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Jörg Rüpke

Roman Gods and Private Property: The Invention of State Religion in Cicero's Speech *On His House*¹

Abstract

The transformation of the home of the exiled Marcus Tullius Cicero into a sacred space by his opponent, the pontifex Clodius, sheds light on religious appropriations and demarcations against religion in an urban context. The source situation is peculiar, since it is the person at the heart of the dispute who describes his perception of the problem in the two relevant preserved speeches. However, the scope of the speech (*De domo sua*) given before the responsible religious specialists, the pontiffs, allows for a detailed analysis of the issues. This study takes seriously the fact that the author pursues a clear goal, the restitution of his property. My thesis is that, in order to achieve this goal, Cicero presents and systematises different normative positions and practices as historically verifiable or even already asserted. On this basis he develops a restrictive concept of those religious practices that can claim a generally binding force, that is, that can bind both Roman legal and political institutions as well as individuals in the city of Rome. To make my claim plausible, I follow Cicero's argumentation in its interplay of examples and generalisations. The investigation demonstrates the extent to which this text, which has generally been accepted as an impartial description of the fundamentals of 'Roman religion' as a religious 'system' that is very closely bound to politically legitimised actors, in fact represents only one position in a sharp confrontation (albeit the victorious one in this particular conflict).

Keywords: civil religion, state religion, property, Cicero, *de domo sua*, *libri pontificum*, legal sources, dedication, consecration

1 Using legal texts as sources for the History of Religion

Legal texts have a prominent place in research on ancient Mediterranean religion. The stele featuring the 'Codex Hammurabi', the Torah, Athenian

1 I am grateful to Elisabeth Begemann for a critical reading and for improving both the language and the argument of this article. The reviewers' remarks also helped me to sharpen my argument and to make my methodology more explicit; I am grateful for the time and care anonymously spent on that endeavour.

legal oratory, speeches given or speech exercises invented by Roman lawyers, the apologetics of the new philosophy of ‘Christianity’, *leges sacrae*, the Mishna – all of these texts have played crucial roles in the development of interpretations of vast cultural formations. This article focuses on the genre of legal speeches and argues for a methodological approach that pays more attention to the generic characteristics of these texts and their specific historical contexts. This methodology is inspired both by recent work on ancient advocacy and by the ‘lived ancient religion’ approach. Whereas the former goes beyond the verification of rhetorical precepts in speeches given in the law courts,² the latter has demonstrated how fruitful it is to take account of the strategic interests in normative and systematising statements by people at the heart of processes of institutionalisation.³

This article analyses Cicero’s speech *On his house*. This is not merely a case-study. The first part of the article demonstrates that this text has been of crucial importance – has been a ‘crown witness’, so to speak – in the reconstruction of something called ‘Roman state religion’ or ‘Roman civil religion’. In the second part, I then turn to the actual analysis of this lengthy speech. Recent philological and historical scholarship has shown that Cicero *cannot* have based his argumentation on clear-cut ritual rules that were well-known, widely accepted, and perhaps even existed in a written form. Building on these results, I will show that the most far-reaching claims about religion made by Cicero appear in the most emotional, and the least legally based, parts of the speech, ultimately appealing to a shared notion of property rather than religion.

2 Roman ‘state religion’

In the standard interpretation that prevailed in the twentieth century, religious action in ancient Rome was viewed from the perspective of a ‘Roman religion’. This ‘Roman religion’ – a system of beliefs and, above all, of practices – was understood by those scholars as a ‘state religion’ or a ‘civic religion’, that is as a religion to which one irrevocably belonged as a person with civil rights. To put it another way, by participating in the rituals of this religion, one also participated in, learned, and expressed one’s political identity. The practice of this religion was dominated and regulated by political representatives, members of the state (‘public’) priesthods who were recruited

2 Powell and Paterson 2004, e. g., 47.

3 Rüpke 2012; Albrecht et al. 2018.

from the senatorial class or who were, at least, members of senatorial families. These priests were set apart from others by their specialised knowledge of practices and rules related to the performance of 'Roman' religious functions (even if Cicero complained that the augurs had lost much of their knowledge and even if the knowledge of the detailed procedures frequently rested with subaltern personnel or slaves).⁴ All other religious practices and ideas did not belong to this 'Roman religion', even if they were often shaped by its elaborately staged rules.⁵ Unlike the practices of the 'Roman religion', these other practices entailed ritual duties only for individuals or their families, they were not the 'great', but only small traditions. At best they were irrelevant for the 'cult of the state' (as was the case with the vast fields of ancestor worship, private divination, or healing practices); at worst they were thought to undermine the state in either of two ways. Due to their un-Roman origins and character, 'oriental' cults (which found much favour with individuals) for instance would destroy central Roman values in the long run. Already in the short run, outrightly criminal practices, 'magic' for instance, endangered other Romans.

The criticism that has been levelled at this view of Roman religion over the past twenty years has led to significant shifts in scholarly opinions. Above all, it has led to a major reassessment of the proportions of the religious practices and beliefs at Rome that fall within or outside of the umbrella of 'state religion.' The 'Roman religion' described above is now seen to account for only a small proportion of the 'religion of the Romans.'⁶ Contrary to initial appearances, 'Roman religion' is now understood to be the 'small', rather than the 'great', tradition.⁷ In an even more radical perspective, 'civic' religion, too, was the attempt of members of the political elite to control and instrumentalise established religious practices and ideas. From a perspective of 'lived ancient religion',⁸ also such attempts, formerly seen as normative, are just religion 'lived' by individual actors or groups of actors, are themselves innovations and attempts to immobilise other actors' dynamics by freezing former practices in the form of 'traditions' (and occasionally even 'laws').⁹ Such a new perspective on the whole range of religious practices in the Roman metropolis is based above all on consistent historicisation.¹⁰ A

4 See Scheid 1990a, 674; Cicero: Cic. *div.* 1.28.

5 See the radical position taken by John Scheid in Scheid 2016.

6 Rüpke 2006; Rüpke 2007a.

7 Bendlin 1998; see also Bendlin 2000, Bendlin 2001, Bendlin 2002.

8 See note 3.

9 Rüpke 2012; Raja and Rüpke 2015; Rüpke 2016b, Rüpke 2019; Albrecht et al. 2018.

10 Beard, North and Price 1998; Rüpke 2016a.

history of religion that is focused as much on the urban as it is on taking into account the large-scale external influx from beyond the *Imperium Romanum* takes the place of the reconstruction of a religious ‘system’, the rule-based and ethnic ‘Roman religion’ as it appears in the standard scholarly texts at the beginning and the end of the twentieth century.¹¹

‘Historicisation’ as used here means the contextualisation of normative sources as much as narrative or other sources, regardless of whether they come from the top or middle ranks of society. What I will try to show is that such an approach leads to a reassessment of the core notions underpinning the idea of a civic religion. A central feature of the ‘civic religion’ construct was the idea that the position and role of the gods was clearly demarcated, with limits set on what the gods should do to society and what they should expect from it in return. This demarcation also set limits on religion as the practice directed at the gods or determined by them. The Roman gods were very close to the people. They were not transcendent deities but, rather, outstanding fellow citizens, clearly localised and with clear areas of competence (*potestates*, a term used to describe the competences of magistrates).¹² Nevertheless, despite this proximity it is not intimacy that determined the relationship between the individual and the gods. Rather, it was the demarcation of boundaries by a clear limitation of mutual claims that was regarded as central by the modern notion of Roman civic religion. On this model, the relationship was something akin to a sober business relationship, in which precise expectations of favours given by the gods and adequate gifts conditionally promised to them (*vota*) were defined and quantified in clear formulas. This relates as much to the observation of the cries and flights of birds in auspication (*legum dictio*) as it does to gift rituals or to instances in which divine signs were converted into obligations of atonement, the quantity of which needed to be specified (*procuratio prodigiorum*). Accordingly, ritual errors or omissions also gave rise to the obligation to repeat (*instauratio*) or compensate (*piacula*) the ‘same’ ritual performance. This procedure was subject to the precise determination of the scope of such signs, omissions, or errors and the identification of the service providers to be employed for the ritual compensation.¹³

At the centre of these assumptions lie the interpretations of the concepts of *dedicatio* and *consecratio*. The discussion of these concepts was shaped by two articles by Georg Wissowa, entitled, fittingly, ‘*dedicatio*’ and ‘con-

11 Wissowa 1902, Wissowa 1912; Scheid 2001, Scheid 2003.

12 On the Varronian concept, see Rüpke 2005a.

13 Case collection and systematisation: Scheid 1981.

secratio'. These articles appeared in the new edition of what had originally been the six-volume *Realencyclopädie der classischen Altertumswissenschaft* by Stuttgart teacher Pauly, but had grown, with Wissowa as editor, into the 83-volume *RE* or *Pauly-Wissowa*.¹⁴ In the article on 'consecratio', Wissowa defines this term as a 'legally valid and permanent transfer of a thing or person from the legal sphere of the *ius humanum* to that of the *ius divinum*, which results in its classification in the category of the *sacrum*'.¹⁵ The first witness cited by Wissowa is Gallus Aelius:

... Gallus Aelius ait *sacrum esse, quocumque modo atque instituto civitatis consecratum sit, sive aedis, sive ara, sive signum, sive locus, sive pecunia, sive quid aliud, quod dis dedicatum atque consecratum sit: quod autem privati[s] suae religionis causa aliquid earum rerum deo dedicent, id pontifices Romanos non existimare sacrum. at si qua sacra privata suscepta sunt, quae ex instituto pontificum stato die aut certo loco facienda sint, ea sacra appellari, tamquam sacrificium; ille locus, ubi ea sacra privata facienda sunt, vix videtur sacer esse*.¹⁶

Gallus Aelius said that that is *sacrum*, which, in whatever mode and tradition of the polity has been consecrated, whether temple, altar, image, place, money or whatever, has been dedicated and consecrated to the gods. However, whatever of these things private persons on account of their religious obligations dedicate to a god, that is not considered *sacrum* by the Roman pontiffs. But when some private cults (*sacra privata*) are taken up, that have to be performed by decree of the pontiffs on a fixed date or at a fixed place, these are called *sacra*, like a sacrifice (*sacrificium*). The place, where these private cults have to be performed, are hardly regarded to be *sacer*.

This text is problematic as a testimony when it is isolated from the supporting material on which Wissowa draws in the subsequent passages of the lemma. The supporting passages that provide the foundation for interpreting Gallus Aelius take the form of quotations from Cicero's speech *On his house*. We do not know whether Gallus Aelius wrote shortly before, or in knowledge of, the incident addressed in the exchange of speeches dealing with Cicero's house. It is clear that the pontiffs here claim the right to award the label of *sacer* but the consequences of such a designation nevertheless remain unclear. All consecrations of the items listed in the quotation (which we by means of extension of a single concept would call religious) lead to the qualification as *sacer*, if in some way the responsibility for this move lies with the polity (*civitas*). The same, however, applies in the area of privately motivated religious actions only under very limited conditions. Such private actions are themselves *sacra* if they take place according to pontifical rules

14 On Wissowa, see Unte 1999; Rüpke 2003, Rüpke 2005b.

15 Wissowa 1900, 896.

16 Fest. 422.36–424.30 L s. v. sacer mons.

of time and place, but they do not seem to ‘qualify’ – vagueness is characteristic of the words chosen by Aelius Gallus as quoted by Festus – the places affected thereby. Judged by the wording, not only the lemma of Festus, to whom we owe the quotation, but also Aelius Gallus himself already seems to have argued within a complex debate and to have held contentious positions.

Wissowa, of course, was not interested in the *agency* that is considered here in such a differentiated way but, rather, in permanently valid rules in the sense of Mommsen’s concept of ‘law’.¹⁷ A central point for any evaluation of Wissowa’s interpretation is the fact that he refers the terms to systematics that underlay Gaius’ legal textbook *Institutiones* some two hundred and fifty years later. In Gaius, a sharp dichotomy between *publicus* and *privatus* is projected onto the terms *sacer* and *religiosus*, thus creating a parallelism in which *sacer* is sharply profiled as divine property and distinguished from both public and private property, while *religiosus* is granted this status only partially. Wissowa thus opts for an anachronistic connection in an attempt at systematisation, with the connection itself being a product of an imperial jurisprudence that had to deal with a *fiscus Caesaris* which encompassed an enormous mass of property and raised claims that could not be divided by reference to a simple dichotomy between public and private.¹⁸ This move has consequences and immunises Wissowa against his own selection of sources. Wissowa himself cites an abundance of inscriptions and even an utterance by Cicero that contradict his interpretation.¹⁹ He then moves on to describe different types of objects that can be subject to consecration. From these he arrives at an understanding of *consecratio* as a form of exclusion from further ‘legal transactions’ and of ‘protection by the law’. Finally, he acknowledges that *consecratio* was also used as a technical term for the introduction of new deities: such an extension of the concept is, according to him, only to be explained as ‘a translation ... which came from the consecration of the images of these gods’.²⁰

The lemma ‘*dedicatio*’, written shortly after, takes up the line of argumentation found in ‘consecration’. Dedication is defined as ‘the technical term for the act by which someone deprives himself of ownership of a movable or immovable thing for the benefit of the deity’.²¹ ‘Non-technically’, such a transfer of ownership could also be carried out for the benefit of the community. It is important that the transfer of ownership is recorded on the object

17 On Mommsen, see briefly Demandt 1990.

18 Ando and Rüpke 2006.

19 Wissowa 1900, 899.

20 Wissowa 1900, 901.

21 Wissowa 1901, 2356.

itself, for example in the form of an inscription. Wissowa understands all relevant formulae as abbreviations of such documentation, which at the same time describe the consequences for the further handling of such an object (for example in the case of a *lex* for an altar). His main interest, however, is in the protagonists and especially in cases in which the responsible magistrate is not available. Having considered such a case, Wissowa then discusses the ritual itself. Here, the gesture of touching the posts of a new building to be erected (*postem tenere*) is deemed central.²² Finally, Wissowa reiterates that the ‘transfer’ is always permanent. The dedicated objects become *res sacrae*. However, when the protagonist of the ritual is a private person, they become *res religiosae*.²³

Wissowa supports his account with an abundance of references to Cicero’s speech before the pontiffs taken to be of high reliability in matters religious due to the fact that the presence of these priests would have exerted control on such utterances. In fact, however, it is a speech by which a person who had returned from exile demanded a return transfer of his property after a previous consecration of the confiscated building – and in the end achieved this very aim. Indeed, a superficial reading, or, more precisely, a reading based on the presupposition of the existence of a stable and systematised ‘sacred law’ might confirm this impression. The whole affair seems to prove that Clodius’ (Cicero’s opponent’s) lack of legitimation had created a situation in which the whole consecration had never been valid in the first place.²⁴ However, this conclusion does not stand up to a more detailed analysis of the text.²⁵ I will suggest that not only can Cicero be discredited by such an analysis as a leading witness for the existence of *civic religion* but a surprising new finding also comes to light. For it turns out that the limits to the claims of the gods are not the legal rules formulated by the body of citizens but, rather, the claims made on behalf of *private property*. This is the argument with which Cicero convinces the pontiffs, as I seek to demonstrate in the following.

22 Wissowa 1901, 2358.

23 Wissowa 1901, 2359.

24 Thus still Lennon 2010, 429. Nevertheless, the author’s detailed reflections on the role of ‘impurity’ in the representation of the opponents are noteworthy. Goar 1972 argues along basically the same lines as Wissowa.

25 See above all Stroh 2004 in his detailed analysis of Cicero’s arguments and the emphases given. Rich in detail, but traditional in outlook is Bergemann 1992, in particular 41–45 in her analysis of the formal interaction of priests and magistrates.

3 The historical context and composition of the speech

The historical circumstances lying behind the text discussed below have been laid out by a number of scholars.²⁶ These reconstructions are based primarily on Cicero's speech to the Senate and, later, his speech to the people after his return. To these can be added two further speeches, one addressed to the *pontifices* (*De domo sua*) and the other (again addressed to the Senate) about the *haruspices* (*De responso haruspicum*). In the latter, Cicero discusses obstacles that had appeared after the restitution of his house and which now needed to be removed. To sum up the course of events, Cicero believed that he had acquired immortal fame through the suppression of a notorious attempt to seize power during his consulate (63 BCE) – the 'Catilinarian conspiracy', as Sallust describes it. However, the immediate, quasi-martial-law-based, but still fundamentally illegal, execution of several of the conspirators opened the door to future political agitation against him. Cicero himself escaped possible violence by leaving Rome even before the formalised relegation²⁷ in early March 58 BCE. His adversary, the ex-patrician tribune of the people Publius Clodius, deepened the shame by destroying Cicero's city villa on the Palatine, in one of Rome's most sought-after residential areas.²⁸ After the destruction, Clodius turned a (small) part of the property into a temple to the goddess of freedom, *Libertas* or Liberty.²⁹

Cicero eventually managed to engineer his recall, in significant part by relying on the influence of Pompey, the third member of the triumvirate of 59 BCE,³⁰ who had remained in the city of Rome and became stronger in Caesar's absence. Not only did he manage to reclaim his place in Rome's political constellation but, on his return at the beginning of September 57 BCE, he also successfully agitated for the return of his house. Pompey was present at the delivery of the speech, thus supporting Cicero's attempt in a publicly visible way.³¹ At the same time, the swift political favours from the not-uncontro-

26 Comprehensive introduction by Nisbet 1939; for a critique of this commentary's focus on 'style' see Scheidegger-Lämmle 2017, 149–150. See again Stroh 2004, 316–323 and Begemann 2015; for the biographical context and the place of the work in Cicero's rhetorical oeuvre, see Classen 1985; Gildenhard 2011.

27 On Cicero's dealing with a presumably public semantics of *exsul* and his scarce use and redefinition of the word, see Riggsby 2002, 168 and 170–171.

28 See Begemann 2015.

29 On the significance of this choice, see Cairo 2018; for the form of presence of the deity, Rüpke 2010b. The partiality of the temple project is admitted by Cicero (*dom.* 116: a tenth) and rightly stressed by Stroh 2004, 319.

30 On the role of the triumvirate in the Ciceronian speeches of the period, see Riggsby 2002, 172–179.

31 See Cic. *dom.* 25.

versial Pompey created a new open flank from which Cicero might be vulnerable to attack, a flank which Cicero tried to close in his speech before the pontiffs on 29 September. Given their family backgrounds, the members of the pontifical college would not naturally side with the ‘popular’ Pompey. The members of the priestly college, headed by C. Julius Caesar as Pontifex maximus, are known to us. In sequence of seniority and excluding the *flamines* and minor pontiffs, they were: P. Servilius C. f. M. n. Vatia Isauricus; M. Terentius M. f. Varro Lucullus; Q. Caecilius C. f. Q. n. Metellus Creticus; M. Acilius M. f. M. n. Glabrio; M. Valerius M. f. M. n. Messalla; P. Sulpicius Galba; Q. Caecilius Q. f. Q. n. Metellus Pius Scipio Nasica; C. Fannius C. f.; M. Aemilius M. f. Q. n. Lepidus; P. Cornelius P. f. L. n. Lentulus Spinther; M. Aemilius M. f. M. n. Scaurus; M. Licinius M. f. P. n. Crassus; and C. Scribonius C. f. Curio. The final member of the college was L. Pinarius Natta, its most recent appointee and the only one for whom it is not possible to identify family members serving as magistrates over the previous century.³² Natta is also notable for having participated in the dedication of parts of Cicero’s property in the latter’s absence. From among the pontiffs Caesar was absent in Gaul. Natta was absent, too. He may have been persuaded by the pontiffs to not attend this meeting, a shrewd move to avoid loss of face during a foreseeably controversial discussion of his role and perhaps an indication of the basic sympathy of the college with Cicero’s move to regain his property.³³ The political situation was, thus, rather difficult for Cicero.³⁴ As is evident from the speech he gave, he reacted not only by accepting and heightening the pontiffs’ role as judges in the usual manner (up to the point of likening them to gods).³⁵ In addition, he also stressed from the very beginning the political fundament shared by the pontiffs and Cicero himself. To this end, the opening part of the speech was devoted in particular to the discrediting of Clodius (3–31), in order to build a common front with the ‘jury’. The text of the speech itself characterises these paragraphs as digression.³⁶ Only afterwards did Cicero dare to stress his friendship with Pompey.³⁷

A careful handling of his relationship to the college in charge of proceedings was vital for Cicero and served as a necessary foundation from which he could develop the emotional rhetoric of which he was a master.³⁸ This

32 Rüpke 2008, 125; see Cic. *har. resp.* 12 for the list of those present.

33 This is based on Stroh’s analysis (Stroh 2004, 323).

34 Stressed by Kenty 2018, 246.

35 See in detail Winterbottom 2004, 224.

36 Cic. *dom.* 3 and 32.

37 Kenty 2018, 251.

38 Powell and Paterson 2004, 50.

was all the more important because the legal problem, already discussed inconclusively in a previous meeting of the pontiffs,³⁹ was intricate. The problem has been analysed in detail by Wilfried Stroh and I broadly agree with his findings. Despite all of his polemics against the young pontiff Natta, Cicero never makes a strong claim that the pontiff's insecurities invalidated the ritual procedure.⁴⁰ Neither does he argue that the magistrate who performed the dedication made such a mistake. The arguments focus rather on the question of a previous problem in the political legitimisation of the procedure, a legitimisation which again in general is basically given, if one does not assume that all the institutions, that is, the entire group of people involved, were mistaken. The wording of the legitimising *lex Clodia* is never attacked but Cicero does suggest, on the basis of a one-hundred-year-old precedent, that the dedicant should have been fixed by name.⁴¹ The use of *consecrare* and not *dedicare* was an issue on which Cicero built a feeling of controversy rather than an argument.⁴² Ultimately, it was not procedural mistakes but the outcome that was unacceptable: Cicero's recall from exile would not have been complete if his house, his visible presence in the city, was not also returned to him.⁴³ Of course, despite these considerations, the background to the case is still the shared feeling that something which has been given to the gods cannot be reclaimed by humans.

I will not retrace Stroh's argument here or try to further bolster it, running the danger of a *petitio principii*, as I have accepted his position as my starting hypothesis. Rather, I will examine the main parts of the speech in order to analyse the specific balance of religious and political arguments that have played out in the history of research against the newly reconstructed background. Methodologically, I will follow the principle that with regard to the speech 'we must ... view it as an intervention in a specific political scenario'⁴⁴ and keep in mind the inventiveness of Cicero's conceptual approach to religious practices, evident not only in his philosophical treatises but also in his speeches.⁴⁵

39 Thus, convincingly, Stroh 2004, 322, referring to Cic. *har. resp.* 12.

40 See also Patzelt 2019.

41 Stroh 2004, 341 with reference to *dom.* 136, *habetis in commentariis vestris*. Here I side with Linderski against Stroh, that the *commentarii* were accessible in principle (see n. 128–129); thus, the occult *libri* referred to a different type of knowledge, knowledge that was, in fact, purely imaginary to any listener to Cicero's speech (see Rüpke 2003).

42 Stroh 2004, 328–332, 364–365.

43 Stroh 2004, 338–339.

44 Kenty 2018, 261.

45 Forcefully Gildenhard 2011.

4 Arguing from religious concerns and the commonweal

The framework for Cicero's argumentation is set out in the first sentences of the speech: *religio* and *res publica* are mutually supportive (1):

Cum multa divinitus, pontifices, a maioribus nostris inventa atque instituta sunt, tum nihil praeclarior, quam quod eosdem et religionibus deorum immortalium et summae rei publicae praeesse voluerunt, ut amplissimi et clarissimi cives rem publicam bene gerendo religiones, religiones sapienter interpretando rem publicam conservarent. quod si ullo tempore magna causa <in> sacerdotum populi Romani iudicio ac potestate versata est, haec profecto tanta est, ut omnis rei publicae dignitas, omnium civium salus, vita, libertas, arae, foci, di penates, bona, fortunae, domicilia vestrae sapientiae, fidei, potestati commissa creditaque esse videantur.

Even if many things, o pontiffs, have been devised and established with divine wisdom by our ancestors, no action of theirs was ever more important than their decision that the same men should direct those things that relate to the religious concerns towards the immortal gods as well as the supreme interests of the commonweal, so that the most well-renowned and noble citizens preserve the religious concerns by governing the polity well and by wisely interpreting the religious concerns of the commonweal. But if there has ever been a time when an important cause was subject to the judgment and competence of the priests of the Roman people, this indeed is a cause of such a great importance that the dignity of the whole polity, the safety of all citizens, their life, their liberty, their altars, hearths, household gods, their property, well-fare, homes, appear to be committed and entrusted to your wisdom, your reliability, competence.⁴⁶

On the basis of this claim about the *instituta maiorum*, this claim, like most claims about the *mos maiorum*, is not to be taken at face value.⁴⁷ Rather, we must subject it to the methodology presented above. The pontiffs are placed under argumentative pressure here. Cicero will, as he declares after his lengthy and digressive introduction, not even talk about *religio*. Instead, he makes his listeners confront the fact that, in the case on which they have to decide, a citizen has been wronged according to *legal* standards, even if, of course, the matter as such has religious dimensions as well:

Quae cum sit in ius religionis et in ius rei publicae distributa, religionis partem, quae multo est verbosior, praetermittam, de iure rei publicae dicam. (33) quid est enim aut tam adrogans quam de religione, de rebus divinis, caerimoniis, sacris pontificum conlegium docere conari, aut tam stultum quam, si quis quid in vestris libris invenerit, id narrare vobis, aut tam curiosum quam ea scire velle de quibus maiores nostri vos solos et consuli et scire voluerunt? nego potuisse iure publico, legibus iis quibus haec civitas utitur, quemquam civem ulla eius modi calamitate adfici sine iudicio ...

⁴⁶ The translations are mine.

⁴⁷ As done by Stroh 2004, 342: 'a peculiarity of Roman religion'. Cf. Linke and Stemmler 2000; Hölkeskamp 2012; Miano 2011.

As the case is divided into two parts – one relating to the law of religious concerns, and the other to the law of the commonweal – I will pass over the question of religion, which is an issue for many more words, and speak on the law of the commonweal. (33) For what can be so arrogant as to try to teach the priesthood of the pontiffs about religious concerns, divine property, ceremonies and cults? Or so stupid as to start to tell you if he has found anything relevant in your books; or so inquisitive as to wish to know things which only you should discuss and know of according to the decision of our ancestors? I simply deny that, according to public law, according to those laws which are used by this body of citizens, any citizen could be affected by such a disaster without formal judgment.

Cicero appears to make use here of the fact that most of the pontiffs present would have been senators and even judges in the capacity of the offices they had previously held.⁴⁸ Nevertheless, it is important to stress that the formal communication is addressed to the priestly office-holders and their specifically religious competence, the competence with which Cicero expressly claims he does not want to interfere – an odd enough start.⁴⁹

It has been rightly pointed out that it is strange that Cicero does not make any explicit and fundamental claim the centre of his argument.⁵⁰ In a not yet unusual manner, he starts by keeping quiet about the actual incident that triggered the whole procedure. Cicero maintains this approach for quite some time; in the first 99 paragraphs of the speech there is hardly any mention at all of his house, other than the brief hint to *domicilia* in general quoted above and a short summary of the whole trial at the centre of the speech (69). The reason for this is because there is no real cause to be dealt with. According to Cicero, the pontiffs are in agreement with Pompey to defend Cicero and they have been given their present task by the Senate on the initiative of Marcus Bibulus. That task is not to discuss seriously the question of whether Clodius' move was made without any legal basis, religious reasons, or formal procedure (*nihil legibus, nihil religionibus, nihil iure esset actum*). The only real reason for their meeting is to ensure that no one from the opposition can claim that 'any religious concern rests on [Cicero's] house' (*in meis aedibus aliquam religionem residere diceret*).

Taking up the strategy of the digression-like *exordium* (3–31), Cicero first and foremost attacks the person of Clodius in general terms in the first main part (33–99). In doing so, he takes his listeners far back in time. Opening with strong assertions (*dico ... nego ... dixi ...*), Cicero deals with the status of his opponent's political and legislative actions, starting with the question of whether he had lawfully left a patrician family (*gens*) and, thus, whether

⁴⁸ Nisbet 1939, 65 *ad loc.*

⁴⁹ Thus Nisbet 1939, 95.

⁵⁰ Kenty 2018, 247.

he could have legitimately become a tribune of the *plebs* (33–42). This is followed by criticising the fact that Cicero had, himself, been proscribed, which he brands as a forbidden *privilegium*, i. e., as a law directed against one individual only (43–53). The violent circumstances surrounding the adoption of the law also discredit it (53–61). After a brief period of reflection, in which Cicero presents himself as the sole bulwark (and thus also a scapegoat) holding up the honesty of the *res publica* (62–64), he moves on to discuss the developments and attempted revisions of the subsequent period (65–99).

The second main part of the speech introduces the theme of the house (100–141), the object of injustice. The recall (*reditus*) of Cicero, the person, would remain incomplete without the return (*reddere, restitutio*) of his house (100). As the very last sentence of the speech states (147), the former, willed by all, would remain worthless without the latter, to be put into action by the pontiffs.

In this second main part, Cicero continues to entangle the notions of *religio* and *ius*, present together already in the opening, and the notions of *consecratio* and *dedication*. This entanglement takes place both within these pairs and between them. In this part of the speech the focus shifts from the first pair to the second, thus articulating two successive trains of thought.

By this point, Cicero has stressed time and again that he does not want to talk about *religio*, but about *ius*, namely *ius publicum* (32–33; 69; cf. 138). However, he needed to apologise that he has once again transgressed his own principles over paragraph after paragraph (122) at the end of the section of the second main part that has had this very focus:

Quamquam quid ego de dedicatione loquor aut quid de vestro iure et religione contra, quam proposueram, disputo?

But why do I argue about the dedication or about your law and *religio* against my own announcement?

The disposition of the speech announced at the beginning does not correspond to the actual structure of the speech, which only becomes visible over the course of time. As becomes clear to the audience only in retrospect, that is, at the end of the first section of this part (121), the initial questions are, in fact, concerned with the sphere of *religio* (101–121).

Again, this first polemic in the second main part of the speech takes a broad stance. First, Cicero presents his own case, the expropriation of private property for religious purposes, in the context of a longer series of such cases, which appear to be far from unusual (101–103). He then goes on to identify the differences among these cases. In his own case, he argues, no religious restrictions could possibly apply. First, the protagonist of the mat-

ter, Clodius, is denied any religious authority by reference to the Bona Dea scandal (104–105). The same lack of religious intention is true for the consecration of Cicero's house (*consecratio*), which Clodius performed without any religious aims in mind (106–109). The new 'goddess' was in fact only the tomb-statue of a prostitute (110–113). Consecrating parts of Cicero's property as a temple of Liberty was only a pretext for the creation of a private luxury complex (114–116). The pontiff present at the consecration was himself inexperienced. He was not a figure who could enhance the validity of the ritual (117–121). The *argumentum ad hominem* against Clodius is here extended to his helpers.

Only now does Cicero focus on the civil and public-law aspects of the process (*ius*, 122–137, formulated again in retrospect at 138). At the beginning of this passage, he retrospectively set the preceding discussion in the context of the concept of *religio*. Now, approaching the end of his speech, he goes so far as to formulate a public-law concept of consecration, the *ius publicum dedicandi* (136). Evidently, for once Cicero is following his own recipes as taught in his earlier works and strategically veils the real structure of his argument.⁵¹

How does Cicero shape his argumentation in order to be regain the use of that part of the house that has become a temple, despite the fact that all those involved share the view that a correctly transferred building cannot be taken away from the gods? Despite all the polemics and the personal/political framing, the central part of the speech offers a structured argument. Cicero assumes a continuous distinction. The pontiffs, as one of the priest-hoods, have a specific knowledge concerning *religio*, that is, the obligation to give the gods special respect and to venerate them *as* gods.⁵² World view and ritual action cannot be separated here. This knowledge, Cicero insinuates time and again, is discursively administered by the priests and preserved in written form. This attribution expresses reverence for the priesthood. However, the content of their knowledge is never specifically appealed to. Although Cicero touches on these areas more frequently than one would expect on the basis of his original framing of his speech, Cicero never develops arguments that depend precisely on the content of the specialised religious knowledge. All that he offers in this context are frequent hints to such knowledge, not to mention commonplaces about it. Cicero does not seem to expect this knowledge to provide relevant solutions, and nor does he risk his own remarks being refuted by knowledge drawn from such a pool. In this

51 Stroth 2004, 339, referring to Cic. *de orat.* 2.310.

52 See Rüpke 2007b.

respect, his gesturing at such knowledge refers to structural secrecy rather than to secrets that are mysterious in terms of their content.⁵³

This was not a risky strategy. Contrary to the attempts of the late nineteenth and early twentieth centuries to reconstruct the ‘priestly books’, we can be quite sure that such books never existed, apart from minutes taken by the different priesthoods, documenting movements in membership, decisions, participation in specific events, or the culinary programme of the dinners given by new members.⁵⁴ Taking a perspective redolent of a sort of sociology-of-secrecy, Cicero contrasts this knowledge of religious matters with the public knowledge of law (*ius*) and its history of application, from which he draws evidence and arguments.

Against that background, it is noteworthy that Clodius, as he is presented in the second section of the second main part of the speech and with a focus on the *consecratio/dedicatio* complex, proceeds in the opposite direction. According to Cicero, Clodius speaks of the ‘great religious power of dedication’ (127):

‘Dedicatio magnam’ inquit ‘habet religionem.’ nonne vobis Numa Pompilius videtur loqui? discite orationem, pontifices, et vos, flamines; etiam tu, rex, discite a gentili tuo, quamquam ille gentem istam reliquit, sed tamen discite ab homine religionibus dedito ius totum omnium religionum.

‘Dedication has a lot of religious concern’, he says. Doesn’t it seem to you that Numa Pompilius is speaking? Listen attentively to the speech, pontiffs and you, flamens; even you, Rex (sacrorum), learn from your clan-mate, even if he left your clan, but nevertheless learn from a man dedicated to religious concerns the complete Law of all religious concerns.

Such an expression exposes Clodius to ridicule, as Cicero’s biting remark pretends that Numa Pompilius, the mythical founder of Roman religion, speaks with Clodius’ voice. The *ius totum omnium religionum*, the ‘body of law of all religious concerns’ here put into Clodius’ mouth, simply does not exist.

Unlike this totalising fiction of an all-compassing regulatory system, Cicero treats his (no less invented) *ius dedicationis* as a professional lawyer would do when composing a *commentarius*. Applying the concept of ‘law’ to something that clearly (at least also) falls within the realm of ‘religious concerns’ is already a clever conceptual move. He now presents a tripartite analysis – asking who? what? how? (*quis, quid, quomodo*, 127) – which turns

⁵³ In addition, Simmel 1907; specifically in a religio-historical context, Kippenberg and Stroumsa 1995.

⁵⁴ See Scheid 1990c, 672–676; Scheid 1990b; Rüpke 2003; Barchiesi, Rüpke and Stephens 2004.

out to be a hermeneutic key, unlocking the various parts of his speech to which it corresponds perfectly (127):

Quid? in dedicatione nonne et quis dedicit et quid et quo modo quaeritur? an tu haec ita confundis et perturbas ut, quicumque velit, quod velit quo modo velit possit dedicare? quis eras tu qui dedicabas? quo iure? qua lege? quo exemplo? qua potestate?

What? Isn't there the question of who dedicates and what and how in the case of a dedication? Do you possibly confuse these issues so utterly that anybody, regardless of who, what, and how, can dedicate? In what role did you perform the dedication? On which legal basis? By which law? By which model? By which competence?

The wording of the tripartite principle is placed in the mouth of an anonymous instance (*quaeritur*, 127). But that, too, is a clever deception. What is presented here is not a systematically developed treatise but, rather, a matter of improvisation and variation. It is the very presentation of the problem as if an objectively given constellation of specific elements that is the situational frame produced by Cicero. The argumentative strategy is not that of a clean definition under which the particular concrete case is then subsumed. Rather, Cicero asserts that this is a complex process in which a large number of parameters, including contextual conditions, must be examined. Shortly afterwards, Cicero presents a further, not entirely congruent, tripartite division, which marks an important shift. This new division compares *hominem ... tempus ... rem* (130) – actor, circumstances, and the object of the ritual.

Throughout this argumentative confusion, the central terms remain relatively stable.⁵⁵ *Dedicatio* describes the ritual performance in all its dimensions (e. g., 121, 133), but above all in its linguistic form. It is this enunciation that might need to be fixed in writing (*litterae dedicationis*, 137). Accordingly, it must also be removed when the act is repealed (137). *Consecratio* is the act that causes a change in the status of an object. Our own concept of 'ritual' is plainly inadequate to the task of capturing this differentiation.

Yet, for Cicero, the pattern is not some concept of *sacrum*, of divine property enlarged by pious acts. Rather it is the ostracism or confiscation of goods by a tribune of the people, that is to say, a punishment imposed on somebody. Such an action can, in turn, apply ritual elements that are characteristic of (but do not define) dedications, without being able to positively influence the legitimacy of the result (124). In a thought experiment, Cicero lets a criminal inaugurate an altar, thus asking pardon for his many misdeeds (140).⁵⁶ The example is intended to provoke the shudders that should (actually) occur in such a case but that are absent in the case of Clodius. Relevant

⁵⁵ Different but unfounded, Lisdorf 2005, 452.

⁵⁶ See Nisbet 1939, 189–190 on *detestatione scelerum*.

for the present discussion is the word that Cicero uses for that criminal's action: *consecrare* (140).

Cicero is anxious not to separate such consecration from a dedication that would create religious bonds. Ritual correctness or its absence is sufficient for polemics, insofar as it represents poor performance;⁵⁷ it is not central to the argumentation. Instead, focusing on the tribunes of the people allows him to look for examples in situations that were highly controversial. After all, the People's Tribune can be described as probably the most dynamic institution of the Roman Republic.⁵⁸ It is, surprisingly, in this office that Cicero searches for the valid rules of the game, not in that of the pontiffs, who maintain continuity according to his depiction. It is in the actions of the tribunes of the people that he finds those evaluations that he wants to propose as yardsticks. An 'old' *lex Papiria* (quoted only here in all the extant Latin literature) calls into question the validity of measures taken without the decision of the *plebs* (127). Evidently, these must have been special cases⁵⁹ and the basis on which Cicero will later reconsider their relevance (*vis*, 130) must remain open. Other cases criticise individuals acting on public ground or the absence of a resolution by the *populus* (136). Only in these instances the result of the preceding action, which is called in question by the revision demanded, is called *sacrum*. It is significant how carefully the formulations are worded here and yet how vague they remain: *sacrum non viderier* (136), *ne id sacrum esset* (137). All this is about recognition, about attribution, and not about ontological facts. The changes of status through consecration are purposeful, not arbitrary, they are ritual instruments or concern hostile territory, they are about the creation of temples, not the redefinition of property: *aedes sacrae* are consecrated, not private houses or *templa inaugurata* made into *aedes sacrae* (128).

Sed quia consecrabantur aedes, non privatorum domicilia, sed quae sacrae nominantur, consecrabantur agri, non ita ut nostra praedia, si qui vellet, sed ut imperator agros de hostibus captos consecraret, statuebantur arae, quae religionem adferrent ipsi ei loco <quo> essent consecratae, haec nisi plebs iussisset fieri vetuit. ... neque ego nunc de religione sed de bonis omnium nostrum, nec de pontificio sed de iure publico disputo.

But because it was the practice to consecrate buildings, not private dwellings, but what are called sacred buildings, and to consecrate lands – it was not intended that anyone who wished should consecrate the estates of citizens, but that generals should consecrate lands taken from the enemy – and as it was usual to erect altars, giving sanctity even to the place of their dedication, the law forbade all such proceedings unless the consent

57 See Cic. *dom.* 139; on the standards of religious performance, Patzelt 2018.

58 In addition, Bleicken 1968; Thommen 1989.

59 More broadly understood by Wissowa 1900, 897.

of the plebeian assembly had been gained.⁶⁰ ... Now I am not arguing about *religio*, but about the property of all of us; nor about pontifical law, but about public law.

Even the addition of inscriptions – that is to say the permanent documentation of a formulaic act – would not change the matter, as Cicero explains in the summary of these arguments placed at the end of this second section of the second part of the speech (137 for 122–137).

Nevertheless, Cicero does not attempt to deny completely the religious quality of dedications. Quite the contrary. His view is only that this quality should be based on certain specific details, whether those be concepts – *dedicatio* instead of *consecratio* – or ritual elements of execution – the presence of folding altars or pontiffs.⁶¹ This framing of the procedure allows him a double strategy: on the one hand, he can counter the association of what has happened with *religio* by suspecting *simulata religio*, faked piety, or pretend *religio* (*religionis nomine; fictis religionibus*) (137, 139, 147 at the end). On the other hand, he can tie all the actions of this complex back to the aims of the *res publica*: dedications can only take place when they do not disadvantage any single person (*sine cuiusquam incommodo*, 131). In concrete terms, it is private property that is thus placed under protection.

The second main part of the speech concludes with a third, very short piece of final argumentation. These paragraphs are a critique of the consecration ritual itself (138–141). Being in exile at the time, Cicero cannot, himself, serve as a witness to the actual process, so all the statements are pure imagination and were known to be such by his audience.⁶² Nonetheless, Cicero proceeds to suggest how and why the implementation violated all standards of *religio*. In essence, this critique leads directly into his concluding plea, the establishment of the principle *in scelere religio non valeret* (139): in view of a crime, religious considerations play no role, they have no weight, everything is invalid.

The enunciation of this principle leads on to the *peroratio*, the concluding part of the speech. Once again, Cicero emphasises the reciprocal reference between religion and law, between gods and pontiffs, on the one hand, and city and empire, on the other (143). This leads directly to a prayer to the gods, mentioned by name for the first time in this speech (144–145). Prior to this point, Cicero has more generally spoken of *immortales*, immortal gods

⁶⁰ This part of the translation is by Nisbet 1939, 176.

⁶¹ The argumentation is different in Lisdorf 2005, who ultimately bases his cognitive-scientific argumentation on the assumption that firmly anchored and shared sacral-law principles of the actors existed.

⁶² Stroh 2004, 366.

as a collective. The prayer, not without parallel in his speeches,⁶³ gives its speaker the opportunity to add even more elaborate gestures to his words.⁶⁴ In it, Cicero establishes a nexus between his self-consecration to the gods (*devovi*) for the benefit of the polity and his expectation of being able to combine return with restitution (145).⁶⁵ This decision is placed in the hands of the pontiffs (146–147). It is the shared sense of property as something which must only be taken away in truly exceptional circumstances and in universal consent of the polity that ends the speech.

5 Conclusion

Cicero's argument is not based on a set of clearly defined rules but on a conflict-laden reality of religious thoughts or associations, and religiously charged actions that are used strategically while at the same time remaining precarious. The positive outcome of *De domo sua* will itself later be questioned and required further action on Cicero's part, preserved in the reaffirmation of *De responso haruspicum*. The very status of 'religion', the potential ascribed to the gods to interfere, is subject to the potential to question concrete acts of such human ascriptions. In the case under scrutiny, Cicero depicts exactly this situation in an attempt to subject an obviously soft field of action to his own rules and to exclude competing independent religious expertise, for instance in the form of books, *libri*, of a priesthood. At the same time, the assertion of such collective knowledge can be played off against the competence of an individual pontiff by emphasising his inexperience.

The selectivity and malleability of the rules brought into the argumentative space is not a contingent characteristic of the incident but is, rather, constitutive of it.⁶⁶ This is overlooked in Stroh's search for a precise legal framework, but it concurs with his general conclusion, namely that the speech is focused on the arousal of emotion and thus on winning supporters, never offering an alternative 'narration' of what had happened nor a *propositio* of what exactly he meant to argue.⁶⁷ From here, we can formulate a first conclusion, focusing on the methodology. Judicial speeches need to be interpreted

63 See Winterbottom 2004, 225, e. g., *Pro Murena*.

64 Winterbottom 2004, 223.

65 On the figure of this *devovere*, modeled on P. Decius Mus, see Dyck 2004.

66 With a view onto Cicero's speeches, Riggsby 2002, 188, and Gildenhard 2011. In general: Rüpke 1996; Rüpke 2010a; Rüpke 2018a, 158–182.

67 Stroh 2004, 368–370.

within their highly controversial discursive and complex social contexts, both of which are at the core of the attempt by this very speech to change or redefine these contexts. What needs to come into view are not religious 'systems' but 'religion in the making'.⁶⁸

Such an approach fits into a world that repeatedly shines through the dense curtain of argumentation in Cicero's *De domo suo*, a world in which religious frames, semantics, and honours are daily currency. Being fully located in that world, Cicero does not reject Clodius' accusation that he himself is a Jupiter. Rather, he compares it with the (religiously) worse divine associations of his opponent (92). Like the Caesar of the anonymous *commentarius* on the Spanish Civil War, Cicero can also imagine himself rising into heaven (71).⁶⁹ A patron is quickly given a statue in a temple (81). And, of course, it is highly honourable when a senator wants to make his colleagues work together better by turning their meeting space into a temple of Concordia with a corresponding commitment to such harmony (130–131). The importance attributed to this statue of Concordia is matched even by the importance attributed by Cicero to the statue of Libertas. Accordingly, he has to put an enormous effort into effectively destroying her reputation (110–113).

This leads to the second conclusion in a historiographic line of argument. In view of these findings, the claim established in the literature that Cicero is arguing in *On his house* against the background of a stable sacral law, spelled out in quotable sentences, cannot be upheld. Such a law, a rule-based 'state' or 'civic religion', cannot be extrapolated from the text. What *De domo sua* documents (and enacts) is lived ancient religion.

Situationally (and not surprisingly, given the issue at stake) the religious controversy has a clear focus on property issues, and this merits a third and final conclusion. Not only can Cicero be discredited as a crown witness for a civic religion enshrined in sacred law but we can also add a new facet to the lived ancient religion of first century BCE Rome. The limits set for the gods in Cicero's speech are not constitutive legal rules for religion voted on by the body of citizens, a *ius totum omnium religionum*, but the inviolability of private property. Judging from the results, it was on the basis of this argument that Cicero carried the day and won the pontiffs. Here, a bitter after-taste remains. What has been looked at as sacred law since Wissowa was, in fact, something rather more like class justice.

⁶⁸ Rüpke 2018b.

⁶⁹ Cf. *Bell. Hisp.* 42.7.

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