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Cicero's Teaching on Natural Law

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We are in the midst of a crisis—not always evident in the comfortable lives we lead, but a crisis nonetheless. A sign of the crisis is the ongoing political collapse of the West; the liberal democracies of America and Europe are barely willing to defend themselves against the insolence of petty tyrants and the armed imperialism of the Soviet Union.

Why this somnolent slide into voluntary weakness? Because we are not convinced that we have anything to fight *for*. We are ready to believe the worst of ourselves, and the best of our adversaries, because we no longer fully believe that we deserve to survive. That is because we no longer know what the West is, and why its preservation matters for nurturing and sustaining the noblest and best of human activities. In particular, we in America no longer know why the United States is the best hope for the modern world.

The core of the West is not only worth saving; it is perhaps the highest reason for living. Our best moral traditions and political institutions foster a rational thoughtfulness that enables all of us, to the extent of our abilities, to use words, human speech, to discover and articulate the natures of things. This unique feature of Western peoples became most evident to me when I taught classes that included both Americans and non-Western foreigners, especially students from the Middle East. Because their characters were formed by different kinds of laws and habits, such foreigners are inclined to look upon reason and speech as manipulative tools by which people impose their will on each other rather than as aids to bringing forth truth from darkness. Truth, then, is the opinion of the stronger, of whoever has or appears to have the power to make it stick. A *Newsweek* reporter expressed his bafflement over this attitude when he visited Iran in December of 1979 and found everyone convinced that Khomeini would make America turn over the ex-Shah to Iran—even though our laws and our self-interest forbade it. The Ayatollah said it, so the people believed it.[1]

Americans are different. You can argue with them and get them to see, by means of the argument, what you see. A successful argument is not just a victory of one person over another, for what the discussion is about is never merely personal. Even when Americans fling their convictions at one another in barroom disputes—who is the better quarterback, Bradshaw or Staubach?—they are dimly aware that the issue they are controverting is something real, independent of their boisterous claims, and that the truth about it can be brought to light through words. When students raised in non-Western traditions appear in one's classes, they do not grasp that the purpose of talk is insight, not power; as a result, they usually suppose that the teacher only wants his students to remember and parrot his own opinions. On the contrary, proper teaching provides an example of thinking which students at first imitate; later, they begin to be able to repeat the thought on their own, and finally, if ability and effort suffice, to think by themselves without such help.

To learn the connection between rationality and republican political institutions, education is needed. And to perfect one's own rationality, education is needed. But education today most often means getting through college quickly and moving on to one's career. I do not believe such an education is enough to enable students to withstand the assaults of positivism, socialism, and the other defeatist doctrines that dominate current fashion in most professional and graduate schools, not to mention the "real world" outside. As ever, the best education consists principally of a patient, dedicated study of political history and the outstanding Western authors, particularly the classical authors, of history, literature, and political philosophy.[2] The revival of this education—and it has already begun—is probably the only thing that can save the liberty of our country and of our minds. Cicero deserves inclusion in such a curriculum, no less for his admirable statesmanship than for his philosophical work.

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Cicero has a prominent place in most histories of political philosophy, but few scholars regard him as a thinker of the first rank. His ideas, it is typically asserted, are mostly platitudinous and second-hand, taken over from second-rate Hellenistic philosophers. His philosophical works, which educated men read as recently as the eighteenth century for rational guidance in the conduct of

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life, are now studied chiefly by antiquarians engaged in source-criticism and historical research.[3] Even among his scholarly admirers, few would seriously look to Cicero for instruction in living their own lives. His eclipse rivals that of Xenophon, that allegedly simple-minded hanger-on of Socrates who wrote such surprisingly charming prose. I believe that what Leo Strauss accomplished in his interpretations of Xenophon—he rediscovered Xenophon the philosopher by conceding to subtlety the benefit of every doubt—can also, in part, be done on behalf of Cicero.[4]

Besides this scholarly depreciation of Cicero, another and deeper critique is posed by Martin Heidegger. Cicero, or rather Roman philosophy generally, represents for Heidegger an important stage in the gradual forgetting of the Greek discovery of nature, a forgetting process which has marked the whole history of the West. According to Heidegger, the very translation of Greek philosophy into Latin effaced that insight. Roman philosophy conceived *natura*, the nature of things, as present-at-hand and readily available to easy philosophic contemplation and the formulation of ethical doctrines. It thereby failed to renew the vibrant amplitude of the Greek *physis*, which embraces the emergence and coming-to-be of things no less than their distinct standing-forth in full presence before the mind's eye. The Roman narrowing of nature therefore prepared the way for the modern view of beings as mere disposable resources, easily accessible to human projects and manipulation.

The scholarly view of Cicero, being less serious, can be addressed more easily. But Heidegger's more profound charge can also be met.

Cicero faced a philosophical-political situation in Rome in some ways similar to our own. As today, philosophical writings about how politics ought to be conducted, and more broadly, about how life ought to be lived, were widely known. But their effect on the formation of the characters of future politicians, not to speak of direct influence on public life, was small. Nor did political philosophy temper the philosophers' nearly exclusive preoccupation with private morals, theory of knowledge, the nature of the gods, and the order of the physical world. By tremendous efforts Greek philosophy had achieved its insight into the distinction between and yet necessary belonging-together of nature and convention, being and appearance, truth and opinion, an insight anticipated in the dark lyrics of the pre-Socratic thinkers and given its consummate expression in the works of Plato and Aristotle. But now, in the moribund Roman republic, this grasp upon the tense unity of nature and convention was forgotten by politicians unformed by philosophy and philosophers disdainful of politics.

In all of his writings, from the practical orations to the theoretical excursions into epistemology and theology, Cicero strove to reyoke the sundered pair. He sought thereby not only to revitalize philosophy, which in its late Greek appearance and Roman transplantation had become routinized in a set of contesting schools of thought, each with its characteristic jargon and dogma; he also tried to revive the wilting prospects for political liberty in Rome, where the despotic acquisitiveness and imperialism that had long marked its foreign policy were increasingly employed within Rome itself by ambitious factions and generals, acting against their fellow Romans. Julius Caesar's conversion of Rome into a popular dictatorship late in Cicero's career openly displayed whither Roman politics were tending. Cicero's teaching on law, the peak of his reflections on the nature of the political, epitomizes his twofold intention: to render politics more rational and reason more politically responsible, on the ground that reason and politics are inseparable.

Only in the first two books of *De legibus (On Laws)* does Cicero give a sustained account of his legal doctrine. There is a famous passage on law from the third book of his *De re publica* (III.33), but its value is doubtful because it is a fragment whose context is lost and because it is put into the mouth of one of the dialogue's characters, Laelius, whose views do not always coincide with Cicero's. In any event, Laelius's statement on law is not much different from what we find in the *Laws*, where Cicero speaks in his own name and the question of law is amply developed.

At first glance the *Laws* offers an array of comforting certitudes. True law is grounded in the eternal verities of God, reason, and nature; and Rome's law, with some modifications, seems to be a fitting exemplar. Rhetorical flights in praise of law-abidingness and piety, apparently nothing more than variations on Stoic commonplaces, grace the pages of the book.

Cicero is of course fully responsible for this initial impression, and if many scholars penetrate no further than this surface, they at least grasp the first level of his teaching. The surface provides a standard for politicians and professors who incline toward private gain at the expense of public duty; by "private gain" I mean the pleasure of pursuing wisdom apart from the commonwealth no less than the acquisition of wealth and honor to its actual detriment. For the law teaches politicians that man's end is to know and to choose the good, which requires philosophy and "pure religion," and it teaches philosophers that the soul is born for political society and not merely for private contemplation of eternity (I.58–62).

It takes only a modest attentiveness to the order and argument of the work to see beyond this first impression. The *Laws* is a fictitious dialogue between Cicero himself, his brother Quintus, who was active in Roman public life and composed some tragic poetry, and Cicero's closest friend, Atticus, the Epicurean philosopher and wealthy Roman knight. Like many Roman political men, Quintus is liberally educated in Greek philosophy and poetry (II.17), though not philosophically inclined, and he is an uncritical adherent of government by his own peers, the aristocrats or optimates (III.17). He is possessed by a certain excess of the love of one's own that typifies the citizen and gentleman at all times and places.

Atticus has the opposite defect. His very name, "the man from Attica," signals his long removal from his native Italy to the academic center Athens. His interest in the conversation on law is purely theoretical—one might even call it aesthetic, for he pursues it for the personal pleasure it affords and the trans-political themes it develops, not because of any practical good he might gain from it (I.13–14, 28). He is particularly delighted by the setting of their dialogue, in the summer shade, along the banks and islands of a cool stream in the country (I.14, II.6–7). In his attention to these pleasures of body and mind he displays himself as the unpolitical Epicurean that he is.

Cicero's two interlocutors, then, represent the two divergent Roman tendencies mentioned at the outset, unphilosophical politics and unpolitical philosophy, but with this difference: both men are close enough to Cicero that they can be persuaded to follow his lead—Quintus because of his admiration and affection for his brother, Atticus because of his friendship with Cicero and of his probable awareness that law-abidingness protects the wealth that sustains his philosophic leisure. Cicero comprises in himself the qualities possessed separately by his two companions. He shares exclusively with Quintus a serious political vocation and a poetizing avocation, and with Atticus, a dedication to philosophy and admiration for Plato (I.1, 15, III.1).

These three topics—politics, poetry, and philosophy—are prominent themes in the *Laws*, and the conversation opens with an exchange on the nature of poetry. Poetry, it seems, has the capacity to immortalize what is by nature mortal; the old oak that stands before the three men will live forever in Cicero's poem, just as the olive tree on the Athenian acropolis is believed to have been planted by Athena and hence to be sempiternal. But poetry, says Cicero, affords pleasure rather than truth; truth is rather the standard for history. And since history too is full of innumerable fables—Herodotus is the example named—Cicero will shortly turn from history to philosophy to bring forth the truth about law and justice (I.1–5, 17). The prefatory conversation to the *Laws*, then, sets forth an implicit antithesis between poetry, pleasant but untrue, and philosophy, which is true. The contrast raises this question: does Cicero mean that the truth exposed by philosophy is unpleasant?

This seemingly inconsequential talk about poetry arrests our attention as soon as we notice a possible similitude, not explicitly stated by Cicero, of poetry to law. Poetry renders the mortal immortal, and, more generally, it bestows life and memory on that which does not exist by nature. By mentioning the example of Romulus's apotheosis in the context of this discussion of poetry's truth, Cicero implies that poetry allots to the gods themselves their being and qualities (I.3). Does not law, too, share this capacity to implant convictions in the minds of men, convictions that surpass by far in importance and degree the voluntary suspension of disbelief that we concede to a well-wrought novel or poem? Poetry and law (law taken in a wide sense, like the Greek *nomos*, to include custom and tradition) appear to immortalize the transient or even to bring non-being into being by touching our minds and memories through words. If philosophy, which strives uncompromisingly to unveil the true natures of things, is the antithesis of poetry, it would likewise seem to be the enemy of the traditions and beliefs on which law depends and which in some measure law *is*. The beginning of Cicero's *Laws* unobtrusively questions whether law contains any truth whatever. Law, like poetry, may be nothing more than a fiction that furnishes pleasure by establishing trust in eternally binding precepts and practices.[5]

Cicero forestalls this positivist inference by drawing a distinction between two senses of the word law: the popular sense, according to which law is "that which sanctions in writing whatever it wishes, either by commanding or prohibiting," and the more learned sense, derived from nature itself, according to which law is "the mind and reason of the prudent man" (I.19). This explanation serves the law's truthfulness by limiting merely arbitrary enactments to the vulgar notion of law. But the unambiguous clarity we might expect from Cicero's employment of this distinction is not forthcoming. For he immediately adds that "it will sometimes be necessary to speak popularly" about law, since "our whole discussion is involved in the people's way of reasoning (*in populari ratione*)" (I.19).

We wonder why Cicero must speak at all in the vulgar manner, for he has just said that he will draw his account of law from the heart of philosophy (I.17). We will return to this question later, but a preliminary answer is suggested by the parallel treatment of morality in Cicero's *On Duties*. Morality (*honestum*) in the strict sense is wisdom, says Cicero, possessed (if by anyone) by extraordinary men such as Socrates. But the morality that is discussed in *On Duties*, he says, is only "a certain second-grade morality," and the great statesmen who come to mind as examples of virtue, such as the two Scipios and Marcus Cato, have only "a sort of similitude and appearance of wise men." Nevertheless, "we [ordinary men] ought to watch over and preserve that morality which falls within our [more limited] understanding. . . . For otherwise it is not possible to maintain such progress as has been made toward virtue" (*De officiis*, III.13–17, I.148). We infer that a forthright presentation of morality as wisdom would discourage progress in virtue, because genuine wisdom is exalted too far above the common intellectual capacity and moral taste to be a plausible aim for most men. Most Athenians regarded Socrates as an object more of curiosity or annoyance than of emulation. By concealing the wisdom requisite for strict morality, Cicero allows "second-grade morality" to retain the luster that would otherwise be robbed from it. Nevertheless, the concealment is not absolute, for part of Cicero's purpose is to explain the truth about virtue.

The *Laws* treats law as *On Duties* treats virtue. Cicero will indeed be seeking true law, but he will also speak with a view to "strengthening republics, establishing cities, and

making peoples healthy" (I.37). Therefore he will not admit Epicureans into the discussion, "even if they speak the truth," because by referring everything to the criterion of pleasure and pain, they corrode the convictions of those who believe that "all correct and honorable things are to be sought for their own sake" (37, 39). Even the skepticism to which Cicero adheres in other works is excluded, so that the grounds for their dialogue will not be destroyed (39). In short, since the *Laws* has a twofold purpose of revealing the truth about law and promoting salutary political usages, Cicero will speak about law in both the strict and vulgar sense—and he does not spell out at what times he will speak in which sense. The truth frankly displayed would not only cause displeasure, like poetry debunked, but it would also mar the intended practical effect.

Before we pursue further Cicero's intricate weaving of the two senses of law, let us first look at some of his explicit statements on the subject. His first is a report of the "most learned": "Law is the highest reason, seated in nature, which orders what is to be done and forbids the opposite. This reason, when it is settled and accomplished in the mind of a human being, is law" (I.18). In his own name Cicero restates the formulation as follows: "[Law] is a force (*vis*) of nature, the mind and reason of the prudent man, the standard of the just and of injustice" (I.19). In the three other places in Book I where law is defined, it is "correct reason" (I.23) or "correct reason in ordering and forbidding" (I.33, 42). Law is natural in the same way that reason is natural, as a gift of nature bestowed on every human being (I.33). But only in the prudent man, whose reason is developed as far as it can be, does reason become "correct," and so only *his* commands and prohibitions are truly "law."

In spite of the exalted tone in which Cicero delivers these pronouncements, we note that law is nothing more than the reasonable orders of the sensible man. There is no trace whatever here of a table of definite, eternally binding precepts, of the sort characteristic of the natural-law doctrine, actually medieval, that scholars generally attribute to Cicero.[6] His formulation avoids entirely the notorious dilemma between inflexible rules of scholastic natural law and the Machiavellian renunciation of any natural law whatever. Cicero's alternative is so simple, yet so radical, that cognizance of it has rarely been taken. True law—Cicero himself persistently avoids the term "natural law" (*lex naturalis* or *lex naturae*)—true law, then, to put it bluntly, is whatever the wise man orders.[7] If he commands you to worship Zeus, then worship of Zeus is part of the true law. If he says, "believe that you are sprung directly from the earth itself and that your soul is compounded of gold or silver or bronze," then such beliefs too will be enjoined by true law. Far from being eternal, the true law will be subject to change whenever the sensible man sees that circumstances call for it. And conflict between the positive law of the actual political order, infused as it must be with concessions to particularity, and a higher law whose demands cannot be met in this world, need not occur. To the extent that the government is prudent or that the wise orders of the original law-giver continue to fit present conditions, the statutes on the books and the true law will be one and the same.

In light of all this, how can Cicero maintain that law is "one"? (I.42). What center governs the seemingly indefinite latitude granted to the prudent man and prevents it from spinning off into orderless multiplicity and caprice? How can what is one be many? Cicero provides an oblique resolution of these questions in the lengthy set-piece oration that occupies the bulk of Book I. The nature of the just, he begins, must be sought in the nature of man (17), and human nature, like the divine, achieves its peak and perfection through virtue (25). Virtue, in turn, is the steady and continuous rational conduct of life, in which prudence follows the naturally honorable and avoids the naturally dishonorable courses of action; virtue is "reason perfected" (45). And since reason, "when it is full-grown and perfected, is duly called wisdom" (23), prudence involves the full development of man's rationality and thoughtfulness.

From these statements we might expect Cicero to proclaim unambiguously that wisdom, acquired by philosophy, comprising knowledge of self as well as the nature of all things, is *the* human good (cf. 58–62). Such a standard would furnish the prudent man with a reliable guide as he crafted his laws for a given polity, just as the legislator of Plato's *Republic* looks up to the idea of the good as a pattern for his artful lawmaking (484c–d). The laws would then prescribe such educational practices and institutional arrangements as would issue in habits of body and mind conducive to the development of reason in everyone so far as that is possible. The variety of prudent legislative codes would betoken an application of the one truth about the human good, qualified by the vagaries of local circumstances. Laws and customs appropriate to men who look up to Jove and honor martial valor would be far different from those suited to men who believe in human equality and regard the career of a businessman as more respectable than that of a general.

This interpretive expectation, however, stumbles over the fact that Cicero disclaims such precise knowledge of the good. It is true that Cicero allows us to form the impression that he believes he knows not only the good but the nature of the cosmos and the gods themselves. In considering his grandiloquent foray, however, we must not fail to notice the light, bantering exchange that touches it off, in which the Epicurean Atticus, who can be presumed not to believe it, agrees to Cicero's assertion of Ø ivine rule over the cosmos (21). He perhaps accepts Cicero's teleo-theology because he is aware of its usefulness in supporting the rights of property from which he benefits and which provides leisure for his philosophizing (cf. III.37).[8] And Cicero's own joking over this solemn matter is far from reassuring.

We particularly wonder about Cicero's true convictions in light of his surprising admission at the end of his long

speech that the controversy over the end or highest of goods, the *finis bonorum*, will not even be investigated in their conversation (I.52–57). This theme, which provides the title for that book of Cicero's which according to himself is most worth reading, *On the Ends of Goods and Evils* (*finibus bonorum et malorum*, I.11) would divert the inquiry into an extended and perhaps endless weighing of the alternative accounts of the good. We infer this because although in that book Cicero refutes the Stoic and Epicurean teachings on the good, he will not affirm there any definite opinion of his own. To be sure, he finds the Peripatetic doctrine "probable" or "praiseworthy" (*probabilis*), but this, he says, in no way qualifies his skeptical stance toward all of them (*De finibus*, V.7, 75–76). Although Cicero does not advertise his skepticism in the *Laws*, his explicit omission of an account of the good points to his knowledge that he does not know it. Neither here nor elsewhere does Cicero claim to have resolved this first of all moral and political questions.

Quintus, however, is quite satisfied with Cicero's speech, and he even believes that the nature of the good has been sufficiently brought to light (I.56). Certainly all those fine words about honor, virtue, and the gods lend themselves to Quintus's sanguine conclusion, but it appears that his urgent concern for a code of law to live by distracts him from the central question of the good, for he now asserts that that question has nothing to do with the subject of law (57). Quintus's urgency springs from the same source as the urgency of law itself, which cannot hold in abeyance its dispensations of what it holds to be just and unjust without endangering the political order. So Quintus calls Cicero and Atticus back from the leisure of philosophy to the practical problems of everyday life that demand instant attention, and thus he unknowingly draws a veil over the unsolved problem. Cicero remarks ironically that Quintus speaks "most prudently" (57), and he accommodatingly closes the discussion of the highest good.

How then are we to understand Cicero's account of law? Or, putting the question another way, what constitutes the correctness or reasonableness of reason if no final criterion of good is forthcoming by which reason can orient itself?

Even if complete knowledge of the good is unavailable, as Cicero's skepticism implies, we may infer that an approximation to wisdom is accessible through the assiduous exercise of the understanding. Cicero's final peroration to Book I paints a picture of perfect wisdom that can be a standard, even if unattained, of human striving (58–62). Self-knowledge is the key. For once we thoroughly examine and test ourselves, says Cicero, we learn that we are equipped by nature for acquiring wisdom, and we sense that the mind, as a sort of image of the gods, is worthy of care and cultivation (59). But Cicero does not promise a consummation of wisdom; using the future perfect tense, he speaks as one not yet wise, but aiming to become so: "when [the soul] *will* have examined . . . the nature of all things . . . ." (61). Cicero's own wisdom extends no further than the "human wisdom" of Socrates, who, by knowing his own ignorance, is spurred on to an active pursuit of knowledge to supply that defect.[9]

The law laid down by such a man would, I think, have a double aspect aiming at the single end of wisdom. First, like the legal code mentioned above, it would nourish decorous moral habits and vigorous thoughtfulness by means of appropriate rules of conduct and education. Cicero says, "Law should be a commender of virtues and detractor from vices" (58). Second, the law's formulation would itself be both an example of and an incentive to thought. Perhaps, like the religious laws that Cicero proposes in Book II, the law's proclamations could be discerned, by a close observer, to be deliberately incomplete or ambiguous or an image of something else. The theological preface that Cicero attaches to those laws declares at once that "the gods are lords and governors of all things" and that "it is sacrilege to say that any thing stands above the nature of all things" (II.15–16). Are the gods governed by nature or are nature's habits subject to divine exception? The philosophic inquiry into the relation of nature and the will of the gods is as it were built into the law itself, for a self-contradiction embedded in an authoritative statement can only be resolved by rational consideration of the doubtful point.[10]

I would propose another, deeper sense in which law can be an exemplary embodiment of philosophy or human wisdom. This sense can also help to explain our earlier questions: how the law's variety, which we attributed to the prudent man's adaptation of wisdom to conditions, can be reconciled with its alleged oneness, and how and why the vulgar and precise senses of law are mingled in the dialogue. Philosophy for Cicero is inseparable from its beautiful presentation in particular form: "I have always judged that philosophy to be complete which is able to speak about the greatest questions abundantly and with suitable adornment (*ornate*)."[11] One of Ciceros' characters in *de oratore* identifies the complete philosopher with the complete orator (III.56–73), since the capacity to think well necessarily involves the capacity to speak well about what one is thinking. Similarly, if we take a larger, synoptic look at Cicero's teaching on law, we are inclined to the conclusion that the perfect philosopher is the perfect legislator, and that law in the strictest sense *is* philosophy. If "law" is taken as one possible form of wisdom's displaying itself "with suitable adornment," then a well-crafted legal code would be constructed like any other philosophically informed work of art. The variety and particularity of true laws would therefore derive not only from the disparity of men and nations, but also from philosophy's inherent need to show itself forth. For reason only becomes visible in display, and a display is always cast in particular form. Unless the truth that is thought is given "a local habitation and a name," it does not manifest itself and therefore is not itself, for the essence of truth is to be the

unconcealment of what is naturally hidden. It has to be brought out into the open, usually through words. And once truth is given concrete shape, it of necessity appears as a partial, particular, incomplete fragment or image of what is inherently one.[12]

Let us return to the two senses of law deliberately interwoven in Cicero's text. There is a difficulty with my earlier argument that now must be faced. One law, the true one, is "the reason and mind of the wise man for ordering and deterring," which is "eternal" and can never be repealed (II.8, 14). About law popularly understood Cicero says: "those things that have been drawn up for peoples variously and for the times have the name 'law' more by indulgence (*favore*) than in fact (*re*)" (II.11). The statements quoted here require that true law be eternal and exclude from it the element of timeliness. Yet I continue to maintain that true law is whatever the wise man orders, which will vary according to circumstances. How can this be? Can one and the same law be both law and not law, both eternal and temporal? Can law in truth and law by convention be the same? I believe they can, for it all depends upon how the one "law" is understood. Insofar as it is thought through from the rational perspective of the philosophizing legislator, the law is true; insofar as it is understood "popularly," that is, to the extent that its rational conception and intention are missed, then the law is only conventionally or "by indulgence" a law, not in fact.

At the moment when law is conceived in the mind of a prudent man, a discovery occurs and truth becomes manifest to him, so far as he grasps it, in the artifact he is about to produce. Truth remains present in the law only when it is being thought or rethought in its originating sense. So its truth is eternal only equivocally, during such thoughtful occasions, as the fruit of the mind's vigorous exertion. It is not something lying there present at hand, open to the view of anyone who casts an idle glance in its direction. But neither is its truth a Nietzschean contrivance of the mind or will, that imposes itself on an otherwise meaningless external world. The truth of the law is like that of any well-crafted dramatic or philosophical work. Consider the Platonic dialogue. If the reader grasps only its obvious surface teaching, no "philosophy" will be transmitted or rather will occur, since "the philosophy of Plato" is an event that only happens through an active thinking about the work by the reader, in such a way that he repeats the thought of its author by discerning the weave of its dramatic action and its explicit argument. Such also is true law.

True law, as philosophy, seeks to discover what it is.[13] To the extent that it does so, law reveals nature. But nature's own end, its core, is reason perfected, as can be inferred from Cicero's identification of virtue and perfected reason (I.45), and of virtue and perfected nature (I.25). (Cicero's attribution of reason to the whole cosmos shows that reason is not confined only to *human* nature.) But since Cicero also links law with correct reason (I.23), and since correct reason is presumably reason perfected, then law and perfected nature are one. So Cicero's account of law, his "politics," is also his account of nature and nature's end, his "physics" and "metaphysics." A sign of this is that the doubleness of law, which both reveals and conceals, remaining one while adapting to particular conditions, is like the doubleness of nature itself. Its principle is one, its forms diverse; it shows itself but loves to hide.[14] When Cicero says that law is "something eternal that directs the whole world by its wisdom in ordering and prohibiting" (II.8), he is personifying, for the sake of his proposed civil law, the truth that nature aims at and that rational man grasps in part.

Why is it that when people accept law as a rule to live by, they rarely recover or repeat the discovery that generated its founding? Most men are blind to the single truth that unites the variety of good institutions found in well-governed cities and nations or in books like Cicero's *Laws*. Once established, law becomes routine, obvious, boring—it becomes a convention that reflects only dimly the tremendous thought lying behind it and in it. Why is this so? Cicero's comparison of law to poetry suggests an answer. Like poetry, law as convention is sweet. We take comfort in the simple answers affirmed in its familiar cadences, and we do not gladly expose ourselves to the uncertainty that goes with sustained inquiry into its truth. Even when we moderns, enlightened as we are, question our religious and moral upbringing, we mostly do so in the name of a yet deeper unexamined faith in such received opinions as the value of learning, compassion for our fellow men, or the vulgar notion that wealth, fame, and enjoying oneself constitute happiness. Seeing through convention to nature, from law by indulgence to law in fact, means repudiating the comforts of convention. Only when the law's "poetry," its affirmations of eternity, are read "philosophically" does it become more than an untruthful instrument of slothful pleasure.

Alfarabi succinctly epitomizes the teaching on law that I am attributing to Cicero, as follows:

> "Now these things [namely, the images representing the theoretical things, and proper convictions about the practical] are *philosophy* when they are in the soul of the legislator. They are *religion* when they are in the souls of the multitude. For when the legislator knows these things, they are evident to him by sure insight, whereas what is established in the souls of the multitude is through an image and a persuasive argument. Although it is the legislator who also represents these things through images, neither the images nor the persuasive arguments are intended for himself. As far as he is concerned, they are certain.... They are a religion for others, whereas, so far as he is concerned, they are philosophy."[15]

Although Cicero's specific legal proposals presented in Books II and III appear to be a hodgepodge of traditions from the Roman past, they present a different aspect when read with this twofold sense of law in mind. His polytheistic theology in particular deserves scrutiny for its

covert truth, as is indicated by his replacement of the expression "the wise and prudent man" with "highest Jupiter" (II.10) in the context of composing prefaces to his proposed laws. From here we begin to make sense of the fact that the only gods mentioned by name in Cicero's religious law are Jupiter and Ceres (representing, respectively, wisdom and grain from the earth), the household gods of the hearth (the Lares), apotheosized human beings of exemplary virtue, and deified excellences such as Mind, Piety, and Virtue (II.19–22). Evidently a purgation of the Roman pantheon is in process. The very inclusion of a god called "Mind" in the list ought to give pause, since there is no record as far as I know of any Roman tradition assigning divinity to this name. Religion is the people's image of philosophy. It is opium indeed for those who fail to think, but a stimulant to the rest.

We are now prepared to speak to Cicero's most profound critic—indeed, the most profound critic of the philosophical tradition stemming from Plato—Martin Heidegger. Speaking of the translation of Greek philosophy into Latin by Cicero and others, Heidegger says: "The event of this translation of Greek into Roman is nothing indifferent and harmless, but rather the first chapter of the course of the exclusion and alienation of the original essence of Greek philosophy." The rest of the course of Western philosophy, Heidegger claims, leads us through Christianity and modernity to the predicament of today, where an "emasculation of the spirit" reigns, where, in the grip of technology, which reduces all things to raw materials and resources to be exploited for an indefinite variety of indifferent purposes, "all things reach the same level, a surface that is like a blind mirror that reflects no longer, that throws back nothing."[16]

The impoverished spirit of the present has come about as the result of a progressive narrowing of the meaning of being in Western philosophy. For the Greeks, being, or rather *physis* ("nature"), which comprehends beings as a whole, is that which spontaneously emerges out of itself and endures, standing steadily by itself and manifesting itself. *Physis* also designates the process of emerging, the effort and struggle through which things become what they are by finding their completion and end. This process includes not only the generation of plants and animals but also and especially the bringing-forth-into-the-light achieved by our thought and speech. Heidegger maintains that the post-Aristotelian tradition, presumably including Cicero, was formed directly or indirectly by a superficial Platonism that forgot the becoming- and thinking-aspect of *physis* and reduced it to what can be gazed at by the mind's eye (the ideas) and what can be an eternal model for human life to imitate (the good). This forgetting took place in part because of the incapacity of the Latin language to capture the philosophically indispensable resonances of such decisive Greek words as *logos* (speech), *aletheia* (truth), and especially *physis*. Thus they inadvertently deprived *physis* of its richness and depth. In its place they installed, we may infer, a less ambiguous world of concepts and facts that could be described, to the extent that human knowledge reached, in propositional formulations suitable for dissemination in schools and treatises. This change, in turn, which made *physis* far more accessible to man, became the foundation for the modern transformation of nature into manipulable material available for an indefinite array of projects of the will.[17]

If Cicero truly bears part of the responsibility, however remote, for the degradation of man and thought that threatens to overwhelm us today, it would be wrong for us to defend him. But our discussion of his teaching on law shows that Greek thinking, far from being smothered, was recovered in Cicero's work. Cicero was no stale Platonist. If he had contented himself with being a mere translator, of which Heidegger almost accuses him, then he would indeed have failed to convey the thought of the Greeks, for the Latin language simply cannot perform what Heidegger shows that Greek can do.[18] Cicero overcame this obstacle by the arrangement of what he wrote; he created complex dialogues and double-edged speeches that retained and re-presented the Greek insight into truth and opinion, the one and the many, being and appearance. Cicero's teaching on law is from this perspective a restatement and rethinking of the Greek *physis*, which Heidegger was the first to recover in our century.

Cicero's teaching on law instances the decisive characteristic of the writings of the best philosophers, namely, exotericism. By "exotericism" I mean a manner of writing that presents an apparently straightforward outer doctrine which however is substantially qualified and deepened by the reader's reflection on the movement and details of the argument.[19] By using such a twofold outer and inner teaching as I have described in this essay, Cicero and the other thoughtful successors of Plato recapitulated in their writings the doubleness vibrating in *physis* itself that was discovered by the Greeks. Nature both shows itself and withdraws; it affords a surface appearance that comes to a stand and yet comprises an inner development, grasped in thought, that gives the lie to that surface permanence. Similarly, the books of Plato and Cicero in their weave of surface and thought imitate and thereby reveal nature's nature.

Although Heidegger recovered the original sense of *physis* through his rereading of the pre-Socratics, he was unaware of the exotericism employed by Plato and later authors, and so when he compared the early Greek *physis* to the doctrines that followed in the later history of philosophy, beginning with Plato, he plausibly concluded that a forgetfulness of being has dogged the thinking of all the philosophers. Whence followed his thesis that philosophy's history describes the course of a gradual withdrawal or self-concealment of being, culminating in the present "night of the world."[20] When Leo Strauss and Jacob Klein rediscovered the exoteric character of the writings of ancient and medieval philosophers, partly under the impetus of Heidegger's recovery of *physis*,[21] the Heideggerian presumption about the philosophers' forgetfulness

of being could be strongly challenged. The multitude of philosophical doctrines among Greek, Roman, and Christian thinkers is not necessarily a consequence of the blind dispensation of fate, as Heidegger's radical historcism would aver. Some of these writers may have chosen their doctrines quite deliberately, with a view to the changing circumstances of the people they were addressing and as the particular embodiment of the writers' insights. The history of philosophy, at least in pre-modern times, may chronicle the thoughtful responses to these circumstances and the various depictions of a "common" truth, rather than the shifting conceptions of being over which the thinkers have no control. Their deepest insights may well be the same. Hence the recovery of exotericism is the condition for the refutation of historicism.

Cicero employed exotericism to redeem philosophy from its Roman and late Greek tendency toward doctrinalism, which treated nature as eternally present to view, lying open to the propositional descriptions and contented gaze of apolitical contemplatives like Atticus. Cicero also directed his teaching toward the educated politicians like his brother Quintus who, being ignorant of the unity of true and popular law, saw no need to engage in abstruse philosophical considerations as a prelude to decent political practice (I.56–57). By directing Atticus's attention from nature to politics and Quintus's from politics to nature, Cicero points each of them to the one truth of which each touches only a part. He thus made available to the Latin-speaking world if not a salvation from the impending tyranny of the Roman empire, at least an example from which a later revival of liberty and philosophy could take its bearing.

1. *Newsweek*, December 17, 1979, 34.
2. See my three-part essay, "On Education," *Improving College and University Teaching* 28/1 (Winter 1980), 3–7; 28/2 (Spring 1980), 61–66; and 28/3 (Summer 1980), 99–104.
3. This is particularly so in the case of Cicero's *Laws*: Elizabeth Rawson, "The Interpretation of Cicero's 'De legibus,' " in *Aufstieg und Niedergang der römischen Welt*, ed. Hildegard Temporini, Berlin 1973, Part I, vol. 4, 340.
4. Exemplary of Strauss on Xenophon is *On Tyranny*, New York 1963.
5. This observation on law, and the point to be pursued later connecting the particular laws of Book II with law in the strict sense, were first developed in part by Eric Salem in a graduate seminar paper at the University of Dallas.
6. The scholarly consensus on Cicero has changed little since George H. Sabine, *A History of Political Theory*, 3rd ed., New York 1961, 163–167. As for the medieval doctrine, even St. Thomas Aquinas (*Summa Theologica*, I–II.100.8) appears more rigid than he is, for although he maintains that the ten commandments are indispensably part of the natural law, he qualifies this by admitting that the only moral precept that admits of no exception is "that nothing undue be done to anyone and that each one be rendered his due; for it is according to this reasoning that the precepts of the decalogue are to be understood." The spirit of Acquinas's doctrine comes very close to the spirit of Cicero's. For a different account of Acquinas's natural law—but one that agrees with the tendency noted here—see Ernest L. Fortin, "Thomas Aquinas and the Reform of the Augustinian Natural Law Doctrine," paper delivered at the 1975 Annual Meeting of the American Political Science Association, mimeographed.
7. Quintus uses the expression "law of nature" at I.56, but Cicero himself never does. As a man of the city, Quintus is unaware of the problem embedded in that facile formulation. As far as I know, the only other occurrences of "natural law" in Cicero are in *On the Nature of the Gods*, I.36, and in *On Duties*, III (several times). In the former instance, the expression is attributed to the Stoic Zeno by an Epicurean critic, who may be exaggerating the Stoic claim in order to refute it more easily. And in *On Duties* Cicero has deliberately adapted the imprecise manner of speech about morality described on page 76 above. Apparently Cicero himself, when speaking in his own name, hesitated to yoke nature and law (convention) in an unqualified bond. Cicero does occasionally speak in the *Laws* of *ius naturae*, the right or justice of nature (I.36, 40); this expression grates less because of the wide range of *ius* from "legal enactment" to "that which is right." Helmut Koester argues persuasively that there is no natural law teaching properly so called either in the pre-Ciceronian Stoics or in Cicero himself: natural law in the sense of an eternally valid binding rule of moral conduct first appears in the Jewish author Philo of Alexandria (Koester, "*Nomos Physeos*: The Concept of Natural Law in Greek Thought," in *Religions of Antiquity: Essays in Memory of Erwin Ramsdell Goodenough*, ed. Jacob Neusner, Leiden 1970, 521–41). Hence Leo Strauss's remarks in *Natural Right and History*, Chicago 1953, 154–55, on Cicero's relation to Stoicism are misleading insofar as they appear to attribute to the Stoics a natural law that commands particular moral duties.
8. Strauss, *Natural Right and History*, 154.
9. Plato, *Apology*, 20d–23b.
10. The "preludes" to the laws in Plato's *Laws* perform a similar function, as is shown by Thomas L. Pangle, *The Laws of Plato*, New York 1980, 445–49, commenting on *Laws* 718b–724a,
11. *Tusculan Disputations*, I.7. The importance of *ornatus* for Cicero's thought is discussed by Raymond DiLorenzo, "The Critique of Socrates in Cicero's *De Oratore*," *Philosophy and Rhetoric* 11 (Fall 1978), 247–61.
12. The conception of truth informing the latter part of this paragraph is the Greek one, as explained by Martin Heidegger, *Introduction to Metaphysics*, trans. Ralph Manheim, New Haven 1959.
13. Cf. Plato, *Minos*, 315a: "Law wishes to be a discovery of being."
14. Besides Heraclitus's Fragment 123—*physis kryptesthai philei* (nature loves to hide)—compare this remark made by one of Cicero's characters in *de finibus*, V.41: "...at first, at any rate, nature is marvellously hidden and can be neither observed nor known; as we grow older, however, we gradually or rather tardily come, as it were, to know ourselves."
15. "The Attainment of Happiness," in *Alfarabi's Philosophy of Plato and Aristotle*, trans. Muhsin Mahdi, Ithaca 1969, 47.
16. *Introduction to Metaphysics*, ch. 1; the quotations are on pp. 13, 45, and 46 (translations mine); "The Question Concerning Technology," in *The Question Concerning Technology and Other Essays*, New York 1977.
17. *Introduction to Metaphysics*, especially ch. 2 and 4.
18. Consider, for example, his discussion of *physis* (*Introduction to Metaphysics*, 13–17, 100–101), *aletheia* and *doxa* (102–105), and *logos* (119–136).
19. Leo Strauss has written widely on this topic. See, for example, *Persecution and the Art of Writing*, Glencoe 1952.
20. *Introduction to Metaphysics*; the expression "forgetfulness of being" (*Seinsvergessenheit*) appears in *Wegmarken*, Frankfurt 1967, 243; "night of the world" in "What are Poets For?" in *Poetry, Language, Thought*, New York 1971, 94.
21. Leo Strauss, "An Unspoken Prologue to a Public Lecture at St. John's," *Interpretation* 7 (September 1978), 2; "Klein was the first to understand the possibility which Heidegger had opened without intending it: the possibility of a genuine return to classical philosophy, to the philosophy of Aristotle and of Plato, a return with open eyes and in full clarity about the infinite difficulties which it entails." See also Jacob Klein and Leo Strauss, "A Giving of Accounts," *The College* 22 (April 1970), 1, 4.