

‘THE LAWS OF THE RITES AND OF THE PRIESTS’: VARRO AND LATE REPUBLICAN ROMAN SACRAL JURISPRUDENCE¹

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Abstract: Starting from Cicero’s famous panegyric on Varro’s *Antiquitates* and attempting to look past the image of the book provided by Augustine, this article proposes a new reading of that work and its place in late Republican intellectual culture. Cicero’s specific claim that Varro opened up ‘the laws of the rites and of the priests’ for his readers allows us to contextualize the *Antiquitates* within a contemporary jurisprudence. The rise of Roman legal studies in general in the first century BC extended to the laws of the priestly colleges: there are signs of lively debate over their nature and the production of texts on the details of these *iura*. By re-reading the fragments from the *Antiquitates* alongside the evidence for this sacral-legal turn, we can gain both a new appreciation for the place of law (*ius*) in Varro’s textualization of Roman religion and a fuller understanding of Republican legal thinking.

Keywords: Roman law; pontifical law; pontifical college; Varro; *Antiquitates Rerum Divinarum*; Cicero; Q. Mucius Scaevola

‘That is the case, Varro,’ I said, ‘for we were wandering and roaming in our own city like outsiders, it was as if your books (*tui libri*) led us home so that we could finally know who and where we were. You revealed (*aperuisti*) the age of the homeland, the divisions of periods, you revealed the laws of the rites, the laws of the priests (*tu sacrorum iura tu sacerdotum*), you revealed the method (*disciplinam*) of domestic affairs and of campaign, you revealed the site of the regions, of the places, you revealed the names, types, functions, and reasons for all things, divine and human.’
(Cic. *Acad.* 1.9: author’s translation)

At the beginning of the sixth book of his *De civitate Dei*, Augustine of Hippo opens what will be a two-book-long polemic against the late Republican intellectual Marcus Terentius Varro with a long passage of praise for his long-dead opponent, presumably with the goal of making clear that Varro was a worthy target of the rhetorical assault to come. At the heart of his cynical panegyric, Augustine quotes the famous passage from Cicero’s revised version of his *Academica* with which I opened.² For Augustine, as for many readers since, this passage stands as *the* statement of Varro’s intellectual achievement. The Christian bishop, of course, could read parts of Varro’s own work — notably the *Antiquitates*, the very likely referent of Cicero’s *tui libri* — that we now cannot.³

¹ I am grateful to Valentina Arena and Fiachra Mac Góráin for their excellent organization of the Varro workshop and edited volume. I thank Paul du Plessis, Caroline Humfress, and Adam Gitner for assistance. I also thank John Bodell and his Fall 2016 Varro seminar at Brown for timely feedback on this material.

² August. *De civ. D.* 6.2: *denique et ipse <Tullius> huic tale testimonium perhibet*. See Hadas (this volume) for the cynicism.

³ The idea that the *Antiquitates* are the *libri* mentioned here has been the scholarly consensus since Schneider 1794: 1.230, who thought it *manifestum*. For more recent views see, e.g., Dahlmann 1935: 1229 and Cardauns 1976: 12–13. Note too that the character Varro in Cic. *Acad.* 1.8 speaks of the *antiquitatum prooemia* and Augustine quotes Cicero in the introduction to his polemic against this work.

Despite this loss, the Ciceronian statement stands as a potential map of Varro's (lost) learning. Although we cannot know if Varro would have framed his own work in the same way, it allows us to see how it 'made sense' in late Republican Rome. Like the famous Chinese encyclopedia invented by Borges, which divided animals into groups '(a) those that belong to the emperor, (b) embalmed ones, (c) those that are tamed, (d) sucking pigs, (e) mermaids, (f) fabulous ones, (g) stray dogs, (h) those that are included in this classification' and provoked Foucault to laughter and the composition of his *The Order of Things*, Cicero outlines a culturally specific 'Roman encyclopedia' that Varro apparently provided to his contemporaries, and led them 'as if to home'.⁴ Cicero, in a single rapid sentence, charts out the salient taxa of Roman knowledge that Varro offered in the *Antiquitates*: the specific revelation of Roman time, sacral *iura*, political *disciplina* and space, as well as the terms, categories, functions, and origins of all of Roman culture.⁵

Cicero's order of Roman things, however, has often been simply read as a blanket summary of Varro's encyclopedic antiquarianism.⁶ In this reading, Cicero outlines a project that feels familiar: a handbook of *Kult-*, *Privat-*, and *Staatsaltertümer*. Varro, however, is not a colleague; neither was he a colleague of the early modern antiquarians who appropriated him as a scholarly predecessor.⁷ Instead, I suggest, we should read Cicero's list of Varro's accomplishments without assuming that the items straightforwardly correlate with more modern disciplinary projects. For example, the recent debate on the intellectual origin of the medieval disciplines — Varronian or late antique? — is a fine reminder about the difficulty of articulating the relationship between ancient and later fields of knowledge.⁸ Instead, a historicist approach to Roman modes of knowing the world can provide new insights into Republican intellectual life and the work of Varro.⁹ Important recent studies by Andrew Wallace-Hadrill and Denis Feeney have already set Varro's contribution to reframing Roman time and space in a first century BC context.¹⁰

We can extend this kind of investigation to another element of the cultural periodic table laid out by Cicero: 'you revealed the laws of the rites, the laws of the priests' (*tu sacrorum iura tu sacerdotum [...] aperuisti*). What did it mean for Cicero to speak of 'laws' related to the worship of the gods? Modern scholars have often assumed that there is an underlying category of sacred law in Roman thought, which existed in parallel to public and private law.¹¹ In fact, the Romans of the late Republic did not have a single unified concept of

⁴ Borges 1999: 231 and Foucault 1970: xv–xx.

⁵ Although Cicero writes of 'all things, divine and human', a comment by Augustine reveals that Varro's *Rerum humanarum* were 'not on global affairs but about Rome alone', (*non quantum ad orbem terrarum, sed quantum ad solam Romam pertinent*: August. *De civ. D.* 6.4 = *Ant. div.* fr. 5 [I cite from Cardauns 1976 throughout]).

⁶ See, e.g., Dahlmann 1935: 1229; Rawson 1985: 263; Fuhrmann 1987: 144.

⁷ Varro has often been mistaken for a colleague: see, e.g., Taylor 2015: 21, for the idea that Varro is a modern 'language scientist'. On antiquarianism, see MacRae 2018, which argues that the discipline is an early modern invention.

⁸ See Hadot 2005, Shanzer 2005.

⁹ Moatti 1997 is a model for this kind of study, but more remains to be done. On Varro, see the contextualist approach of Gitner 2015.

¹⁰ Feeney 2007: 198–201; Wallace-Hadrill 2008: 231–43, 260–64.

¹¹ See, e.g., Cenderelli 1973: 163 ('diritto sacro'). For criticism of the idea, see *New Pauly s.v. 'Sakralrecht'* (Rüpke).

religious law.¹² There were no ‘religious’ courts or religious police; rather, the connection of *ius* with ritual practice seems to have been made with reference to the priestly colleges, especially the *pontifices* and the augurs.¹³ In Cicero’s own *De domo sua*, for example, he articulates — for an audience of priests — the idea that there are separate *iura* appropriate to either college and contrasts these *iura* with public law.¹⁴ I will suggest in this essay that the *iura* of the priestly colleges had become a significant object of study in the first century BC and will place Varro’s work in relation to this contemporary jurisprudential culture; following Cicero, I argue that sacral jurisprudential material had a substantial place in Varro’s *Antiquitates rerum divinarum*.

Now is the time to turn to the relationship between Varro and Roman sacral jurisprudence. In recent scholarship on Roman religion, learned late Republican texts on this topic, including Varro’s own, have been assimilated to the broad category of ‘antiquarianism’ and, thus, separated from the ‘real’ domain of religion.¹⁵ John Scheid, for example, marginalizes these works as ‘the province of private scholars, writing books that were learned but not official’.¹⁶ On the other hand, work on Varro’s writing on the law has often been conducted according to the frameworks of the ‘Romanist’ tradition of study of Roman law. Romanists have been preoccupied by whether Varro deserves the title of ‘jurisprudent’ and with his ideas about private law.¹⁷ In line with the paligenetic tendencies of the field, the focus has been on the otherwise unparalleled notice of a work in fifteen books by Varro, *De iure civili*, given by Jerome (*Ep.* 33) and the status of various notices of legal procedure and doctrine given by Varro in preserved works (most notably the sections in the *De re rustica* on the law of sale).¹⁸

The most comprehensive and recent work in this vein, by Aldo Cenderelli, argues that Varro does not deserve the title of jurisprudent, but that students of Roman law should still use Varro in a limited way as an indirect source.¹⁹ This kind of approach, however, is defined

¹² See North 2009 for this point and an overview of the topic. A useful survey of Latin terms for ‘sacred law’ and ‘pontifical law’ can be found in the Rutgers dissertation of Michael Johnson 2007. I set aside here the term *ius divinum*, which is generally not used to refer to a body of Roman norms, but rather to either a dharma-like concept of divine order (see, for example, Cic. *Part. or.* 129 and Livy 1.20.6) or as an expression of the subjective property interest of the gods (Gai. *Inst.* 2.2–9, cf. *Dig.* 1.8.1). cf. *RE s.v.* ‘*ius divinum*’ (Berger).

¹³ These colleges did not have broad jurisdictional remit and most often seem to be learned advisors to the senate: see Beard 1990, Santangelo 2013, and Rüpke 2011a.

¹⁴ The idea is raised early in the speech: Cic. *Dom.* 32: ‘these matters are divided between ritual law and public law; I’ll leave aside the part on ritual law, which is much more lengthy to explain, and will speak about public law’ (*quae cum sit in ius religionis et in ius rei publicae distributa, religionis partem, quae multo est verbosior, praetermittam, de iure rei publicae dicam*). It becomes clear that *ius religionis* is a blanket term for separate *iura* of augural and pontifical colleges, about which he repeats his refusal to speak several times in the speech (*Dom.* 39; 121; 128; 138). This was not in good faith: a substantial part of the speech deals with pontifical law: see Linderski 1985 and MacRae 2016: 64–68.

¹⁵ See, for example, the discussion of these texts in Prescendi 2007: 16 and Beard–North–Price 1998: 1.152–53 for the idea that they are separate from religion proper (ritual); by contrast, MacRae 2016 presents a case for their significance in shaping ideas of ‘Roman religion’.

¹⁶ Scheid 2006: 33. The same thing, however, could be said of the civil jurists (I owe this point to Caroline Humfress).

¹⁷ Sanio 1867 and Stella Maranca 1934 argue in favour of Varro as jurisprudent; Cenderelli 1973 argues against (see below).

¹⁸ *Rust.* 2.2–7. On these passages, see Harries 2006: 29–32.

¹⁹ Cenderelli 1973; see also Cenderelli 1976a and 1976b.

by a vision of what 'really' counts as Roman law that is strongly shaped by the example and words of the classical jurists who were canonized by Justinian's *Digest*. Cenderelli, for example, argues that Varro is not a jurist because, despite his evident knowledge of the technicalities of law, he did not think like a jurist; he lacked the 'drive, which we could call instinctive, perhaps unconscious' to isolate the law from other social facts.²⁰ This view of the jurists as guardians of the autonomy of the law is manifestly derived from the classical Roman lawyers and the civilian tradition that follows them.²¹

Recent thinking about Roman law has begun to turn away from this position. As Roman law has lost its place in legal curricula, it has begun a 'descent into history' and has started to seek out 'new frontiers'.²² This new wave of Roman legal history has challenged the image of the social and intellectual autonomy of Roman law and jurisprudence. In a provocative recent essay, Georgy Kantor points out that the juristic stereotype that made the Roman legal sphere coterminous with private, secular law is not supported by the evidence and suggests that we take a more inclusive view of 'Roman law', encompassing religious law.²³ Looking closer, then, at the work of Varro and other late Republican writing on sacral and priestly law can contribute to this new historiography of Roman law.²⁴

This essay aims to substantiate Cicero's characterization of Varro's *Antiquitates* as a work, in part, on *ius* and, more broadly and in support of that argument, to investigate the place of sacral jurisprudence in Roman elite intellectual culture.²⁵ I start from the wider context by investigating how pontifical and augural law became the object of written works and intellectual debate in the late Republic, and then turn to the fragments of Varro to show how the *Antiquitates* was engaged with that legal discourse on the sacred.

1. Writing the *iura*

In a passing comment in Cicero's *Brutus*, designed to authenticate the reputation of the great jurist and statesman Ser. Sulpicius Rufus, the eponymous character mentions that he had encountered the jurist on Samos: 'Just recently, I listened to him carefully and often on Samos, when I wished to know how our pontifical law was connected with civil law.'²⁶ This is a tantalizing and allusive passage; Cicero gives us no more details about this encounter and seems to expect the audience of the *Brutus* to understand why Brutus would have been so keen to hear Sulpicius on this topic.

²⁰ Cenderelli 1973: 166–67: 'il suo impulso, diremmo istintivo e forse inconsapevole, ad isolare in tale fatto l'elemento giuridico'. For arguments in favour of the 'isolation' of Roman law, see Watson 1995 and 2007. See, against this view (all espousing forms of legal realism), Frier 1985, Meyer 2004: 1–7, Harries 2006, Cairns and du Plessis 2007, du Plessis 2013.

²¹ See Tuori 2007 for the role, in particular, of the civilian legal tradition in Roman legal history.

²² See the titles of Frier 2000 and the volume introduced by du Plessis 2013. This new direction itself has a long history: Momigliano 1966.

²³ Kantor 2012.

²⁴ Sacral jurisprudence, on these terms, can become one of the 'pieces' of Roman legal culture that Bryen 2014 urges historians to pick up in search of their distinctive culture of legality.

²⁵ On Varro's interest in *ius publicum* see Todisco in this volume.

²⁶ Cic. *Brut.* 156: *audivi enim nuper eum studiose et frequenter Sami, cum ex eo ius nostrum pontificium, qua ex parte cum iure civili coniunctum esset, vellem cognoscere*. This is all the more jarring in light of Cicero's claim at *De or.* 3.136 that 'nobody studies pontifical law' (*pontificium [ius] [...] nemo discit*), but that idea belongs to a loaded discussion of the 'decline' of the Roman political elite.

Another Ciceronian work, the *De legibus*, however, allows us to see the likely issue. There, Cicero discusses precisely the question of the relationship of pontifical and civil law in two separate passages of polemic against the father and son Publius and Quintus Mucii Scaevolae, who were both pontiffs and jurists. In the first, he decries the position taken by the elder Scaevola that ‘no one is a good pontiff except the one who knows the civil law’; in the second, he complains that the Scaevolae ruined the pontifical law by importing a dodge from the civil law that could allow heirs to avoid having to keep up familial rites (*sacra*).²⁷ If we read these passages against the grain, we can see that the Scaevolae and Cicero were on two sides of a debate over the problem posed in the *Brutus*: how were pontifical and civil law related? The Scaevolae seem to have emphasized that the two were closely linked and to have extended pontifical law by analogy with civil law; Cicero maintains that the connection between the two was tenuous (*quantulum*).²⁸

Historians have tended to side with one or the other party in this dispute — the popular option has been to seek substantive connections between the *ius civile* and the *ius pontificium*; less often scholars have argued for the relative autonomy of the pontifical law.²⁹ Neither argument is quite satisfying: we simply lack the evidence to know what the ‘proper’ relationship between the two *iura* might have been and the very fact of Brutus’s question to Sulpicius perhaps suggests that it was unknown even in the late Republic.³⁰ Instead, we are better off focusing on the dispute itself as evidence that the boundaries of these two bodies of law were being worked out in intellectual terms during the late Republic. I contend that this debate was so pressing because in the same period members of the Roman elite had started articulating the substance of both civil law and priestly law in written works. This new ‘internal’ discourse of the law, as Frier calls it, following Lawrence Friedman, can hardly have failed to raise questions about the relationship between the different forms of *ius*.³¹

Certainly, we can trace, through the second and first centuries BC, an accelerating written discourse on pontifical and augural law. The earliest certain writings on sacral jurisprudence in Rome belong to the second century: we know something of a work on the *ius pontificium*

²⁷ Cic. *Leg.* 2.47; 2.52–53. On the technicalities of the dispute over familial *sacra*, see Harries 2006: 149–53 for a concise guide; for more detail, see Bruck 1945, Bona 2003, and Johnson 2015.

²⁸ Cic. *Leg.* 2.47: ‘What has a *pontifex* to do with the law of party walls or water channels or anything at all, except that bit of law connected with ritual? And how little that is! I believe it’s the law concerning rites, vows, holidays, tombs, and anything else of that kind.’ (*quid enim ad pontificem de iure parietum aut aquarum aut ullo omnino, <ni>si eo quod cum religione coniunctum est? id autem quantulum est! de sacris credo, de votis, de feriis et de sepulcris, et si quid eius modi est.*) See Fontanella 2012: 71–78 for possible philosophical background to Cicero’s position.

²⁹ There is a very long Romanist bibliography on this topic, often without clarity about what connection or separation might entail, though see Schulz 1946: 12 for the stakes. Earlier literature: Pernice 1885, 1886; Mitteis 1908: 26–28; and Watson 1992. See Wieacker 1988: 310–40 for further bibliography. Of recent and non-Romanist works, see in favour of a connection: Scheid 2006; against a connection: Tellegen-Couperus 2012, and Johnson 2015.

³⁰ Our sources suggest that an original pontifical monopoly over the civil law was removed in the late Republican period: Pomponius’s juristic history of Roman *ius* gives the full narrative (*Dig.* 1.2.2; see also Livy 9.46). The question of the historicity of this narrative goes beyond the scope of the present paper; it suffices to note that even in the late Republic, the relation of the *pontifices* to the civil law was up for debate.

³¹ Frier 1985: 141. In addition, the new ‘external’ discourse on codification of law (see Suet. *Iul.* 44 and Cicero’s lost *de iure civili in artem redigendo*) could also have provoked reflection on the limits of the *iura*.

by a certain Fabius Pictor.³² Another Fabius, a Fabius Maximus Servilianus, if this is not the same person, also wrote on this topic in the middle of the second century.³³ It is in the first century, however, that we find much more evidence for writing on the *ius pontificium* and the *ius augurale*.³⁴ We have several references to these works (it is unclear whether these are references to titles of works or just summaries of their content):³⁵ Cicero himself was responsible for a treatise *de auspiciis*; a Veranius wrote a work on *pontificales quaestiones*; Lucius Caesar composed *augurales libri*; like Cicero, Valerius Messalla Rufus wrote *de auspiciis*; Appius Claudius Pulcher dedicated a book *de iure augurali* to Cicero himself; Granius Flaccus is associated with a work *de iure Papiriano*, formally a commentary on old regal law, but apparently focused on ritual norms; and Trebatius Testa wrote a work *de religionibus*. In the next generation, Antistius Labeo wrote *de iure pontificio* and Ateius Capito, the exegete of the Augustan *Ludi Saeculares*, also produced texts *de iure pontificio*, *de iure sacrificiorum*, *de iure augurali*.³⁶ We also know that Quintus Mucius Scaevola the *pontifex* and the augur Claudius Marcellus had opinions on these topics, though it is uncertain whether these were contained in texts or circulated orally.³⁷

All these works seem to have taken their cue from the slightly earlier development of a literature on the civil law: the *Tripertita* of Sex. Aelius Paetus Catus is traditionally credited as the breakthrough.³⁸ That work appears to have been an extended commentary on the Twelve Tables and, therefore, concerned with the *ius civile*. Aelius had some second-century followers, including Junius Brutus and Manilius, but again, this literature seems to have flowered in the first century. Quintus Mucius Scaevola has a reputation as a key figure in this movement and his systematic eighteen books *de iure civili* apparently set a pattern followed by Roman jurists for centuries.³⁹ Many others followed the example of Scaevola: the most famous, thanks to Cicero, are Sulpicius Rufus, Trebatius Testa, and Aelius Tubero.⁴⁰ In the Augustan period, Ateius Capito and Antistius Labeo were particularly prominent and, eventually, fictive ancestors of the two leading schools of the classical jurists.⁴¹

³² This person is most likely to be the Ser. Fabius mentioned in Cic. *Brut.* 81 and should therefore be distinguished from the historians Q. Fabius Pictor and Q. Fabius Maximus Servilianus. For discussion, see Rüpke 2008: 677 n. 5.

³³ Macrob. *Sat.* 1.13.28. This may be a case of garbled transmission through Macrobius, but it is better to suspend judgment.

³⁴ The evidence for all of the following except Cicero can be found in the collection of jurisprudential fragments by Bremer 1896 and 1898, though some book/work attributions and the conclusions in his commentary are incautious. For Cicero, see Müller 1898–1908: 4.3:312. The evidence for the juristic style of these books rests either on their titles (or, at least, how they are referenced by later authors), which echo the form of other juristic works (*de iure*, *quaestiones*), or on reports of their contents.

³⁵ Citation of titles for Latin books, especially in the Republican period, tended to be approximate; confusion between authorial titles and indications of subject matter (in the form of *de* + topic) is particularly common in our evidence. On these issues, see Daly 1943 and Horsfall 1981.

³⁶ For Capito, see also Strzelecki 1967 in addition to Bremer 1898.

³⁷ For Q. Mucius Scaevola, see below. For Claudius Marcellus, see Cic. *Leg.* 2.32 and *Div.* 2.75.

³⁸ *Dig.* 1.2.2.38: 'cradle of the law' (*cunabula iuris*). See Bauman 1983: 129–32.

³⁹ *Dig.* 1.2.2.41. See Bremer 1896: 48–104 for the fragments. See Schiavone 2012 and Frier 1985: 159–71, esp. at 171: 'Q. Mucius is the father of Roman legal science and of the Western legal tradition.' We should perhaps be a little more cautious (see Tuori 2007: 21–69). Cf. Watson 1987, for the idea that Q. Mucius was not innovative, and Harries 2006 and Zetzel 2013, for the role of Cicero in promoting Scaevola as a symbol of legality.

⁴⁰ For biographies, see Kunkel 1952: #40, 44, and 46, and Bauman 1985.

⁴¹ See Bauman 1989: 25–55.

The repetition of names over the last two paragraphs is no coincidence: it was broadly the same group of men who wrote books on the different *iura*, civil, augural, and pontifical. If we look to the surviving fragments of the Republican works on jurisprudence — and frankly this is not a large set of texts — it is clear that this was a single ‘internal’ or expert discourse. There were, of course, points of difference between the texts on different forms of *ius*, derived from the subject material: the genre of collections of juristic *responsa*, whether presented in specific or generalized form, were particular to the individualized cautelar jurisprudence of civil law; the texts on priestly law instead collected the *decreta* and *responsa* of the colleges, which, despite the shared name, had a different valence as expressions of the corporate body and were often produced in response to magisterial or senatorial referrals.⁴² But beyond these differences, we find elements of a common intellectual style: concern to collect norms and record verbal formulae, interest in commentary on archaic laws, and the definition and distinction of terms.

Taking these habits in turn, we can find examples in the various preserved fragments of these works. We can start with the second-century Fabius, whose fragments manifest the collection and edition of rules around the *pontifices* and efficacious verbal *formulae*. The well-known passage on the taboos around the *flamen Dialis*, preserved by Aulus Gellius and probably transmitted to him in a work by the early imperial jurist Masurius Sabinus, is a concatenation of rules that constrained that priest:

It is forbidden for the *flamen Dialis* to be carried on horseback [...] it is forbidden for the *flamen Dialis* ever to swear an oath; it is forbidden for him to use a ring unless it is perforated and broken. It is not lawful (*ius non est*) for fire to be taken from the *flaminia*, the house of the *flamen*, unless it is for rites.⁴³

This bare report of pontifical norms hardly appears to our eyes to constitute anything deserving of the word ‘systematic’, but Fabius Pictor’s work does appear to have initiated learned writing on the *ius pontificium*. In this respect, he has much in common with the other juristic writers of the second century, like Aelius Paetus and his successors, who seem to have been primarily collectors of rules — often in the form of cautelar *responsa* — and *actiones*.

In the first century, we find in several fragments on pontifical and augural law a continuing concern with *formulae*. Trebatius Testa, for example, gave the formula for a libation and specified that the word *vinum* had to be qualified by the adjective *inferius* in order to avoid the accidental consecration of all the wine in the household storage.⁴⁴ Etymology was used as a way to understand the terminology. We find a good example of this in Testa’s *de*

⁴² On priestly *decreta* and *responsa* and their recording, see Linderski 1985b, Linderski 1986: 2154–62 and 2241–56, Scheid 1994, and North 1998.

⁴³ Fabius Pictor fr. 3 (Bremer) = Gell. 10.15.3–7: *equo Diale flaminem vehi religio est [...] item iurare Diale fas numquam est; item anulo uti nisi pervio cassoque fas non est. ignem e flaminia, id est flaminis Dialis domo, nisi <in> sacrum efferi ius non est.* Schulz 1946: 98 identifies this passage as representative of the style of Roman legal discourse in the ‘Hellenistic period’. See also Fabius Pictor fr. 1 (Bremer) = Gell. 1.12.14 for a religious formula.

⁴⁴ Trebatius Testa fr. II. 9 (Bremer) = Arn. *Adv. nat.* 7.31: “‘May the god be honored by this sacrificial wine.’” The word sacrificial, says Trebatius, is added for the sake of this and mentioned for this reason: so that not all the wine that is stored in the cellars and magazines from where that wine which is being offered was taken becomes consecrated and removed from human consumption. (*‘mactus hoc vino inferio esto.’ inferio, inquit Trebatius, verbum ea causa est additum eaque ratione profertur, ne vinum omne omnino quod in cellis atque apothecis est conditum, ex quibus illud quod effunditur promptum est, esse sacrum incipiat et ex usibus eripiatur humanis.*)

religionibus. Trebatius defined the word *sacellum* as 'a small place dedicated to a god, with an altar' and etymologized this word as a compound of *sacra* and *cella*.⁴⁵

Another form of writing on law in the Republican period, starting with Aelius Paetus's interpretation of the Twelve Tables, was commentary on archaic statutes.⁴⁶ We find traces of a work of this kind by Granius Flaccus among the fragments of sacral jurisprudence. His name was attached to a work *de iure Papiriano*, which indicates it was a commentary on a compilation of royal statutes under the name of a legendary early Republican *pontifex maximus* named Sextus Papirius.⁴⁷ As far as we can see, Granius explained various cult regulations, mostly attributed to Numa. For example, he explained that the word *paelex* in a regulation relating to the cult of Juno meant 'concubine'.⁴⁸

Quintus Mucius Scaevola apparently opened up new approaches to jurisprudential thinking in the early first century. The most central of these was a concern with the definition and distinction of terms and the making of analogies. His dialectic definition of the term *gentilis* — found in Cicero's *Topica* — exemplifies the habit of working through the meaning of legal terms by use of increasingly particular distinctions.⁴⁹ We can also see this sort of intellectual work in Appius Claudius's definition of a *sollistimum tripudium* as whatever fell from the mouth of a bird, because it belonged to a wider class of portentous falling objects.⁵⁰ The definition alludes to the *auspicia pullaria*, the Roman practice of feeding chickens before battle in order to generate positive omens (the seed would naturally fall from the beaks, getting around the idea that the objects should fall without human interference).

We know more about this Claudian definition than is given in the terse report in Festus's lexicon. As Jerzy Linderski pointed out, Cicero complains in the *De divinatione* that the augural college had issued an old *decretum* that defined the *tripudium* in exactly this way, as something that fell from the mouth of any bird; he almost certainly learnt this from Appius's book on augury, which was dedicated to him and he read while governor of Cilicia.⁵¹ In other words, Appius Claudius was not simply transmitting a traditional understanding of the form of omen; rather he recorded the decree of the college that had authorized it. In this, he was not alone: the preservation of collegial *decreta* and *responsa* appears in several fragments of these jurisprudential texts.⁵² For example, Ateius Capito explained that the

⁴⁵ Trebatius fr. II. 5 (Bremer) = Gell. 7.12.5–6: *Trebatius in libro de religionibus secundo: [...] sacellum ex duobus verbis arbitror compositum sacri et cellae, quasi sacra cella*. For Varro's discussion of different categories of temple and precinct, see de Melo in this volume, section 2.1.

⁴⁶ On the role of the Twelve Tables in juristic textual 'topography' see Wibier 2014: 59–65.

⁴⁷ See Schulz 1946: 89, with n. 2 for the debate over whether the *ius Papirianum* was an authentically old document or, more likely, was the work of Granius Flaccus himself (perhaps a new collection of old laws).

⁴⁸ Granius Flaccus fr. I. 1 (Bremer) = Macrob. *Sat.* 3.11.5. For the law, see Paulus Diaconus 248 L.

⁴⁹ Cic. *Top.* 29.

⁵⁰ Appius Claudius Pulcher fr. 1 (Bremer) = Festus 386 L: 'Appius Pulcher in book 1 of *Augural Practice* says that a *sollistimum tripudium* is when something falls from a bird, out of the mouth, that she picked up herself; or a solid rock or a rooted tree falls, which are not previously cut down or thrown down or pushed over by rot or human force.' (*sollistimum, Ap. Pulcher in auguralis disciplinae liber I ait, esse tripudium quom avi excidit ex ore, quod illa fert; saxumve solidum aut arbos viviradix ruit, quae nec prae vitio humanave vi caeduntur, iaciantur, pellantur*.) This *liber auguralis disciplinae* is likely the same that was dedicated to Cicero and discussed the *ius augurale* (Cic. *Fam.* 3.9.3).

⁵¹ Cic. *Div.* 2.73: *decretum collegii vetus habemus omnem avem tripudium facere posse*. See Linderski 1985b: 227 and *Fam.* 3.4.2; 3.9.3; 3.11.4 for the connection with Appius Claudius's book.

⁵² Aside from the example below, Gell. 5.17.1–2, Aelius Gallus = Festus 424 L. See also Macrob. *Sat.* 1.16.28 (Messalla Rufus seeking a *responsum*), and Veranius fr. 1.1 (Bremer) = Festus 366 L (absence of augural *decretum*). See Cohee 1994 for priestly *decreta* and *responsa*, especially 39–41 on their preservation in jurisprudential literature.

third-century *pontifex maximus* Tiberius Coruncanius had obtained a *decretum* of a college that permitted the performance of *feriae praecidaneae* on a day of ill omen (*dies ater*).⁵³ In other words, juristic texts on pontifical and augural law were not simply ‘external’ texts, but also transmitted individual rulings of the colleges, articulating them as sources of *ius*.

The poor preservation of the texts limits how much more can be said about sacral jurisprudence in the late Republic. In subsequent periods, this literature apparently failed to find a broad readership: as will be apparent, Gellius, Festus, and Macrobius dominate as tradents of this literature. This subsequent (non-)reception, however, should not prevent us from seeing that these *iura* were a significant locus of intellectual activity in the late Republic, conducted on the same terms, by some of the same people, as civil jurisprudence. Members of the colleges, jurists, and members of the elite all wrote on *sacrorum iura* [...] *sacerdotum*: they collected and discussed rules and *formulae*, commented on old legal texts and defined terms. When they did so, they used the tools of etymology, dialectic, and historical research that were the common patrimony of intellectual culture of the period.

2. tu sacrorum iura tu sacerdotum: *Varro's achievement*

What was Varro's place in this intellectual context? Can we say why Cicero gave him credit for ‘opening up’ the laws of the rites and of the priests? As should now be clear, the inclusion of the *iura* in the list from the *Academica* does not indicate that Varro was first to discuss them. On the contrary, Varro was far from alone in writing on this topic in the mid-first century BC and he, like others, was following predecessors like Fabius Pictor. In highlighting the juristic aspect of Varro's work, Cicero was responding, I suggest, to two broad tendencies apparent in the fragments of the *Antiquitates*: concern with ritual and priestly norms and engagement with the wider late Republican discourse on pontifical and augural law.

If we have not been accustomed to think about Varro's *Antiquitates* in this way, we must blame (or thank) Augustine.⁵⁴ His *De civitate Dei* is by far the most important text for understanding the *Antiquitates*, particularly the sixteen books on *res divinae*. This leaves us dependent on a highly tendentious account of the late Republican text. In light of this, we should note the difference between the Ciceronian summary that included *sacrorum iura* [...] *sacerdotum* and the ‘table of contents’ provided by Augustine for the *res divinae*. Among the books listed, he explains that three books were dedicated to *sacerdotes* (the *pontifices*, the augurs, and the *quindecimviri*) and three others were dedicated to *sacra* (*consecrationes*, *sacra privata*, *sacra publica*), but does not frame these in terms of law. However, as has frequently been pointed out, Augustine's interest in the book by Varro is theological; the part of the work that he discusses at greatest length is the three-book section on the gods.⁵⁵ In fact, none of Cardauns's thirteen fragments from the books on *sacerdotes* or *sacra* are taken from Augustine's text.

⁵³ Ateius Capito fr. 10 (Strzelecki) = Gell. 4.6.10: ‘Therefore, I wrote out the words of Ateius Capito, from book 5 of his *De pontificio iure*: *Feriae praecidaneae* were celebrated on a day of ill omen when Tiberius Coruncanius was *pontifex maximus*. The college decreed that this was not a ritual offence that there were *feriae praecidaneae* on that day.’ (*propterea verba Atei Capitonis, ex quinto librorum quos de pontificio iure composuit, scripsi: Tib. Coruncanio pontifici maximo feriae praecidaneae in atrum diem inauguratae sunt. collegium decrevit non habendum religioni, quin eo die feriae praecidaneae essent.*) The identity of the college here is debated: see Linderski 1986: 2190 n. 159.

⁵⁴ See Hadas (this volume) for Augustine's influence on ‘our’ *Antiquitates*.

⁵⁵ See, e.g., O'Daly 1996 and Hadas in this volume.

Nevertheless, Augustine preserves enough of Varro's programme that we can discern the late Republican author's interest in advancing a normative religious system. For example, one of his justifications for the book was that he could inform the reader which god *should* be worshipped — effectively, a declaration that he would offer theological and ritual norms.⁵⁶ Going further, Augustine writes that Varro's work was framed in the terms of the so-called *theologia tripartita* — making a distinction between poetic, philosophical, and civic conceptions of the gods — and leaves us enough to see that Varro's work aimed at reconciling these three theologies, in order to rationalize and defend the tradition of the city.⁵⁷ In practice, this seems to have involved the harmonization of myth and philosophy to civic ritual; in other words, civil theology was at the centre of the book, with the other two theologies deployed to support it.⁵⁸ In this light, then, Varro's apparent definition of the civil theology is particularly significant:

tertium genus est, inquit, quod in urbibus cives, maxime sacerdotes, nosse et administrare debent. in quo est, quos deos publice † sacra et sacrificia colere et facere quemque par sit.⁵⁹

The third form [civil theology] is that which citizens in cities, especially priests, should know and carry out. It includes which gods each person should worship publicly, which rites and sacrifices each should perform.

The passage is unfortunately corrupt; my English translation gives the clear sense, but editors have not agreed on how to reconstruct Augustine's (or Varro's) words in this passage from the manuscript tradition of the *De civitate Dei*.⁶⁰ At any rate, what is clear is that Varro set up his civil-theological project in terms of *sacerdotes*, *deos*, and *sacra* and used a vocabulary of norms, if not quite explicitly the language of *ius*.⁶¹ Civil theology, he claimed, provided 'canons' of both knowledge and practice for the civic priests: the gods they should worship and the rites they should perform.

This characterization of civil theology may have been even more pointed if the originator of Roman tripartite theology was a previous *pontifex maximus*, Quintus Mucius Scaevola. In a passage that is difficult to interpret, Augustine writes that Scaevola — unlike Varro himself — did not harmonize the three theologies, but championed the civic one as the only form useful to the city. The gods of the poets and of the philosophers were dangerous or superfluous for the state.⁶² In other words, the great jurist appears to have pushed a

⁵⁶ *Ant. div.* fr. 3 (= August. *De civ. D.* 4.22): 'From this we will be able, he says, to know which god we should invoke and pray to and for what reason' (*ex eo poterimus, inquit, scire quem cuiusque causa deum invocare atque advocare debeamus*).

⁵⁷ On the *theologia tripartita* see Pépin 1956, Lieberg 1973, Lehmann 1997: 193–225, Ando 2010, and Hadas in this volume, pp. 82–89.

⁵⁸ See van Nuffelen 2010 and North 2014: 236–45 for how Varro used the tripartite theology.

⁵⁹ *Ant. div.* fr. 9 = August. *De civ. D.* 6.5.

⁶⁰ See the apparatus in Cardauns 1976: 20. My translation follows Merkel and Agahd in taking *colere* with *deos* and inserting *quae* before *sacra*, but this can only be a tentative solution.

⁶¹ Rüpke 2005: 109–10 unduly downplays this normative element.

⁶² August. *De civ. D.* 4.27: 'It is recorded in books that the *pontifex* Scaevola claimed that three kinds of gods had been passed down: the first by poets, the second by philosophers, the third by the leading men of the city. He says that the first kind is worthless, because many things about the gods are made up; the second does not fit with states, because it has some things that are superfluous and some things that are harmful for populations to know.' (*relatum est in litteras doctissimum pontificem Scaevolam disputasse tria genera tradita deorum: unum a poetis, alterum*

civil theology as a counterpart to the civil law with which he is so closely associated.⁶³ Augustine's phrasing implies that Varro discussed the Scaevolan idea in the *Antiquitates rerum divinarum*, though, as we have seen, he differed on the particulars of the relationship between the three theologies.⁶⁴ Nevertheless, his decision to take up the system associated with Scaevola and to emphasize the normative content of civil theology is a useful signpost towards the possible jurisprudential orientation of his book.

We can also place the dedication of the work to Julius Caesar in the context of this programme. Both Augustine and Lactantius mention the dedication and use parallel phrasing when they refer to the *Antiquitates rerum divinarum* as *ad C. Caesarem pontificem (maximum)*.⁶⁵ The similarity suggests that Varro himself placed the emphasis on Caesar's pontificate in the dedication — the Christian authors are unlikely to have independently described Caesar as a *pontifex*. Considering that his addressee was the current head of the pontifical college, which had a strong proprietorial interest in these sacral norms, Varro's bold choice to take up Scaevola's distinction and to emphasize civil theology as a domain of rules for the priests in particular (*maxime sacerdotes*) suggests his confidence in the canons that he claimed to provide in the book and their potential concordance with the *ius pontificium*.

The way this normative programme played out in the *Antiquitates* can be reconstructed from Varronian fragments on *sacra* and *sacerdotes* — not all expressly quoted from the *Antiquitates*, but all congruent with the apparent coverage of that work. In these texts we can find signs of an engagement with the pontifical and augural jurisprudence that I sketched in the last section. As we saw, recording and explanation of *decreta* and *responsa* of the priestly colleges was a salient part of late Republican writing on *ius*. Fragments from the *Antiquitates* demonstrate that Varro also incorporated these pontifical texts into his work. Gellius records that the Romans declared a holy day if an earthquake was felt or announced. Anyone who violated the holy day had to make a propitiatory sacrificial offering.⁶⁶ However,

a philosophis, tertium a principibus civitatis. primum genus nugatorium dicit esse, quod multa de diis fingantur indigna; secundum non congruere civitatibus, quod habeat aliqua supervacua, aliqua etiam quae obsit populis nosse.) I concur with North 2014: 236: 'There is in fact a very strong case for thinking that the two positions of Scaevola and Varro, whatever the order in which they were presented in public form, were completely distinct in their arguments.'

⁶³ See Schiavone 2012: 232–33 and 239–41.

⁶⁴ August. *De civ. D.* 4.27: 'Varro himself does not mind saying that in his books on divine matters' (*quod dicere etiam in libris Rerum divinarum Varro ipse non dubitat*). I take Augustine's *Varro ipse* to imply that Varro was the tradent of the Scaevolan passage. Cardauns 1960: 33–37 cleverly hypothesized that Augustine's source was not the *Antiquitates*, but the *Curio de cultu deorum*, another work certainly known to Augustine. He also suggested that the Scaevola was not, in fact, the real person here, but a character in the dialogic *Curio*. Against this proposal, note the difference between the introductory formula for this notice (*relatum est in litteras*) and the way that Augustine mentions the character Balbus in Cicero's *De natura deorum* at *De civ. D.* 4.30: 'Quintus Lucilius Balbus makes a case in his (Cicero's) second book *De natura deorum*' (*disputat apud eum Quintus Lucilius Balbus in secundo De deorum natura libro*). See also Schiavone 2012: 227 and North 2014: 234 for reservations.

⁶⁵ Lactant. *Div. inst.* 1.6.7: 'Marcus Varro [...] in the books on divine matters, which he addressed to Caesar the *pontifex maximus* (*M. Varro [...] in libris rerum divinarum, quos ad Caesarem pontificem maximum scripsit*); August. *De civ. D.* 7.35: 'those written and published books of Varro dedicated to Caesar *pontifex*' (*istos Varronis ad Caesarem pontificem scriptos atque editos*). On the relationship between Varro and Caesar, see Todisco in this volume.

⁶⁶ *Ant. div. fr.* 78 = Gell. 2.28.3: 'They sacrificed a victim "whether to god or goddess". Varro says that was done by a decree of the *pontifices*; since it was unknown both what power and which of the gods or goddesses was responsible for the earthquake.' (*hostiam 'si deo si deae' immolabant, idque ita ex decreto pontificum observatum esse Varro dicit; quoniam et qua vi et per quem deorum dearumve terra tremere incertum esset.*)

since the deity responsible for the earthquake was unknowable, the offering was given to the deity 'whether god or goddess'. Varro, Gellius tells us, explained that this was the result of the pontifical decree. In other words, Varro grounded the details of a specific ritual in the decree. Gellius does not preserve either Varro's own wording or the text of the decree in this case, but another fragment does seem to preserve the legislative language of this kind of decree. Macrobius gives us a verbatim text from a work of Varro: '[A magistrate] should not summon men on a holy day; if he calls them, let there be a propitiatory sacrifice.'⁶⁷ Varro's interest in pontifical law relating to this topic also shows up in his *De lingua Latina*, where he documents Quintus Mucius Scaevola's *responsum* that distinguished between a negligent and deliberate violation of the holy day and limited expiation to the negligent violation.⁶⁸ Tertullian preserves another *decretum* on the validity of an imperatorial vow — the dedication was only permissible with the assent of the senate — and gave its context: an attempt by Marcus Aemilius to dedicate a shrine to an otherwise unknown god called Alburnus.⁶⁹ As editors of the *Antiquitates* have noticed, the late Republican author was very likely responsible for the transmission of this *decretum*.

A fragment preserved in Festus's lexicon on the *spolia opima*, the special dedication of the armour of an enemy general killed by a Roman soldier in combat, attests to Varro's concern to preserve sacral norms.⁷⁰ The manuscript is lacunose, but enough survives for us to see that Varro recorded the rules for sacrifice and donations that were required for the dedication of the stripped armour. There were three levels of *spolia*, with the distinctions perhaps depending on the rank of the soldier involved. Varro gave two sets of rules for these three levels: the first, which he gave on the testimony of pontifical books (*libri pontificum*), fixed the sacrificial animals to accompany this dedication: 'The state should sacrifice (*publice fieri debere*) a bull for the first *spolia*, a *suovetaurilia* for the second *spolia*, and a

⁶⁷ Macrobius *Sat.* 1.16.18 = *Ant. div.* VIII App. (e): 'They avoided [summons] even on holy days, as Varro writes in these words in his books on the augurs: [a magistrate] should not summon men on a holy day; if he calls them, let there be a propitiatory sacrifice.' (*vitabant etiam ferias sicut Varro in augurum libris scribit in haec verba: viros vocare feriis non oportet; si vocavit, piaculum esto.*) This citation of *libri augurum* creates uncertainty: there was a *liber de auguribus* (book 3) in the *Ant. div.*, but Cardauns 1976: 176 argues for this fragment's placement in the eighth book of the work. Macrobius's practices of citation in this part of the *Saturnalia* are otherwise generally precise: see Rüpke 2011b: 94.

⁶⁸ *Ling.* 6.30: 'The praetor who makes a decision on that day, if he did it accidentally, is purified by an expiatory sacrifice; if he did it on purpose, Quintus Mucius used to say that he was impious and could not be purified.' (*praetor qui tum fatus est, si imprudens fecit, piaculari hostia facta piatur, si prudens dixit, Q. Mucius aiebat eum expiari ut impium non posse.*) A parallel passage in Macrobius *Sat.* 1.16.11 makes clear that this was a *responsum* by Quintus Mucius Scaevola. See Tellegen-Couperus 2012: 158–63.

⁶⁹ *Ant. div.* fr. 44 = Tert. *Ad nat.* 1.10.14; and Tert. *Apol.* 5.1: 'there was an ancient decree that a god should not be consecrated without senate approval. Marcus Aemilius is proof of this, with regard to his god Alburnus' (*vetus erat decretum, ne qui deus ab imperatore consecraretur, nisi a senatu probatus. Scit M. Aemilius de deo suo Alburno*). This *decretum* should be pontifical *decretum*: see the parallels with the pontifical *responsa* at issue in Cicero's *Dom.* 136.

⁷⁰ Festus 204 L: *M. Varro ait opima spolia esse, etiam si manipularis miles detraxerit, dummodo duci hostium ... non sint ad aedem Iovis Feretri poni, testimonio esse libros pontificum; in quibus sit: pro primis spoliis bove, pro secundis solitaurilibus, pro tertiis agno publice fieri debere; esse etiam Pompili regis legem opimorum spoliiorum talem: 'cuius auspicio classe procincta opima spolia capiuntur, Iovi Feretrio dari oporteat, et bovem caedito, qui cepit aeris CC<C> ... secunda spolia, in Martis ara in campo solitaurilia ultra voluerit caedito ... tertia spolia, Ianui Quirino agnum marem caedito, C qui ceperit ex aere dato, cuius auspicio capta, dis piaculum dato.'* I take the accusative with infinitive constructions to depend on *ait* and thus report Varro, but the lacunae mean that this must remain simply a likely suggestion. See Rüpke 1990: 220–23 on this text. This text is not included in Cardauns's edition of the *Ant. div.*, but, as Harrison 1989: 410 points out, its subject matter fits with that work.

lamb for the third *spolia*.⁷¹ He then recorded a law of Numa (*lex Pompili regis*) that supports this distinction in sacrificial animals and explains the different requirements of payment in bronze and to which deities the *spolia* should be dedicated. In both cases, the language used conforms to the language of Roman legislation. Festus's text — despite its unfortunate state — shows how Varro collected these normative texts. But where did he find them? Scholars have debated the meaning of *libri pontificum* since the nineteenth century, but a strong consensus now holds that these were not primary records of the college, but learned works on pontifical law.⁷¹ Similarly, we have seen that Granius Flaccus collected Numa's legislation in the *de iure Papiriano*. In other words, Varro's interest in these normative texts was most likely mediated through other works on sacral law. This passage, then, allows us to see Varro as himself a writer on ritual law and as a reader of other works of the same type.

Varro's reading on the *spolia opima* was not an isolated case: we have other fragments that indicate that Varro read and talked with jurists on topics of pontifical law. Nonius quotes him saying that he read the details of the preparation of the salty *muries*, a sacrificial dish prepared by the Vestal Virgins, in an old commentary (*vetus commentarius*) by Fabius Pictor.⁷² Elsewhere, Macrobius reports that Varro said that he used to hear a man very learned in pontifical law say that it was permitted to repair ditches on the festival days, but not to dig new ones (*ius non esset*). By analogy, widows were allowed to marry on these days, but virgins were not.⁷³ In Macrobius, this jurist's name is given as Verrius Flaccus, but this Augustan name is an obvious error on the grounds of chronology. In this case, the jurist's actual identity must remain uncertain — the two most likely candidates are Granius Flaccus and Veranius — but we can at least get a sense here of how Varro presented his interactions with these experts. Finally, in the *De lingua Latina*, admittedly a different work, but one that had explicit overlaps with material in the *Antiquitates*, Varro gave the etymology of *pontifices* propounded by Quintus Mucius Scaevola himself, who claimed that the word derived from the verbs *posse* ('can') and *facere* ('act').⁷⁴ In this case, again, it seems likely that transmission was oral rather than written — this is the best way to understand Varro's use of the imperfect verb *dicebat* — and he again offered his own better suggestion for the etymology of the word, from *pontem facere* ('to build a bridge').⁷⁵

To sum up, fragments from Varro's *Antiquitates rerum divinarum* and related works suggest that Cicero's characterization of the work as, in part, an exposition of *sacrorum iura et sacerdotum* was founded on a perceptible orientation of the text towards ritual and priestly law. Varro's own conception of civil theology, possibly under the influence of Scaevola, was normative in orientation. In this vein, he collected the *decreta* and archaic legislation that governed ritual action and read and used works of sacral jurisprudence. Beyond this, there are signs that his work shared the interests and material of the wider late Republican learned discourse around pontifical and augural *ius*.

⁷¹ See Rohde 1936: 19–21, Linderski 1985b: 220, and Scheid 1994. Note the citation to Varro's *libri augurum* in Macrobi. *Sat* 1.16.18 (see above).

⁷² Non. 223 M = *Ant. div.* XIII App. (a): 'Varro: "I read this in an old commentary by Fabius Pictor: *muries* is made out of salt, because humble salt is crushed and then thrown into a rough clay jar." (*Varro: in commentario veteri Fabi Pictoris legi: muries fit ex sale, quod sale sordidum pistum est et in ollam rudem fictilem adiectum est.*)

⁷³ Macrobi. *Sat*. 1.15.21 = *Ant. div.* VIII App. (f): *sed Verrium Flaccum iuris pontificii peritissimum solitum dicere refert Varro, quia feriis tergere veteres fossas liceret, novas facere ius non esset. ideo magis viduis quam virginibus idoneas esse ferias ad nubendum.*

⁷⁴ *Ling.* 5.83: *pontifices, ut [a] Sc<a>evola Quintus pontifex maximus dicebat, a posse et facere.*

⁷⁵ On oral transmission and intellectual activity see Marshall, esp. section 3, in this volume.

What would Varro's incorporation of law into his book have looked like? In the absence of a continuous portion of the text, it is difficult to be sure, but one possibility is offered by part of the extant *De re rustica*. In the second book, on animal husbandry, Varro includes several *actiones* for the purchase of herd animals, apparently taken from the second-century jurist Manilius.⁷⁶ These formulae, and comments on them, are included in the text alongside discussions, organized by species, of how to feed, breed, and care for the animals. It is tempting, then, to speculate that Varro used an analogous technique in the *Antiquitates* to insert priestly law into his discursive treatment of Roman cult. On this model, the *Antiquitates rerum divinarum* was not a juristic text *per se* — the later books preserved by Augustine show the distinctly philosophical and theological outlook of that part of the work — but I suggest that we take Cicero's praise as reflective of a particularly prominent thread in what must have been a massive and varied text.⁷⁷

3. Conclusion: Sacral Jurisprudence in the intellectual life of the late Roman Republic

For thirty years, Elizabeth Rawson's *Intellectual Life in the Late Roman Republic* has served — and will continue to serve — as an essential map of the significant and varied intellectual activities of the late Republican literati, both members of the Roman elite and their Greek teachers and assistants. However, like all maps — especially maps of knowledge — the categories of the cartographer have shaped the view of the territory: her disciplinary chapters are palpably selective and shaped by modern preconceptions.⁷⁸ The subject of this essay sits in one of the blank spots on Rawson's atlas — since it is absent or only partly discussed in her different chapters on 'Law', 'Antiquarianism', or 'Theology and the Arts of Divination'.

If we are to advance Rawson's work on the intellectual history of Rome, we must also consider native categories for the organization of knowledge. In this case, I have argued that pontifical and augural law were salient objects of writing and debate in the late Republic and that, as Cicero advertised, this discourse was incorporated into Varro's *Antiquitates*. Forms of *ius* were articulated from various old documents and traditions — *decreta* and *responsa* of the colleges, laws attributed to Numa — and current ritual practices. Even if it was somewhat modest in volume compared to the significant literature on civil law that started in the same period, this discourse on pontifical and augural law shows the potential capaciousness of *ius* as an ordering principle for the Roman tradition. In fact, the debate preserved by Cicero about the borderlines of the *iura* of the colleges and the *ius* of the *populus* at large was a dispute about nothing less than the spheres of the respective *iura* and, therefore, of the empire of 'law' itself.

At the same time, the late Republican interest in the *ius* of *sacra* and *sacerdotes* can provide a new angle of vision on Varro's contemporary 'big book': the *Antiquitates*. Instead of seeing this work as an ancestor of early modern antiquarian compendia, I have followed Cicero's praise in the *Academica* by tracking the sacral-jurisprudential element in the text.

⁷⁶ *Rust.* 2.2.5–6 (*antiqua formula*); 2.3.5; 2.4.5; 2.5.10–11; 2.7.6. *Ius* is rarer in other parts of the work; to justify Cicero's choice to highlight the revelation of *iura*, the *Antiquitates* would presumably have needed to be more like this first section of book 2. For an analysis of *Rust.* see Nelsestuen in this volume.

⁷⁷ See Hadas (this volume) for the philosophy of Augustine's Varro.

⁷⁸ Rawson 1985 was admirably self-conscious about this: 'the latter part [Rawson's chapters on fields of knowledge] has proved hard to organize, for a period of incomplete specialization, in which the influence of certain disciplines is felt in a number of fields' (vii).

Still, as a branch of knowledge, jurisprudence was not absolutely divided from philosophy or *grammatikē* or historiography, but borrowed methods and preoccupations from these other elements in Roman intellectual culture. Cicero's laudation of the work already suggests that Varro's *Antiquitates* may stand as an example of exactly this compound, as it combined an exposition of *sacrorum iura et sacerdotum* alongside other elements: theological, lexical, and historical accounts of Roman religious life.⁷⁹

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⁷⁹ See Rüpke 2014 for the historical vision and van Nuffelen 2010 for the theological argument of the work.