

IX.—Did Cicero Complete the *De Legibus*?

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In his article "Did Cicero Complete the *De Legibus*?" *AJPh* 58 (1937) 403–417, the late C. W. Keyes appears to have disposed conclusively of all but one of the traditional arguments against the completeness of the *De Legibus* as it must have existed (though since damaged by accidents of transmission) during Cicero's lifetime.¹ The seemingly unanswered difficulty concerns the absence of a formal non-dramatic proem, a feature of all Cicero's dialogues except the *De Legibus* and the *Partitiones Oratoriae*. Keyes attempts to account for the absence of such a proem in the *De Legibus*, first, by assuming (*loc. cit.* 404–406) that Cicero is here following his procedure in the *Partitiones Oratoriae*, which Keyes, following Hirzel, Schanz-Hosius, and others, assigns to 54 B.C., not long before the conventional date (about 52) at which Cicero is supposed to have begun work on the *De Legibus*; second, by referring (*ibid.* 407) to the example of Plato's *Laws*, in which, as in the *De Legibus*, the dialogue begins abruptly with the dramatic action; and third, by the assertion (*ibid.* 409–410; similarly, M. Pohlenz, *Philologus* 93 [1938] 121–124) that all necessary information which might have been given in a proem is contained in the dramatic prologue (*Leg.* 1.1–18).

Against Keyes' position it may be urged, first, that the date of the *Partitiones Oratoriae* must still be regarded as controversial in view of H. Bornecque's able arguments for 46 B.C. (*Cicéron, Divisions de l'art oratoire, Topiques* [Paris, 1924] xi–xiv); while the relative importance, purpose, and execution of the two works seem all against Keyes' interpretation; and second, that, as pointed out by Schanz (cf. Schanz-Hosius, *Gesch. d. röm. Lit.* 1⁴ [1927] 498 n. 1), Cicero in the closely related *De Republica* departs from his model in Plato's *Republic* to prefix a typical proem.²

¹ These arguments and the recent literature of the problem (i.e. to 1937) are adequately presented by Keyes and need not be repeated here. The alleged testimony of Quintilian (*Inst.* 12.3.10) is, however, better regarded as simply indecisive than as (so Keyes *loc. cit.* 415 n. 48) wholly inadmissible.

² Keyes (*loc. cit.* 407) seems to overlook the fundamental difference between the proem of Cicero's *De Republica* and that of Plato's *Republic*.

As regards the third point, though the absence of a "dedicatory epistle" is perhaps, as Keyes holds (*loc. cit.* 410), immaterial, it appears to be overlooked that Cicero in every other dialogue (excepting, of course, the *Partitiones Oratoriae*) suggests, in the proem or in a transitional non-dramatic passage immediately following, the relation in time between the fictive conversation and the actual date of composition, which, whether or not defined in explicit terms, is assumed to be the present for both Cicero and his reader. This explanation of the dramatic date is given in both the "Heraclidean" and the "Aristotelian" dialogues, as Cicero distinguishes the two types (*Att.* 13.19.4). In the former class Cicero describes the date of the conversation (which is supposed to have taken place before his birth or, as in the *De Oratore*, at a period at which he could not by reason of age readily have been present) and gives the authority on which he presumes to report the discussion: so *Rep.* 1.13-14; *De Or.* 1.24; *De Sen.* 3 (where the fictitious character of Cato's speech is plainly admitted; cf. *De Am.* 4); *De Am.* 1-5. In the dialogues of the "Aristotelian" type (in which Cicero appears as a speaker and in which the dramatic date is well within the period of Cicero's maturity) we are further enabled by the chronological indications thus given to distinguish between those works in which the dramatic date is nearly identical with the date of writing (*Brutus*, *Academica Posteriora*, *Tusculans*, *De Divinatione*, *De Fato*) and those in which a considerable number of years have elapsed between the supposed conversation and its redaction. Thus in *Brut.* 9; *Ac.* 1.1; *Tusc.* 1.7; *Div.* 1.8 the word *nuper* is used to designate the relative dates; while in *Fat.* 1-2 a more detailed description of the circumstances of the conversation with Hirtius appears to date the discussion to the period shortly after the death of Caesar. In the remaining dialogues we find the word *quondam* employed in the *Lucullus* (*Ac.* 2.9) to indicate a conversation datable by this passage before the death of Catulus (60 B.C.) and (*Ac.* 2.62) subsequent to Cicero's exposure of the Catilinarian conspiracy in 63; and in *Fin.* 1.13 to relate *De Finibus* 1 and 2 (as appears from *Fin.* 2.74) to 50 B.C. Similarly in *De Finibus* 3 and 4 the date is restricted by *Fin.* 3.6-7 to a time not long after the death of Lucullus the elder (56 B.C.), more precisely defined (*Fin.* 4.1) as 52; and in *De Natura Deorum* (1.15) to 77-75.³ Finally the dramatic action of *De Finibus*

³ The *De Natura Deorum* may belong technically to the "Heraclidean" dialogues (cf. Mayor's note on *N.D.* 1.34 *Heracles*), but the point is immaterial for the question in hand.

5 and *Timaeus* are explicitly assigned (*Fin.* 5.1; *Tim.* 2) to 79 and 51, respectively.

It is thus improbable in view of his all but universal practice in other dialogues that Cicero should carry his imitation of a perhaps accidental feature of Plato's *Laws* to such an extent as to omit, in a work otherwise apparently ready for publication, any indication which would enable the reader to know in advance the approximate dramatic date of the work. That Cicero gave considerable thought to this and similar details of dramatic propriety appears not only from the passages cited (cf. *De Am.* 1–5), but also from many incidental discussions in his letters (e.g. *Ad Q.F.* 3.5.1–2; *Att.* 13.19.4; 16.6.4; *Fam.* 9.8.1). The difficulty is not answered, as Keyes believes (*loc. cit.* 409–410), by the fact that indications of dramatic date are contained in the dramatic prologue of the work (*Leg.* 1.1–18). The same situation obtains in other “Aristotelian” dialogues as well (e.g. *Brut.* 10 sqq.; *Div.* 1.8–10; *Fin.* 3.8; *Fat.* 3–4). In all these cases, however, the dramatic date had already been at least approximately defined in the prefatory non-dramatic introduction.

The question of completeness is perhaps not without importance for the more fundamental problem of the real date of composition of the *De Legibus*, since, as is well known, Cicero nowhere mentions this work in his other writings (Teuffel-Kroll, *Gesch. d. röm. Lit.* 1⁶ [1916] 406; R. Philippon, *RE* 7 A 1118.19–20). If we follow the common opinion that Cicero began the work about 52 and probably resumed it, after an interruption, in 46 (so Keyes, *loc. cit.* 403), and if we further admit, as now seems necessary from the rest of Keyes' demonstration, that the treatise is complete in all but the prefatory matter discussed above, we are confronted anew by the difficulty of explaining not only why Cicero did not publish the work prior to the date of his catalogue of published works in *Div.* 2.1–4 (spring or summer, 44 B.C.),⁴ but also, and perhaps more important, why the *De Legibus* is never mentioned in the letters to Atticus, our chief source for the progress of his writings and studies, through the

⁴ It is by no means as likely as Keyes (*loc. cit.* 403–404) and others seem to imply that Cicero would have been deterred from publishing the *De Legibus*, assuming it had then been written, by fear of Caesar or by the unsettled conditions which prevailed after the latter's death. He had, in 46, published his *Cato* and had, earlier in that year, contemplated writings of the character of our *De Republica* and *De Legibus* (*Fam.* 9.2.5); while, in 45–44, we find him not only publicly and gratuitously affirming his authorship of the *De Republica* (*Tusc.* 4.1; *Div.* 2.3) but even projecting various works of a political nature (cf. Schanz-Hosius, *Gesch. d. röm. Lit.* 1⁴ [1927] 533f.).

close of the correspondence in November, 44. Yet the closely related *De Republica* is frequently mentioned there and never as requiring the *De Legibus* to supplement it though the latter represents itself (1.15; 2.14) as a sequel to the former treatise. If, on the other hand, we assume (cf. *TAPhA* 71 [1940] 529–531) that the *De Legibus* in its entirety may date from the end of 44 or even from 43, Keyes' demonstration of the completeness of our work in all but the detail here under consideration may suggest the hypothesis that Cicero, having begun the work after November, 44, and having completed it in all essentials during his temporary return to power as head of the senatorial party in the struggle against Antony (*Leg.* 3.14; 29 may be interpreted as relevant to this period), finally abandoned the design of publishing it when his political situation became desperate about the middle of 43 (cf. *TAPhA* 71 [1940] 530, n. 27).