural law and working through these to the legitimacy of the *jus gentium*, constitutional and civil law, Cicero sets down the foundations for thinking about the just war in juristic, republican and humanistic terms. I have room here to consider briefly only three thinkers in the just war tradition who have been influenced by his ideas. Its putative father, Augustine, was very well read in and highly respectful of Cicero. His own focus was more on the 'virtue' rather than the 'civic' (understood as the City of Man), but many of the just war principles he puts forward, such as keeping promises with enemies and showing mercy to the defeated, can be traced back to Cicero. Thomas Aquinas developed his own systematic theory of natural law, built with a close eye on Aristotelian philosophy, but he was also very well read in Cicero and we see the same concern for the natural and conventional being dealt with in his own writings. Finally, but not exhaustively, Alberico Gentili studied in great depth the influence of Roman law on just war and his *De Armis Romanis* is a dialogue directly modelled on the Carneadean debate that takes place between Philus and Laelius in *De Re Publica*.

An enduring relevance can be discerned in Cicero's creative moral engagement with his own society's values. My own research will continue to investigate the central Roman values of honour and glory in relation to the ethics of warfare. This is surely more than of mere historical interest. Do these concepts still have explanatory power in a contemporary setting? What did they mean for Romans, what did they mean for Cicero, how have they changed or stayed the same over time, and how might they be influencing the theory and practice of justice in warfare today? Such values seem to be rooted in a distinctly republican kind of *libertas*. Standing at the head of the tradition of republican thought, Cicero's writings on the subject, it seems, cannot help but be *auctoritatis*. Whether they are also invested with *potestas* remains to be seen.

As a further example of the applicability of his thought, I will cast a brief Ciceronian gaze upon a contemporary just war discourse. James Turner Johnson has perhaps done more than any other living scholar to enrich our knowledge of the historical tradition within which moral thinking about warfare takes place. He views the very influential pastoral letter written in 1983 by the National Conference of Catholic Bishops (NCCB), *The Challenge of Peace*, which planted a 'presumption against war' in our moral thinking, as breaking faith with the classical just war tradition, which in turn Johnson views as a consolidation of some religious (*jus ad bellum*) and secular (*jus in bello*) concepts around the end of the Middle Ages (Johnson, 1975). Key points of contention include the sequencing and (some) content of the *jus ad bellum* categories that the NCCB sets down (just cause, competent authority, comparative justice, right intention, last resort, probability of success, and proportionality), the undue influence of modern war pacifism on their presumption against war, which removes the "compass of moral decision" from military capabilities which unavoidably exist, and the redundancy of the presumption itself in the face of the NCCB identifying the

“obligations” of statesmen in terms of humanitarian intervention a decade later (Johnson, 2006:180ff., NCCB 1993).

The question of sequencing is an interesting one. Cicero’s own might run something like last resort, then just cause and right intention simultaneously, then proportionality, then finally proper authority (Off. 1.34-36). But the mode of reasoning involved in ‘sequencing’ breaks down in the face of practical wisdom, which of course Johnson seeks to preserve both at the head of the sequence and in the study of the ethics of warfare in general (and in both I wholly agree with him). But if we consider the NCCB’s contribution to the just war tradition as a form of practical wisdom itself, where the rational supports the actual for the common advantage, we might see the presumption against war as a rhetorical device which is theoretically redundant (as it will not affect the moral calculations of statesmen in practice) but nevertheless effective at shifting the global moral discourse, the just war tradition, in a generally pacifist direction. This questioning of *auctoritas* whilst standing wholly in line with it insofar as it seeks to preserve the common advantage can be regarded as a development of the tradition. Foundations are preserved and augmented rather than uprooted; our thinking is enlarged.

And yet we can stretch our application of Cicero’s thinking even further. He deals shrewdly and creatively with this perennial problem in political philosophy – reconciling the rational and the actual - that speaks not only to the difficulties of thinking about just war, not only to the republican tradition and its international legacy more generally, but also, and more generally still, to the Academy itself. Let us take our own field as an example of the latter. It is characterised by an internecine struggle between those who find wisdom in an analytical, ahistorical approach to the study of ethics in warfare, and those who find a more practical wisdom in its history

of thought instead. Channelling Cicero, perhaps we can say that the best practicable regime for our field is a judicious blending of the *potestas* of the analytical theorists, the *auctoritas* of the historical approach, and thereby sufficient *libertas* for the field in general. Instead of civil warfare, we could be a peaceable commonwealth, if only there were *iuris consensus*. Cicero, of course, notwithstanding his scepticism, was a fierce advocate of ancestral tradition and senatorial *auctoritas*. The *potestas* of *imperators* is essential for anything to get done, but as fallible human beings left to their own devices, by and by, they will succumb to their passions which is to the detriment of us all. Philosophy, of necessity, must be brought to bear on both politics and history, but there are limits to how far it can do so in both cases. Reconciling the rational and the actual is not easy. To push beyond philosophy's limits in its application to politics, we *need* history. Practical wisdom is necessary in all political endeavours and it cannot be achieved purely through the use of reason, though we need that as well. Cicero's teachings represent a fount of wisdom, both rational and practical, still largely untapped in the just war tradition.

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